

ACT 173

H.B. NO. 2724

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. Section 514A-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If after the effective date has been issued by the commission for a public report, any circumstance occurs which would render the public report misleading as to purchasers in any material respect, the developer shall stop all offers of sale and sales and immediately submit to the commission a supplementary public report, together with such supporting information as may be required by the commission, to update the information contained in the public report, accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. [Sales] Offers of sale and sales shall not resume until an effective date has been issued by the commission for the supplementary public report. The developer shall provide all prospective purchasers with a true copy of the supplementary public report and all prior public reports not superseded by the supplementary public report.”

SECTION 2. Section 514A-43, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-43 Automatic expiration of public reports[.]; exceptions.** (a) A public report shall expire thirteen months after the effective date of the report[, unless the]. The commission, upon submission of a written request for an extension by the developer at least thirty calendar days prior to the expiration date, together with such supporting information as may be required by the commission,

a review of the registration, and after payment of a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, [issues] may issue an order extending the effective [period] date of the report.

(b) The commission may issue an order that the final public report for a two apartment condominium project shall have no expiration date, provided that the developer submits to the commission:

- (1) A written request for such an order not later than thirty calendar days prior to the next expiration date of the final public report;
- (2) Satisfactory evidence that one or both apartments are either retained by the developer, or conveyed to an irrevocable trust to benefit a spouse or family member of the developer. A family member is anyone related by blood, descent, or adoption; and
- (3) Payment of a nonrefundable fee as provided by rules adopted by the department of commerce and consumer affairs pursuant to chapter 91.

The final report shall be subject to the supplemental public report requirements as provided in section 514A-41(a).

The developer receiving an order under this subsection shall provide written notification to the commission within thirty calendar days of any subsequent sale and conveyance of either apartment to any person.”

SECTION 3. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

“§514A-46 Investigatory powers. If the commission has reason to believe that any person is violating or has violated any provision set forth in sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, 514A-134, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association, the board of directors, the managing agent, real estate broker, the real estate salesperson, the purchaser, or the developer. For the purposes of examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and to make such records accessible to the commission upon reasonable notice and demand.”

SECTION 4. 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 commission has reason to believe that any person is violating or has violated sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, 514A-134, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon 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

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requiring the person to cease and desist from the violation of the law or the rules of the commission adopted pursuant thereto, charged in the complaint. If upon the hearing the commission is of the opinion that this chapter, or the rules of the commission adopted pursuant thereto, 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 the violations. The person complained of, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court."

SECTION 5. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-48 Power to enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated any of sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, 514A-134, 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 6. 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 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134, is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person 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 commission under sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134 shall be punished by a fine not exceeding \$10,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto also shall be subject to a civil penalty not exceeding \$10,000 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 commission."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 12, 1992.)