

A Bill for an Act Relating to Horizontal Property Regimes.

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

SECTION 1. The purpose of this Act is to restate, without substantive change, the Horizontal Property Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER 514  
HORIZONTAL PROPERTY REGIMES  
PART I. GENERAL PROVISIONS AND DEFINITIONS**

**Sec. 514-1 Title.** This chapter shall be known as the “Horizontal Property Act”.

**Sec. 514-2 Chapter not exclusive.** This chapter is in addition and supplemental to all other provisions of the Revised Statutes; provided that this chapter shall not change the substantive law relating to land court property, and provided further that if this chapter conflicts with chapters 501 and 502, chapters 501 and 502 shall prevail.

**Sec. 514-3 Definitions.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

- (1) “Apartment” means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace, and patio.
- (2) “Apartment owner” means the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto; provided that to such extent and for such purposes,

including the exercise of voting rights, as shall be provided by lease filed with the board of directors, a lessee of an apartment shall be deemed to be the owner thereof.

- (3) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and declaration.
- (4) "Commission" means the real estate commission of the state department of regulatory agencies.
- (5) "Common elements", unless otherwise provided in the declaration, means and includes:
  - (A) The land included in the horizontal property regime, whether leased or in fee simple;
  - (B) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building or buildings;
  - (C) The basements, flat roofs, yards, gardens, recreational facilities, parking areas, and storage spaces;
  - (D) The premises for the lodging or use of janitors and other persons employed for the operation of the property;
  - (E) Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerators;
  - (F) The elevators, escalators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations for common use;
  - (G) Such facilities as may be designated as common elements in the declaration; and
  - (H) All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- (6) "Common expense" means and includes:
  - (A) Expenses of operation of the property; and
  - (B) All sums designated common expenses by or pursuant to this chapter, the declaration or the bylaws.
- (7) "Common interest" means the percentage of undivided interest in the common elements appertaining to each apartment, as expressed in the declaration, and any specified percentage of the common interests means such percentage of the undivided interests in the aggregate.
- (8) "Common profits" means the balance of all income, rents, profits, and revenues from the common elements remaining after the deduction of the common expenses.
- (9) "Completion of construction" means the issuance by the appropriate county official of a certificate of completion.
- (10) "Condominium" means the ownership of single units, with common elements, located on property within the horizontal property regime.
- (11) "Declaration" means the instrument by which the property is submitted to this chapter, as hereinafter provided, and such declaration as from time to time amended.
- (12) "Developer" means a person who undertakes to develop a real estate

- condominium project.
- (13) "Limited common elements" means and includes those common elements designated in the declaration as reserved for the use of a certain apartment or certain apartments to the exclusion of the other apartments; provided that no amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the apartment or apartments for the use of which such limited common elements are reserved.
  - (14) "Majority" or "majority of apartment owners" means the owners of apartments to which are appurtenant more than fifty per cent of the common interest, and any specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.
  - (15) "Master deed" or "master lease" means any deed or lease showing the extent of the interest of the person submitting the property to the horizontal property regime.
  - (16) "Operation of the property" means and includes the administration and operation of the property and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.
  - (17) "Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
  - (18) "Project" means a real estate condominium project; a plan or project whereby a condominium of two or more apartments located within the horizontal property regime are offered or proposed to be offered for sale.
  - (19) "Property" means and includes the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, whether leasehold or in fee simple, to the extent of the interest held therein by the owner or lessee submitting such interest to the horizontal property regime; the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the regime established by this chapter.
  - (20) "To record" means to record in accordance with chapter 502, or to register in accordance with chapter 501.
  - (21) All pronouns used herein include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.

**Sec. 514-4 Status of apartments.** Each apartment together with the common interest appertaining thereto, shall for all purposes constitute real property and may be individually conveyed, leased, or encumbered and be the subject of ownership, possession, or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other apartment or apartments in the property of which it forms a part, and the corresponding individual titles and interests shall be recordable.

**Sec. 514-5 Ownership of apartments.** The apartment owner is entitled to the exclusive ownership and possession of the apartment. Any apartment may be jointly or commonly owned by more than one person.

**Sec. 514-6 Separate taxation.** The laws relating to home exemptions from state property taxes are applicable to the individual apartments, which shall have the benefit of home exemption in those cases where the owner of single-family dwelling would qualify. Property taxes assessed by the State shall be assessed on and collected on the individual apartments and not on the property as a whole. Without limitation of the foregoing, each apartment and the common interest appertaining thereto shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.

## **PART II. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS**

**Sec. 514-11 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 514-20 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, 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 herein-after provided, together with the residence or place of business of the person which shall be within the county or city and 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 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.
  - (12) Description as to any additions, deletions, modifications, and reservations as to the property.

**Sec. 514-12 Copy of the floor plans to be filed.** Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the verified statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with and approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, there shall be recorded within thirty days from the date of completion of the building or buildings as "date of completion" is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built. The plans shall be kept by the recording officer in a separate file for each property, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "apartment ownership," with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.

**Sec. 514-13 Common elements.** (a) Each apartment shall have appurtenant thereto a common interest as expressed in the declaration.

(b) The common interest appurtenant to each apartment as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded. The common interest shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(c) The common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as otherwise expressed in this chapter.

Any provision to the contrary is void.

(d) Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject always to the exclusive use of the limited common elements as provided in the declaration.

(e) The operation of the property shall be carried out as provided herein and in the declaration and the bylaws.

(f) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

(g) An undivided interest in the land included in the common elements equal to the apartment's common interest may be leased to the apartment owner and the apartment and other common elements may be deeded to the apartment owner with a right of removal; and, this shall not constitute a division or partition of the common elements, or a separation of the common interest from the apartment to which it appertains; nor shall any such deed be construed as conveying title to the land included in the common elements.

**Sec. 514-14 Parking stalls.** Notwithstanding any provision of the declaration, apartment owners with the consent of the lessor and mortgages, if any, shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the declaration and respective apartment leases or deeds involved. The amendment shall be effective only upon recording or filing of the same of record with the bureau of conveyances.

**Sec. 514-15 Common profits and expenses.** The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners, including the developer, in proportion to the common interest appurtenant to their respective apartments; provided that in a mixed use project containing apartments for both residential and commercial use, such charges and distributions may be apportioned in any fair and equitable manner as set forth in the declaration; provided further that in the case of limited common elements all costs and expenses of every description pertaining thereto including, but not limited to, the cost of the maintenance, repair, and replacement of, and the making of any additions and improvements to, any limited common element may be charged to the owners of the apartments for the use of which such limited common element is reserved in any equitable manner as set forth in the declaration. An apartment owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to his apartment at the time the certificate of occupancy relating to his apartment is issued by the appropriate county agency.

**Sec. 514-16 Liens against apartments; removal from lien; effect of part payment.** (a) Subsequent to recording the declaration as provided in this chapter, and while the property remains the subject of a horizontal property regime, no lien shall arise or be created against the common elements, During

such period, liens may arise or be created only against the several apartments and their respective common interests.

(b) Labor performed on or materials furnished to an apartment shall not be the basis of a lien pursuant to part II of chapter 507 against the apartment of any apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. No labor performed on or materials furnished to the common elements shall be the basis of a lien thereon, but all funds received and to be received by the manager or board of directors in payment of common expenses, and the right to receive such funds, shall constitute trust funds for the purpose of paying the cost of such labor or materials performed or furnished at the express request or with the consent of the manager or board of directors, and the same shall be expended first for such purposes before expending any part of the same for any other purpose.

**Sec. 514-17 Contents of deeds or leases of apartments.** Deeds or leases of apartments shall include the following particulars:

- (1) Description of the land as provided in section 514-11, or incorporation by reference of the description in the declaration, or the post office address of the property, including in either case an appropriate reference to the recording of the declaration.
- (2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification.
- (3) Statement of the use for which the apartment is intended and restrictions on its use.
- (4) The common interest appertaining to the apartment.
- (5) All encumbrances on the apartment and any further details which the grantor and grantee, or lessor and lessee, deem desirable to set forth consistent with the declaration and this chapter.

**Sec. 514-18 Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance or lease.** At the time of the first conveyance of lease of each apartment, every mortgage and other lien, except any improvement district or utility assessment, affecting both the apartment and any other apartment shall be paid and satisfied of record, or the apartment being conveyed or leased and its common interest shall be released therefrom by partial release duly recorded.

**Sec. 514-19 Merger of increments.** Two or more condominium projects, whether or not adjacent to one another, but which are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the apartments in the merged projects. The merger documents may provide for a single association of apartment owners and board of directors for the merged projects and for a sharing of the common expenses of the projects among all the owners of the apartments in the merged projects.

**Sec. 514-20 Horizontal property regimes.** Whenever the sole owner or all of the owners including all of the lessees of a property expressly declare, through

the execution and recordation of a master deed, together with a declaration, which declaration shall set forth the particulars enumerated by section 514-11, his or their desire to submit the property to the regime established by this chapter, there shall thereby be established a horizontal property regime with respect to the property, and this chapter shall be applicable to the property. If the master deed is already recorded, the recordation of the declaration is sufficient to achieve the same result.

**Sec. 514-21 Removal from provisions of this chapter. (a) If:**

- (1) Apartment owners owning not less than eighty per cent in number of apartments in the aggregate, and owning apartments to which are appurtenant not less than eighty per cent of the common interests, execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of the apartments of the apartment owners executing such instrument consent thereto by instruments duly recorded, or
- (2) The common elements suffer substantial damage or destruction and such damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof or the apartment owners have earlier determined as provided in the declaration that such damage or destruction shall not be rebuilt, repaired, or restored,

then, and in either event, the property shall be subject to an action for partition by any apartment owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all apartment owners in proportion to their respective common interests, provided that no payment shall be made to an apartment owner until there has first been paid off out of his share of such net proceeds all liens on his apartment. Upon such sale, the property ceases to be the subject of a horizontal property regime or subject to this chapter.

(b) All of the apartment owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto, by instruments duly recorded. Upon such removal from this chapter, the property, or the part of the property designated in the instrument, ceases to be the subject of a horizontal property regime or subject to this chapter, and is deemed to be owned in common by the apartment owners in proportion to their respective common interests.

**Sec. 514-22 Removal no bar to subsequent resubmission.** The removal provided for in section 514-21 shall in no way bar the subsequent resubmission of the property to this chapter.

### **PART III. REGISTRATION AND ADMINISTRATION**

**Sec. 514-31 Notification of intention.** Prior to the time when a condominium project is to be offered for sale in this State, the developer shall notify the real estate commission in writing of his intention to sell such offerings.



No offer of sale or sale shall be made without the issuance of a preliminary or final public report.

**Sec. 514-32 Questionnaire and filing fee.** The notice of intention shall be accompanied by a fee of \$250 and by a verified copy of a questionnaire properly filled in. The questionnaire shall be in such form and content as will require full disclosure of all material facts reasonably available.

**Sec. 514-33 Inspection.** After appropriate notification has been made pursuant to section 514-31 and 514-32, an inspection of the condominium project may be made by the real estate commission.

**Sec. 514-34 Inspection expenses.** When an inspection is to be made of projects, the notice of intention shall be accompanied by the filing fee, together with an amount estimated by the real estate commission to be necessary to cover the actual expenses of the inspection, not to exceed \$20 a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses.

**Sec. 514-35 Waiver of inspection.** The real estate commission may waive initial inspection when in its opinion, a preliminary or final public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries. Failure of the commission to notify the developer of its intent to inspect his project within ten days after notification of intention is properly filed pursuant to section 514-31 and 514-32 will be construed a waiver of the inspection.

**Sec. 514-36 Public reports and issuance fees.** When the real estate commission makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts reasonably available. A public report shall neither be construed to be an approval nor disapproval of a project. No final public report for a condominium project shall be issued until execution and recordation of the deed or master lease, the declaration with a true copy of the bylaws annexed thereto, and floor plans as approved by the county officer having jurisdiction over the issuance of permits for the construction of buildings, as provided by section 514-20, 514-12, and 514-81.

No additional fee shall be imposed for the issuance by the commission of the first public report. The developer shall be assessed a fee of \$150 for the issuance of a subsequent public report and \$75 for the issuance of a supplemental public report.

**Sec. 514-37 Preliminary public report.** A preliminary public report may be issued by the real estate commission upon receipt of a notice of intention the filing of which is complete except for some particular requirement, or requirements, which is, or are, at the time not fulfilled, but which may reasonably be expected to be completed. No preliminary report shall be issued unless the commission is satisfied that the report adequately discloses all material facts which a prospective purchaser should consider and that adequate protection for purchaser's funds has been provided.

**Sec. 514-38 Request for public report or hearing by developer.** If, within thirty days after notice of intention is properly filed pursuant to sections 514-31

and 514-32, a public report has not been issued by the real estate commission, the developer may, in writing, request of the commission that the report be prepared by a private consultant, and when requested by the commission, the director of regulatory agencies may contract with private consultants for the preparation of public reports prescribed in this chapter. The cost of preparation of public reports by private consultants shall be borne by the developer; provided that upon payment of the cost of the first public report, the developer shall be reimbursed one-half of the filing fee paid under section 514-32, or upon payment of the cost of subsequent or supplementary public reports, the developer shall be reimbursed one-half of the respective fee assessed therefor under this chapter. If the commission does not request the director to let the contract, or if the director determines not to let the contract, or when a final or preliminary public report is not otherwise issued within a reasonable time after notice of intention is properly filed pursuant to sections 514-31 and 514-32, or when a substitute public report is not issued within a reasonable time after requested or required, or if the developer is materially grieved by the form or content of a public report, the developer may, in writing, request and shall be given a hearing by the real estate commission within a reasonable time after receipt of request.

**Sec. 514-39 Filing with commission required.** Preliminary public reports shall not be used for selling under a contract for the sale of a condominium unit, unless the developer of the project has filed with the real estate commission those documents and exhibits required to be submitted with the notification of intention required by section 514-31 and 514-32, a specimen copy of an escrow agreement with a third party depository for retention and disposition of purchasers funds in accordance with section 514-65.

**Sec. 514-40 Issuance of final reports prior to completion of construction.** No final public report shall be issued prior to completion of construction of the project, unless there is filed with the real estate commission:

- (1) A verified 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 building;
- (2) A verified 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 of not less than one hundred per cent of the cost of construction;
- (6) If purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the trust fund required under section 514-67 for financing construction, which shall expressly provide for:
  - (A) No disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disburse-

ments which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

- (B) No disbursements from the balance of the trust fund after payment of construction costs pursuant to the preceding paragraph until 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.

**Sec. 514-41 Supplementary public reports.** If after a final public report has been issued, any circumstance occurs which would render the final public report misleading as to purchasing, or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the real estate commission to enable it to issue a supplementary public report describing the changes. Sales shall not resume until the supplementary report has been issued.

**Sec. 514-42 True copies of public report.** The true copies of the real estate commission's report shall be an exact reproduction of those prepared by the commission.

**Sec. 514-43 Automatic expiration of public reports.** A public report shall expire thirteen months after the date of issuance, unless a supplementary report has been issued or the real estate commission, upon review of the registration issues an order extending the effective period of the report.

**Sec. 514-44 Deposit of fees.** All fees collected under this chapter shall be deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.

**Sec. 514-45 Supplemental regulations governing a horizontal property regime.** Whenever they deem it proper, the real estate commission, the county councils of the various counties or the city council of the city and county of Honolulu may adopt supplemental rules and regulations governing a horizontal property regime established under this chapter in order to implement this program; provided that any of the supplemental rules and regulations adopted shall not conflict with this chapter or with any of the rules and regulations adopted by the real estate commission to implement this chapter.

**Sec. 514-46 Investigatory powers.** If the real estate commission has reason to believe that a developer is violating any provision set forth in sections 514-2, 514-31 to 514-39, 514-41, 514-42, 514-44 to 514-49, 514-62 to 514-66, 514-68, 514-69, and 514-85, or the rules and regulations of the commission made pursuant thereto, the commission may investigate the developer's project and examine the books, accounts, records, and files used in the project of the developer. For the purposes of examination, the developer is required to keep and maintain records of all sales transactions and of the funds received by him pursuant thereto, and to make them accessible to the commission upon reasonable notice and demand.

**Sec. 514-47 Cease and desist orders.** In addition to its authority under section 514-48, whenever the real estate commission has reason to believe that any person is violating or has violated this chapter, it shall issue and serve upon such 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 requiring the person to cease and desist from the violation of the law charged in the complaint. If upon the hearing the commission is of the opinion that this chapter 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 such violations. The person complained of may, within thirty days after service upon him of the report or order, obtain a review thereof in the appropriate circuit court.

**Sec. 514-48 Power to enjoin.** Whenever the real estate commission believes from satisfactory evidence that a person has violated any of sections 514-2, 514-31 to 514-39, 514-41, 514-42, 514-44 to 514-49, 514-62 to 514-66, 514-68, 514-69, and 514-85 or the rules and regulations of the commission adopted pursuant thereto, it may conduct an investigation on such matter, and bring an action in the name of the people of the State of Hawaii 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.

**Sec. 514-49 Penalties.** (a) Any person who, in any respect, violates or fails to comply with any of the provisions set forth in sections 514-2, 514-31 to 514-39, 514-41, 514-42, 514-44 to 514-49, 514-62 to 514-66, 514-68, 514-69, and 514-85 or 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 real estate commission under sections 514-2, 514-31 to 514-39, 514-41, 514-42, 514-44 to 514-49, 514-62 to 514-66, 514-68, 514-69, and 514-85 is guilty of a misdemeanor, and shall be punished by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding one year, or both.

(b) Any person who violates any provision of this chapter or the rules of the real estate commission adopted pursuant thereto shall also be subject to a civil penalty not exceeding \$2,500, 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 real estate commission.

**Sec. 514-50 Limitation of action.** No civil or criminal actions shall be brought by the State pursuant to this chapter more than one year after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.

#### PART IV. PROTECTION OF PURCHASERS

**Sec. 514-61 Disclosure requirements.** (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or his agent and of the project manager of his agent;
- (2) A breakdown of the annual maintenance fees and the monthly esti-

mated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;

- (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties;
  - (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed use project containing apartments for both residential and hotel use; and
  - (5) A statement of the extent of commercial or other non-residential development in the project.
- (b) This section shall be administered by the real estate commission.

**Sec. 514-62 Copy of public report to be given to prospective purchaser.** The developer or any other person offering any unit in a condominium project prior to completion of its construction shall not enter into a binding contract or agreement for the sale or resale thereof until:

- (1) A true copy of the real estate commission's final public report thereon with all supplementary public reports, if any has been issued, has been given to the prospective purchaser;
- (2) The prospective purchaser has been given an opportunity to read the reports; and
- (3) The prospective purchaser executes his receipt for the reports.

Receipts taken for any public report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date the receipt was taken.

**Sec. 514-63 Enforceability of sales.** Rights under contracts of sale of condominium units under a preliminary public report are not enforceable against purchasers until purchasers have had a full opportunity to read the real estate commission's final public report on the project, and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

**Sec. 514-64 Changes in building plans.** Purchasers' funds obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a county officer having jurisdiction over issuance of permits for the construction of buildings, unless a purchaser's written approval or acceptance of the specific change is obtained or ninety days have elapsed since the purchaser has accepted in writing the apartment or he has first occupied the apartment.

**Sec. 514-65 Escrow requirement.** All moneys paid by purchasers prior to issuance of final reports shall be deposited in trust under escrow arrangement with instructions that no disbursements shall be made from such trust funds on behalf of the seller until the contract has become effective, and the requirements of sections 514-39, 514-63, 514-64, and 514-66 have been met.

**Sec. 514-66 One-year limit.** If the final public report is not issued within one year from the date of issuance of the preliminary report, purchasers are entitled

to refund of all moneys paid by the purchasers thereunder without further obligation.

**Sec. 514-67 Financing construction.** Should the apartments be conveyed or leased prior to the completion of construction of the building or buildings for the purpose of financing such construction, all moneys from the sale of such apartments, including any payments made on loan commitments from lending institutions, shall be deposited by the developer in a trust fund with a bank, savings and loan association, or trust company authorized to do business in the State under an escrow arrangement. Disbursements from such fund may be made, from time to time, to pay for construction costs of the building or buildings in proportion to the valuation of the work completed by the contractor as certified by a registered architect or professional engineer, and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the money remaining in the trust fund shall be disbursed only upon completion of the building or buildings, free and clear of all mechanic's and materialmen's liens. The real estate commission may impose other restrictions relative to the retention and disbursement of the trust fund.

**Sec. 514-68 Misleading statements and omissions.** No officer, agent, or employee of any company, and no other person may knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease, and no person may issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning any project which contains any written statement that is false or which contains an untrue statement of a material fact or omits to state material fact necessary in order to make the statements therein made in the light of the circumstances under which they are made not misleading.

**Sec. 514-69 Remedies; sales voidable when and by whom.** Every sale made in violation of section 514-68 is voidable at the election of the purchaser; and the person making such sale and every director, officer, or agent of or for such seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, is jointly and severally liable to the purchaser in an action in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorney's fees; provided that no action shall be brought for the recovery of the purchase price after two years from the date of the sale and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by the purchaser, together with interest at six per cent on such amount for the period from the date of payment by the purchaser down to the date of repayment.

**Sec. 514-70 Warranty against structural and appliance defects; notice of expiration required.** The developer of a horizontal property regime subject to this chapter shall give notice by certified mail at the appropriate time to all

members of the association of apartment owners and all members of the board of directors that the normal one-year warranty period will expire in ninety days. The notice shall set forth specific methods which apartment owners may pursue in seeking remedies for defects, if any, prior to expiration.

## **PART V. CONDOMINIUM MANAGEMENT**

**Sec. 514-81 Bylaws.** The operation of the property shall be governed by bylaws, a true copy of which shall be annexed to the declaration and made a part thereof. No modification of or amendment to the bylaws is valid unless set forth in an amendment to the declaration, which amendment is duly recorded.

**Sec. 514-82 Contents of bylaws.** The bylaws shall provide for at least the following:

- (1) The election of a board of directors, the number of persons constituting the same, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of directors; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them.
- (2) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, constitutes a quorum; and what percentage is, consistent with this chapter, necessary to adopt decisions binding on all apartment owners.
- (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.
- (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
- (5) Election of a treasurer who shall keep the financial records and books of account.
- (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges.
- (7) Manner of collecting from the apartment owners their share of the common expenses.
- (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements.
- (9) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.
- (10) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners.
- (11) Seventy-five per cent of the apartment owners may at any time modify

or amend by bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws.

- (12) The first meeting of the association of apartment owners shall be held not later than one hundred eighty days after a certificate of occupancy for the project has been issued by the appropriate county agency.
- (13) All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose.
- (14) A director shall not vote at any board meeting on any issue in which he has a conflict of interest.
- (15) No resident manager of the condominium shall serve on the board of directors.
- (16) The board of directors shall meet at least once a year.
- (17) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to such meeting, and shall contain at least: the date and time of such meeting, the place of such meeting, the items on the agenda for such meeting, and a standard proxy form authorized by the association, if any.
- (18) A proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only.
- (19) The resident manager or managing agent, or board of directors shall keep an accurate and current list of members of the association of apartment owners and their current addresses and the name and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors.
- (20) All association and board of directors meetings shall be conducted in accordance with Roberts Rules of Order, or other accepted rules for the conduct of meetings.
- (21) The members of the association of apartment owners may require, by vote at the annual meeting, a yearly audit of the association books by a certified public accountant.
- (22) All meetings of the association of apartment owners shall be held at the address of the condominium project, or elsewhere within the State as determined by the board of directors.

**Sec. 514-83 Purchaser's right to vote.** The purchaser of an apartment pursuant to an agreement of sale recorded in the bureau of conveyances or land court shall have all the rights of an apartment owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting his security interest in the apartment, including but not limited to, the right to vote on:

- (1) Any partition of all or part of the project;
- (2) The nature and amount of any insurance coverage the project and the disposition of any proceeds thereof;



- (3) The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith;
- (4) The payment of any amount in excess of insurance or condemnation proceeds;
- (5) The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project;
- (6) The special assessment of any expenses;
- (7) The acquisition of any apartment in the project;
- (8) Any amendment to the declaration of horizontal property regime or bylaws;
- (9) Any removal of the project from the provisions of this chapter; and
- (10) Any other matter which would substantially affect the security interest of the seller.

**Sec. 514-84 Management contracts; developer and its affiliates.** 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. 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.

**Sec. 514-85 Books of receipts and expenditures; availability for examination.** The manager or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors, and shall be available for examination by the apartment owners at convenient hours of week days.

**Sec. 514-86 Insurance.** (a) The board of directors shall purchase and at all times maintain insurance which covers the common elements and, whether or not part of the common elements, all exterior and interior walls, exterior glass, floors, and ceilings against loss or damage by fire and such other hazards (including flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973, if the property is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development) sufficient to provide for the repair or replacement thereof in the event of such loss or damages. The insurance coverage shall be written on the property in the name of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in proportion to their respective common interests. Premiums shall be common expenses. Provision for the insurance shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

(b) Any insurance policy providing the coverage required by subsection (a) shall contain a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the board of directors

with a written summary, in layman's terms, of the policy. The summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium, and renewal dates. The board of directors shall provide this information to each apartment owner.

**Sec. 514-87 Personal application.** (a) All apartment owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to this chapter.

(b) All agreements, decisions, and determinations lawfully made by the association of apartment owners in accordance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all apartment owners.

**Sec. 514-88 Compliance with covenants, bylaws, and administrative provisions.** Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the manager or board of directors on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner.

**Sec. 514-89 Certain work prohibited.** No apartment owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the unanimous consent of all the other apartment owners being first obtained; provided that additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the board of directors of the association of apartment owners and such percentage, number, or group of apartment owners as may be required by the declaration or bylaws.

**Sec. 514-90 Priority of lien.** (a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except only (1) liens for taxes and assessments lawfully imposed by governmental authority against the apartment, and (2) all sums unpaid on mortgages of record, and costs and expenses including attorney's fees provided in such mortgages. The lien may be foreclosed by action by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, may, unless prohibited by the declaration, bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the same. Action to recover a money judgment for unpaid common

expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(b) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtain title to the apartment as a result of foreclosure of the mortgage, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment which became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer, his successors, and assigns.

**Sec. 514-91 Joint and several liability of grantor and grantee for unpaid common expenses.** In a voluntary conveyance the grantee of an apartment is jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee is entitled to a statement from the manager or board of directors setting forth the amount of the unpaid assessments against the grantor, and neither the grantor nor the grantee is liable for, nor is the apartment conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

**Sec. 514-92 Waiver of use of common elements; abandonment of apartment; conveyance to board of directors.** No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment. Subject to such terms and conditions as may be specified in the bylaws, any apartment owner may, by conveying his apartment and his common interest to the board of directors on behalf of all other apartment owners, exempt himself from common expenses thereafter accruing.

**Sec. 514-93 Actions.** Without limiting the rights of any apartment owner, actions may be brought by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one apartment. Service of process on two or more apartment owners in any action relating to the common elements or more than one apartment may be made on the person designated in the declaration to receive services of process.

**Sec. 514-94 Attorney's fees and expenses of enforcement.** All costs and expenses, including reasonable attorney's fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments against any owner's apartment;
  - (2) Foreclosing any lien thereon;
  - (3) Enforcing any provision of the declaration, bylaws, house rules, and the Horizontal Property Act; or
  - (4) The rules and regulations of the real estate commission;
- against an owner or any occupant of an apartment shall be promptly paid on demand to the association by the apartment owner; provided that if the claims upon which the association takes any action are not substantiated, all costs and

expenses, including reasonable attorney's fees, incurred by the apartment owner as a result of the action of the association, shall be promptly paid on demand to the apartment owner by the association."

SECTION 3. Chapter 514, Hawaii Revised Statutes, is repealed.

SECTION 4. If any other Act passes during this Regular Session of 1977 amending chapter 514, the Act shall be appropriately placed in the recodification of chapter 514 enacted by this Act.

SECTION 5. This Act shall take effect on January 1, 1978.

(Approved May 14, 1977.)