
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 that
8 the developer provides notice of all changes authorized by this
9 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 (2) Purchasers by means of amendments to the developer's
14 public report submitted to the commission pursuant to
15 section 514B-56; and
16 (3) Prospective purchasers by means of a statement in an
17 announcement or advertisement published pursuant to



1 section 514B-95.5 that amendments have been made to
2 the developer's public report.

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

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

11 "Capital equipment" means an asset with a life of greater
12 than one year or that extends the life of an existing asset for
13 a period greater than one year that is installed by the
14 developer as an integral part of the project and is necessary
15 for the day to day function of the project as it is marketed to
16 owners and prospective owners. Capital equipment shall include
17 but shall not be limited to elevator equipment, energy
18 generation or efficiency equipment, irrigation systems, mail
19 boxes, recreational equipment, safety alarms, sprinkler or fire
20 resistance systems, and surveillance or security systems located
21 in common areas or limited common areas and intended for use by
22 the project as a whole or by appurtenant units."



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

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

19 (b) A unit owner, including the developer, shall become
20 obligated for the payment of the share of the common expenses
21 allocated to the owner's unit at the time the certificate of
22 occupancy relating to the owner's unit is issued by the



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

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

22 (1) The amount at issue;



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

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

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

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



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

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

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

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



- 1 (1) The name and address of the project, and the name,
2 address, telephone number, and electronic mail
3 address, if any, of the developer or the developer's
4 agent;
- 5 (2) A statement of the deadline, pursuant to section
6 514B-89, for completion of construction or, in the
7 case of a conversion, for the completion of any
8 repairs required to comply with section 514B-5, and
9 the remedies available to the purchaser, including but
10 not limited to cancellation of the sales contract, if
11 the completion of construction or repairs does not
12 occur on or before the completion deadline;
- 13 (3) A breakdown of the annual maintenance fees and the
14 monthly estimated cost for each unit, certified to
15 have been based on generally accepted accounting
16 principles, and a statement regarding when a purchaser
17 shall become obligated to start paying the fees
18 pursuant to section 514B-41(b);
- 19 (4) A description of all warranties for the individual
20 units and the common elements, including the date of
21 initiation and expiration of any [~~such~~] warranties, or
22 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 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.

9



Report Title:

Condominiums; Estimated Replacement Reserve Fund; Notice

Description:

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. Requires that notice of amendments to project documents be provided to owners, purchasers, and potential purchasers and that amendments that effect a material change trigger a purchaser's right of rescission. (SD1)

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

