

A Bill for an Act Relating to Horizontal Property Regimes.

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

SECTION 1. Section 514-53, Hawaii Revised Statutes, is amended to read:

**“Sec. 514-53 Limitation of action.** No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.”

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

**“Sec. 514-10 Common profits and expenses.** (a) 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 a mixed use project containing apartments for both residential and commercial use, such

charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration; provided further that all limited common elements costs and expenses, including but not limited to, maintenance, repair, replacement, additions and improvements shall be charged to the owner of the apartment to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.

(b) An apartment 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; provided that a developer may assume all the actual common expenses in common expenses in a residential project containing no mixed commercial and residential use, by stating in the abstract as required by Act 239, use by stating in the abstract as required by Act 239, Section 1, Session Laws of Hawaii 1976, that the apartment owner shall not be obligated for the payment of his respective share of the common expenses until such time the developer files an amended abstract with the commission which shall provide, that after a date certain, the respective apartment owner shall thereafter be obligated to pay for his respective share of common expenses that is allocated to his apartment. The amended abstract shall be filed at least 30 days in advance with the commission with a copy of the abstract being delivered either by mail or personal delivery after the filing to each of the apartment owners whose maintenance expenses were assumed by the developer."

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

**"Sec. 514-15 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 real estate commission:

- (1) 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;
- (2) A verified estimate of the time of completion of construction of the total project;
- (3) Satisfactory evidence of sufficient funds to cover the total project cost from purchasers funds, equity funds, interim or permanent loan commitments, or other sources;
- (4) A copy of the executed construction contract;
- (5) Satisfactory evidence of a performance bond of not less than one hundred per cent of the cost of construction;
- (6) If purchasers funds are to be used for construction, an executed copy of the escrow agreement for the trust fund required under section 514-14 for financing construction, which shall expressly provide for:
  - (A) 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
- (B) 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;
- (7) A parking plan to include designated residence parking stalls and guest parking, if any, exclusive of assignment to individual apartments, if parking stalls are to be considered limited common elements."

SECTION 4. Section 514-20.5, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 514-20.5 Management contracts; developer.** (a) 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. The identity of the managing agent as the developer or its affiliate shall be disclosed to the association of apartment owners no later than the first meeting of the association. 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.

(b) A managing agent employed or retained for a condominium project shall provide evidence of a fidelity bond in the minimum amount of \$25,000.

(c) If a project chooses not to have a managing agent, a fidelity bond shall be secured for all individuals handling the funds in the minimum amount \$10,000.

SECTION 5. Section 514-26, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 514-26 Insurance.** (a) The association of apartment owners shall purchase and at all times maintain insurance which covers the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with the as-built condominium plans and specifications, against loss or damage by fire sufficient to provide for the repair or replacement thereof in the event of such loss or damages. Flood insurance shall also be provided under the federal Flood Disaster Protection Act if the property is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development. Exterior glass may be insured at the option of the association of apartment owners. The insurance coverage shall be written on the property in the name of the association of apartment owners. Premiums shall be common expenses. Provision for the insurance shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

(b) Any insurance policy providing the coverage required by subsection (a) shall contain a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the board of directors

with a written summary, in layman's terms, of the policy. The summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium, and renewal dates. The board of directors shall provide this information to each apartment owner."

SECTION 6. Section 514-39, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 514-39 One year limit.** If the final public report is not issued within one year from the date of issuance of the preliminary report, each purchaser is entitled to refund all moneys paid by the purchaser without further obligation; provided that if the final public report is issued after the one year period and a copy of the final public report is delivered to the purchaser either personally or by registered or certified mail with return receipt requested, notwithstanding any law to the contrary, the purchaser shall have thirty days from the date of delivery to exercise his right of refund and cancellation of obligation, after which period such right shall be deemed waived; provided further, that such waiver shall be effective only if at the time the purchaser receives a copy of the final public report, he is notified in writing of his right of refund and cancellation of obligation and the waiver of such right upon his failure to act within the thirty day period."

SECTION 7. Section 514-41, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 514-41 Copy of public report to be given to prospective purchaser.** The developer of 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:

(1) A true copy of the real estate commission's final public report thereon with all supplementary public reports, if any has been issued, has been delivered to the prospective purchaser, either personally or by registered or certified mail with return receipt requested.

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

(3) The prospective purchaser executes his receipt for the reports; provided that if the prospective purchaser does not execute and return his receipt for the reports within thirty days from the date of delivery of such reports, he shall be deemed to have receipted for the reports; provided further, that such receipt shall be effective only if at the time of the delivery of the reports the prospective purchaser is notified in writing of the fact that he will be deemed to have executed his receipt for the reports upon his failure to act within the thirty day period.

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 8. Section 514-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Subsequent to substantial completion of the project and the recordation of the first conveyance or lease of an apartment in the project to a

## ACT 193

bona fide purchaser, and thereafter while the property remains the subject of a horizontal property regime, no lien shall arise or be created against the common elements. Following such completion and first recordation, liens may arise or be created only against the several apartments and their respective common interests.

During such period while (1) the developer retains ownership of any apartment other than

- (i) the mere reservation of legal title under an agreement of sale to a bona fide purchaser; and
  - (ii) the apartment in respect of which a binding contract of sale has been entered into with a bona fide purchaser but which has not, at the time of filing of the application of a mechanic's lien, closed escrow; or
- (2) Any other person retains ownership of any apartment prior to the first conveyance or lease of such apartment to a bona fide purchaser, mechanics' and materialmen's liens may arise or be created for labor or material furnished in project construction performed before the completion of construction, and such liens shall affect every apartment and its respective common interests so retained until released or until the period for making application for such liens has expired without any such application having been filed."

SECTION 9. If either S.B. No. 330, S.D. 2†, or H.B. 498 is passed by the legislature during this Regular Session of 1977, whether before or after the effective date of this Act, the corresponding provisions of S.B. No. 330, S.D. 2†, or H.B. 498 shall be amended to conform with this Act.

SECTION 10. 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 11. This Act shall take effect upon its approval.

(Approved June 8, 1977.)

---

†Now Act 98.

\*Edited accordingly.