
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6 proposed legislation that repealed the existing chapter 514A and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 repealing the
6 condominium management education fund; transferring all
7 unexpended and unencumbered balances remaining in the
8 condominium management education fund to the credit of the
9 condominium education trust fund; clarifying the allocation of
10 future payments due to the credit of the condominium education
11 trust fund, and changing all statutory references to the
12 condominium education trust fund.

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

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

1 chapter 91. [~~Payments required under this subsection shall be~~
2 ~~due after June 13, 1989.~~]"

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

5 "**§514A-46 Investigatory powers.** If the commission has
6 reason to believe that any person is violating or has violated
7 section [~~514A-2,~~] 514A-31 to 514A-49, 514A-61 to 514A-63,
8 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85,
9 514A-95, 514A-95.1, 514A-97, 514A-98, [~~514A-132, or 514A-134,~~]
10 or 514B-72, or the rules of the commission adopted pursuant
11 thereto, the commission may conduct an investigation of the
12 matter and examine the books, accounts, contracts, records, and
13 files of the association of apartment owners, the board of
14 directors, the managing agent, the real estate broker, the real
15 estate salesperson, the purchaser, or the developer. For the
16 purposes of this examination, the developer and the real estate
17 broker shall keep and maintain records of all sales transactions
18 and of the funds received by the developer and the real estate
19 broker pursuant thereto, and shall make the records accessible
20 to the commission upon reasonable notice and demand."

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

1 "**§514A-47 Cease and desist orders.** In addition to its
2 authority under section 514A-48, whenever the commission has
3 reason to believe that any person is violating or has violated
4 section [~~514A-27~~] 514A-31 to 514A-49, 514A-61 to 514A-63,
5 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85,
6 514A-95, 514A-95.1, 514A-97, 514A-98, [~~514A-132, or 514A-134,~~]
7 or 514B-72, or the rules of the commission adopted pursuant
8 thereto, it shall issue and serve upon the person a complaint
9 stating its charges in that respect and containing a notice of a
10 hearing at a stated place and upon a day at least thirty days
11 after the service of the complaint. The person served has the
12 right to appear at the place and time specified and show cause
13 why an order should not be entered by the commission requiring
14 the person to cease and desist from the violation of the law or
15 the rules of the commission charged in the complaint. If, upon
16 the hearing, the commission is of the opinion that this chapter
17 or the rules of the commission have been or are being violated,
18 it shall make a report in writing stating its findings as to the
19 facts and shall issue and cause to be served on the person an
20 order requiring the person to cease and desist from the
21 violations. The person, within thirty days after service upon

1 the person of the report or order, may obtain a review thereof
2 in the appropriate circuit court."

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

5 "**§514A-48 Power to enjoin.** Whenever the commission
6 believes from satisfactory evidence that any person has violated
7 section [~~514A-2,~~] 514A-31 to 514A-49, 514A-61 to 514A-63,
8 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85,
9 514A-95, 514A-95.1, 514A-97, 514A-98, [~~514A-132, or 514A-134,~~]
10 or 514B-72, or the rules of the commission adopted pursuant
11 thereto, it may conduct an investigation on the matter and bring
12 an action in the name of the people of the State in any court of
13 competent jurisdiction against the person to enjoin the person
14 from continuing the violation or engaging therein or doing any
15 act or acts in furtherance thereof."

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

18 "(a) Any person who violates or fails to comply with
19 section [~~514A-2,~~] 514A-31 to 514A-49, 514A-61 to 514A-63,
20 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85,
21 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to [~~514A-106,~~
22 ~~514A-132, or 514A-134,~~] 514A-105, or 514B-72 is guilty of a

1 misdemeanor and shall be punished by a fine not exceeding
2 \$10,000 or by imprisonment for a term not exceeding one year, or
3 both. Any person who violates or fails, omits, or neglects to
4 obey, observe, or comply with any rule, order, decision, demand,
5 or requirement of the commission under section [~~514A-2,~~] 514A-31
6 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68,
7 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1,
8 514A-97, 514A-98, 514A-102 to [~~514A-106, 514A-132, or 514A-134~~]
9 541A-105, or 514B-72 shall be punished by a fine not exceeding
10 \$10,000."

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

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

15 (1) Secure a fidelity bond in an amount equal to \$500
16 multiplied by the number of apartments, to cover all
17 officers, directors, employees, and managing agents of
18 the association of apartment owners who handle,
19 control, or have custody of the funds of the
20 association of apartment owners; provided that the
21 amount of the fidelity bond required by this paragraph
22 shall not be less than \$20,000 nor greater than

1 \$100,000. The fidelity bond shall protect the
2 association of apartment owners against fraudulent or
3 dishonest acts by persons, including any managing
4 agent, [~~handling~~] who have access to the funds of the
5 association of apartment owners. An association of
6 apartment owners shall act promptly and diligently to
7 recover from the fidelity bond required by this
8 section. An association of apartment owners that is
9 unable to obtain a fidelity bond may seek approval for
10 an exemption or a bond alternative from the
11 commission. The commission shall adopt rules
12 establishing the conditions and terms for which it may
13 grant an exemption or a bond alternative, or permit
14 deductibles. Failure to obtain or maintain a fidelity
15 bond in compliance with this chapter and the rules
16 adopted pursuant thereto, including failure to provide
17 current evidence of the fidelity bond coverage in a
18 timely manner to the commission, shall result in non-
19 registration or the automatic termination of the
20 registration, unless an approved exemption or a bond
21 alternative is presently maintained. Current evidence
22 of a fidelity bond includes a certification statement

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

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

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

- 21 (3) Pay a nonrefundable application fee and, upon
22 approval, an initial registration fee [~~and~~

1 ~~subsequently pay]~~ or a reregistration fee, and the
2 ~~[condominium management education fund fee, as~~
3 ~~provided in]~~ condominium education trust fund fee
4 pursuant to section 514B-72 and rules adopted by the
5 director of commerce and consumer affairs pursuant to
6 chapter 91;

7 (4) Register or reregister and pay the required fees by
8 the due date. Failure to register or reregister or to
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 (5) Report immediately in writing to the commission any
13 changes to the information contained on the
14 registration or reregistration application, the
15 evidence of the fidelity bond, or any other documents
16 set forth by the commission. Failure to do so may
17 result in termination of registration and subject the
18 condominium project or the association of apartment
19 owners to initial registration requirements."

20 SECTION 8. Section 514B-71, Hawaii Revised Statutes, is
21 amended to read as follows:

1 "[+]§514B-71[+] **Condominium education trust fund.** (a)

2 The commission shall establish a condominium education trust
3 fund that the commission may use for educational purposes.

4 Educational purposes shall include financing or promoting:

5 (1) Education and research in the field of condominium
6 management, condominium project registration, and real
7 estate, for the benefit of the public and those
8 required to be registered under this chapter;

9 (2) The improvement and more efficient administration of
10 associations; and

11 (3) Expeditious and inexpensive procedures for resolving
12 association disputes.

13 (b) The commission may use any and all moneys in the
14 condominium education trust fund for purposes consistent with
15 subsection (a).

16 (c) Any publications produced by the commission pursuant
17 to subsection (a) shall be made available to individual
18 condominium owners in both printed and electronic formats."

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

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

1 "~~§~~514B-72~~§~~ **Condominium education trust fund; payments**
2 **by associations and developers.** (a) Each project or
3 association with more than five units, including any project or
4 association with more than five units subject to chapter 514A,
5 shall pay to the department of commerce and consumer affairs a
6 condominium education trust fund fee within one year after the
7 recordation of the purchase of the first unit or within thirty
8 days of the association's first meeting, and thereafter, on or
9 before June 30 of every odd-numbered year, as prescribed by
10 rules adopted pursuant to chapter 91."

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

12 (d) The department of commerce and consumer affairs shall
13 allocate the fees collected under this section, section 514A-40
14 and section 514A-95.1 to the condominium education trust fund
15 established pursuant to section 514B-71. The fees collected
16 pursuant to this section shall be administratively and fiscally
17 managed together as one condominium education trust fund
18 established by section 514B-71."

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

21 "~~§~~514B-73~~§~~ **Condominium education trust fund;**
22 **management.** (a) The sums received by the commission for

1 deposit in the condominium education trust fund pursuant to
2 sections 514A-40, 514A-95.1, and 514B-72 shall be held by the
3 commission in trust for carrying out the purpose of the fund.

4 (b) The commission and the director of commerce and
5 consumer affairs may use moneys in the condominium education
6 trust fund collected pursuant to sections 514A-40, 514A-95.1,
7 and 514B-72, and the rules of the commission to employ necessary
8 personnel not subject to chapter 76 for additional staff
9 support, to provide office space, and to purchase equipment,
10 furniture, and supplies required by the commission to carry out
11 its responsibilities under this part.

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

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

- 1 (1) A summary of the programs funded during the prior
2 fiscal year and the amount of money in the fund[+],
3 including a statement of which programs were directed
4 specifically at the education of individual
5 condominium owners; and
- 6 (2) A copy of the budget for the current fiscal year,
7 including summary information on programs that were
8 funded or are to be funded[-] and the target audience
9 for each program. The budget shall include a line
10 item reflecting the total amount collected from
11 individual condominium owners."

12 SECTION 11. Chapter 514A, part VIII, Hawaii Revised
13 Statutes, is repealed.

14 SECTION 12. The director of finance shall transfer the
15 unexpended balance, including encumbrances and accrued
16 liabilities, of the condominium management education fund
17 respectively established, managed, containing payments pursuant
18 to sections 514A-40(c), 514A-131, 514A-132, and 514A-133, Hawaii
19 Revised Statutes, existing as of the effective date of this Act
20 to the credit of the condominium education trust fund as
21 provided in sections 514B-71, 514B-72, and 514B-73, Hawaii
22 Revised Statutes, upon the effective date of this Act.

1 Encumbered moneys shall continue to be encumbered until paid out
2 or released from prior encumbrances.

3 SECTION 13. Any unencumbered and unexpended balance
4 existing as of the effective date of this Act in the condominium
5 management education fund established under chapter 514A, Hawaii
6 Revised Statutes, shall be deposited into the condominium
7 education trust fund established under chapter 514B, Hawaii
8 Revised Statutes, and shall be held in trust by the real estate
9 commission for carrying out the purpose of the condominium
10 education trust fund.

11 SECTION 14. Until the real estate commission and the
12 director of the department of commerce and consumer affairs
13 amend the rules pursuant to chapter 91, Hawaii Revised Statutes,
14 the condominium management education fund shall be known as the
15 condominium education trust fund.

16 SECTION 15. This Act shall be amended to conform to all
17 other acts passed by the legislature during the regular session
18 of 2009, whether enacted before or after the effective date of
19 this Act, unless the other acts specifically provide otherwise.

20 SECTION 16. The revisor of statutes shall replace the term
21 "condominium management education fund" or like term whenever it

1 may appear in the Hawaii Revised Statutes, with the term
2 "condominium education trust fund".

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

6 SECTION 18. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 19. This Act shall take effect on July 1, 2009.

Report Title:

Condominium Management Education Fund; Condominium Education
Trust Fund

Description:

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