
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The recodified condominium law is the result of
2 Act 164, Session Laws of Hawaii 2004, Act 93, Session Laws of
3 Hawaii 2005, and Act 273, Session Laws of Hawaii 2006. The
4 administration of the recodified condominium law has brought up
5 a number of issues that require some housekeeping amendments.
6 The purpose of this Act is to make necessary technical and
7 conforming amendments to relevant statutory provisions.

8 SECTION 2. Section 467-14, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§467-14 Revocation, suspension, and fine.** In addition to
11 any other actions authorized by law, the commission may revoke
12 any license issued under this chapter, suspend the right of the
13 licensee to use the license, fine any person holding a license,
14 registration, or certificate issued under this chapter, or
15 terminate any registration or certificate issued under this
16 chapter, for any cause authorized by law, including but not
17 limited to the following:



- 1 (1) Making any misrepresentation concerning any real
2 estate transaction;
- 3 (2) Making any false promises concerning any real estate
4 transaction of a character likely to mislead another;
- 5 (3) Pursuing a continued and flagrant course of
6 misrepresentation, or making of false promises through
7 advertising or otherwise;
- 8 (4) Without first having obtained the written consent to
9 do so of both parties involved in any real estate
10 transaction, acting for both the parties in connection
11 with the transaction, or collecting or attempting to
12 collect commissions or other compensation for the
13 licensee's services from both of the parties;
- 14 (5) When the licensee, being a real estate salesperson,
15 accepts any commission or other compensation for the
16 performance of any of the acts enumerated in the
17 definition set forth in section 467-1 of real estate
18 salesperson from any person other than the real estate
19 salesperson's employer or the real estate broker with
20 whom the real estate salesperson associates or, being
21 a real estate broker or salesperson, compensates one



- 1 not licensed under this chapter to perform any such
2 act;
- 3 (6) When the licensee, being a real estate salesperson,
4 acts or attempts to act as a real estate broker or
5 represents, or attempts to represent, any real estate
6 broker other than the real estate salesperson's
7 employer or the real estate broker with whom the real
8 estate salesperson is associated;
- 9 (7) Failing, within a reasonable time, to account for any
10 moneys belonging to others which may be in the
11 possession or under the control of the licensee;
- 12 (8) Any other conduct constituting fraudulent or dishonest
13 dealings;
- 14 (9) When the licensee, being a partnership, permits any
15 member of the partnership who does not hold a real
16 estate broker's license to actively participate in the
17 real estate brokerage business thereof or permits any
18 employee thereof who does not hold a real estate
19 salesperson's license to act as a real estate
20 salesperson therefor;
- 21 (10) When the licensee, being a corporation, permits any
22 officer or employee of the corporation who does not



1 hold a real estate broker's license to have the direct
2 management of the real estate brokerage business
3 thereof or permits any officer or employee thereof who
4 does not hold a real estate salesperson's license to
5 act as a real estate salesperson therefor;

6 (11) When the licensee, being a real estate salesperson,
7 fails to file with the commission a written statement
8 setting forth the name of the real estate broker by
9 whom the licensee is employed or with whom the
10 licensee is associated;

11 (12) When the licensee fails to obtain on the contract
12 between the parties to the real estate transaction
13 confirmation of who the real estate broker represents;

14 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,
15 or 515; section 516-71; or the rules adopted pursuant
16 thereto;

17 (14) Splitting fees with or otherwise compensating others
18 not licensed hereunder for referring business;
19 provided that notwithstanding paragraph (5), a real
20 estate broker may pay a commission to:

21 (A) A licensed real estate broker of another state,
22 territory, or possession of the United States if



1 that real estate broker does not conduct in this
2 State any of the negotiations for which a
3 commission is paid;

4 (B) A real estate broker lawfully engaged in real
5 estate brokerage activity under the laws of a
6 foreign country if that real estate broker does
7 not conduct in this State any of the negotiations
8 for which a commission is paid; or

9 (C) A travel agency that in the course of business as
10 a travel agency or sales representative, arranges
11 for compensation the rental of transient vacation
12 rental; provided that for purposes of this
13 paragraph "travel agency" means any person, which
14 for compensation or other consideration, acts or
15 attempts to act as an intermediary between a
16 person seeking to purchase travel services and
17 any person seeking to sell travel services,
18 including an air or ocean carrier;

19 (15) Commingling the money or other property of the
20 licensee's principal with the licensee's own;

21 (16) Converting other people's moneys to the licensee's own
22 use;



- 1 (17) The licensee is adjudicated insane or incompetent;
- 2 (18) Failing to ascertain and disclose all material facts
- 3 concerning every property for which the licensee
- 4 accepts the agency, so that the licensee may fulfill
- 5 the licensee's obligation to avoid error,
- 6 misrepresentation, or concealment of material facts;
- 7 provided that for the purposes of this paragraph, the
- 8 fact that an occupant has AIDS or AIDS Related Complex
- 9 (ARC) or has been tested for HIV (human
- 10 immunodeficiency virus) infection shall not be
- 11 considered a material fact;
- 12 (19) When the licensee obtains or causes to be obtained,
- 13 directly or indirectly, any licensing examination or
- 14 licensing examination question for the purpose of
- 15 disseminating the information to future takers of the
- 16 examination for the benefit or gain of the licensee;
- 17 or
- 18 (20) Failure to maintain a reputation for or record of
- 19 competency, honesty, truthfulness, financial
- 20 integrity, and fair dealing.



1 Disciplinary action may be taken by the commission whether the
2 licensee is acting as a real estate broker, or real estate
3 salesperson, or on the licensee's own behalf. "

4 SECTION 3. Section 514B-86, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) No sales contract for the purchase of a unit from a
7 developer shall be binding on the developer, prospective
8 purchaser, or purchaser until:

9 (1) The developer has delivered to the prospective
10 purchaser:

11 (A) A true copy of the developer's public report
12 including all amendments with an effective date
13 issued by the commission. The developer's public
14 report shall include the report itself, the
15 condominium project's recorded declaration and
16 bylaws, house rules if any, a letter-sized
17 condominium project map, and all amendments[-
18 ~~Where it is impractical to include a letter-sized~~
19 ~~condominium project map, the prospective~~
20 ~~purchaser or purchaser shall be provided a~~
21 ~~written notice of an opportunity to examine the~~
22 ~~map. The copy of the recorded declaration and~~



1 ~~bylaws creating the project shall indicate the~~
2 ~~document number or land court document number, or~~
3 ~~both, as applicable,]~~ which shall be:

4 (i) Attached to the developer's public report
5 itself as exhibits or shall be concurrently
6 and separately provided to the prospective
7 purchaser or purchaser with the developer's
8 public report;

9 (ii) Printed copies unless the commission,
10 prospective purchaser, or purchaser indicate
11 in a separate writing their election to
12 receive the required condominium's
13 declaration, bylaws, house rules, if any,
14 letter-sized condominium map, and all
15 amendments through means of a computer disc,
16 email, download from an internet site or by
17 any other means contemplated by chapter
18 489E. Where it is impractical to include a
19 letter-sized condominium project map, the
20 prospective purchaser or purchaser shall be
21 provided a written notice of an opportunity
22 to examine the map. The copy of the



1 recorded declaration and bylaws creating the
 2 project, shall indicate the document number
 3 or land court document number, or both, as
 4 applicable; and

5 (B) A notice of the prospective purchaser's thirty-
 6 day cancellation right on a form prescribed by
 7 the commission, upon which the prospective
 8 purchaser may indicate that the prospective
 9 purchaser has had an opportunity to read the
 10 developer's public report, understands the
 11 developer's public report, and exercises the
 12 right to cancel or waives the right to cancel;
 13 and

14 (2) The prospective purchaser has waived the right to
 15 cancel or is deemed to have waived the right to
 16 cancel."

17 SECTION 4. Section 514B-103, Hawaii Revised Statutes, is
 18 amended by amending subsection (a) to read as follows:

19 "(a) Each project or association having more than five
 20 units shall:

21 [~~(1)~~] (1) Secure and maintain a fidelity bond in an amount
 22 for the coverage and terms as required by section



1 514B-143(a)(3). An association shall act promptly and
2 diligently to recover from the fidelity bond required
3 by this section. An association that is unable to
4 obtain a fidelity bond may seek approval for an
5 exemption, a deductible, or a bond alternative from
6 the commission. Current evidence of a fidelity bond
7 includes a certification statement from an insurance
8 company registered with the department of commerce and
9 consumer affairs certifying that the bond is in effect
10 and meets the requirement of this section and the
11 rules adopted by the commission.

12 (2) Register with the commission through approval of a
13 completed registration application, payment of fees,
14 and submission of any other additional information set
15 forth by the commission. The registration shall be
16 for a biennial period with termination on June 30 of
17 each odd-numbered year. The commission shall
18 prescribe a deadline date prior to the termination
19 date for the submission of a completed reregistration
20 application, payment of fees, and any other additional
21 information set forth by the commission. Any project
22 or association that has not met the submission



1 requirements by the deadline date shall be considered
2 a new applicant for registration and be subject to
3 initial registration requirements. Any new project or
4 association shall register within thirty days of the
5 association's first meeting. If the association has
6 not held its first meeting and it is at least one year
7 after the recordation of the purchase of the first
8 unit in the project, the developer or developer's
9 affiliate or the managing agent shall register on
10 behalf of the association and shall comply with this
11 section, except for the fidelity bond requirement for
12 associations required by section 514B-143(a)(3). The
13 public information required to be submitted on any
14 completed application form shall include but not be
15 limited to evidence of and information on fidelity
16 bond coverage, names and positions of the officers of
17 the association, the name of the association's
18 managing agent, if any, the street and the postal
19 address of the condominium, and the name and current
20 mailing address of a designated officer of the
21 association where the officer can be contacted
22 directly;



1 [~~(2)~~] (3) Pay a nonrefundable application fee and, upon
2 approval, an initial registration fee, a
3 reregistration fee upon reregistration and the
4 condominium education trust fund fee, as provided in
5 rules adopted by the director of commerce and consumer
6 affairs pursuant to chapter 91;

7 [~~(3)~~] (4) Register or reregister and pay the required fees
8 by the due date. Failure to register or reregister or
9 pay the required fees by the due date shall result in
10 the assessment of a penalty equal to the amount of the
11 registration or reregistration fee; and

12 [~~(4)~~] (5) Report promptly in writing to the commission any
13 changes to the information contained on the
14 registration or reregistration application or any
15 other documents required by the commission. Failure
16 to do so may result in termination of registration and
17 subject the project or the association to initial
18 registration requirements."

19 SECTION 5. Where an association is unable to obtain the
20 required fidelity bond of section 514B-103, the commission's
21 current fidelity bond exemption policies shall be used until
22 such time the commission adopts rules.



1 SECTION 6. Act 93, Session Laws of Hawaii 2005, is amended
2 by amending section 9(b) to read as follows:

3 "(b) The developer of a project [~~registered~~] created
4 pursuant to chapter 514A, Hawaii Revised Statutes, may elect to
5 register the project under the new chapter established by
6 section 2 of Act 164, Session Laws of Hawaii 2004, as amended by
7 this Act, by submitting the application, documentation, and fees
8 required under sections -52 and -54, Hawaii Revised
9 Statutes, in section 3 of this Act[-]; provided the property is
10 removed from chapter 514A, in accordance with section 514A-21.

11 Upon the issuance of an effective date for the project's public
12 report pursuant to the new chapter, the project's registration
13 under chapter 514A, Hawaii Revised Statutes, shall terminate,
14 the developer shall provide copies of the new public report to
15 all existing purchasers, and the rights and obligations of the
16 developer and all purchasers shall thereafter be governed by the
17 new chapter; provided that unless the new public report reflects
18 a material change to the project:

19 (1) The issuance of the new public report shall not affect
20 the enforceability of any purchase contract that
21 previously became binding upon the purchaser;



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1 (2) A purchaser shall have the right to rescind the
2 purchase contract; and

3 (3) A developer shall not be required to deliver a notice
4 of thirty-day right of cancellation as specified in
5 section -86, Hawaii Revised Statutes, in section 4
6 of this Act."

7 SECTION 7. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun, before its effective date.

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect upon its approval.

13

INTRODUCED BY: _____

By Roy Jeter

JAN 23 2007



Report Title:

Condominiums

Description:

Makes technical and conforming amendments that relate to the recodified condominium law.

