

A Bill for an Act Relating to Horizontal Property Regimes.

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

SECTION 1. Chapter 514, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“Sec. 514- Management contracts; developer and its affiliates. If the developer or any affiliate of the developer acts as the first managing agent for the association of apartment owners following its organization, the contract shall not have a term exceeding one year and shall contain a provision that the contract may be terminated by either party thereto on not more than sixty days’ written notice. An affiliate of, or person affiliated with, a developer is a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.

Sec. 514- Purchaser’s right to vote. The purchaser of an apartment pursuant to an agreement of sale recorded in the bureau of conveyances or land court shall have all the rights of an apartment owner, including the right to vote; provided that the seller may retain the right to vote on matters sub-

stantially affecting his security interest in the apartment, including but not limited to, the right to vote on:

- (1) Any partition of all or part of the project,
- (2) The nature and amount of any insurance covering the project and the disposition of any proceeds thereof,
- (3) The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith,
- (4) The payment of any amount in excess of insurance or condemnation proceeds,
- (5) The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project,
- (6) The special assessment of any expenses,
- (7) The acquisition of any apartment in the project,
- (8) Any amendment to the declaration of horizontal property regime or bylaws,
- (9) Any removal of the project from the provisions of this chapter, and
- (10) Any other matter which would substantially affect the security interest of the seller.

Sec. 514- Merger of increments. Two or more condominium projects, whether or not adjacent to one another, but which are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the apartments in the merged projects. The merger documents may provide for a single association of apartment owners and board of directors for the merged projects and for a sharing of the common expenses of the projects among all the owners of the apartments in the merged projects.

Sec. 514- Warranty against structural and appliance defects; notice of expiration required. The developer of a horizontal property regime subject to this chapter shall give notice by certified mail at the appropriate time to all members of the association of apartment owners and all members of the board of directors that the normal one-year warranty period will expire in ninety days. The notice shall set forth specific methods which apartment owners may pursue in seeking remedies for defects, if any, prior to expiration.”

SECTION 2. Section 514-10, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 514-10 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, including the developer, in proportion to the common interest 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. An apart-

ment owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to his apartment at the time the certificate of occupancy relating to his apartment is issued by the appropriate county agency.”

SECTION 3. Section 514-20, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 514-20 Contents of bylaws.** The bylaws shall provide for at least the following:

- (1) The election of a board of directors, the number of persons constituting the same, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of directors; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them.
- (2) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, constitutes a quorum; and what percentage is, consistent with this chapter, necessary to adopt decisions binding on all apartment owners.
- (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.
- (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
- (5) Election of a treasurer who shall keep the financial records and books of account.
- (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges.
- (7) Manner of collecting from the apartment owners their share of the common expenses.
- (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements.
- (9) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.
- (10) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners.
- (11) That seventy-five per cent of the apartment owners may at any time modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws.
- (12) That the first meeting of the association of apartment owners shall be held not later than one hundred eighty days after a certificate of

occupancy for the project has been issued by the appropriate county agency.

- (13) That all members of the board of directors shall be owners, co-owners, a spouse of an owner, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose.
- (14) That a director shall not vote on any issue in which he has a conflict of interest.”

SECTION 4. Section 514-21, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 514-21 Books of receipts and expenditures; availability for examination.** The manager or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors, and shall be available for examination by the apartment owners at convenient hours of weekdays.”

SECTION 5. Section 514-46, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 514-46 Penalties.** Any person who, in any respect, violates or fails to comply with any of the provisions set forth in sections 514-21, 514-29 to 514-52 and 514-55 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 real estate commission under sections 514-21, 514-29 to 514-52 and 514-55 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.”

SECTION 6. Section 514-48, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 514-48 Investigatory powers.** If the real estate commission has reason to believe that a developer is violating any provision set forth in sections 514-21, 514-29 to 514-52 and 514-55, 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 records 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 7. Section 514-50, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 514-50 Power to enjoin.** Whenever the real estate commission

believes from satisfactory evidence that any person has violated any of sections 514-21, 514-29 to 514-52 and 514-55 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 the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof."

SECTION 8. Section 514-2, Hawaii Revised Statutes, is amended by amending the definition of "property" to read:

"(18) "Property" means and includes the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, whether leasehold or in fee simple, to the extent of the interest held therein by the owner or lessee submitting such interest to the horizontal property regime, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the regime established by this chapter."

SECTION 9. Section 514-3, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 514-3 Horizontal property regimes.** Whenever the sole owner or all of the owners including all of the lessees of a property expressly declare, through the execution and recordation of a master deed, together with a declaration, which declaration shall set forth the particulars enumerated by section 514-11, his or their desire to submit the property to the regime established by this chapter, there shall thereby be established a horizontal property regime with respect to the property, and this chapter shall be applicable to the property. If the master deed is already recorded, the recordation of the declaration is sufficient to achieve the same result."

SECTION 10. Section 514-11, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 514-11 Recordation and contents of declaration.** The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration to which section 514-3 refers shall express the following particulars:

- (1) Description of the land, whether leased or in fee simple, on which the building or buildings and improvements are or are to be located.
- (2) Description of the building or buildings, stating the number of stories and basements, the number of apartments, and the principal

materials of which it or they is or are constructed or to be constructed.

- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common element to which it has access, and any other data necessary for its proper identification.
- (4) Description of the common elements.
- (5) Description of the limited common elements, if any, stating to which apartments their use is reserved.
- (6) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting.
- (7) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use.
- (8) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of the person which shall be within the county or city and county in which the property is located.
- (9) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, or restore the property in the event of damage or destruction of all or part of the property.
- (10) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter.
- (11) The method by which the declaration may be amended, consistent with this chapter.
- (12) Description as to any additions, deletions, modifications, and reservations as to the property."

SECTION 11. Section 514-12, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 514-12 Contents of deeds or leases of apartments. Deeds or leases of apartments shall include the following particulars:

- (1) Description of the land as provided in section 514-11, or incorporation by reference of the description in the declaration, or the post office address of the property, including in either case an appropriate reference to the recording of the declaration.
- (2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification.
- (3) Statement of the use for which the apartment is intended and restrictions on its use.
- (4) The common interest appertaining to the apartment.
- (5) All encumbrances on the apartment and any further details which the grantor and grantee, or lessor and lessee, deem desirable to set forth consistent with the declaration of this chapter."

SECTION 12. Section 514-13, Hawaii Revised Statutes, is amended to

read as follows:

“Sec. 514-13 Copy of the floor plans to be filed. Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the verified statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with and approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, there shall be recorded within thirty days from the date of completion of the building or buildings as “date of completion” is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built. The plans shall be kept by the recording officer in a separate file for each property, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated “apartment ownership,” with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.”

SECTION 13. Section 514-16, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 514-16 Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance or lease. At the time of the first conveyance or lease of each apartment, every mortgage and other lien, except any improvement district or utility assessment, affecting both the apartment and any other apartment shall be paid and satisfied of record, or the apartment being conveyed or leased and its common interest shall be released therefrom by partial release duly recorded.”

SECTION 14. Section 514-24, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 514-24 Priority of lien. (a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except only (1) liens for taxes and assessments lawfully imposed by governmental authority against the department, and (2) all sums unpaid on mortgages of record, and costs and expenses including attorney’s fees

provided in such mortgages. The lien may be foreclosed by action by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, may, unless prohibited by the declaration, bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the same. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(b) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment which became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer, his successors and assigns."

SECTION 15. Section 514-29, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 514-29 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 real estate commission in writing of his intention to sell such offerings. No offer of sale or sale shall be made without the issuance of a preliminary or final public report."

SECTION 16. Section 514-37, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 514-37 Changes in building plans. Purchaser's 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 or ninety days have elapsed since the purchaser has accepted in writing the apartment or he has first occupied the apartment."

SECTION 17. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 18. This Act shall take effect upon its approval.

(Approved May 24, 1975.)

*Edited accordingly.