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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 Hawaii state legislature,  
2 recognizing the need to clarify and update the condominium laws  
3 in the State, mandated the real estate commission of the  
4 department of commerce and consumer affairs to conduct a  
5 comprehensive review and recodification of chapter 514A, Hawaii  
6 Revised Statutes, Act 213, Session Laws of Hawaii 2000, and Act  
7 131, Session Laws of Hawaii 2003. The real estate commission  
8 reported the results of its study to the legislature in  
9 December, 2003, and included proposed legislation that repealed  
10 the existing chapter 514A, Hawaii Revised Statutes, replaced it  
11 with a new comprehensive condominium law, and made amendments to  
12 existing statutes to conform to this change. The final version  
13 of that measure that passed the legislature and was signed into  
14 law, however, differed from the original version of the real  
15 estate commission's study. Act 164, Session Laws of Hawaii  
16 2004, not only removed parts of the new condominium law, but  
17 also retained parts of the existing chapter. The legislature  
18 again revisited the issue of condominium regulation in the 2005,



1 2006, and 2007 sessions, fine-tuned the "new" condominium law,  
2 codified as chapter 514B, Hawaii Revised Statutes, and  
3 reinstated the "old" condominium law, chapter 514A, Hawaii  
4 Revised Statutes, resulting in two separate chapters on  
5 condominiums.

6 Act 164, Session Laws of Hawaii 2004, in removing parts of  
7 the new condominium law, and retaining parts of the existing  
8 chapter 514A, Hawaii Revised Statutes, and Act 93, Session Laws  
9 of Hawaii 2005, not only resulted in two separate chapters on  
10 condominiums but also resulted in the real estate commission's  
11 administration of two trust funds for the same target group and  
12 for the very same identically defined educational purpose,  
13 albeit entitled differently. Namely, the trust fund established  
14 and administered by the real estate commission pursuant to  
15 chapter 514A, Hawaii Revised Statutes, is entitled "condominium  
16 management education fund" and the trust fund pursuant to  
17 chapter 514B, Hawaii Revised Statutes, is entitled "condominium  
18 education trust fund" (collectively, the "education trust  
19 funds"). Educational purposes are identically defined in the  
20 condominium law in section 514A-131, Hawaii Revised Statutes,  
21 and 514B-71, Hawaii Revised Statutes, as:



- 1           (1) Education and research in the field of condominium  
2           management, condominium project registration, and real  
3           estate, for the benefit of the public and those  
4           required to be registered under this chapter;
- 5           (2) The improvement and more efficient administration of  
6           associations; and
- 7           (3) Expeditious and inexpensive procedures for resolving  
8           association disputes.

9           However, the two education trust funds obligate the real  
10          estate commission to separately budget, plan, report to the  
11          legislature of educational purposes programs funded or to be  
12          funded together with budgetary information, and separately  
13          account for the receipts and expenses of each fund. These  
14          results were unintended, are administratively impractical,  
15          burdensome and confusing. In March 2008, the auditor issued a  
16          report entitled "*Sunrise Report: Condominium Commission*" noting  
17          the co-existence and co-administration of the two funds. The  
18          notation was not accompanied by any discussion of any consumer  
19          harm.

20          Accordingly, the purpose of this Act is to merge the two  
21          funds into one fund, the condominium education trust fund



1 established pursuant to section 514B-71, Hawaii Revised  
2 Statutes, by:

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

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

13 "(c) No effective date shall be issued by the commission  
14 for a final public report until the developer has paid into the  
15 ~~[condominium management education fund]~~ condominium education  
16 trust fund, pursuant to section 514B-72 for the purposes of the  
17 fund established by section 514B-71 a nonrefundable fee of \$5  
18 for each apartment in the project. Fees required by this  
19 subsection shall be subject to adjustment as prescribed by rules  
20 adopted by the director of commerce and consumer affairs  
21 pursuant to chapter 91. ~~[Payments required under this~~  
22 ~~subsection shall be due after June 13, 1989.] "~~



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

3 "§514A-46 Investigatory powers. If the commission has  
4 reason to believe that any person is violating or has violated  
5 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,  
6 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,  
7 514A-95.1, 514A-97, 514A-98, [~~514A-132, or~~] 514A-134, or 514B-  
8 72, or the rules of the commission adopted pursuant thereto, the  
9 commission may conduct an investigation of the matter and  
10 examine the books, accounts, contracts, records, and files of  
11 the association of apartment owners, the board of directors, the  
12 managing agent, the real estate broker, the real estate  
13 salesperson, the purchaser, or the developer. For the purposes  
14 of this examination, the developer and the real estate broker  
15 shall keep and maintain records of all sales transactions and of  
16 the funds received by the developer and the real estate broker  
17 pursuant thereto, and shall make the records accessible to the  
18 commission upon reasonable notice and demand."

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

21 "§514A-47 Cease and desist orders. In addition to its  
22 authority under section 514A-48, whenever the commission has



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



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

3 "§514A-48 Power to enjoin. Whenever the commission  
4 believes from satisfactory evidence that any person has violated  
5 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,  
6 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,  
7 514A-95.1, 514A-97, 514A-98, [~~514A-132, or~~] 514A-134, or 514B-  
8 72, or the rules of the commission adopted pursuant thereto, it  
9 may conduct an investigation on the matter and bring an action  
10 in the name of the people of the State in any court of competent  
11 jurisdiction against the person to enjoin the person from  
12 continuing the violation or engaging therein or doing any act or  
13 acts in furtherance thereof."

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

16 "(a) Any person who violates or fails to comply with  
17 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,  
18 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,  
19 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, [~~514A-132,~~  
20 ~~or~~] 514A-134, or 514B-72, is guilty of a misdemeanor and shall  
21 be punished by a fine not exceeding \$10,000 or by imprisonment  
22 for a term not exceeding one year, or both. Any person who

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

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

10 "(a) Each condominium project or association of apartment  
11 owners having six or more apartments shall:

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





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



1 of this section and the rules adopted by the  
2 commission;

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



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

- 18 (3) Pay a nonrefundable application fee and, upon  
19 approval, an initial registration fee and subsequently  
20 pay a reregistration fee, and the [~~condominium~~  
21 ~~management-education-fund~~] condominium education trust  
22 fund fee as set forth in section 514B-72, for the



purposes of the fund established by section 514B-71  
and as provided in rules adopted by the director of  
commerce and consumer affairs pursuant to chapter 91;

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

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

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

"~~[+]~~ §514B-72 ~~[+]~~ **Condominium education trust fund; payments**  
**by associations and developers.** (a) Each project or  
association with more than five units including any project or  
association with more than five units subject to chapter 514A,

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

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

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



1 impair the validity of any claim of the association for common  
2 expenses or other assessments, or prevent the association from  
3 defending any action in any court of this State.

4 (d) The department of commerce and consumer affairs shall  
5 allocate the fees collected under this section and sections  
6 514A-40 (c) and section 514A-95.1 to the condominium education  
7 trust fund established pursuant to section 514B-71. The fees  
8 collected pursuant to this section shall be administratively and  
9 fiscally managed together as one condominium education trust  
10 fund established by section 514B-71 for the educational purposes  
11 defined in section 514B-71 and as further provided in sections  
12 514B-72 and section 514B-73."

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

15 " [f] §514B-73 [f] **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(c), 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(c), 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(c), 514A-95.1, 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 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 11. The director of finance shall transfer the  
 14 unexpended balance, including encumbrances and accrued  
 15 liabilities, of the condominium management education fund,  
 16 respectively established, managed, and containing payments  
 17 pursuant to sections 514A-40(c), 514A-131, 514A-132, 514A-133,  
 18 and 514A-135, Hawaii Revised Statutes, existing as of the  
 19 effective date of this Act to the credit of the condominium  
 20 education trust fund as provided in sections 514B-71, 514B-72,  
 21 and 514B-73, Hawaii Revised Statutes, upon the effective date of



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

3 SECTION 12. 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 13. Until such time the real estate commission and  
12 the director of commerce and consumer affairs amends its rules  
13 pursuant to chapter 91, section 16-53-16.8(4), Hawaii  
14 Administrative Rules, the condominium management education fund  
15 shall be amended and renamed and shall be known as the  
16 condominium education trust fund.

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

21 SECTION 15. The revisor of statutes shall replace the term  
22 "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 16. 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 17. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 18. This Act shall take effect on July 1, 2009.  
9

INTRODUCED BY:

Calvin K. King  
J. Phil. Kwanata

JAN 26 2009



**Report Title:**

Condominiums

**Description:**

Merges the condominium management education fund under old condominium law into the condominium education trust fund established under new condominium law.

