

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. The legislature finds that the function of county zoning and county land development ordinances and rules is to protect public health, safety, and welfare. The purpose of this Act is to clarify that projects created and established as condominium property regimes are subject to county land use regulatory authority, and to ensure that projects created and established as condominium property regimes conform to the provisions of underlying county zoning ordinances and development requirements and are consistent with the purposes of adopted county land use policies and the state land use law.

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

**“§514A- Conformance with county land use ordinances.** Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county, pursuant to section 514A-45, to ensure the conformance of condominium property regimes to the purposes and provisions of county zoning and development ordinances and chapter 205. In the case of a property which includes one or more existing structures being converted to condominium status, the condominium property regime shall comply with section 514A-11(13) or section 514A-40(b).”

SECTION 3. Section 514A-11, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-11 Recordation and contents of declaration.** The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration to which section 514A-20 refers shall express the following particulars:

- (1) Description of the land, whether leased or in fee simple, on which the building or buildings and improvements are or are to be located;
- (2) Description of the building or buildings, stating the number of stories and basements, the number of apartments, and the principal materials of which it or they is or are constructed or to be constructed;
- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, [and] immediate common element to which it has access, designated parking stall[,], if considered a limited common element, and any other data necessary for its proper identification;
- (4) Description of the common elements;
- (5) Description of the limited common elements, if any, stating to which apartments their use is reserved;

- (6) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting;
- (7) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use;
- (8) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of the person which shall be within the county in which the property is located;
- (9) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, or restore the property in the event of damage or destruction of all or part of the property;
- (10) Any further details in connection with the property [which] that the person executing the declaration may deem desirable to set forth consistent with this chapter;
- (11) The method by which the declaration may be amended, consistent with this chapter; provided that an amendment to the declarations of all condominium projects existing as of May 22, 1991, and all condominium projects created thereafter shall require a vote or written consent of seventy-five per cent of all apartment owners, except as otherwise provided in this chapter; provided further that the declarations of condominium projects having five or fewer apartments may provide for the amendment thereof by a vote or written consent of more than seventy-five per cent of all apartment owners;
- (12) Description as to any additions, deletions, modifications, and reservations as to the property, including without limitation provisions concerning the merger or addition of later phases of the project. To the extent provided in the declaration, an amendment to the declaration [which] that is made to implement those additions, deletions, modifications, reservations, or merger provisions shall require the vote or written consent of only the declarant or such percentage of apartment owners as is provided in the declaration; and
- (13) [In the case of a project which includes one or more existing structures being converted to condominium status, a statement] A declaration subject to the penalties set forth in section 514A-49(b) that the [project] condominium property regime is in compliance with all zoning and building ordinances and codes [applicable to the project], and all other permitting requirements pursuant to section 514A-\_\_\_\_, and specifying[, if applicable:] in the case of a property which includes one or more existing structures being converted to condominium status:
  - (A) Any variances which have been granted to achieve such compliance; and
  - (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal non-conforming uses or structures[.];except that a property that is registered pursuant to section 514A-31 shall instead provide this declaration pursuant to 514A-40.”

SECTION 4. Section 514A-40, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No effective date shall be issued by the commission for a final public report prior to completion of construction of the project, unless there is filed with the commission:

- (1) A 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 project;
- (2) An 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 issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the commission;
- (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 expressly shall provide for:
  - (A) No disbursements by the escrow agent for payment of construction costs[,] unless bills are submitted with the request for disbursements that have been approved or certified for payment by the project lender or an otherwise qualified financially disinterested person; and
  - (B) No disbursements from the balance of the trust fund after payment of construction costs pursuant to [the preceding] paragraph (A) until construction of the project has been completed and 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; [and]
- (8) A copy of the disclosure statement required by section 514A-62(f)(3) if an effective date for a contingent final public report has been issued by the commission and the report has not expired[.]; and
- (9) A declaration subject to the penalties set forth in section 514A-49(b) that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to section 514A-\_\_\_\_\_.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 19, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.