

ACT 54

H.B. NO. 2362

A Bill for an Act Relating to Condominiums.

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

SECTION 1. The legislature finds that although originally the real estate commission had investigatory and enforcement powers over condominium apartment owners' rights to examine information about their projects, an amendment to the condominium property regime law which created a more comprehensive section on those rights inadvertently neglected to give the commission investigatory and enforcement powers over those rights.

The legislature further finds that standard fidelity bonds usually protect only the person who obtains the bond against misappropriation by that person's employees. However, the fidelity bonds required to be obtained by managing agents are intended to protect condominium associations, not the managing agents, against misappropriation of association funds.

The purpose of this Act is to restore the real estate commission's power to investigate any denial of condominium owners' rights to obtain information about their projects and to enforce those rights. In addition, this Act is intended to amend the law relating to condominium managing agents by requiring managing agents to obtain "standard" fidelity bonds and to pay any proceeds received from the bonds to associations which have suffered losses; authorizing the acceptance of fidelity bonds with deductibles; requiring the collection of an application fee to defray the administrative costs of processing new applications; and recognizing associations' right to recover from the real estate recovery fund.

SECTION 2. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

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“§514A-46 Investigatory powers. If the commission has reason to believe that a developer, an association of apartment owners, or a managing agent is violating any provision set forth in section 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, or 514A-98, or the rules of the commission adopted pursuant thereto, the commission may investigate the developer’s project, the association of apartment owners, or the managing agent and examine the books, accounts, records, and files of the association, the managing agent, or those used in the project of the developer. For the purposes of examination, the developer shall keep and maintain records of all sales transactions and of the funds received by the developer pursuant thereto, and to make such records accessible to the commission upon reasonable notice and demand.”

SECTION 3. 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 section 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-65, 514A-68, 514A-69, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 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 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 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 4. 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 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 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 5. 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 section 514A-2, 514A-31 to

514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, or 514A-134,¹ is guilty of a misdemeanor and shall be punished by a fine not exceeding \$2,000 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 section 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, or 514A-134 shall be punished by a fine not exceeding \$2,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto also shall 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 commission.”

SECTION 6. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (a) 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 chapter 406;
- (2) Register annually with the commission. The information required to be submitted upon registration shall include but not be limited to proof of fidelity bond coverage, name, business address, and phone number;
- (3) Provide evidence annually and at time of initial registration 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; provided that the amount of the bond shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the [association of apartment owners against fraudulent or dishonest acts by persons handling the association’s funds. Any association aggrieved by the actions of a managing agent on the grounds of fraud, misrepresentation, or deceit shall recover by order of the circuit or district court of the county where the violation occurred from the bond required by this section, and if the managing agent is a licensed real estate broker, secondly from the real estate recovery fund established under section 467-16.] managing agent against the loss of any association money, securities, or other property caused by the fraudulent or dishonest acts of employees of the managing agent. 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 bond alternative[; and], 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, and apply the bond proceeds, if any, to reduce the association’s loss. If more than one association suffers a loss, the managing agent shall divide the proceeds among the associations in proportion to each association’s loss. An association may request a

court order requiring the managing agent to act promptly and diligently to recover from the bond. If an association cannot recover its loss from the bond proceeds of the managing agent, the association 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 fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission; and

- [(4)] (5) Pay an application fee and, upon approval, an initial registration fee [of \$25] for the first year, and subsequently pay an annual 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(n) and the rules adopted pursuant thereto.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 3, 1990.)

Note

1. So in original.