
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. In 2000, the legislature, recognizing the need
2 to clarify and update the State's condominium laws, directed the
3 real estate commission to conduct a comprehensive review of
4 chapter 514A. The real estate commission reported the results of
5 its study to the legislature in December 2003, and included
6 proposed legislation that repealed the existing chapter 514A and
7 replaced it with a new comprehensive condominium law. The final
8 version of that measure, however, differed from the original
9 version recommended by the commission. The legislature
10 revisited the issue of condominium regulation in the 2005, 2006,
11 and 2007 sessions, when it fine-tuned the "new" condominium law
12 codified in chapter 514B and reinstated the "old" condominium
13 law codified in chapter 514A. This resulted in two parallel
14 chapters on condominiums as well as two separate trust funds
15 designated for identically defined educational purposes.

16 The two educational trust funds obligate the real estate
17 commission to duplicate its work by separately budgeting,



1 planning, reporting to the legislature, and accounting for the
2 receipts and expenses of the two funds. This result is
3 administratively impractical, burdensome, and confusing.

4 The purpose of this Act is to merge the two funds into one
5 fund, the condominium education trust fund, by:

- 6 (1) Repealing the condominium management education fund;
- 7 (2) Transferring all unexpended and unencumbered balances
8 remaining in the condominium management education fund
9 to the credit of the condominium education trust fund;
- 10 (3) Clarifying the allocation of future payments due to
11 the credit of the condominium education trust fund;
12 and
- 13 (4) Changing all statutory references to the condominium
14 education trust fund.

15 SECTION 2. Section 514A-40, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) No effective date shall be issued by the commission
18 for a final public report until the developer, pursuant to
19 section 514B-72, has paid into the [~~condominium management~~
20 ~~education fund~~] condominium education trust fund established
21 under section 514B-71 a nonrefundable fee of \$5 for each
22 apartment in the project. Fees required by this subsection



1 shall be subject to adjustment as prescribed by rules adopted by
2 the director of commerce and consumer affairs pursuant to
3 chapter 91. [~~Payments required under this subsection shall be~~
4 ~~due after June 13, 1989.~~]"

5 SECTION 3. Section 514A-46, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§514A-46 Investigatory powers.** If the commission has
8 reason to believe that any person is violating or has violated
9 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
10 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,
11 514A-95.1, 514A-97, 514A-98, [~~514A-132, or~~] 514A-134, or 514B-
12 72, or the rules of the commission adopted pursuant thereto, the
13 commission may conduct an investigation of the matter and
14 examine the books, accounts, contracts, records, and files of
15 the association of apartment owners, the board of directors, the
16 managing agent, the real estate broker, the real estate
17 salesperson, the purchaser, or the developer. For the purposes
18 of this examination, the developer and the real estate broker
19 shall keep and maintain records of all sales transactions and of
20 the funds received by the developer and the real estate broker
21 pursuant thereto, and shall make the records accessible to the
22 commission upon reasonable notice and demand."



1 SECTION 4. Section 514A-47, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§514A-47 Cease and desist orders. In addition to its
4 authority under section 514A-48, whenever the commission has
5 reason to believe that any person is violating or has violated
6 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
7 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,
8 514A-95.1, 514A-97, 514A-98, [~~514A-132, or~~] 514A-134, or 514B-
9 72, or the rules of the commission adopted pursuant thereto, it
10 shall issue and serve upon the person a complaint stating its
11 charges in that respect and containing a notice of a hearing at
12 a stated place and upon a day at least thirty days after the
13 service of the complaint. The person served has the right to
14 appear at the place and time specified and show cause why an
15 order should not be entered by the commission requiring the
16 person to cease and desist from the violation of the law or the
17 rules of the commission charged in the complaint. If, upon the
18 hearing, the commission is of the opinion that this chapter or
19 the rules of the commission have been or are being violated, it
20 shall make a report in writing stating its findings as to the
21 facts and shall issue and cause to be served on the person an
22 order requiring the person to cease and desist from the



1 violations. The person, within thirty days after service upon
2 the person of the report or order, may obtain a review thereof
3 in the appropriate circuit court."

4 SECTION 5. Section 514A-48, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§514A-48 Power to enjoin. Whenever the commission
7 believes from satisfactory evidence that any person has violated
8 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
9 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,
10 514A-95.1, 514A-97, 514A-98, [~~514A-132, or~~] 514A-134, or 514B-
11 72, or the rules of the commission adopted pursuant thereto, it
12 may conduct an investigation on the matter and bring an action
13 in the name of the people of the State in any court of competent
14 jurisdiction against the person to enjoin the person from
15 continuing the violation or engaging therein or doing any act or
16 acts in furtherance thereof."

17 SECTION 6. Section 514A-49, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Any person who violates or fails to comply with
20 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
21 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,
22 514A-95.1, 514A-97, 514A-98, 514A-102 to [~~514A-106, 514A-132, or~~



1 ~~514A-134,~~] 514A-105, 514A-134, or 514B-72 is guilty of a
2 misdemeanor and shall be punished by a fine not exceeding
3 \$10,000 or by imprisonment for a term not exceeding one year, or
4 both. Any person who violates or fails, omits, or neglects to
5 obey, observe, or comply with any rule, order, decision, demand,
6 or requirement of the commission under section [~~514A-27,~~] 514A-31
7 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68,
8 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1,
9 514A-97, 514A-98, 514A-102 to [~~514A-106, 514A-132, or 514A-134~~]
10 514A-105, or 514B-72 shall be punished by a fine not exceeding
11 \$10,000."

12 SECTION 7. Section 514A-95.1, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Each condominium project or association of apartment
15 owners having [~~six or~~] more than five apartments shall:

16 (1) Secure a fidelity bond in an amount equal to \$500
17 multiplied by the number of apartments, to cover all
18 officers, directors, employees, and managing agents of
19 the association of apartment owners who handle,
20 control, or have custody of the funds of the
21 association of apartment owners; provided that the
22 amount of the fidelity bond required by this paragraph



1 shall not be less than \$20,000 nor greater than
2 \$100,000. The fidelity bond shall protect the
3 association of apartment owners against fraudulent or
4 dishonest acts by persons, including any managing
5 agent, [~~handling~~] who have access to the funds of the
6 association of apartment owners. An association of
7 apartment owners shall act promptly and diligently to
8 recover from the fidelity bond required by this
9 section. An association of apartment owners that is
10 unable to obtain a fidelity bond may seek approval for
11 an exemption or a bond alternative from the
12 commission. The commission shall adopt rules
13 establishing the conditions and terms for which it may
14 grant an exemption or a bond alternative, or permit
15 deductibles. Failure to obtain or maintain a fidelity
16 bond in compliance with this chapter and the rules
17 adopted pursuant thereto, including failure to provide
18 current evidence of the fidelity bond coverage in a
19 timely manner to the commission, shall result in non-
20 registration or the automatic termination of the
21 registration, unless an approved exemption or a bond
22 alternative is presently maintained. Current evidence



1 of a fidelity bond includes a certification statement
2 from an insurance company registered with the
3 department of commerce and consumer affairs certifying
4 that the bond is in effect and meets the requirement
5 of this section and the rules adopted by the
6 commission;

- 7 (2) Register with the commission through approval of a
8 completed registration application, payment of fees,
9 and submission of any [~~ether~~] additional information
10 set forth by the commission. Beginning June 30, 1997,
11 the registration shall be for a biennial period with
12 termination on June 30 of an odd-numbered year. The
13 commission shall prescribe a deadline date prior to
14 the termination date for the submission of a completed
15 reregistration application, payment of fees, and any
16 [~~ether~~] additional information set forth by the
17 commission. Any condominium project or association of
18 apartment owners that has not met the submission
19 requirements by the deadline date shall be considered
20 a new applicant for registration and subject to
21 initial registration requirements. Any new
22 condominium project or association of apartment owners



1 shall register within thirty days of the association
2 of apartment owners' first meeting. If the
3 association of apartment owners has not held its first
4 meeting [~~and it is at least~~] within one year after the
5 recordation of the purchase of the first apartment in
6 the condominium project, the developer or developer's
7 affiliate or the managing agent shall register on
8 behalf of the unorganized association of apartment
9 owners and shall comply with this section, except the
10 fidelity bond requirement for association of apartment
11 owners. The public information required to be
12 submitted on any completed application form shall
13 include but not be limited to evidence of and
14 information on fidelity bond coverage, names and
15 positions of the officers of the association, the name
16 of the association of apartment owners' managing
17 agent, if any, the street and the postal address of
18 the condominium, and the name and current mailing
19 address of a designated officer of the association of
20 apartment owners where the officer can be contacted
21 directly;



- 1 (3) Pay a nonrefundable application fee and, upon
2 approval, an initial registration fee [~~and~~
3 ~~subsequently pay~~] or a reregistration fee, and the
4 ~~[condominium management education fund fee, as~~
5 ~~provided in]~~ condominium education trust fund fee
6 pursuant to section 514B-72 and rules adopted by the
7 director of commerce and consumer affairs pursuant to
8 chapter 91;
- 9 (4) Register or reregister and pay the required fees by
10 the due date. Failure to register or reregister or to
11 pay the required fees by the due date shall result in
12 the assessment of a penalty equal to the amount of the
13 registration or reregistration fee; and
- 14 (5) Report immediately in writing to the commission any
15 changes to the information contained on the
16 registration or reregistration application, the
17 evidence of the fidelity bond, or any other documents
18 set forth by the commission. Failure to do so may
19 result in termination of registration and subject the
20 condominium project or the association of apartment
21 owners to initial registration requirements."



1 SECTION 8. Chapter 514A, part VIII, Hawaii Revised
2 Statutes, is amended to read as follows:

3 " ~~[+] PART VIII. [+] CONDOMINIUM [MANAGEMENT] EDUCATION TRUST FUND~~

4 ~~[[§514A-131] Condominium management education fund. (a)~~

5 ~~The real estate commission shall establish a condominium~~
6 ~~management education fund that the commission may use for~~
7 ~~educational purposes. Educational purposes shall include~~
8 ~~financing or promoting:~~

9 ~~(1) Education and research in the field of condominium~~
10 ~~management, condominium registration, and real estate~~
11 ~~for the benefit of the public and those required to be~~
12 ~~registered under this chapter;~~

13 ~~(2) The improvement and more efficient administration of~~
14 ~~condominium associations; and~~

15 ~~(3) Expeditious and inexpensive procedures for resolving~~
16 ~~condominium association disputes.~~

17 ~~(b) The commission may use any and all moneys in the~~
18 ~~condominium management education fund for purposes consistent~~
19 ~~with subsection (a).~~

20 ~~§514A-132 Payments to the fund. (a) Each condominium~~
21 ~~project or association of apartment owners with six or more~~
22 ~~apartments shall pay to the department of commerce and consumer~~



1 ~~affairs the condominium management education fund fee on or~~
2 ~~before June 30 of an odd numbered year or within thirty days of~~
3 ~~the association of apartment owners' first meeting or within one~~
4 ~~year after the recordation of the purchase of the first~~
5 ~~apartment, as prescribed by rules adopted by the director of~~
6 ~~commerce and consumer affairs pursuant to chapter 91.~~

7 ~~(b) The department of commerce and consumer affairs shall~~
8 ~~allocate the fees collected to the condominium management~~
9 ~~education fund established pursuant to section 514A 131.~~

10 ~~(c) Payments of any fees required under this section shall~~
11 ~~be due on or before the registration due date and shall be~~
12 ~~nonrefundable. Failure to pay the required fee by the due date,~~
13 ~~shall result in a penalty assessment of ten per cent of the~~
14 ~~amount due and the association of apartment owners shall not~~
15 ~~have standing to bring any action to collect or to foreclose any~~
16 ~~lien for common expenses or other assessments in any court of~~
17 ~~this State until the amount due, including any penalty, is paid.~~
18 ~~Failure of an association of apartment owners to pay a fee~~
19 ~~required under this section shall not impair the validity of any~~
20 ~~claim of the association of apartment owners for common expenses~~
21 ~~or other assessments, or prevent the association of apartment~~
22 ~~owners from defending any action in any court of this State.~~



1 ~~§514A 133 Management of fund.~~ (a) ~~The sums received by~~
2 ~~the commission for deposit in the condominium management~~
3 ~~education fund shall be held by the commission in trust for~~
4 ~~carrying out the purpose of the fund.~~

5 ~~(b) The commission and the director of commerce and~~
6 ~~consumer affairs may use moneys in the condominium management~~
7 ~~education fund to employ necessary personnel not subject to~~
8 ~~chapter 76 for additional staff support, to provide office~~
9 ~~space, and to purchase equipment, furniture, and supplies~~
10 ~~required by the commission to carry out its responsibilities~~
11 ~~under this part.~~

12 ~~(c) The moneys in the condominium management education~~
13 ~~fund may be invested and reinvested together with the real~~
14 ~~estate education fund established under section 467 19 in the~~
15 ~~same manner as are the funds of the employees retirement system~~
16 ~~of the State. The interest from these investments shall be~~
17 ~~deposited to the credit of the condominium management education~~
18 ~~fund.~~

19 ~~(d) The commission shall annually submit to the~~
20 ~~legislature, prior to the convening of each regular session:~~

21 ~~(1) A summary of the programs funded during the prior~~
22 ~~fiscal year and the amount of money in the fund, and~~



1 ~~(2) A copy of the budget for the current fiscal year,~~
2 ~~including summary information on programs which were~~
3 ~~funded or are to be funded.]~~

4 [+]§514A-134[+] **False statement.** It shall be unlawful for
5 any association of apartment owners, its officers, its board of
6 directors, or its agents to file with the commission any notice,
7 statement, or other document required under this chapter that is
8 false or untrue or contains any material misstatement of fact.
9 Any violation of this section shall constitute a misdemeanor.

10 [+]§514A-135[+] **Rules.** The real estate commission shall
11 adopt rules pursuant to chapter 91 to effectuate fully the
12 purpose of this [+]part[+]."

13 SECTION 9. Section 514B-72, Hawaii Revised Statutes, is
14 amended follows:

15 1. By amending its title and subsection (a) to read:

16 "[+]§514B-72[+] **Condominium education trust fund; payments**
17 **by associations and developers.** (a) Each project or
18 association with more than five units, including any project or
19 association with more than five units subject to chapter 514A,
20 shall pay to the department of commerce and consumer affairs a
21 condominium education trust fund fee within one year after the
22 recordation of the purchase of the first unit or within thirty



1 days of the association's first meeting, and thereafter, on or
2 before June 30 of every odd-numbered year, as prescribed by
3 rules adopted pursuant to chapter 91."

4 2. By amending subsection (d) to read:

5 "(d) The department of commerce and consumer affairs shall
6 allocate the fees collected under this section, section 514A-40
7 and section 514A-95.1 to the condominium education trust fund
8 established pursuant to section 514B-71. The fees collected
9 pursuant to this section shall be administratively and fiscally
10 managed together as one condominium education trust fund
11 established by section 514B-71."

12 SECTION 10. Section 514B-73, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[~~§~~514B-73~~]~~ **Condominium education trust fund;**

15 **management.** (a) The sums received by the commission for
16 deposit in the condominium education trust fund pursuant to
17 sections 514A-40, 514A-95.1, and 514B-72 shall be held by the
18 commission in trust for carrying out the purpose of the fund.

19 (b) The commission and the director of commerce and
20 consumer affairs may use moneys in the condominium education
21 trust fund collected pursuant to sections 514A-40, 514A-95.1,
22 and 514B-72, and the rules of the commission to employ necessary



1 personnel not subject to chapter 76 for additional staff
2 support, to provide office space, and to purchase equipment,
3 furniture, and supplies required by the commission to carry out
4 its responsibilities under this part.

5 (c) The moneys in the condominium education trust fund
6 collected pursuant to sections 514A-40, 514A-95.1, and 514B-72,
7 and the rules of the commission may be invested and reinvested
8 together with the real estate education fund established under
9 section 467-19 in the same manner as are the funds of the
10 employees' retirement system of the State. The interest and
11 earnings from these investments shall be deposited to the credit
12 of the condominium education trust fund.

13 (d) The commission shall annually submit to the
14 legislature, no later than twenty days prior to the convening of
15 each regular session:

16 (1) A summary of the programs funded during the prior
17 fiscal year and the amount of money in the fund[+],
18 including a statement of which programs were directed
19 specifically at the education of individual
20 condominium owners; and

21 (2) A copy of the budget for the current fiscal year,
22 including summary information on programs that were



1 funded or are to be funded[-] and the target audience
2 for each program. The budget shall include a line
3 item reflecting the total amount collected from
4 individual condominium owners."

5 SECTION 11. On the effective date of this Act the director
6 of finance shall transfer the unexpended balance, including
7 encumbrances and accrued liabilities, existing on the day prior
8 to the effective date of this Act, of the condominium management
9 education fund established by section 514A-131, Hawaii Revised
10 Statutes, to the credit of the condominium education trust fund
11 established by section 514B-71, Hawaii Revised Statutes.
12 Encumbered moneys shall continue to be encumbered until paid out
13 or released from prior encumbrances.

14 SECTION 12. Any unencumbered and unexpended balance
15 existing as of the effective date of this Act in the condominium
16 management education fund established under chapter 514A, Hawaii
17 Revised Statutes, shall be deposited into the condominium
18 education trust fund established under chapter 514B, Hawaii
19 Revised Statutes, and shall be held in trust by the real estate
20 commission for carrying out the purpose of the condominium
21 education trust fund.



1 SECTION 13. Until the real estate commission and the
2 director of the department of commerce and consumer affairs
3 amend the rules pursuant to chapter 91, Hawaii Revised Statutes,
4 to change the name of the condominium management education fund,
5 references to the condominium management education fund in the
6 Hawaii Administrative Rules shall be deemed to be references to
7 the condominium education trust fund.

8 SECTION 14. This Act shall be amended to conform to all
9 other acts passed by the legislature during the regular session
10 of 2009, whether enacted before or after the effective date of
11 this Act, unless the other acts specifically provide otherwise.

12 SECTION 15. The revisor of statutes shall replace the term
13 "condominium management education fund" or like term whenever it
14 may appear in the Hawaii Revised Statutes, with the term
15 "condominium education trust fund."

16 SECTION 16. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun, before its effective date.

19 SECTION 17. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 18. This Act shall take effect on July 1, 2009.



S.B. NO. 1107
S.D. 2
H.D. 1

Report Title:

Condominium Management Education Fund; Condominium Education
Trust Fund

Description:

Merges the condominium management education fund and the
condominium education trust fund. (SB1107 SD2 HD1)

SB1107 HD1 HMS 2009-3085

