

ACT 106

H.B. NO. 3101

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-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] section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 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[,] of apartment owners, the board of directors, the managing agent, the real estate broker, the real

estate salesperson, the purchaser, or the developer. For the purposes of this 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] shall make [such] the records accessible to the commission upon reasonable notice and demand.”

SECTION 2. 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] section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 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 and containing a notice of a hearing at a stated place and upon a day [and at a place therein fixed] at least thirty days after the service of the complaint. The person [so complained of] served has the right to appear at the place and time [so fixed] specified 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 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] have been or [is] are being violated, it shall make a report in writing [in which it shall state] stating 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 3. 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] section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 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 4. 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-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 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] section 514A-2, 514A-

31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 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 also 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 5. Section 514A-84, Hawaii Revised Statutes, is amended to read as follows:

“§514A-84 Management and contracts; developer[.], managing agent, and association of apartment owners. (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 the developer’s affiliate shall be disclosed to the association of apartment owners no later than the first meeting of the association[.] of apartment owners, which is when the association of apartment owners is organized. 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) Any developer or affiliate of the developer or a managing agent, who manages the operation of the property from the date of recordation of the first apartment conveyance until the organization of the association of apartment owners, shall comply with the requirements of sections 514A-95.1, 514A-97, and 514A-132, with the exception of the fidelity bond requirement for the association of apartment owners.

(c) The developer, affiliate of the developer, managing agent, and the association of apartment owners shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract. Prior to the organization of the association of apartment owners, any apartment owner may request to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.”

SECTION 6. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every managing agent shall:

- (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 article 8 of chapter 412;
- (2) Register [annually] with the commission[.] prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. Beginning December 31, 1996, the registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed

re-registration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted [upon registration] with any application shall include but not be limited to [proof of] evidence of and information on fidelity bond coverage, name, business address, [and] phone number[;], and names of association of apartment owners managed;

- (3) Provide complete evidence [annually and at time of] with the initial registration application and re-registration application 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;] apartments of the association of apartment owners managed by the managing agent; provided that the amount of the bond shall not be less than \$20,000 nor greater than \$100,000. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association of apartment owners funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The bond shall protect the managing agent against the loss of any association [money,] of apartment owners' moneys, securities, or other [property] properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide complete evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. 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 a bond alternative, or permit deductibles;
- (4) Act promptly and diligently to recover from the bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association[,] of apartment owners, and apply the bond proceeds, if any, to reduce the [association's] association of apartment owners' loss. If more than one association of apartment owners suffers a loss, the managing agent shall divide the proceeds among the associations of apartment owners in proportion to each [association's] association of apartment owners' loss. An association of apartment owners may request a court order requiring the managing agent to act promptly and diligently to recover from the bond. If an association of apartment owners cannot recover its loss from the bond proceeds of the managing agent, the association of apartment owners may recover by court order from the real estate recovery fund established under section 467-16, provided that:
 - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
 - (B) The managing agent is a licensed real estate broker; and
 - (C) The association of apartment owners fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission; [and]

- (5) Pay [an] a nonrefundable application fee and, upon approval, an initial registration fee [for the first year], and subsequently pay [an annual] a 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(o) and the rules adopted pursuant thereto[.]; and
 - (6) Report immediately in writing to the commission any changes to the information contained on the registration application, the evidence of the fidelity bond, or any other documents provided for registration. Failure to do so may result in termination of registration and subject the condominium project or the association of apartment owners to initial registration requirements.
- (b) The commission may [reject] deny any registration or re-registration application or terminate a registration without hearing if [bonding for which proof is shown fails] the fidelity bond and its evidence fail to meet the [statutory] requirements[.] of this chapter and the rules adopted pursuant thereto."

SECTION 7. Section 514A-95.1, Hawaii Revised Statutes, is amended to read as follows:

“§514A-95.1 Association of apartment owners registration; fidelity bond. (a) Each condominium project or association of apartment owners having six or more [apartment units] apartments 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,] apartments, to cover all officers, directors, employees, and managing agents of the association of apartment owners who handle, control, or have custody of the [association's] funds[.]; of the association of apartment owners; provided that the amount of the fidelity bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The fidelity bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons, including any managing agent [registered with the commission,] handling the [association's] funds[.] of the association of apartment owners. An association of apartment owners shall act promptly and diligently to recover from the fidelity 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] of apartment owners that is unable to obtain a fidelity bond may seek approval for an exemption [from the fidelity bond requirement] or a bond alternative from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or a bond alternative[.];, or permit deductibles. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide complete evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained;
- (2) Register [annually through its association] with the commission [starting on January 1, 1990.] through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. Beginning June 30, 1997, the registration shall be for a biennial period with termination on June 30 of

an odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed re-registration application, payment of fees, and any other additional information set forth by the commission. Any condominium project or association of apartment owners that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. Any new condominium project [coming into existence after January 1, 1990,] or association of apartment owners shall register [through its association] within thirty days of the [association's] association of apartment owners' first meeting. If the association of apartment owners has not held its first meeting and it is at least one year after the recordation of the purchase of the first apartment in the condominium project, the developer or developer's affiliate or the managing agent shall register on behalf of the unorganized association of apartment owners and shall comply with this section, except the fidelity requirement for association of apartment owners. The public information required to be submitted [upon registration] on any completed application form shall include but not be limited to [proof of] evidence of and information on fidelity bond coverage, names and positions of those persons who handle the [association's] association of apartment owners' funds, the name of the [association's] association of apartment owners' managing agent, if any, the postal address of the condominium, and the [name, business address,] names, addresses, and phone [number] numbers of [a designated] the officers of the association of apartment owners, of which one shall be designated as the public contact person for the association[;] of apartment owners;

- (3) Pay [an initial] a nonrefundable application fee and, upon approval, an initial registration fee [of \$25 for the first year from June 13, 1989,] and subsequently [an annual] pay a [reregistration] re-registration fee [as prescribed by], and the condominium management education fund fee, as provided in rules adopted by the director of commerce and consumer affairs[;] pursuant to chapter 91;
- (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.] Register or re-register and pay the required fees by the due date. Failure to register or re-register or pay the required fees by the due date shall result in the assessment of a penalty equal to the amount of the registration or re-registration fee; and
- (5) Report immediately in writing to the commission any changes to the information contained on the registration or re-registration application, the evidence of the fidelity bond, or any other documents set forth by the commission. Failure to do so may result in termination of registration and subject the condominium project or the association of apartment owners to initial registration requirements.

(b) The commission may reject or terminate any registration submitted by a condominium project or an association [which] of apartment owners that fails to comply with this section. Any association [which] of apartment owners that 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 of apartment owners to register, or rejection or termination of its registration, shall not impair the validity of any

contract or act of the association of apartment owners nor prevent the association of apartment owners from defending any action or proceeding in any court in this State.”

SECTION 8. Section 514A-98, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-98 False statement.** It shall be unlawful for any [association of apartment owners, its officers, its board of directors,] person or [its] person’s agents to testify before or file with the commission any notice, statement, application, or other document required under this chapter [which] that is false or untrue or contains any material misstatement of fact[. Any such false filing], or contains forgery. In addition to any sanctions or remedies as provided in this chapter, any violation of this section shall constitute a misdemeanor.”

SECTION 9. Section 514A-132, Hawaii Revised Statutes, is amended to read as follows:

“**[[§514A-132]] Payments to the fund.** (a) Each condominium project or association of apartment owners with six or more apartments shall pay to the department of commerce and consumer affairs [a] the condominium management education fund fee [of \$2 for each apartment for calendar year 1990. Thereafter, the annual fee shall be] on or before June 30 of an odd-numbered year or within thirty days of the association of apartment owners’ first meeting or within one year after the recordation of the purchase of the first apartment, 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-131.

(c) Payments of any fees required under this section shall be due on or before [January 1 of each year.] the registration due date and shall be nonrefundable. [If an association of apartment owners fails to pay a] Failure to pay the required fee by [March 1 of each year,] the due date, [the association] shall [be assessed] result in a penalty assessment of ten per cent of the amount due and the association of apartment owners 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 of apartment owners for common expenses or other assessments, or prevent the association of apartment owners from defending any action in any court of this State.”

SECTION 10. Notwithstanding any other provision of law to the contrary, any fee imposed pursuant to section 6, 7, or 9 of this Act shall not exceed the existing fee amount required to be paid for the same purpose as of April 1, 1996; provided that for a biennial registration or re-registration, the re-registration fee, compliance resolution fund fee, and condominium management education fund fee shall not exceed twice the existing annual fee.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 12, 1996.)