

ACT 244

S. B. 695.

A Bill for an Act Relating to Horizontal Property Regimes.

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

SECTION 1. Section 170A-2, Revised Laws of Hawaii 1955, as amended, is amended in the following respects:

(a) By amending paragraph (j) to read:

“(j) ‘Project’ means a real estate condominium project; a plan or project whereby a condominium of two or more apartments located within the horizontal property regime are offered or proposed to be offered for sale.”

(b) By adding a new paragraph to read:

“(u) ‘Completion of construction’ means the issuance by the appropriate county official of a certificate of completion.”

SECTION 2. Section 170A-10, Revised Laws of Hawaii 1955, as amended, is hereby further amended as follows:

“**Sec. 170A-10. Common profits and expenses.** The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners in proportion to the common interests appurtenant to their respective apartments; provided, that in the case of limited common elements all costs and expenses of every description pertaining thereto including but not limited to the cost of the maintenance, repair and replacement of, and the making of any additions and improvements to, any limited common element may be charged to the owners of the apartments for the use of which such limited common element is reserved in any equitable manner as set forth in the declaration.”

SECTION 3. A new section to be appropriately numbered is hereby

inserted next preceding section 170A-14, Revised Laws of Hawaii 1955, as amended, to read as follows:

“Sec. 170A-13..... Issuance of final reports prior to completion of construction. No final public report may be issued prior to completion of construction of the project unless there is filed with the commission:

(a) A verified statement showing all costs involved in completing the project, including land payments or lease payments, real property taxes, construction costs, architect, engineering and attorneys’ fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the building;

(b) A verified estimate of the time of completion of construction of the total project;

(c) Satisfactory evidence of sufficient funds to cover the total project cost from purchasers’ funds, equity funds, interim or permanent loan commitments, or other sources;

(d) A copy of the executed construction contract;

(e) Satisfactory evidence of a performance bond of not less than 100 per cent of the cost of construction;

(f) If purchasers’ funds are to be used for construction, an executed copy of the escrow agreement for the trust fund required under section 170A-13.5 for financing construction, which shall expressly provide for:

(1) No disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

(2) No disbursements from the balance of the trust fund after payment of construction costs pursuant to the preceding paragraph until the escrow agent receives satisfactory evidence that all mechanics’ and materialmen’s liens have been cleared, unless sufficient funds are set aside for any bona fide dispute.”

SECTION 4. Section 170A-32, Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

“Sec. 170A-32. Public reports. 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 final public report for a condominium project will be issued until execution and recordation of the deed or master lease, the declaration with a true copy of the by-laws annexed thereto, and floor plans as approved by the county officer having jurisdiction over the issuance of permits for the construction of buildings, as provided by sections 170A-3, 170A-13 and 170A-17.”

SECTION 5. Section 170A-33, Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

“Sec. 170A-33. Preliminary public report. A preliminary public report may be issued by the commission upon receipt of a notice of intention

filing [of] 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. No preliminary report shall be issued unless the commission is satisfied that the report adequately discloses all material facts which a prospective purchaser should consider and that adequate protection for purchaser's funds has been provided.

"Sec. 170A-33.1. Filing with commission required. Preliminary public reports may not be used for selling under a contract for the sale of a condominium unit unless the developer of the project has filed with the commission those documents and exhibits required to be submitted with the notification of intention required by sections 170A-27 and 170A-28, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a third party depository for retention and disposition of purchasers' funds in accordance with section 170A-33.5 hereof.

"Sec. 170A-33.2. Changes in building plans. Purchasers' funds obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a county officer having jurisdiction over issuance of permits for construction of buildings, unless purchaser's written approval or acceptance of the specific change is obtained.

"Sec. 170A-33.3. Enforceability of sales. Rights under contracts of sale of condominium units under a preliminary public report shall not become enforceable against purchasers until purchasers have had a full opportunity to read the commission's final public report on the project, and to obtain refund of any moneys paid as well as release from all obligations if the final report differs in any material respect from the preliminary report.

"Sec. 170A-33.4. One year limit. If the final public report is not issued within one year from the date of issuance of the preliminary report, purchasers shall be entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

"Sec. 170A-33.5. Escrow requirement. All moneys paid by purchasers prior to issuance of final reports shall be deposited in trust under escrow arrangement with instructions that no disbursements shall be made from such trust funds on behalf of the seller until the contract has become effective, and the requirements of sections 170A-33.1 through -33.4 have been met."

SECTION 6. Section 170A-34, Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

"Sec. 170A-34. Copy of public report to be given to prospective purchaser. The developer or any other person offering any unit in a condominium project prior to completion of its construction shall not enter into a binding contract or agreement for the sale or resale thereof until:

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

(b) The prospective purchaser has been given an opportunity to read the reports, and,

(c) The prospective purchaser executes his receipt for the reports.

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 7. Section 170A-35, Revised Laws of Hawaii 1955, as amended, is hereby amended to read as follows:

"Sec. 170A-35. Supplementary public report. If after a final public report has been issued, any circumstance occurs which would render the final public report misleading as to purchasers, or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the commission to enable it to issue a supplementary public report describing the changes. Sales shall not resume until the supplementary report has been issued."

SECTION 8. Section 170A-37, Revised Laws of Hawaii 1955, as amended, is hereby deleted.

SECTION 9. Section 170A-39, Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

"Sec. 170A-39. Misleading statements and omissions. No officer, agent or employee of any company, and no other person may knowingly authorize, direct or aid in the publication, advertisement, distribution or circularization of any false statement or representation concerning any project offered for sale or lease, and no person may issue, circulate, publish or distribute any advertisement, pamphlet, prospectus or letter concerning any project which contains any written statement that is false or which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein made in the light of the circumstances under which they are made not misleading."

SECTION 10. The following new sections, to be numbered 170A-39.1 and 170A-39.2, are hereby inserted next following section 170A-39, Revised Laws of Hawaii 1955, as amended, to read as follows:

"Sec. 170A-39.1. Penalties. Any person who, in any respect, violates or fails to comply with any of the provisions set forth in sections 170A-27 to 170A-44 or who in any other respect violates or fails, omits or neglects to obey, observe or comply with any rule, order, decision, demand or requirement of the commission under sections 170A-27 to 170A-44 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 both.

"Sec. 170A-39.2. Remedies; sales voidable when and by whom. Every sale made in violation of section 170A-39 shall be voidable at the election of the purchaser; and the person making such sale and every director, officer or agent of or for such seller, if such director, officer or agent shall

have personally participated or aided in any way in making such sale, shall be jointly and severally liable to such purchaser in an action at law in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by such purchaser, with interest, together with all taxable court costs and reasonable attorney's fees; provided, that no action shall be brought for the recovery of the purchase price after two years from the date of such sale and provided further, that no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by such purchaser, together with interest at 6 per cent on such amount for the period from the date of payment by such purchaser down to the date of repayment."

SECTION 11. A new section, to be numbered 170A-40.1, is hereby inserted next following section 170A-40, Revised Laws of Hawaii 1955, as amended, to read as follows:

"Sec. 170A-40.1 Cease and desist orders. In addition to its authority under section 170A-41, whenever the commission has reason to believe that any person is violating or has violated any of the provisions of this chapter, it shall issue and serve upon such person a complaint stating its charges in that respect, containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person to cease and desist from the violation of the law so charged in the complaint. If upon such hearing the commission is of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations. The person complained of may, within thirty days after service upon him of said report or order, obtain a review thereof in the appropriate circuit court."

SECTION 12. Section 170A-45 is hereby added to chapter 170A, to read as follows:

"Sec. 170A-45. Limitation of action. No civil or criminal actions shall be brought by the State pursuant to this chapter more than one year after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever shall have first occurred."

SECTION 13. Section 170A-46 is hereby added to chapter 170A, to read as follows:

"Sec. 170A-46. Automatic expiration of public reports. A public report shall expire thirteen months after the date of issuance, unless a supplementary report has been issued or the commission, upon review of the registration issues an order extending the effective period of the report."

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**SECTION 14. This Act shall take effect upon its approval.
(Approved June 6, 1967.)**