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# 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 163, 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 raised a  
5 number of issues that require some housekeeping amendments.

6           The purpose of this Act is to make technical and conforming  
7 amendments to various provisions of the condominium law.

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; and], 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 provided in chapter 489E.  
18 Where it is impractical to include a letter-  
19 sized condominium map, the prospective  
20 purchaser or purchaser shall be provided a  
21 written notice of an opportunity to examine  
22 the map. The copy of the recorded





1                   declaration and bylaws creating the project  
2                   shall indicate the document number or land  
3                   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) Secure and maintain a fidelity bond in an amount for  
22          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 requirements of this section and the  
11           rules adopted by the commission.

12        ~~(1)~~ (2) Register with the commission through approval of  
13           a 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. Act 93, Session Laws of Hawaii 2005, is amended  
20       by amending subsection (b) of section 9 to read as follows:

21       "(b) The developer of a project registered pursuant to  
22       chapter 514A, Hawaii Revised Statutes, may elect to register the



1 project under the new chapter established by section 2 of Act  
2 164, Session Laws of Hawaii 2004, as amended by this Act, by  
3 submitting the application, documentation, and fees required  
4 under sections [~~52~~] 514B-52 and [~~54,~~] 514B-54, Hawaii  
5 Revised Statutes, in section 3 of this Act [~~-~~]; provided that the  
6 property is removed from chapter 514A, Hawaii Revised Statutes,  
7 in accordance with section 514A-21, Hawaii Revised Statutes.

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

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

19 (2) A purchaser shall have no right to rescind the  
20 purchase contract; and

21 (3) A developer shall not be required to deliver a notice  
22 of thirty-day right of cancellation as specified in



1 section [~~86,~~] 514B-86, Hawaii Revised Statutes, in  
2 section 4 of this Act."

3 SECTION 6. Where an association is unable to obtain a  
4 fidelity bond as required in section 514B-103, Hawaii Revised  
5 Statutes, the real estate commission's policy on bond exemption  
6 shall be followed until such time as the real estate commission  
7 adopts rules to effectuate section 514B-103, Hawaii Revised  
8 Statutes.

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

12 SECTION 8. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect upon its approval.  
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INTRODUCED BY:

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**Report Title:**  
Condominiums

**Description:**  
Makes clarifying amendments to various provisions of condominium law.

