
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§514A-15 **Common profits and expenses.** (a) The common
4 profits of the property shall be distributed among[7] and the
5 common expenses shall be charged to[7] the apartment owners,
6 including the developer, in proportion to the common interest
7 appurtenant to their respective apartments; provided that in a
8 mixed-use project containing apartments for both residential and
9 commercial use, such charges and distributions may be
10 apportioned in a fair and equitable manner as set forth in the
11 declaration; provided further that all limited common elements
12 costs and expenses, including but not limited to, maintenance,
13 repair, replacement, additions, and improvements shall be
14 charged to the owner of the apartment to which the limited
15 common element is appurtenant in an equitable manner as set
16 forth in the declaration.

17 (b) An apartment owner, including the developer, shall
18 become obligated for the payment of the share of the common



1 expenses allocated to [~~his~~] the apartment owner's apartment at
2 the time the certificate of occupancy relating to [~~his~~] the
3 apartment is issued by the appropriate county agency; provided
4 that a developer may assume all the actual common expenses in a
5 residential project containing no mixed commercial and
6 residential use, by stating in the abstract as required by
7 section 514A-61 that the apartment owner shall not be obligated
8 for the payment of [~~his~~] the apartment owner's respective share
9 of the common expenses until [~~such time~~] the developer files an
10 amended abstract with the commission which shall provide[~~7~~] that
11 after a date certain, the respective apartment owner shall
12 thereafter be obligated to pay for [~~his~~] the respective share of
13 common expenses that is allocated to [~~his~~] the owner's
14 apartment. The amended abstract shall be filed at least thirty
15 days in advance with the commission [~~with~~] and a copy of the
16 abstract [~~being~~] shall be delivered either by mail or personal
17 delivery after the filing to each of the apartment owners whose
18 maintenance expenses were assumed by the developer.

19 (c) Fees charged to apartment owners for maintenance,
20 repair, replacement, additions, and improvements to common
21 elements shall not increase by more than five per cent over any
22 given five-year period; provided that this subsection shall not



1 apply in the case of expenses incurred due to a natural disaster
2 or for major capital improvements approved by the board
3 according to the bylaws of the association."

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

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

21 (b) A unit owner, including the developer, shall become
22 obligated for the payment of the share of the common expenses



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

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



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

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

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

21 (c) Fees charged to unit owners for maintenance, repair,
22 replacement, additions, and improvements to common elements



1 shall not increase by more than five per cent over any given
2 five-year period; provided that this subsection shall not apply
3 in the case of expenses incurred due to a natural disaster or
4 for major capital improvements approved by the board according
5 to the bylaws of the association."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2010.

9

INTRODUCED BY:

Robert D. Jones MR.



Report Title:

Condominiums; Common Expenses

Description:

Prohibits an increase in maintenance fees of more than five per cent over any given five year period except for expenses incurred due to a natural disaster or for a major capital improvement project.

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