

MAR 18 2009

SENATE CONCURRENT RESOLUTION

ENCOURAGING THE REAL ESTATE COMMISSION TO MODIFY AND ADOPT RULES
TO REFLECT CHANGES IN THE CONDOMINIUM LAW UNDER CHAPTER
514B, HAWAII REVISED STATUTES.

1 WHEREAS, during the 2004, 2005, and 2006 legislative
2 sessions, the Legislature passed several acts (Act 164, Session
3 Laws of Hawaii 2004; Act 93, Session Laws of Hawaii 2005; and
4 Act 273, Session Laws of Hawaii 2006) that revised the
5 "Condominium Property Act", chapter 514A, Hawaii Revised
6 Statutes (HRS), and recodified it as chapter 514B, Hawaii
7 Revised Statutes, effective July 1, 2006; and

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9 WHEREAS, the intent of the recodification was to "update,
10 clarify, organize, deregulate, and provide for consistency and
11 ease of use of the condominium property regimes law", as
12 directed by Act 213, Session Laws of Hawaii 2000, which called
13 for a review of Hawaii's condominium property regimes laws in
14 preparation for the recodification; and

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16 WHEREAS, as also explained by Act 213, two of the
17 objections to chapter 514A, HRS, were that it is "overly
18 regulatory" and "hinders development"; and

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20 WHEREAS, in order to permit the Real Estate Commission to
21 provide guidance regarding the implementation of the new
22 Condominium Property Act, the Legislature enacted section
23 514B-61, HRS, in Act 93, Session Laws of Hawaii 2005,
24 authorizing the Real Estate Commission to "[a]dopt, amend, and
25 repeal rules pursuant to chapter 91[, Hawaii Revised Statutes]";
26 and

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28 WHEREAS, the Legislature finds that except for an
29 additional subchapter relating to replacement reserves that was
30 added in 1995, the current administrative rules relating to
31 condominiums, chapter 107, Hawaii Administrative Rules, have not
32 been updated since 1981; and



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2 WHEREAS, notwithstanding that two and one-half years have
3 elapsed since the new Condominium Property Act took effect, the
4 Real Estate Commission has not yet adopted administrative rules
5 that pertain to chapter 514B, HRS, nor has it begun to do so;
6 and
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8 WHEREAS, furthermore, section 16-107-1, Hawaii
9 Administrative Rules (HAR), states that chapter 107, HAR, is
10 "intended to clarify and implement chapter 514A, HRS" and no
11 mention is made of the chapter's applicability to chapter 514B,
12 HRS; and
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14 WHEREAS, instead of updating its administrative rules, the
15 Real Estate Commission has been following its long-standing
16 practice of issuing "nonbinding" opinions, some of which
17 interpret statutory provisions of chapter 514B, HRS; and
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19 WHEREAS, these nonbinding opinions are issued for specific
20 projects during monthly Condominium Review Committee and Real
21 Estate Commission meetings that are not part of the rulemaking
22 procedures as established under chapter 91, HRS; and
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24 WHEREAS, it has been reported that, these "nonbinding"
25 opinions are used by the Real Estate Commission to interpret the
26 questions of developers, their attorneys, and Real Estate
27 Commission private consultants for purposes of the condominium
28 public report application process, and that effective dates for
29 condominium public reports are not issued except in compliance
30 with these nonbinding opinions; and
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32 WHEREAS, the Legislature is concerned that, by issuing such
33 nonbinding opinions in lieu of adopting administrative rules,
34 and then relying on these nonbinding opinions for future
35 decisions, the Real Estate Commission may be engaging in
36 rulemaking without adhering to chapter 91, HRS; and
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38 WHEREAS, the Legislature is also concerned that the
39 practice of issuing a nonbinding opinion based upon a unique set
40 of facts presented at a Real Estate Commission hearing and then
41 applying the opinion to other projects may lead to situations
42 where precedential weight is ascribed to a decision merely
43 because it is the first to be heard by the Real Estate



Commission and not because the decision is truly generally applicable to other projects; and

WHEREAS, the Legislature believes that it would be far more beneficial to developers, their attorneys, and Real Estate Commission private consultants for the Real Estate Commission to engage in public rulemaking pursuant to chapter 91, HRS, in order to assure that various views are heard, rather than issuing nonbinding opinions based on the argument of only one developer or attorney presenting his or her case at a Real Estate Commission meeting; and

WHEREAS, the Legislature believes that engaging in the rulemaking procedures under chapter 91, HRS, will ensure that the Real Estate Commission adheres to the law and allows input from the public to assure that chapter 514B, HRS, does, in fact, "provide for consistency and ease of use of the condominium property regimes law", as directed by Act 213; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2009, the House of Representatives concurring, that the Real Estate Commission is encouraged to draft, adopt, and implement revised or additional administrative rules under chapter 107, HAR, to reflect changes in the condominium law under chapter 514B, HRS, by no later than December 31, 2009; and

BE IT FURTHER RESOLVED that the Chair of the Real Estate Commission is requested to report on the progress made to updating chapter 107, HAR, to the Legislature not later than twenty days before the convening of the Regular Session of 2010; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Director of Commerce and Consumer Affairs and the Chair of the Real Estate Commission.

OFFERED BY:

