

ACT 180

A Bill for an Act to Provide for the Creation of Horizontal Property Regimes and Regulations Therefor.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known as the "Horizontal Property Act."

SECTION 2. There is hereby added to the Revised Laws of Hawaii 1955 a new chapter, which chapter and its sections shall be appropriately numbered by the Revisor of Statutes and to read as follows:

"CHAPTER, HORIZONTAL PROPERTY REGIMES.

PART I.

Section 1. This chapter shall be known as the 'Horizontal Property Regime'.

Section 2. **Definitions.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(a) 'Apartment' means an enclosed room occupying all or part of a floor in a building of one or more floors or stories regardless of whether it be destined for residence, for office, for the operation of any industry or business, or for any other type of independent use, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;

(b) 'Commission' means the real estate license commission of the state department of treasury and regulation ;

(c) 'Condominium' means the ownership of single units in a multi-unit structure with common elements ;

(d) 'Condominium project' means a real estate condominium project ; a plan or project whereby six or more apartments, rooms, office spaces, or other units in existing or proposed building(s) or structure(s) are offered or proposed to be offered for sale ;

(e) 'Co-owner' means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the building ;

(f) 'Council of co-owners' means all the co-owners as defined in subsection (e) of this section ;

(g) 'Developer' means a person who undertakes to develop a real estate condominium project ;

(h) 'General common elements' means and includes :

(1) The land whether leased or in fee simple, on which the building stands ;

(2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrance and exit or communication ways ;

(3) The basements, flat roofs, yards, and gardens, except as otherwise provided or stipulated ;

(4) The premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated ;

(5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like ;

(6) The elevators, garbage incinerators and, in general all devices or installations existing for common use ; and

(7) All other elements of the building rationally of common use or necessary to its existence, upkeep and safety ;

(i) 'Limited common elements' means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like ;

(j) 'Majority of co-owners' means fifty-one per cent of the co-owners ;

(k) 'Master deed' or 'master lease' means the deed or lease recording the property of the horizontal property regime ;

(l) 'Person' means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof ;

(m) 'Property' means and includes the land whether leasehold or in fee simple, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto ;

(n) 'To record' means to record in accordance with the provisions of chapter 343, or to register in accordance with the provisions of chapter 342 ;

(o) All pronouns used herein include the male, female and neuter genders and include the singular or plural numbers, as the case may be.

Section 3. Horizontal property regimes. Whenever a developer, a sole owner or the co-owners of a building expressly declare, through the recording of a master deed or lease, which shall set forth the particulars enum-

erated by section 7, their desire to submit their property to the regime established by this chapter, there shall thereby be established a horizontal property regime.

Section 4. Status of apartments within an horizontal property regime. Once the property is submitted to the horizontal property regime, an apartment in the building may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other apartments in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

Section 5. Joint or common ownership of an apartment. Any apartment may be jointly or commonly owned by more than one person.

Section 6. Ownership of apartments, of common elements. An apartment owner shall have an exclusive right to his apartment and shall have a common right to a share, with other co-owners, in the common elements of the property.

PART II

THE MASTER DEED OR LEASE OF THE HORIZONTAL PROPERTY REGIME; RECORDATION.

Section 7. Recordation. The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation or registration of a master deed or lease and the individual apartments may be made. Provisions shall be made for the recordation of the individual apartments on subsequent re-sales, mortgages and other encumbrances, as is done with all other real estate recordations. The master deed or lease to which section 3 refers shall express the following particulars:

(a) The description of the land, whether leased or in fee simple, and the building, expressing their respective areas;

(b) The general description and number of each apartment, expressing its respective areas;

(b) The general description and number of each apartment, expressing its area, location and any other data necessary for its identification; and

(c) The description of the general common elements of the building.

Section 8. Apartment deeds. The deed of each individual apartment shall express the particulars prescribed under letters (a) and (b) of section 7 relative to the apartment concerned and shall also express all encumbrances thereon.

Section 9. Waiver of the regime. All the co-owners or the sole owner of a building constituted into an horizontal property regime may waive this regime and request the registrar of the bureau of conveyances or of the land court to re-group or merge the records of the filial estates with the principal property, provided, that the filial estates are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

Section 10. Merger no bar to re-constitution. The merger provided for in the preceding section shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this chapter.

PART III ADMINISTRATION.

Section 11. **Horizontal property regime by-laws.** The administration of every building constituted into an horizontal property regime shall be governed by by-laws approved and adopted by the council of co-owners. The by-laws may be amended from time to time by the council.

Section 12. **Record of receipts and expenditures.** The administrator, or the board of administration, or the person appointed by the by-laws of the regime, shall keep a book with a detailed account of the receipts and expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or in behalf of the regime. Both the book and vouchers accrediting the entries made thereupon shall be available for examination by all the co-owners at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization.

Section 13. **Pro-rata contribution toward expenses.** All co-owners are bound to contribute pro-rata toward the expenses of administration and of maintenance and repair of the general common elements, and, in the proper case, of the limited common elements of the building, and toward any other expense lawfully agreed upon by the council of co-owners.

No co-owner shall be exempted from contributing toward such expenses by waiver or non-use of the use or enjoyment of the common elements, both general and limited, or by abandonment of the apartment belonging to him.

Section 14. **Property taxes.** The laws relating to home exemptions from state property taxes shall be applicable to the individual apartments, which shall have the benefit of home exemption in those cases where the owner of a simple family dwelling would qualify. Property taxes assessed by the State shall be assessed on and collected on the individual apartments and not on the building as a whole.

Section 15. **Priority of liens.** Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner for his pro-rata share in the expenses to which section 13 refers shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

- (a) Assessments, liens, and charges in favor of the State for taxes past due and unpaid on the apartment; and
- (b) Payments due under mortgage instruments duly recorded.

PART IV REGULATION BY COMMISSION.

Section 16. **Notification of Intention.** Prior to the time when a condominium project is to be offered for sale in this State, the developer shall notify the commission in writing of his intention to sell such offerings.

Section 17. **Questionnaire and Filing Fee.** The notice of intention shall be accompanied by a fee of \$50 and by a verified copy of a questionnaire properly filled in. The questionnaire will be in such form and content as will require full disclosure of all material facts reasonably available.

Section 18. Inspection. After appropriate notification has been made pursuant to sections 16 and 17, an inspection of the condominium project may be made by the commission.

Section 19. Inspection Expenses. When an inspection is to be made of projects, the notice of intention shall be accompanied by the filing fee, together with an amount estimated by the commission to be necessary to cover the actual expenses of such inspection, not to exceed twenty dollars (\$20) a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses.

Section 20. Waiver of Inspection. The commission may waive initial inspection when in its opinion, a preliminary or final public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries. Failure of the commission to notify the developer of its intent to inspect his project within ten days after notification of intention is properly filed pursuant to sections 16 and 17 will be construed a waiver of such inspection.

Section 21. Public Report. When the commission makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts reasonably available. A public report shall neither be construed to be an approval nor disapproval of a project. No unit in a condominium project shall be offered for sale until the commission shall have issued a final or substitute public report thereon, nor shall reservations to purchase be taken until the commission has issued a preliminary, final or substitute public report.

Section 22. Preliminary Public Report. A preliminary public report may be issued by the commission upon receipt of a notice of intention filing which is complete except for some particular requirement, or requirements, which is, or are, at the time not fulfilled, but which may reasonably be expected to be completed.

Section 23. Copy of Public Report to be Given to Prospective Purchaser. The developer shall not enter into a binding contract or agreement for the sale of any unit in a condominium project unit

(a) A true copy of the commission's final or substitute public report thereon with all supplementary public reports, if any has been issued, has been given to the prospective purchaser,

(b) The latter has been given an opportunity to read same, and,

(c) His receipt taken therefor.

Receipts taken for any public report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date the receipt was taken.

Section 24. Supplementary Public Report. If, after a final or substitute public report has been issued, the commission shall deem it necessary to conduct further inquiries or investigations in order to protect the general public in its real estate transactions, the commission may issue a supplementary public report describing the findings thereof. Upon the issuance of a supplementary public report, it shall be the duty of the developer to issue a true copy thereof to all purchasers.

Section 25. True Copies of Public Report. The true copies of the commission's public report shall be an exact reproduction of those prepared by the commission.

Section 26. Notice of Change. It is unlawful for the developer of the project, after it is submitted to the commission, to materially change the set-up or value or use of such offering without first notifying the commission in writing of such intended change and substantially notifying all purchasers and prospective purchasers of such change.

Section 27. Request For Hearing By Developer. When a final, preliminary or substitute public report is not issued within a reasonable time after notice of intention is properly filed pursuant to sections 16 and 17, or if the developer is materially grieved by the form or content of a public report, the developer may, in writing, request and shall be given a hearing by the commission within a reasonable time after receipt of request.

Section 28. Penalties For Violations of Certain Provisions. Every officer, agent or employee of any company, and every other person who knowingly authorizes, directs or aids in the publication, advertisement, distribution or circularization of any false statement or representation concerning any project offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus or letter concerning any said project contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes the same, or shall cause the same to be issued, circulated, published or distributed, or who, in any other respect, violates or fails to comply with any of the provisions set forth in Part IV, or who in any other respect violates or fails, omits or neglects to obey, observe or comply with any order, decision, demand or requirement of the commission under Part IV, is guilty of a misdemeanor, and shall be punished by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding one year or by both such fine and imprisonment.

Section 29. Investigatory Powers. If the commission has reason to believe that a developer is violating any provision set forth in Part IV, or the rules and regulations of the commission made pursuant thereto, the commission may investigate the developer's project and examine the books, accounts, records and files used in the project of the developer. For the purposes of examination, the developer is required to keep and maintain record of all sales transactions and of the funds received by him pursuant thereto, and to make them accessible to the commission upon reasonable notice and demand.

Section 30. Power to enjoin. Whenever the commission believes from satisfactory evidence that any person has violated any of the provisions of Part IV or the rules and regulations of the commission made pursuant thereto, it may conduct an investigation on such matter, and bring an action in the name of the people of the State of Hawaii in any court of competent jurisdiction against such person to enjoin such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.

Section 31. Deposit of fees. All fees collected under this part shall be remitted by the commission to the treasurer of this State, and shall be placed to the credit of the special fund of the real estate commission.

Section 32. Chapter not exclusive. The provisions of this chapter shall be in addition and supplemental to all other provisions of the Revised Laws of Hawaii 1955, as amended, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail.

Section 33. **Supplemental regulations governing an horizontal property regime.** Whenever they deem it proper, the boards of supervisors of the various counties or the city council of the city and county of Honolulu may adopt supplemental rules and regulations governing a horizontal property regime established under this chapter in order to implement this program.

Section 34. **Severability.** If any provision of this chapter, or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the chapter and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.”

SECTION 3. Effective date. This Act shall take effect upon its approval.

(Approved July 10, 1961.) **H.B. 1142.**
