

ACT 213

H.B. NO. 2281-84

A Bill for an Act Relating to Horizontal Property Regimes.

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

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

“§514A- Managing agents. (a) Every managing agent shall register with the real estate commission. The information required to be submitted shall include, but not be limited to, the name, business address, and phone number of the managing agent. The managing agent shall also show proof of bonding obtained pursuant to section 514A-84.

(b) The real estate commission may reject any registration without hearing if bonding for which proof is shown fails to meet the statutory requirements.

(c) All managing agents doing business in this State on July 1, 1984 shall register with the real estate commission before January 1, 1985. Any person who becomes a managing agent after July 1, 1984 shall register with the commission by January 1, 1985, or not later than one week after becoming a managing agent,

whichever is later. Every managing agent shall pay an initial registration fee of \$25 and a reregistration fee of \$15. Reregistration shall be on a biennial basis. Registration fees shall be placed in the special fund established under section 26-9(m) for compliance resolution.

(d) All funds collected by any managing agent from any condominium project shall be deposited in a financial institution located in the State whose deposits are insured by an agency of the United States government. Records of the deposits shall be disclosed to the real estate commission upon request.

(e) A managing agent employed or retained by one or more condominium projects may dispose of the records of any condominium project which are more than five years old without liability if the managing agent first provides the board of directors of the condominium project affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board of directors within sixty days, which notice shall include an itemized list of the records which the managing agent intends to dispose of.

(f) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books, or records of any managing agent. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent.

(g) No managing agent may do business in this State unless the managing agent has a designated agent in the State authorized to act on its behalf, and all records of its managed projects shall be maintained and filed in the State.

(h) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent. The managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, and in compliance with all applicable laws.

(i) Any person who embezzles or knowingly misapplies client funds received by a managing agent shall be guilty of a class C felony."

SECTION 2. Section 514A-3, Hawaii Revised Statutes, is amended to read as follows:

"§514A-3 Definitions. Unless it is plainly evident from the context that a different meaning is intended, as used herein:

[(1)] "Apartment" means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace, and patio.

[(2)] "Apartment owner" means the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto; provided that to such extent and for such purposes,

including the exercise of voting rights, as shall be provided by lease registered under chapter 501 or recorded under chapter 502, a lessee of an apartment shall be deemed to be the owner thereof.

[(3)] "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and declaration.

[(4)] "Commission" means the real estate commission of the state department of commerce and consumer affairs.

[(5)] "Common elements", unless otherwise provided in the declaration, means and includes:

- [(A)] (1) The land included in the horizontal property regime, whether leased or in fee simple;
- [(B)] (2) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building or buildings;
- [(C)] (3) The basements, flat roofs, yards, gardens, recreational facilities, parking areas, and storage spaces;
- [(D)] (4) The premises for the lodging or use of janitors and other persons employed for the operation of the property;
- [(E)] (5) Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerators;
- [(F)] (6) The elevators, escalators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
- [(G)] (7) Such facilities as may be designated as common elements in the declaration; and
- [(H)] (8) All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

[(6)] "Common expense" means and includes:

- [(A)] (1) Expenses of operation of the property; and
- [(B)] (2) All sums designated common expenses by or pursuant to this chapter, the declaration or the bylaws.

[(7)] "Common interest" means the percentage of undivided interest in the common elements appertaining to each apartment, as expressed in the declaration, and any specified percentage of the common interests means such percentage of the undivided interests in the aggregate.

[(8)] "Common profits" means the balance of all income, rents, profits, and revenues from the common elements remaining after the deduction of the common expenses.

[(9)] "Completion of construction" means the issuance by the appropriate county official of a certificate of completion.

[(10)] "Condominium" means the ownership of single units, with common elements, located on property within the horizontal property regime.

[(11)] "Declaration" means the instrument by which the property is submitted to this chapter, as hereinafter provided, and such declaration as from time to time amended.

[(12)] "Developer" means a person who undertakes to develop a real estate condominium project.

[(13)] "Limited common elements" means and includes those common elements designated in the declaration as reserved for the use of a certain apartment or certain apartments to the exclusion of the other apartments; provided that no amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the apartment or apartments for the use of which such limited common elements are reserved.

[(14)] "Majority" or "majority of apartment owners" means the owners of apartments to which are appurtenant more than fifty per cent of the common interests, and any specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

"Managing agent" means any person employed or retained for the purposes of managing the operation of the property.

[(15)] "Master deed" or "master lease" means any deed or lease showing the extent of the interest of the person submitting the property to the horizontal property regime.

[(16)] "Operation of the property" means and includes the administration, fiscal management and operation of the property and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.

[(17)] "Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

[(18)] "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.

[(19)] "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.

[(20)] “To record” means to record in accordance with chapter 502, or to register in accordance with chapter 501.

[(21)] 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. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

“[[]§514A-46[]] **Investigatory powers.** If the real estate commission has reason to believe that a developer is violating any provision set forth in sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-66, 514A-68, 514A-69, 514A-, and 514A-85, or the rules [and regulations] of the commission [made] adopted pursuant thereto, the commission may investigate the developer’s project or the managing agent and examine the books, accounts, records, and files of the managing agent, or those used in the project of the developer. For the purposes of examination, the developer [is required to] shall 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 4. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

“[[]§514A-48[]] **Power to enjoin.** Whenever the real estate commission believes from satisfactory evidence that any person has violated any of sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-66, 514A- 68, 514A-69, 514A-, and 514A-85 or the rules [and regulations] of the commission adopted pursuant thereto, it may conduct an investigation on [such] the 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 5. Section 514A-49, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who, in any respect, violates or fails to comply with any of the provisions set forth in sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-66, 514A-68, 514A-69, 514A-, 514A-85, or 514A-102 to 514A-106, 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 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-66, 514A-68, 514A-69, 514A-, 514A-85, or 514A-102 to 514A-106, 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 514A-84, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A managing agent employed or retained for one or more condominium projects shall provide evidence of a fidelity bond in an amount equal to ~~[\$250]~~ \$500 multiplied by the aggregate number of units covered by all of the agent’s condominium management contracts; provided that the minimum amount of bond required by this subsection shall not be less than ~~[\$10,000]~~ \$20,000 nor greater than ~~[\$50,000.]~~ \$100,000.

(c) If a project chooses not to have a managing agent, a fidelity bond in an amount equal to ~~[\$250]~~ \$500 multiplied by the number of units in the project shall be secured for all ~~[individuals]~~ persons handling the project’s funds; provided that the minimum amount of bond required by this subsection shall not be less than ~~[\$10,000]~~ \$20,000 nor greater than ~~[\$50,000.]~~ \$100,000. The association of apartment owners, upon the real estate commission’s request, shall provide evidence of the bond to the commission. The bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons handling the condominium project’s funds.”

SECTION 7. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (m) to read as follows:

“~~[(m)]~~ Every licensed person under any chapter subject to section 26H-4 shall pay upon issuance of a license a fee of \$10 and a subsequent annual fee of \$10, which may be collected biennially or pursuant to rules adopted under chapter 91 and which shall be deposited into the special fund established under this subsection. Any unpaid fee shall accrue and shall be paid by the licensed person upon application for renewal of a license. The director may increase or decrease the annual fee when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be expended by the director’s designated representative for compliance resolution as provided by this subsection. The moneys in the fund shall consist of annual fees collected under this subsection and section 514A-. The director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel. The moneys in the fund may be used to train such personnel as the director finds necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, “compliance resolution” means a determination of whether any licensee under any chapter subject to section 26H-4, has complied with that chapter.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund.”

SECTION 8. This Act does not apply to acts which occurred, penalties which were incurred, or proceedings which were begun prior to its effective date.

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.¹

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

(Approved May 30, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.