

ACT 223

S.B. NO. 552

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Act 181, Session Laws of Hawaii 2017, is amended by amending section 45 to read as follows:

“SECTION 45. Condominium property regimes created prior to July 1, 2006, that were issued an effective date pursuant to ~~[section]~~ sections 514A-40 and 514A-41, Hawaii Revised Statutes, may be sold on or after January 1, 2019, without revising any of the governing documents; provided that the developer’s public report was active ~~[on January 1, 2019, and is]~~, non-expired, and accurate [and not misleading. On] between January 1, 2019, [all active, non-expired chapter 514A, Hawaii Revised Statutes, developer’s public reports] and July 1, 2020, pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, along with their most recent disclosure abstract, if any, will be treated as non-expiring developer’s public reports under part IV of chapter 514B, Hawaii Revised Statutes. Chapter 514A, Hawaii Revised Statutes, developer’s public reports shall be treated as non-expiring chapter 514B, Hawaii Revised Statutes, developer’s reports on the first day their respective report was accurate and had an active effective date between January 1, 2019, and July 1, 2020. Should any pertinent or material changes, or both, occur to the condominium project, the developer shall file ~~[an amended]~~ a developer’s public report superseding all prior reports pursuant to ~~[chapter 514B,]~~ section 514B-56, Hawaii Revised Statutes; provided that such projects and their subsequent reports filed under chapter 514B, Hawaii Revised Statutes, shall be exempt from the conversion requirements under section 514B-84(a)(1) and (2), Hawaii Revised Statutes. ~~[Condominium]~~ On July 1, 2020, condominium property regimes created prior to July 1, 2006, that were not issued an effective date pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, ~~[and]~~ did not file a notice of intent pursuant to section 514A-1.5(2)(B), Hawaii Revised Statutes, or have effective dates expired prior to January 1, 2019, shall revise their governing documents and register under chapter 514B, Hawaii Revised Statutes, for a developer to offer for sale or to sell condominiums.

A condominium property regime registered under chapter 514A, Hawaii Revised Statutes, shall not be required to revise its governing documents to comply with chapter 514B, Hawaii Revised Statutes, for sales of time share interests to be made in the condominium property regime.

Nothing contained in this Act or in the condominium property act shall be deemed to invalidate any condominium property regime that was validly created under chapter 514A, Hawaii Revised Statutes, prior to July 1, 2006.”

SECTION 2. Notwithstanding section 2 of Act 181, Session Laws of Hawaii 2017, and subject to section 3 of this Act, the following sections of chapter 514A, Hawaii Revised Statutes, shall remain operative in the form in which they read on December 31, 2018, until June 30, 2020, for the sole purpose of providing developers with sufficient time to update their developer’s public reports and associated documents in order to qualify for the safe harbor provisions of section 45 of Act 181, Session Laws of Hawaii 2017, as amended by this Act:

Part I. General Provisions and Definitions

- 514A-1 Title
- 514A-1.5 Applicability of chapter
- 514A-1.6 Conformance with county land use ordinances
- 514A-2 Chapter not exclusive
- 514A-3 Definitions
- 514A-4 Status of apartments
- 514A-5 Ownership of apartments
- 514A-6 Separate taxation

Part II. Creation, Alteration, and Termination of Condominiums

- 514A-11 Recordation and contents of declaration
- 514A-12 Copy of the floor plans to be filed
- 514A-13 Common elements
- 514A-13.6 Mailboxes for each dwelling required
- 514A-14 Parking stalls
- 514A-14.5 Ownership of parking stalls
- 514A-15 Common profits and expenses
- 514A-15.1 Common expenses; prior late charges
- 514A-15.5 Metering of utilities
- 514A-16 Liens against apartments; removal from lien; effect of part payment
- 514A-17 Contents of deeds or leases of apartments
- 514A-18 Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance or lease
- 514A-19 Merger of increments
- 514A-20 Condominium property regimes
- 514A-21 Removal from provisions of this chapter

Part III. Registration and Administration

- 514A-32 Questionnaire and filing fee
- 514A-33 Inspection
- 514A-34 Inspection expenses
- 514A-35 Waiver of inspection
- 514A-36 Public reports and registration fees
- 514A-38 Request for effective date or hearing by developer
- 514A-40 Final reports
- 514A-41 Supplementary public report
- 514A-42 True copies of public report; no misleading information
- 514A-43 Automatic expiration of public reports; exceptions
- 514A-44 Deposit of fees
- 514A-45 Supplemental regulations governing a condominium property regime
- 514A-46 Investigatory powers
- 514A-47 Cease and desist orders
- 514A-48 Power to enjoin
- 514A-49 Penalties
- 514A-50 Limitation of action

Part IV. Protection of Purchasers

- 514A-61 Disclosure requirements
- 514A-62 Copy of public report to be given to prospective purchaser
- 514A-63 Rescission rights
- 514A-64.5 Protection of purchasers' funds

514A-65	Escrow requirement
514A-67	Financing construction
514A-68	Misleading statements and omissions
514A-69	Remedies; sales voidable when and by whom
514A-70	Warranty against structural and appliance defects; notice of expiration required.

SECTION 3. Section 514B-56, Hawaii Revised Statutes, is amended to read as follows:

“[§514B-56] Developer’s public report; amendments. (a) After the effective date for a developer’s public report has been issued by the commission, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the developer’s public report, or if the developer desires to update or change the information set forth in the developer’s public report, the developer shall immediately submit to the commission an amendment to the developer’s public report or an amended developer’s public report clearly reflecting the change, together with such supporting information as may be required by the commission, to update the information contained in the developer’s public report, accompanied by nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Within a reasonable period of time, the commission shall issue an effective date for the amended developer’s public report or take other appropriate action under this part.

(b) The submission of an amendment to the developer’s public report or an amended developer’s public report shall not require the developer to suspend sales, subject to the power of the commission to order sales to cease as set forth in section 514B-66; provided that the developer shall advise the appropriate real estate broker or brokers, if any, of the change and disclose to purchasers any change in the information contained in the developer’s public report pending the issuance of an effective date for any amendment to the developer’s public report or amended developer’s public report; [and] provided further that if the amended developer’s public report is not issued within thirty days after its submission to the commission, the commission may order a suspension of sales pending the issuance of an effective date for the amended developer’s public report. Nothing in this section shall diminish the rights of purchasers under section 514B-94.

(c) The developer shall provide all purchasers with a true copy of:

(1) The amendment to the developer’s public report, if the purchaser has received copies of the developer’s public report and all prior amendments, if any; or

(2) A restated developer’s public report, including all amendments.

(d) The filing of an amendment to the developer’s public report or an amended developer’s public report, in and of itself, shall not be grounds for a purchaser to cancel or rescind a sales contract. A purchaser’s right to cancel or rescind a sales contract shall be governed by sections 514B-86 and 514B-87, the terms and conditions of the purchaser’s contract for sale, and applicable common law.

(e) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E; provided that:

(1) A copy of the disclosure statement required by chapter 514E is delivered to the purchaser or prospective purchaser; or

(2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser.

chaser or prospective purchaser because the offer and sale of the time share interest are made outside of the State.”

SECTION 4. On July 1, 2020, the authority to extend the operation of the listed sections of chapter 514A, Hawaii Revised Statutes, that is provided under section 2 to allow developers to qualify for the safe harbor provisions of section 45 of Act 181, Session Laws of Hawaii 2017, as amended by this Act, shall expire.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2019.

(Approved July 2, 2019.)