

ACT 285

S.B. NO. 370

A Bill for an Act Relating to Condominium Management Recovery and Education Funds.

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

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

“PART . CONDOMINIUM MANAGEMENT EDUCATION FUND

§514A- Condominium management education fund. (a) The real estate commission shall establish a condominium management education fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:

- (1) Education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under this chapter;
- (2) The improvement and more efficient administration of condominium associations; and
- (3) Expeditious and inexpensive procedures for resolving condominium association disputes.

(b) The commission may use any and all moneys in the condominium management education fund for purposes consistent with subsection (a).

§514A- Payments to the fund. (a) Each association of apartment owners with six or more apartments shall pay to the department of commerce and consumer affairs a fee of \$2 for each apartment for calendar year 1990. Thereafter, the annual fee shall be as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The department of commerce and consumer affairs shall allocate the fees collected to the condominium management education fund established pursuant to section 514A-

(c) Payments of any fees required under this section shall be due on or before January 1 of each year. If an association of apartment owners fails to pay a required fee by March 1 of each year, the association shall be assessed a penalty of ten per cent of the amount due and the association shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association of apartment owners to pay a fee required under this section shall not impair the validity of any claim of the association for common expenses or other assessments, or prevent the association from defending any action in any court of this State.

§514A- Management of funds. (a) The sums received by the commission for deposit in the condominium management education fund shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium management education fund to employ necessary personnel not subject to chapters 76 and 77 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium management education fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees' retirement system of the State. The interest from these investments shall be deposited to the credit of the condominium management education fund.

§514A- False statement. It shall be unlawful for any association of apartment owners, its officers, its board of directors, or its agents to file with the commission any notice, statement, or other document required under this chapter that is false or untrue or contains any material misstatement of fact. Any violation of this section shall constitute a misdemeanor."

SECTION 2. Section 514A-40, Hawaii Revised Statutes, is amended to read as follows:

"§514A-40 Issuance of final reports. (a) No final public report shall 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 514A-67 for financing construction, which [shall] expressly shall 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] that 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.

(b) No final public report shall be issued for a project [which] that includes one or more existing structures being converted to condominium status unless there is filed with the real estate commission all items required under subsection (a) and:

- (1) A verified statement signed by an appropriate county official that the project is in compliance with all ordinances, codes, rules, regulations, and other requirements in force at the time of its construction;
 - (2) A verified statement signed by an appropriate county official of whether any variance has been granted from any ordinance, code, rule, regulation, or any other requirement in force at the time of its construction or from any current ordinance, code, rule, regulation, or other requirement;
 - (3) A statement by the declarant, based upon a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
 - (4) A statement by the declarant of the expected useful life of each item reported on in paragraph (3) or a statement that no representations are made in that regard;
 - (5) A list of any outstanding notices of uncured violations of building code or other [municipal] county regulations, together with the cost of curing these violations; and
 - (6) A statement whether the project is on a lot[,], or has structures[,], or uses [which] that do not conform to present zoning requirements;
- provided that paragraphs (3), (4), and (5) apply only to apartments that may be occupied for residential use[,], and [only to apartments that] have been in existence for five years.

(c) No final public report or supplementary public report, which supersedes a final public report shall be issued for a project until the developer has paid into the condominium management education fund a nonrefundable fee of \$5 for each apartment in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Payments required under this subsection shall be due after the effective date of this Act."

SECTION 3. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

"§514A-47 Cease and desist orders. In addition to its authority under section 514A-48, whenever the [real estate] commission has reason to believe that any person is violating or has violated sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-65, 514A-68, 514A-69, 514A-84, [and] 514A-85, 514A-95, and 514A-~~96~~ or the rules of the commission adopted pursuant thereto, it shall issue and serve upon [such] the 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 the complaint. The person so complained of has 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 the person to cease and desist from the violation of the law charged in the complaint. If upon the hearing the commission is of the opinion that this chapter has been or is 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 the person an order requiring the person to cease and desist from [such] the violations. The person complained of [may], within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court."

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, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, [and] 514A-95, and 514A- or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter[,] and bring an action in the name of the people of the State 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 to read as follows:

“§514A-49 Penalties. (a) Any person who, in any respect, violates or fails to comply with any of the provisions set forth in [sections] section 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, [or] 514A-102 to 514A-106, or 514A- is guilty of a misdemeanor and shall be punished by a fine not exceeding \$2,000 or by imprisonment for a term not exceeding one year, or both. Any person [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] section 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, [or] 514A-102 to 514A-106, or 514A- [is guilty of a misdemeanor, and] shall be punished by a fine not exceeding [\$1,000] \$2,000. [or by imprisonment for a term not exceeding one year, or both.]

(b) Any person who violates any provision of this chapter or the rules of the [real estate] commission adopted pursuant thereto also shall [also] be subject to a civil penalty not exceeding \$2,500[,] for any violation. Each violation shall constitute a separate offense and the collection of the fine shall be by suit brought by the attorney general on behalf of the [real estate] commission.”

SECTION 6. The real estate commission shall adopt rules pursuant to chapter 91 to effectuate fully the purpose of this Act.

SECTION 7. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 13, 1989.)