

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-A-41, Hawaii Revised Statutes, is amended to read as follows:

**“[ ]§514A-41[ ] 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[,] in any material respect, [or if the developer proposes to materially change the project,] the developer shall stop all sales and immediately submit sufficient information to the real estate commission to enable it to issue a supplementary public report describing the [changes.] circumstance. Sales shall not resume until the supplementary report has been issued. Notwithstanding the provisions of this section, the rescission rights of a purchaser, if any, shall be governed exclusively by sections 514A-62 and 514A-63. This does not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies.”

SECTION 2. 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-63, 514A-65, 514A-68, 514A-69, and 514A-85, 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] such records accessible to the commission upon reasonable notice and demand."

SECTION 3. 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-63, 514A-65, 514A-68, 514A-69, and 514A-85 or the rules and regulations of the commission adopted 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 4. Section 514A-49, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"§514A-49 **Penalties.**<sup>1</sup> (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-63, 514A-65, 514A-68, 514A-69, 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-63, 514A-65, 514A-68, 514A-69, 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 5. Section 514A-62, Hawaii Revised Statutes, is amended to read as follows:

"[ ]§514A-62[ ] **Copy of public report to be given to prospective purchaser.** (a) The developer (or any other person offering any [unit] apartment 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] of an apartment which is binding upon any prospective purchaser 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, together with a true copy of all other public reports thereon, if any, issued prior to the date of such delivery and not previously delivered to such prospective purchaser;
- (2) The prospective purchaser has been given an opportunity to read the reports[.]; and
- (3) The prospective purchaser (A) executes [his] the form of the receipt [for the reports;] and notice set forth in subsection (d); and (B) waives his right to cancel; provided that if the prospective purchaser does not execute and return [his] the receipt and notice [for the reports] within thirty days from the date of delivery of such reports, [he] or if the apartment is conveyed to the prospective purchaser prior to the expiration of such thirty-day period, the prospective purchaser shall be deemed to have receipted for the reports and to have waived his right to cancel[;] provided further, that such receipt shall be effective only if at the time of 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].

(b) The [Receipts] receipts and notices taken [for any public report] hereunder shall be kept on file in possession of the developer (or such other person as may offer any apartment in a condominium project prior to completion of its construction), and shall be subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date the receipt and notice was taken.

(c) Unless such right has previously been waived pursuant to subsection (a), a prospective purchaser shall have the right to cancel any agreement for the purchase or reservation of an apartment at any time prior to the earlier of (1) the conveyance of the apartment to the prospective purchaser or (2) midnight of the thirtieth day following the date of delivery of the final public report to such purchaser, and, upon any such cancellation, shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

(d) Whenever a final public report is delivered to a prospective purchaser pursuant to subsection (a), two copies of the receipt and notice set out below shall also be delivered to such purchaser, one of which may be used by the purchaser to cancel the transaction. Such receipt and notice shall be printed in capital and lower case letters of not less than 12 point type on one side of a separate statement. The receipt and notice shall be in the following form:

**“RECEIPT AND NOTICE OF RIGHT TO CANCEL**

I acknowledge receipt of the Hawaii Real Estate Commission’s (Preliminary, Final and/or Supplementary) Public Report(s) and Disclosure Abstract in connection with my purchase of apartment(s) (insert apartment numbers) in the (insert name of condominium project) condominium project. I also acknowledge that I have had an opportunity to read the Public Report(s).

I understand that I have a legal right under Hawaii law to cancel my purchase, if I desire to do so, without any penalty or obligation within thirty days from the date the above Public Report or Reports were delivered to me. If I cancel, I understand that I will be entitled to receive the refund of any downpayment or deposit, less any escrow cancellation fees and other costs, up to \$250.

If I decide to cancel, I understand that I can do so by notifying (insert name of seller) at (insert address of seller) by mail or telegram sent before: (1) the conveyance of my apartment(s) to me; or (2) midnight of the thirtieth day after delivery of the Public Report(s) to me, whichever is earlier. If I send or deliver my written notice some other way, it must be delivered to the above address no later than that time. I understand that I can use any written statement that is signed and dated by me and states my intention to cancel, or I may use this notice by checking the appropriate box and by signing and dating below.

I understand that if I do not act within the above thirty-day period or if the apartment is conveyed to me within the above thirty-day period, I will be considered to have executed this receipt and to have waived my right to cancel my purchase. I also understand that I can waive my right to cancel by checking the appropriate box, by signing and dating below, and by returning this notice to (insert name of seller).

/ / I WISH TO CANCEL.

\_\_\_\_\_  
Purchaser's signature Date

/ / I WAIVE MY RIGHT TO CANCEL.

\_\_\_\_\_  
Purchaser's signature Date

(e) No obligation to purchase an apartment under any agreement for the purchase or reservation of an apartment entered into prior to the issuance of a final public report is enforceable against the purchaser under such agreement."

SECTION 6. Section 514A-63, Hawaii Revised Statutes, is amended to read as follows:

"[ ]§514A-63[ ] [Enforceability of sales. Rights under contracts of sale of condominium units under a preliminary public report are not enforceable against purchasers until purchasers have had a full opportunity to read the real estate commission's final public report on the project, and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.] Rescission rights. (a) Except for any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the declaration, a purchaser shall have the right to rescind a sale made under a binding contract if there is a material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use.

(b) A purchaser's right of rescission under subsection (a) shall be waived upon (1) delivery to such purchaser, either personally or by registered or certified mail, return receipt requested, of a disclosure document which describes the material change and contains a provision for such purchaser's written approval or acceptance of such change, and (2) such purchaser's written approval or acceptance of the material change, or the lapse of ninety days since such purchaser has accepted the apartment, or the occupancy of the apartment by such purchaser; provided that if such purchaser does not rescind the contract or execute and return the written approval or acceptance of such change as provided in the disclosure document within thirty days from the date of delivery of such disclosure document, such purchaser shall be deemed to have approved

and accepted such change; provided further that the deemed approval and acceptance shall be effective only if at the time of delivery of the disclosure document, such purchaser is notified in writing of the fact that such purchaser will be deemed to have approved and accepted the change upon such purchaser's failure to act within the thirty day period; provided further that if, prior to delivery of such disclosure document, ninety days have lapsed since such purchaser has accepted the apartment, or such purchaser has occupied the apartment, then such purchaser's right of rescission under subsection (a) shall not be waived unless such purchaser shall execute the written approval or acceptance of such change as provided in the disclosure document within thirty days from the date of delivery of such disclosure document or such purchaser is deemed to have approved and accepted such change as set forth above. A copy of the form of disclosure document shall be delivered to the commission prior to delivery to purchasers.

(c) In the event of rescission pursuant to the provisions of this section, a purchaser shall be entitled to a prompt and full refund of any moneys paid.

(d) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies."

SECTION 7. Section 514A-64, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 514A-65, Hawaii Revised Statutes, is amended to read as follows:

"[ ]§514A-65[ ] 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 514A-39[,] and 514A-63[, 514A-64, and 514A-66] have been met."

SECTION 9. Section 514A-66, Hawaii Revised Statutes, is repealed.

SECTION 10. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. The provisions of section 514A-62 relating to the giving of the receipt and notice to prospective purchasers shall only apply to projects, including additional phases or increments of projects, the sales of which commence after the effective date of this Act.

SECTION 12. Statutory material to be repealed is bracketed.<sup>2</sup> New material is underscored.

**ACT 58**

**SECTION 13.** This Act shall take effect upon its approval.

(Approved April 18, 1984.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.