

A Bill for an Act Relating to Condominium Management.

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 designated and to read as follows:

“§514A-95.1 Association of apartment owners registration; fidelity bond.

(a) Each condominium project having six or more apartment units shall:

- (1) Secure annually through its association of apartment owners a fidelity bond in an amount equal to \$500 multiplied by the number of units in the project, to cover all officers, directors, employees, and managing agents of the association who handle the association's funds; provided that the amount of bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the association against fraudulent or dishonest acts by persons, including any managing agent registered with the commission, handling the association's funds. An association shall recover from the bond required by this section by order of the circuit or district court of the county where the violation occurred if the terms of the bond require a court order. An association which is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or bond alternative;
- (2) Register annually through its association with the commission starting on January 1, 1990. Any condominium project coming into existence after January 1, 1990, shall register through its association within thirty days of the association's first meeting. The information required to be submitted upon registration shall include but not be limited to proof of fidelity bond coverage, names and positions of those persons who handle the association's funds, the name of the association's managing agent, if any, the postal address of the condominium, and the name, business address, and phone number of a designated contact person for the association;
- (3) Pay an initial registration fee of \$25 for the first year from the effective date of this section and subsequently an annual reregistration fee as prescribed by rules adopted by the director of commerce and consumer affairs;
- (4) Pay any registration fee on or before January 1 of each year. If an association fails to pay the registration fee by March 1 of each year, the association shall also pay, in addition to the registration fee, a penalty equal to the amount of the registration fee.

(b) The commission may reject or terminate any registration submitted by an association which fails to comply with this section. Any association which fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers. The failure of an association to register, or rejection or termination of its registration, shall not impair the validity of any contract or act of the association nor prevent the association from defending any action or proceeding in any court in this State.”

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

“§514A-97 Association of apartment owners funds; handling and disbursement. (a) The funds in the general operating account of the association of apartment owners shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall a managing agent commingle any association funds with the managing agent’s own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual apartment owners of a project and the payment of such ground lease rents to the ground lessor; provided that:

- (1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual apartment leases of the project;
- (2) If a management contract exists, it requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor;
- (3) The system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association; and
- (4) No managing agent or association shall pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.

(c) All funds collected by an association, or by a managing agent for any association, shall be:

- (1) Deposited in a financial institution located in the State whose deposits are insured by an agency of the United States government;
- (2) Held by a corporation authorized to do business under chapter 406; or
- (3) Invested in the obligations of the United States government.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association’s board of directors. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent’s employees under the supervision of the association’s board of directors. The commission may draft rules governing the handling and disbursement of condominium association funds.

(d) A managing agent or board of directors shall not transfer association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

(e) A 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, chapter 467, the rules of the commission, and all other applicable laws.

(f) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association of apartment owners shall be guilty of a class C felony.”

SECTION 3. Chapter 514A, Hawaii Revised Statutes, is amended by adding two new sections to be designated and to read as follows:

“§514A-98 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 which is false or untrue or contains any material misstatement of fact. Any such false filing shall constitute a misdemeanor.

§514A-99 Rules. The commission shall adopt, amend, or repeal such rules as it may deem proper to fully effectuate this chapter.”

SECTION 4. 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, an association of apartment owners, or a managing agent 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, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, [and] 514A-95, 514A-95.1, 514A-97, or 514A-98, or the rules of the commission adopted pursuant thereto, the commission may investigate the developer’s project, the association of apartment owners, or the managing agent and examine the books, accounts, records, and files of the association, the managing agent, or those used in the project of the developer. For the purposes of examination, the developer shall keep and maintain records of all sales transactions and of the funds received by the developer pursuant thereto, and to make such records accessible to the commission upon reasonable notice and demand.”

SECTION 5. 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, 514A-95.1, 514A-97, or 514A-98, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon such 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, obtain a review thereof in the appropriate circuit court.”

SECTION 6. 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, 514A-95.1, 514A-97, or 514A-98, 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 7. Section 514A-49, Hawaii Revised Statutes, is amended to read as follow:

“§514A-49 Penalties. (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, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, [or] 514A-95.1, 514A-97, 514A-102 to 514A-106, or 514A-98, 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, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, [or] 514A-95.1, 514A-97, 514A-102 to 514A-106, or 514A-98 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 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 8. Section 514A-84, Hawaii Revised Statutes, is amended to read as follows:

“§514A-84 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] the developer’s 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 by one or more condominium projects shall provide evidence of a fidelity bond in an amount equal to \$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 \$20,000 nor greater than \$100,000.

(c) If a project chooses not to have a managing agent, a fidelity bond in an amount equal to \$500 multiplied by the number of units in the project shall be secured for all persons handling the project’s funds; provided that the minimum amount of bond required by this subsection shall not be less than \$20,000 nor greater than \$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.

(d) The funds in the general operating account of the condominium association shall not be commingled with funds of other activities such as lease rent collection and rental operations, nor shall the managing agent commingle any association funds with its own funds. For purposes of this subsection, lease rent collections and rental operations shall not include either the rental or leasing of common elements that is conducted on behalf of the board of directors of the association of apartment owners; or the collection of ground lease rents from in-

dividual apartment owners of a project and the payment of such ground lease rents to the ground lessor; provided that the collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual apartment leases of the project; that the management contract requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor; and that the system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association of apartment owners; provided further that the managing agent shall not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.

(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.]"

SECTION 9. Section 514A-85, Hawaii Revised Statutes, is amended to read as follows:

"§514A-85 [Books of receipts and expenditures; unpaid assessments; availability for examination.] Records; examination; disposal. (a) The [manager] managing agent 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. The [manager] managing agent or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(b) All records and the vouchers authorizing the payments[,] and statements 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 week days. [The manager or board of directors shall not transfer by telephone association funds between accounts, including, but not limited to, the general operating account and reserve fund account.]

(c) A managing agent employed or retained by one or more condominium associations may dispose of the records of any condominium association which are more than five years old without liability if the managing agent first provides the board of directors of the condominium association 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.

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

SECTION 10. Section 514A-95, Hawaii Revised Statutes, is amended to read as follows:

"§514A-95 Managing agents. (a) Every managing agent shall [be licensed as a real estate broker in compliance with chapter 467 and the rules of the real estate commission or a corporation authorized to do business under chapter 406

and 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. Any person aggrieved by an act, representation, transaction, or conduct of a managing agent upon the grounds of fraud, misrepresentation, or deceit shall recover by order of the circuit court or district court of the county where the violation occurred first from the bond required by section 514A-84, and if the managing agent is a licensed real estate broker, secondly from the real estate recovery fund established under section 467-16.];

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under chapter 406;
- (2) Register annually with the commission. The information required to be submitted upon registration shall include but not be limited to proof of fidelity bond coverage, name, business address, and phone number;
- (3) Provide evidence annually and at time of initial registration of a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the managing agent's contracts; provided that the amount of the bond shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons handling the association's funds. Any association aggrieved by the actions of a managing agent on the grounds of fraud, misrepresentation, or deceit shall recover by order of the circuit or district court of the county where the violation occurred from the bond required by this section, and if the managing agent is a licensed real estate broker, secondly from the real estate recovery fund established under section 467-16. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or bond alternative; and
- (4) Pay an initial registration fee of \$25 for the first year and subsequently pay an annual reregistration fee as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(n) and the rules adopted pursuant thereto.

(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 as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Reregistration shall be on a biennial basis. Registration fees shall be placed in the special fund established under section 26-9(n) 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)] (c) 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 11. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 13, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.