

JAN 26 2009

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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. 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6 proposed legislation that repealed the existing chapter 514A and  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 has, pursuant to  
17 section 514B-72, paid into the [~~condominium management education~~  
18 ~~fund~~] condominium education trust fund a nonrefundable fee of \$5  
19 for each apartment in the project. Fees required by this  
20 subsection shall be subject to adjustment as prescribed by rules  
21 adopted by the director of commerce and consumer affairs



1 pursuant to chapter 91. [~~Payments required under this~~  
2 ~~subsection shall be 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, 514A-  
8 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-2,~~] 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-  
5 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, 514A-  
8 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, 514A-  
20 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-27~~] 514A-31  
6 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-  
7 70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97,  
8 514A-98, 514A-102 to [~~514A-106, 514A-132, or 514A-134~~] 541A-105,  
9 or 514B-72 shall be punished by a fine not exceeding \$10,000."

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

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

14 (1) Secure a fidelity bond in an amount equal to \$500  
15 multiplied by the number of apartments, to cover all  
16 officers, directors, employees, and managing agents of  
17 the association of apartment owners who handle,  
18 control, or have custody of the funds of the  
19 association of apartment owners; provided that the  
20 amount of the fidelity bond required by this paragraph  
21 shall not be less than \$20,000 nor greater than  
22 \$100,000. The fidelity bond shall protect the



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



1 department of commerce and consumer affairs certifying  
2 that the bond is in effect and meets the requirement  
3 of this section and the rules adopted by the  
4 commission;

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





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

- 20 (3) Pay a nonrefundable application fee and, upon  
21 approval, an initial registration fee [~~and~~  
22 ~~subsequently pay~~] or a reregistration fee, and the



1           ~~[condominium management education fund fee, as~~  
2           ~~provided in]~~ condominium education trust fund fee  
3           pursuant to section 541B-72 and rules adopted by the  
4           director of commerce and consumer affairs pursuant to  
5           chapter 91;

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

11          (5) Report immediately in writing to the commission any  
12          changes to the information contained on the  
13          registration or reregistration application, the  
14          evidence of the fidelity bond, or any other documents  
15          set forth by the commission. Failure to do so may  
16          result in termination of registration and subject the  
17          condominium project or the association of apartment  
18          owners to initial registration requirements."

19          SECTION 8. Section 514B-72, Hawaii Revised Statutes, is  
20          amended to read as follows:

21          " ~~[§514B-72]~~ **Condominium education trust fund; payments**  
22          **by associations and developers.** (a) Each project or



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

9 (b) Each developer shall pay to the department of commerce  
10 and consumer affairs the condominium education trust fund fee  
11 for each unit in the project, as prescribed by rules adopted by  
12 the director of commerce and consumer affairs pursuant to  
13 chapter 91. The project shall not be registered and no  
14 effective date for a developer's public report shall be issued  
15 until the payment has been made.

16 (c) Payments of any fees required under this section shall  
17 be due on or before the registration due date and shall be  
18 nonrefundable. Failure to pay the required fee by the due date  
19 shall result in a penalty assessment of ten per cent of the  
20 amount due and the association shall not have standing to bring  
21 any action to collect or to foreclose any lien for common  
22 expenses or other assessments in any court of this State until



1 the amount due, including any penalty, is paid. Failure of an  
2 association to pay a fee required under this section shall not  
3 impair the validity of any claim of the association for common  
4 expenses or other assessments, or prevent the association from  
5 defending any action in any court of this State.

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

13 SECTION 9. Section 514B-73, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 " ~~[§]~~ **§514B-73** ~~[§]~~ **Condominium education trust fund;**  
16 **management.** (a) The sums received by the commission for  
17 deposit in the condominium education trust fund pursuant to  
18 sections 514A-40, 514A-95.1 and 514B-72 shall be held by the  
19 commission in trust for carrying out the purpose of the fund.

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



1 and 514B-72, and the rules of the commission to employ necessary  
2 personnel not subject to chapter 76 for additional staff  
3 support, to provide office space, and to purchase equipment,  
4 furniture, and supplies required by the commission to carry out  
5 its responsibilities under this part.

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

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

- 17 (1) A summary of the programs funded during the prior  
18 fiscal year and the amount of money in the fund; and  
19 (2) A copy of the budget for the current fiscal year,  
20 including summary information on programs that were  
21 funded or are to be funded."



1 SECTION 10. Chapter 514A, part VIII, Hawaii Revised  
2 Statutes, is repealed.

3 SECTION 11. The director of finance shall transfer the  
4 unexpended balance, including encumbrances and accrued  
5 liabilities, of the condominium management education fund  
6 respectively established, managed, containing payments pursuant  
7 to sections 514A-40(c), 514A-131, 514A-132, and 514A-133, Hawaii  
8 Revised Statutes, existing as of the effective date of this Act  
9 to the credit of the condominium education trust fund as  
10 provided in sections 514B-71, 514B-72, and 514B-73, Hawaii  
11 Revised Statutes, upon the effective date of this Act.  
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 such time the real estate commission and  
 2 the director of the department of commerce and consumer affairs  
 3 amends its rules pursuant to chapter 91, Hawaii Revised  
 4 Statutes, the condominium management education fund shall be  
 5 known as the condominium education trust fund.

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

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

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

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

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

20

INTRODUCED BY: Russell Kohl

David Y. Lee

S.S.T.Z.

of the

R.D. Smith



**Report Title:**

Condominium Management Education Fund; Condominium Education Trust Fund

**Description:**

Merges the condominium management education fund and the condominium education trust fund.





**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

**TO THE SENATE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009**

**Thursday, February 12, 2009  
8:30 a.m.**

**TESTIMONY ON SENATE BILL NO. 1107 - RELATING TO CONDOMINIUMS.**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

My name is William S. Chee and I serve as the Chairperson of the Real Estate Commission's ("Commission") Condominium Review Committee. Thank you for the opportunity to present testimony on Senate Bill No. 1107, Relating to Condominiums. The purpose of this bill is to merge the two condominium education funds into one fund, the Condominium Education Trust Fund, established pursuant to section 514B-71, HRS. The Commission strongly supports Senate Bill No. 1107 with some recommended changes.

In recodifying the condominium law, it was always the intent that the Commission administer one education fund, the Condominium Education Trust Fund. This bill is to correct the unintended consequence in the 2003-2007 recodification efforts of Chapter 514A and the creation of Chapter 514B when, inadvertently, two separate educational trust funds (the Condominium Management Education Fund, Chapter 514A, HRS; and the Condominium Education Trust Fund, Chapter 514B, HRS) were set forth in two statutes.

Consequently, this bill amends Chapter 514A, HRS, and Chapter 514B, HRS, so that there is only one fund, by the:

- Repeal of the original Condominium Management Education Fund in Chapter 514A, HRS;
- Provision of language which allows for the transfer of all unexpended and unencumbered balances remaining in the Condominium Management Education Fund (Chapter 514A, HRS) to the credit of the Condominium Education Trust Fund (Chapter 514B, HRS);
- Clarification on the allocation of future payments due to the credit of the Condominium Education Trust Fund (Chapter 514B, HRS);
- Housekeeping changes so that all statutory references are to the "Condominium Education Trust Fund" (Chapter 514B, HRS); and
- Other conforming amendments.

However, the Commission recommends the following changes to Senate Bill No. 1107 for the reasons discussed below:

- Page 3, line 7; page 4, line 4; page 5, lines 7 and 19 deletes from the Commission's administrative and investigatory powers "§514A-2 Chapter not exclusive". The Commission respectively recommends that these proposed amendments be amended by removing the brackets and strikethroughs of section "~~[514A-2,]~~" on page 3, line 7; page 4, line 4; and page 5, lines 7 and 19. For condominium projects which have not yet registered with the

Commission and which were created before July 1, 2006 (the effective date of the recodified condominium law) where the developer has elected to register the condominium project under the original condominium law; §514A-2, HRS, allows the Commission in the administration of Chapter 514A, HRS, to reference and utilize other provisions of the Hawaii Revised Statutes. For those condominium associations electing to remain governed by the original condominium law, §514A-2, HRS, clarifies that other provisions of the Hawaii Revised Statutes also apply.

- The deletions of the proposed amendments of section "514A-134" on page 3, line 9; page 4, line 6; page 5, lines 9 and 22; page 6, line 8; and page 14 lines 1-2, as follows:
  - Remove the brackets and strikethroughs on page 3, line 9 of sections "~~514A-134,]~~" and replace with "514A-134."
  - Remove the brackets and strikethroughs on page 4, line 6 of section "~~514A-134],~~" and replace with "514A-134."
  - Add brackets and strikethroughs on page 4, lines 6 to section "514A-132" and replace with "~~[514A-132]~~".
  - Respectively remove the brackets and strikethroughs on page 5, lines 9 and 22 of sections "~~514A-134,]~~", "~~[514A-106, 514A-132, or 514A-134]~~" and replace with "514A-134," and "514A-105, 514A-134,"

- Correct the typo of "541A-105" and replace with "514A-105" and add section 514A-134 in between the underscored section "541-105" and the underscored section "or 514B-72" to read as follows "514A-105, 514A-134 or 514B-72."

In keeping section 514A-134, HRS, as recommended and described above, §514A -134 continues to make it unlawful, for any association of apartment owners, its officers, directors, or agents to file with the Commission any false, untrue, material misstatement of fact, notice, statement or other documents applicable to any association of apartment owners that elect or have elected to remain governed by the original condominium law;

- On page 14, lines 1-2 the Commission recommends amending the title of Part VIII to read "CONDOMINIUM [~~MANAGEMENT~~] EDUCATION TRUST FUND" and deleting §§514A-131, 514A-132, and 514A-133, HRS, from that part; and retaining the remaining provisions of §§514A-134 and 514A-135, HRS. The recommended amendment makes it consistent with the recommended changes described herein.

The Real Estate Commission strongly supports the passage of Senate Bill No. 1107 with the recommended changes and requests your favorable consideration.

Thank you for the opportunity to present testimony.



**H.I.C.C.O.**

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**HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS**  
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

February 12, 2009

Senator Rosalyn H. Baker, Chair  
Committee on Commerce and  
Consumer Protection

**Testimony on SB 1107 Relating to Condominiums**

Dear Senator Baker:

Thank you for this opportunity to testify on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

Our organization has concerns regarding SB 1107. We are concerned about commingling fees collected from developers with funds collected from owners. Funds received from owners should be used specifically for the education of owners. The Legislature should identify the percentage of owner funds that are currently being used to support owners versus funds that are currently being used to educate realtors and condominium boards.

We request that this bill be held.

Sincerely,



Richard Port, Chair  
Legislative Committee