

JAN 15 2014

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The purpose of this Act is to clarify the
2 applicability of section 205-4.6, Hawaii Revised Statutes,
3 relating to private restrictions on agricultural uses and
4 activities, to condominium projects on lands classified as
5 agricultural.

6 SECTION 2. Section 205-4.6, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§205-4.6 Private restrictions on agricultural uses and**
9 **activities; not allowed.** (a) Agricultural uses and activities
10 as defined in sections 205-2(d) and 205-4.5(a) on lands
11 classified as agricultural shall not be restricted by any
12 private agreement contained in any [~~deed~~]:

13 (1) Deed, agreement of sale, or other conveyance of land
14 recorded in the bureau of conveyances after July 8,
15 2003, that subject such agricultural lands to any
16 servitude, including but not limited to covenants,
17 easements, or equitable and reciprocal negative
18 servitudes[-]; and



1 (2) Condominium declaration, map, bylaws, and other
2 documents executed and submitted in accordance with
3 chapter 514A or 514B.

4 Any such private restriction limiting or prohibiting
5 agricultural use or activity shall be voidable, subject to
6 special restrictions enacted by the county ordinance pursuant to
7 section 46-4; except that restrictions taken to protect
8 environmental or cultural resources, agricultural leases,
9 utility easements, and access easements shall not be subject to
10 this section.

11 (b) For purposes of this section, "agricultural leases"
12 means leases where the leased land is primarily utilized for
13 purposes set forth in section 205-4.5(a)."

14 SECTION 3. Section 514B-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§~~**514B-5**~~§~~ **Conformance with county land use laws.** Any
17 condominium property regime established under this chapter shall
18 conform to the existing underlying county zoning for the
19 property and all applicable county permitting requirements
20 adopted by the county in which the property is located,
21 including any supplemental rules adopted by the county, pursuant
22 to section 514B-6, to ensure the conformance of condominium



1 property regimes to the purposes and provisions of county zoning
2 and development ordinances and chapter 205[-], including section
3 205-4.6 where applicable. In the case of a property which
4 includes one or more existing structures being converted to
5 condominium status, the condominium property regime shall comply
6 with section 514B-32(a)(13) or 514B-84(a)."

7 SECTION 4. Section 514B-32, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) A declaration shall describe or include the
10 following:

- 11 (1) The land submitted to the condominium property regime;
- 12 (2) The number of the condominium map filed concurrently
13 with the declaration;
- 14 (3) The number of units in the condominium property
15 regime;
- 16 (4) The unit number of each unit and common interest
17 appurtenant to each unit;
- 18 (5) The number of buildings and projects in the
19 condominium property regime, and the number of stories
20 and units in each building;
- 21 (6) The permitted and prohibited uses of each unit;



- 1 (7) To the extent not shown on the condominium map, a
- 2 description of the location and dimensions of the
- 3 horizontal and vertical boundaries of any unit. Unit
- 4 boundaries may be defined by physical structures or,
- 5 if a unit boundary is not defined by a physical
- 6 structure, by spatial coordinates;
- 7 (8) The condominium property regime's common elements;
- 8 (9) The condominium property regime's limited common
- 9 elements, if any, and the unit or units to which each
- 10 limited common element is appurtenant;
- 11 (10) The total percentage of the common interest that is
- 12 required to approve rebuilding, repairing, or
- 13 restoring the condominium property regime if it is
- 14 damaged or destroyed;
- 15 (11) The total percentage of the common interest, and any
- 16 other approvals or consents, that are required to
- 17 amend the declaration. Except as otherwise
- 18 specifically provided in this chapter, and except for
- 19 any amendments made pursuant to reservations set forth
- 20 in paragraph (12), the approval of the owners of at
- 21 least sixty-seven per cent of the common interest



1 shall be required for all amendments to the
2 declaration;

3 (12) Any rights that the developer or others reserve
4 regarding the condominium property regime, including,
5 without limitation, any development rights, and any
6 reservations to modify the declaration or condominium
7 map. An amendment to the declaration made pursuant to
8 the exercise of those reserved rights shall require
9 only the consent or approval, if any, specified in the
10 reservation; and

11 (13) A declaration, subject to the penalties set forth in
12 section 514B-69(b), that the condominium property
13 regime is in compliance with all zoning and building
14 ordinances and codes, and all other permitting
15 requirements pursuant to section 514B-5[7] and
16 [specifying in] chapter 205, including section 205-4.6
17 where applicable. In the case of a project in the
18 agricultural district classified pursuant to chapter
19 205, the declaration, subject to the penalties set
20 forth in section 514B-69(b), shall include an
21 additional statement that there are no private
22 restrictions limiting or prohibiting agricultural uses



1 or activities in compliance with section 205-4.6. In
2 the case of a property that includes one or more
3 existing structures being converted to condominium
4 property regime status[+], the declaration required by
5 this section shall specify:

6 (A) Any variances that have been granted to achieve
7 the compliance; and

8 (B) Whether, as the result of the adoption or
9 amendment of any ordinances or codes, the project
10 presently contains any legal nonconforming
11 conditions, uses, or structures[+].

12 ~~[except that a]~~ A property that is registered
13 pursuant to section 514B-51 shall instead provide
14 ~~[this]~~ the required declaration pursuant to section
15 514B-54. If a developer is converting a structure to
16 condominium property regime status and the structure
17 is not in compliance with all zoning and building
18 ordinances and codes, and all other permitting
19 requirements pursuant to section 514B-5, and the
20 developer intends to use purchaser's funds pursuant to
21 the requirements of section 514B-92 or 514B-93 to cure
22 the violation or violations, then the declaration



1 required by this paragraph may be qualified to
2 identify with specificity each violation and the
3 requirement to cure the violation by a date certain."

4 SECTION 5. Section 514B-52, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§514B-52[+] **Application for registration.** (a) An
7 application for registration of a project shall:

8 (1) Be accompanied by nonrefundable fees as provided in
9 rules adopted by the director of commerce and consumer
10 affairs pursuant to chapter 91; and

11 (2) Contain the documents and information concerning the
12 project and the condominium property regime as
13 required by sections 514B-54, 514B-83, and 514B-84, as
14 applicable, and as otherwise may be specified by the
15 commission.

16 (b) An application for registration of a project in the
17 agricultural district classified pursuant to chapter 205 shall
18 include a verified statement, signed by an appropriate county
19 official, that the project as described and set forth in the
20 project's declaration, condominium map, bylaws, and house rules
21 does not include any restrictions limiting or prohibiting
22 agricultural uses or activities, in compliance with section 205-



1 4.6. The commission shall not accept the registration of a
2 project where a county official has not signed a verified
3 statement.

4 [~~(b)~~] (c) The commission need not process any incomplete
5 application and may return an incomplete application to the
6 developer and require that the developer submit a new
7 application, including nonrefundable fees. If an incomplete
8 application is not completed within six months of the date of
9 the original submission, it shall be deemed abandoned and
10 registration of the project shall require the submission of a
11 new application, including nonrefundable fees.

12 [~~(e)~~] (d) A developer shall promptly file amendments to
13 report either any actual or expected pertinent or material
14 change, or both, in any document or information contained in the
15 application."

16 SECTION 6. Section 514B-54, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Prior to the issuance of an effective date for a
19 developer's public report, the commission shall have received
20 the following:



- 1 (1) Nonrefundable fees as provided in rules adopted by the
2 director of commerce and consumer affairs pursuant to
3 chapter 91;
- 4 (2) The developer's public report prepared by the
5 developer disclosing the information specified in
6 section 514B-83 and, if applicable, section 514B-84;
- 7 (3) A copy of the deed, master lease, agreement of sale,
8 or sales contract evidencing either that the developer
9 holds the fee or leasehold interest in the property or
10 has a right to acquire the same;
- 11 (4) Copies of the executed declaration, bylaws, and
12 condominium map that meet the requirements of sections
13 514B-32, 514B-33, and 514B-108;
- 14 (5) A specimen copy of the proposed contract of sale for
15 units;
- 16 (6) An executed copy of an escrow agreement with a third
17 party depository for retention and disposition of
18 purchasers' funds that meets the requirements of
19 section 514B-91;
- 20 (7) As applicable, the documents and information required
21 in section 514B-92 or 514B-93;



1 (8) A declaration~~[7]~~ by the developer, subject to the
2 penalties set forth in section 514B-69(b), that the
3 project is in compliance with all county zoning and
4 building ordinances and codes, and all other county
5 permitting requirements applicable to the project,
6 pursuant to chapter 205, including section 205-4.6,
7 where applicable; sections 514B-5 and 514B-32(a)(13);
8 [and]

9 (9) In the case of a project in the agricultural district
10 classified pursuant to chapter 205, a verified
11 statement signed by an appropriate county official
12 that the project as described and set forth in the
13 project's declaration, condominium map, bylaws, and
14 house rules does not include any restrictions limiting
15 or prohibiting agricultural uses or activities, in
16 compliance with section 205-4.6; and

17 ~~[(9)]~~ (10) Other documents and information that the
18 commission may require."

19 SECTION 7. Section 514B-67, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) The commission, after notice and hearing, may issue
22 an order terminating the registration of a condominium project



1 upon determination that a developer, or any officer, principal,
2 or affiliate of a developer has:

3 (1) Failed to comply with a cease and desist order issued
4 by the commission affecting that condominium project;

5 (2) Concealed, diverted, or disposed of any funds or
6 assets of any person in a manner impairing rights of
7 purchasers of units in that condominium project;

8 (3) Failed to perform any stipulation or agreement made to
9 induce the commission to issue an order relating to
10 that condominium project;

11 (4) Misrepresented or failed to disclose a material fact
12 in the application for registration; [~~or~~]

13 (5) Failed to meet any of the conditions described in this
14 part necessary to qualify for registration[~~or~~]; or

15 (6) Failed to conform or comply with county zoning and
16 development ordinances as required by chapter 205,
17 including section 205-4.6 where applicable, and
18 section 514B-5."

19 SECTION 8. 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 a
22 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 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, chapter 205, including section 205-4.6 where
10 applicable, and all other county permitting
11 requirements applicable to the project, pursuant to
12 sections 514B-5 and 514B-32(a)(13); and

13 (8) Any other facts, documents, or information that would
14 have a material impact on the use or value of a unit
15 or any appurtenant limited common elements or
16 amenities of the project available for an owner's use,
17 or that may be required by the commission."

18 SECTION 9. Section 514B-84, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) In addition to the information required by section
21 514B-83, the developer's public report for a project in the
22 agricultural district pursuant to chapter 205 shall disclose:



1 (1) Whether the structures and uses anticipated by the
2 developer's promotional plan for the project are in
3 compliance with all applicable state and county land
4 use laws[+] and with chapter 205, including section
5 205-4.6 where applicable;

6 (2) Whether the structures and uses anticipated by the
7 developer's promotional plan for the project are in
8 compliance with all applicable county real property
9 tax laws, and the penalties for noncompliance; and

10 (3) Other disclosures and information that the commission
11 may require."

12 SECTION 10. This Act applies to a condominium project on
13 lands classified as agricultural pursuant to chapter 205, Hawaii
14 Revised Statutes, for which a developer submits an application
15 for registration of a project pursuant to section 514A-31,
16 Hawaii Revised Statutes.

17 SECTION 11. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun before its effective date.

20 SECTION 12. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
 2 invalid provision or application, and to this end the provisions
 3 of this Act are severable.

4 SECTION 13. Statutory material to be repealed is bracketed
 5 and stricken. New statutory material is underscored.

6 SECTION 14. This Act shall take effect upon its approval.
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INTRODUCED BY: Randy de Be

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S.B. NO. 2078

Report Title:

Condominiums; Condominium Projects; Agricultural Uses and Activities

Description:

Clarifies the applicability of section 205-4.6, HRS, relating to private restrictions on agricultural uses and activities, to condominium projects on lands classified as agricultural.

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

