

ACT 76

H.B. NO. 2460

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Section 514A-97, Hawaii Revised Statutes, is amended to read as follows:

“§514A-97 Association of apartment owners funds; handling and disbursement. (a) The funds in the general operating account of the association of apartment owners shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall a managing agent commingle any association funds with the managing agent’s own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual apartment owners of a project and the payment of [sueh] ground lease rents to the ground lessor; provided that:

- (1) The collection is allowed by the provisions of the declaration, by-laws, master deed, master lease, or individual apartment leases of the project;
- (2) If a management contract exists, it requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor;
- (3) The system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association; and
- (4) No managing agent or association shall pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.

(c) All funds collected by an association, or by a managing agent for any association, shall be:

- (1) Deposited in a financial institution, including a federal or community credit union, located in the State and whose deposits are insured by an agency of the United States government;
- (2) Held by a corporation authorized to do business under article 8 of chapter 412;
- (3) Held by the United States Treasury; [or]
- (4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the state, and the accounts of which are held by member firms of the New York Stock Exchange or

National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation[-]; or

- (5) Placed through a federally insured financial institution located in the State for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States.

(d) All funds collected by an association, or by a managing agent for any association, shall be invested only in:

- (1) Demand deposits, investment certificates, and certificates of deposit;
- (2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the apartment owners at an annual or special meeting of the association or by written consent of a majority of the apartment owners; ~~or~~
- (3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the apartment owners at an annual or special meeting of the association or by written consent of a majority of the apartment owners; or
- (4) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;

provided that before any investment longer than one year is made by an association, the board ~~must~~ shall approve the action; and provided further that the board ~~must~~ shall clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board of directors. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board of directors. The commission may draft rules governing the handling and disbursement of condominium association funds.

~~[(d)]~~ (e) A managing agent or board of directors shall not transfer association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

~~[(e)]~~ (f) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.

~~[(f)]~~ (g) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association of apartment owners shall be guilty of a class C felony."

SECTION 2. Section 514B-149, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- "(c) (1) All funds collected by an association, or by a managing agent for any association, shall be:

- (A) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;
 - (B) Held by a corporation authorized to do business under article 8 of chapter 412;
 - (C) Held by the United States Treasury; [ø]
 - (D) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation[-]; or
 - (E) Placed through a federally insured financial institution located in the State for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States.
- (2) All funds collected by an association, or by a managing agent for any association, shall be invested only in:
- (A) Deposits, investment certificates, savings accounts, and certificates of deposit;
 - (B) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; [ø]
 - (C) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or
 - (D) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 15, 2008.)