

HB

811

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Act 181, Session Laws of Hawaii 2017, is
2 amended by amending section 45 to read as follows:
3 "SECTION 45. Condominium property regimes created prior to
4 July 1, 2006, that were issued an effective date pursuant to
5 ~~[section]~~ sections 514A-40 and 514A-41, Hawaii Revised Statutes,
6 may be sold on or after January 1, 2019, without revising any of
7 the governing documents; provided that the developer's public
8 report was active ~~[on January 1, 2019, and is]~~, non-expired, and
9 accurate [and not misleading. On] between January 1, 2019, ~~[all~~
10 ~~active, non expired chapter 514A, Hawaii Revised Statutes,~~
11 ~~developer's public reports]~~ and July 1, 2020, pursuant to
12 sections 514A-40 and 514A-41, Hawaii Revised Statutes, along
13 with their most recent disclosure abstract, if any, will be
14 treated as non-expiring developer's public reports under part IV
15 of chapter 514B, Hawaii Revised Statutes. Chapter 514A, Hawaii
16 Revised Statutes, developer's public reports shall be treated as
17 non-expiring chapter 514B, Hawaii Revised Statutes, developer's



1 reports on the first day their respective report was accurate
2 and had an active effective date between January 1, 2019, and
3 July 1, 2020. Should any pertinent or material changes, or
4 both, occur to the condominium project, the developer shall file
5 [~~an amended~~] a developer's public report superseding all prior
6 reports pursuant to chapter 514B, Hawaii Revised Statutes;
7 provided that such projects and their subsequent reports filed
8 under chapter 514B, Hawaii Revised Statutes, shall be exempt
9 from the conversion requirements under section 514B-84(a)(1) and
10 (2), Hawaii Revised Statutes. [~~Condominium~~] On July 1, 2020,
11 condominium property regimes created prior to July 1, 2006, that
12 were not issued an effective date pursuant to sections 514A-40
13 and 514A-41, Hawaii Revised Statutes, [~~and~~] did not file a
14 notice of intent pursuant to section 514A-1.5(2)(B), Hawaii
15 Revised Statutes, or have an effective dates expired prior to
16 January 1, 2019, shall revise their governing documents and
17 register under chapter 514B, Hawaii Revised Statutes, for a
18 developer to offer for sale or to sell condominiums.

19 Nothing contained in this Act or in the condominium
20 property act shall be deemed to invalidate any condominium



1 property regime that was validly created under chapter 514A,
2 Hawaii Revised Statutes, prior to July 1, 2006."

3 SECTION 2. Notwithstanding section 2 of Act 181, Session
4 Laws of Hawaii 2017, and subject to section 3 of this Act, the
5 following sections of chapter 514A, Hawaii Revised Statutes,
6 shall remain operative in the form in which they read on
7 December 31, 2018, until June 30, 2020, for the sole purpose of
8 providing developers with sufficient time to update their
9 developer's public reports and associated documents in order to
10 qualify for the safe harbor provisions of section 45 of Act 181,
11 Session Laws of Hawaii 2017, as amended by this Act:

12 Part I. General Provisions and Definitions

- 13 514A-1 Title
- 14 514A-1.5 Applicability of chapter
- 15 514A-1.6 Conformance with county land use ordinances
- 16 514A-2 Chapter not exclusive
- 17 514A-3 Definitions
- 18 514A-4 Status of apartments
- 19 514A-5 Ownership of apartments
- 20 514A-6 Separate taxation

21 Part II. Creation, Alteration, and Termination



- 1 514A-33 Inspection
- 2 514A-34 Inspection expenses
- 3 514A-35 Waiver of inspection
- 4 514A-36 Public reports and registration fees
- 5 514A-38 Request for effective date or hearing by
- 6 developer
- 7 514A-40 Final reports
- 8 514A-41 Supplementary public report
- 9 514A-42 True copies of public report; no misleading
- 10 information
- 11 514A-43 Automatic expiration of public reports;
- 12 exceptions
- 13 514A-44 Deposit of fees
- 14 514A-45 Supplemental regulations governing a condominium
- 15 property regime
- 16 514A-46 Investigatory powers
- 17 514A-47 Cease and desist orders
- 18 514A-48 Power to enjoin
- 19 514A-49 Penalties
- 20 514A-50 Limitation of action
- 21 Part IV. Protection of Purchasers



H.B. NO. 811

Report Title:

Condominiums; Condominium Property Regimes; Extension

Description:

Revives for 1 year specified sections of repealed chapter 514A, HRS, to allow developers whose condominium property regimes were issued an effective date pursuant to sections 514A-40 and 514A-41, HRS, to update their public reports without revising any of the associated documents and have their public reports and disclosure abstracts treated as non-expiring developer's public reports under part IV of chapter 514B, HRS.

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



Testimony of the Real Estate Commission

**Before the
House Committee on Consumer Protection and Commerce
Tuesday, February 5, 2019
2:00 p.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 811, RELATING TO CONDOMINIUMS**

Chair Takumi and Members of the Committee:

My name is Michael Pang, and I am the Chairperson of the Real Estate Commission (Commission). The Commission supports this bill.

The purpose of this bill is to allow developers whose condominium property regimes were issued an effective date pursuant to now-repealed Hawaii Revised Statutes (HRS) sections 514A-40 and 514A-41 an additional year to update their public reports, by amending section 45 of Act 181, Session Laws of Hawaii 2017, to extend the “safe harbor” of the Act.

Since the passage of Act 181, the Commission has been made aware of some, usually smaller, condominium projects that were unable to meet the Act’s deadline of December 31, 2018 for an automatic transfer of active and accurate projects to HRS chapter 514B, due to a lack of time, resources, necessary professionals, and/or natural disasters. By reviving certain salient sections of repealed HRS chapter 514A, these developers would have an opportunity to update their public reports without revising any of the governing documents and by meeting certain criteria. The Commission does not anticipate any adverse effect from allowing these developers additional time to comply. This bill also makes clear that those projects that met the December 31, 2018, deadline transitioned via the Act’s “safe harbor.”

The Commission recommends, however, that the new (underlined) language on page 2, lines 15 and 16 be amended to read as follows: “or have effective dates expired prior to January 1, 2019”.

Thank you for the opportunity to testify on this bill.

CHARLES E. PEAR, JR.
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February 4, 2019

Rep. Roy Takumi, Chair
Rep. Linda Ichiyama, Vice Chair
Members of the House Committee on
Consumer Protection and Commerce
Thirtieth Legislature
Regular Session, 2019

Re: H.B. 811
Hearing on February 5, 2019, 2:00 p.m.
Conference Room 329

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports H.B. 811 with revisions.

Act 181, SLH 2017, repealed Chapter 514A. The Act authorizes developers to continue sales using their Chapter 514A public reports, without having to register under Chapter 514B, so long as the Chapter 514A public reports were active, accurate and not misleading. However, in the event of a pertinent or material change to the condominium, the developer is required to revise the condominium documents to comply with Chapter 514B and register the condominium under Chapter 514B.

Chapter 514B defines "pertinent change" to mean any change that renders any information in a public report inaccurate.¹

¹ 514B-3. Definitions. * * * "Pertinent change" means, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to:

- (1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element;
- (2) The size, use, location, or construction materials of the common elements of the project; or
- (3) The common interest appurtenant to the unit.

A pertinent change does not necessarily constitute a material change.

This broad scope of this definition may lead to unanticipated consequences. For example, a public report must include a breakdown of the annual maintenance fees and the monthly estimated cost for each unit.² However, the budget typically changes each year. As a result, the amount of the monthly estimated cost for each unit, as stated in the 2018 public report, would no longer be accurate when the budget is updated in 2019, 2020, and succeeding years. In such event, Act 181 might be construed to require that the developer re-register the project under Chapter 514B and amend the condominium documents to comply with Chapter 514B.³

This may be particularly troublesome for time share plans. In particular, it is common for the developer of a time share plan to continue sales for many years – potentially decades after the initial registration of the project. This may happen because the developer re-purchases time share interests from owners who want to sell, or perhaps because the buyer defaults under a mortgage in favor of the developer, or even because some buyers simply decide to deed their time share interest back to the developer because they are tired of it or no longer want it.

In addition, a time share project is not a static entity. During the life of a time share project, the association may choose to make improvements by, for example, adding new amenities, discontinuing amenities that are no longer being used, remodeling the units, lobbies or other common areas, and so on. The developer may well still be in sales while all of this is taking place.

Each time that a time share developer sells a time share interest, it must furnish to the purchaser a copy of the developer's current time share disclosure statement. However, the developer is not required to provide a copy of the condominium public report to time share purchasers. This is set forth in Section 514B-82, which provides:

§ 514B-82. Sale of units. Except as provided in section 514B-85, no sale or offer of sale of units in a project by a developer shall be made prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and except as provided by law with respect to time share units, the delivery of the developer's public report to prospective purchasers.
Notwithstanding any other provision to the contrary, where a time

² § 514B-83. Developer's public report. (a) A developer's public report shall contain: * * * (3) A breakdown of the annual maintenance fees and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles, and a statement regarding when a purchaser shall become obligated to start paying the fees pursuant to section 514B-41(b);

³ Technically speaking, a strong argument may be made that the public report accurately states the amount of the budget in effect in 2018 even though it would not reflect the current assessment amounts for subsequent years.

share project is duly registered under chapter 514E and a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser, the developer's public report need not be delivered to the purchaser or prospective purchaser.

[Emphasis added.]

Since time share buyers do not receive the condominium public report, we think it pointless to require that time share developers register and obtain a new public report under Chapter 514B on an existing Chapter 514A condominium just because the condominium budget changes or there is some other change to the project. Moreover, it may not be possible for the time share developer to amend the existing condominium documents to comply with Chapter 514B. And even if it is possible, it may not be wise to require that the developer attempt to do so where, for example, there are 20,000 time share owners who have already made their purchase on the basis of the existing documents created pursuant to Chapter 514A.

Chapter 514A explicitly recognized that there was no need for time share developers to update their condominium public reports. Specifically, Chapter 514A required that condominium developers obtain a “supplementary public report” if there was a change in the condominium. However, it expressly exempted time share developers from this requirement, stating as follows:

§514A-41 Supplementary public report. * * * (d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

We propose that this bill be amended to perpetuate this exemption for time share condominiums by incorporating the exemption into the amendment of Act 181. The net result would be that a change to a time share project created and registered pursuant to Chapter 514A would not trigger any requirement that the developer register or obtain a public report pursuant to Chapter 514B, or amend the condominium documents to comply with Chapter 514B. This makes sense in light of the fact that consumers do not receive the condominium public report

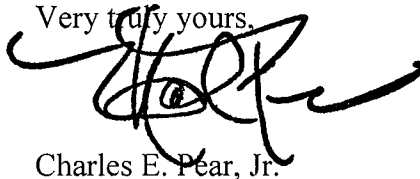
Chair, Vice Chair and Members,
House Committee on
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anyhow, and that the time share disclosure statement would provide any necessary consumer disclosures.

Accordingly, attached please find proposed language to implement this proposal.

Thank you for your kind consideration of this legislation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'CEP', with a large, stylized flourish extending to the right.

Charles E. Pear, Jr.

CEP:kn

Proposed Amendment to HB811

We propose that Section 1 of HB811 be revised to insert the following in an appropriate location:

Notwithstanding anything to the contrary contained herein or in Chapter 514B, should any pertinent or material changes, or both, occur to a time share project duly registered under chapter 514E, it shall not be necessary to revise the governing documents or register the condominium pursuant to chapter 514B or to update any existing public report to reflect any such changes if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

HB-811

Submitted on: 1/31/2019 11:29:02 AM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	Yes

Comments:

The additional year to allow Developers to address their development's documents under HRS514A is reasonable.



Imanaka Asato
A LIMITED LIABILITY LAW COMPANY

February 4, 2019

Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Members of the House Committee on
Consumer Protection and Commerce
Thirtieth Legislature
Regular Session, 2019

RE: HB 811 – Relating to Condominiums
Hearing date: February 5, 2019 at 2:00 pm

Aloha Chair Takumi, Vice Chair Ichiyama and Members of the House Committee on Consumer Protection and Commerce,

Thank you for allowing me to submit testimony on behalf of Marriott Vacations Worldwide Corporation (“MVWC”) in SUPPORT of HB 811 - Relating to Condominiums. Due to the complications in completely repealing Chapter 514A through Act 181, SLH 2017, this bill would provide a one year grace period to allow condominium property regimes issued an effective date pursuant to HRS § 514A-40 and 514A-41 to make certain amendments to the public report without revising any of the associated documents. MVWC supports this allowance and supports the proposal of the American Resort Development Association (“ARDA”) to make an additional amendment.

Under 514B, in the event of a pertinent or material change to the condominium, which is any information that renders the information in a public report inaccurate, the developer is required to revise the condominium documents to comply with Chapter 514B and register the condominium under Chapter 514B. However, this would lead to an undue burden to time share developers as time share projects are much different than other condominium projects. For example, time share projects often continue sales for several years, add additional amenities, discontinue unused amenities and refurbish lobbies and common areas. In addition, time share developers are not required to provide a copy of the public report to purchasers due to the exemption in HRS § 514B-82. Chapter 514A also recognized that the requirement for updating condominium public reports was unnecessary for time share projects and expressly exempted that requirement in HRS § 514A-41.

Based on previous exemptions and lack of need for continuous updates to the condominium public reports for time share projects, MVWC supports ARDA's proposal to add a similar exemption to Chapter 514B in the appropriate subsection to read substantially as follows:

Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Members of the House Committee on
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Notwithstanding anything to the contrary contained herein or in Chapter 514B, should any pertinent or material changes, or

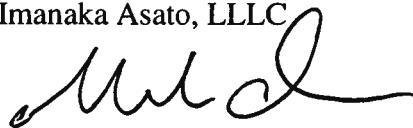
both, occur to a time share project duly registered under chapter 514E, it shall not be necessary to revise the governing documents or register the condominium pursuant to chapter 514B or to update any existing public report to reflect any such changes if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

Mahalo for considering this important revision in order to avoid any further confusion with time share projects exemptions for updating the condominium public reports.

Mahalo,

Imanaka Asato, LLC



Michael L. Iosua, on behalf of
Marriott Vacations Worldwide Corporation