
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Chapter 514B, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§514B- Notice of amendments to governing instruments.

5 (a) The declaration, bylaws, condominium map, public report, or
6 designation of residential units of any condominium created
7 after July 1, 2006, may be amended pursuant to law; provided
8 that the developer provides notice of all changes authorized by
9 this subsection to:

10 (1) Affected condominium owners by means of notice to the
11 association of apartment owners of the condominium and
12 by posting in common areas of the condominium project;
13 and

14 (2) Prospective purchasers by means of a statement in an
15 announcement or advertisement published pursuant to
16 section 514B-95.5 that amendments have been made to
17 the developer's public report.



1 (b) Any amendment to the declaration, bylaws, condominium
2 map, public report, or designation of residential units of any
3 condominium created after July 1, 2006, that effects a material
4 change in the project shall trigger a purchaser's right of
5 rescission pursuant to section 514B-87."

6 SECTION 2. Section 514B-3, Hawaii Revised Statutes, is
7 amended by adding a new definition to be appropriately inserted
8 and to read as follows:

9 "Capital equipment" means an asset with a life of greater
10 than one year or that extends the life of an existing asset for
11 a period greater than one year that is installed by the
12 developer as an integral part of the project and is necessary
13 for the day-to-day function of the project as it is marketed to
14 owners and prospective owners. Capital equipment shall include
15 elevator equipment, energy generation or efficiency equipment,
16 irrigation systems, mail boxes, recreational equipment, safety
17 alarms, sprinkler or fire resistance systems; and surveillance
18 or security systems located in common areas or limited common
19 areas and intended for use by the project as a whole or by
20 appurtenant units."

21 SECTION 3. Section 514B-41, Hawaii Revised Statutes, is
22 amended to read as follows:



1 " ~~[+]~~ §514B-41 ~~[+]~~ Common profits and expenses. (a) The
2 common profits of the property shall be distributed among ~~[7]~~ and
3 the common expenses shall be charged to ~~[7]~~ the unit owners,
4 including the developer, in proportion to the common interest
5 appurtenant to ~~[their]~~ each respective ~~[units,7]~~ unit except as
6 otherwise provided in the declaration or bylaws. In a mixed-use
7 project containing units for both residential and nonresidential
8 use, the charges and distributions may be apportioned in a fair
9 and equitable manner as set forth in the declaration. Except as
10 otherwise provided in subsection (c) or the declaration or
11 bylaws, all limited common element costs and expenses ~~[7]~~
12 including ~~[but not limited to]~~ maintenance, repair, replacement,
13 additions, and improvements, shall be charged to the owner or
14 owners of the unit or units to which the limited common element
15 is appurtenant in an equitable manner as set forth in the
16 declaration.

17 (b) A unit owner, including the developer, shall become
18 obligated for the payment of the share of the common expenses
19 allocated to the owner's unit at the time the certificate of
20 occupancy relating to the owner's unit is issued by the
21 appropriate county agency; provided that a developer may assume
22 all the actual common expenses in a project by stating in the



1 developer's public report required by section 514B-54 that the
2 unit owner shall not be obligated for the payment of the owner's
3 share of the common expenses until [~~such time as~~] the developer
4 sends the [~~owners~~] owner written notice that, after a specified
5 date, [~~the~~] each unit [~~owners~~] owner shall be obligated to pay
6 for the portion of common expenses that is allocated to [~~their~~]
7 the owner's respective [~~units-~~] unit. The developer shall mail
8 the written notice to [~~the owners,~~] each owner, the association,
9 and the managing agent, if any, at least thirty days before the
10 specified date.

11 (c) Unless otherwise provided in the declaration or
12 bylaws, if the board reasonably determines that the extra cost
13 incurred to separately account for and charge for the costs of
14 maintenance, repair, or replacement of limited common elements
15 is not justified, the board may adopt a resolution determining
16 that certain limited common element expenses will be assessed in
17 accordance with the undivided common interest appurtenant to
18 each unit. In reaching its determination, the board shall
19 consider:

- 20 (1) The amount at issue;
- 21 (2) The difficulty of segregating the costs;



- 1 (3) The number of units to which similar limited common
2 elements are appurtenant;
- 3 (4) The apparent difference between separate assessment
4 and assessment based on the undivided common interest;
5 and
- 6 (5) Any other relevant factors, as determined by the
7 board.

8 The resolution shall be final and binding in the absence of a
9 determination that the board abused its discretion.

10 (d) Unless made pursuant to rights reserved in the
11 declaration and disclosed in the developer's public report, if
12 an association amends its declaration or bylaws to change the
13 use of the condominium property regime from residential to
14 nonresidential, all direct and indirect costs attributable to
15 the newly permitted nonresidential use shall be charged only to
16 the unit owners using or directly benefiting from the new
17 nonresidential use[7] in a fair and equitable manner as set
18 forth in the amendment to the declaration or bylaws.

19 (e) At the time of the initial date of sale of at least
20 one-half of the total number of apartments in a condominium
21 project, the developer shall collect an amount equal to one per
22 cent of the total sales price of each residential apartment in



1 the condominium project to be set aside for deposit into the
2 estimated replacement reserves required by section 514B-148.
3 This amount shall be held in escrow until it is conveyed to the
4 association of apartment owners on the date of the first meeting
5 of the association as provided by section 514B-102. After that
6 date, the association of apartment owners shall collect the
7 amount designated for deposit into the estimated replacement
8 reserve fund when any remaining apartments are sold and shall
9 deposit the amount in accordance with the applicable bylaws of
10 the association.

11 (f) The developer shall deposit into escrow an amount
12 equal to one hundred eighty days of operating capital based on
13 the calculation of annual maintenance fees and monthly estimated
14 cost for each unit pursuant to section 514B-83(a)(3). This
15 amount shall be held in escrow until it is conveyed to the
16 association of apartment owners on the date of the first meeting
17 of the association as provided by section 514B-102."

18 SECTION 4. Section 514B-83, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) A developer's public report shall contain:

21 (1) The name and address of the project, and the name,
22 address, telephone number, and electronic mail



- 1 address, if any, of the developer or the developer's
2 agent;
- 3 (2) A statement of the deadline, pursuant to section
4 514B-89, for completion of construction or, in the
5 case of a conversion, for the completion of any
6 repairs required to comply with section 514B-5, and
7 the remedies available to the purchaser, including but
8 not limited to cancellation of the sales contract, if
9 the completion of construction or repairs does not
10 occur on or before the completion deadline;
- 11 (3) A breakdown of the annual maintenance fees and the
12 monthly estimated cost for each unit, certified to
13 have been based on generally accepted accounting
14 principles, and a statement regarding when a purchaser
15 shall become obligated to start paying the fees
16 pursuant to section 514B-41(b);
- 17 (4) A description of all warranties for the individual
18 units and the common elements, including the date of
19 initiation and expiration of any [~~such~~] warranties, or
20 a statement that no warranties exist;



- 1 (5) A summary of the permitted uses of the units and, if
2 applicable, the number of units planned to be devoted
3 to [a] each particular use;
- 4 (6) A description of any development rights reserved to
5 the developer or others;
- 6 (7) A declaration, subject to the penalties set forth in
7 section 514B-69(b), that the project is in compliance
8 with all county zoning and building ordinances and
9 codes, and all other county permitting requirements
10 applicable to the project, pursuant to sections 514B-5
11 and 514B-32(a)(13); [and]
- 12 (8) The amount of the purchase price for each unit that is
13 designated for deposit into the estimated replacement
14 reserve fund;
- 15 (9) A list of all capital equipment installed by the
16 developer that includes the cost, date of
17 installation, and manufacturer's estimated life-span
18 for each piece of capital equipment or for each system
19 of capital equipment in the case of equipment that is
20 functional only in the context of a larger system; and
- 21 ~~(8)~~ (10) Any other facts, documents, or information that
22 would have a material impact on the use or value of a



1 unit or any appurtenant limited common elements or
2 amenities of the project available for an owner's use,
3 or that may be required by the commission."

4 SECTION 5. Section 514B-91, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§514B-91 Escrow of deposits. All moneys paid by
7 purchasers shall be deposited in trust under a written escrow
8 agreement with an escrow depository licensed pursuant to chapter
9 449. An escrow depository shall not disburse purchaser deposits
10 to or on behalf of the developer prior to closing except:

11 (1) As provided in [~~sections~~] section 514B-41, 514B-92
12 [~~and~~], or 514B-93; or

13 (2) As provided in the purchaser's sales contract in the
14 event the sales contract is canceled.

15 An escrow depository shall not disburse a purchaser's deposits
16 at closing unless the escrow depository has received
17 satisfactory assurances that all blanket mortgages and liens
18 have been released from the purchaser's unit in accordance with
19 section 514B-45. Satisfactory assurances shall include a
20 commitment by a title insurer licensed under chapter 431 to
21 issue the purchaser a title insurance policy ensuring the



1 purchaser that the unit has been conveyed free and clear of the
2 liens."

3 SECTION 6. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

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

8 SECTION 8. This Act shall take effect on July 1, 2010.



Report Title:

Condominiums; Estimated Replacement Reserve Fund; Notice

Description:

Requires that notice of amendments to project documents be provided to owners and potential purchasers and that amendments that effect a material change trigger a purchaser's right of rescission. Requires that the developer set aside a percentage of the initial sales price of each residential apartment in a condominium project to be used to fund the project's estimated replacement reserve fund. Requires disclosure of the cost of capital equipment installed in the project. (SB2164 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

