

**ACT 129**

S.B. NO. 1107

A Bill for an Act Relating to Condominiums.

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

SECTION 1. In 2000, the legislature, recognizing the need to clarify and update the State's condominium laws, directed the real estate commission to

conduct a comprehensive review of chapter 514A. The real estate commission reported the results of its study to the legislature in December 2003, and included proposed legislation that repealed the existing chapter 514A and replaced it with a new comprehensive condominium law. The final version of that measure, however, differed from the original version recommended by the commission. The legislature revisited the issue of condominium regulation in the 2005, 2006, and 2007 sessions, when it fine-tuned the “new” condominium law codified in chapter 514B and reinstated the “old” condominium law codified in chapter 514A. This resulted in two parallel chapters on condominiums as well as two separate trust funds designated for identically defined educational purposes.

The two educational trust funds obligate the real estate commission to duplicate its work by separately budgeting, planning, reporting to the legislature, and accounting for the receipts and expenses of the two funds. This result is administratively impractical, burdensome, and confusing.

The purpose of this Act is to merge the two funds into one fund, the condominium education trust fund, by repealing the condominium management education fund; transferring all unexpended and unencumbered balances remaining in the condominium management education fund to the credit of the condominium education trust fund; clarifying the allocation of future payments due to the credit of the condominium education trust fund, and changing all statutory references to the condominium education trust fund.

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485A-202(a)(26) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners’ revolving fund, section 412:2-109, the special handling fund, section 414-13, and

unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, [~~the condominium management education fund, section 514A-131,~~] and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485A-202(a)(26) has complied with chapter 514E or section 485A-202(a)(26);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
- (5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 3. Section 514A-40, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No effective date shall be issued by the commission for a final public report until the developer, pursuant to section 514B-72, has paid into the [~~condominium management education fund~~] condominium education trust fund established under section 514B-71 a nonrefundable fee of \$5 for each apartment in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. [~~Payments required under this subsection shall be due after June 13, 1989.~~]"

SECTION 4. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-46 Investigatory powers.** If the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, ~~[514A-132, or]~~ 514A-134, ~~or 514B-72,~~ or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association of apartment owners, the board of directors, the managing agent, the real estate broker, the real estate salesperson, the purchaser, or the developer. For the purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and shall make the records accessible to the commission upon reasonable notice and demand.”

SECTION 5. 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-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, ~~[514A-132, or]~~ 514A-134, ~~or 514B-72,~~ 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 and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified 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 or the rules of the commission charged in the complaint. If, upon the hearing, the commission is of the opinion that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating 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, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.”

SECTION 6. 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 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, ~~[514A-132, or]~~ 514A-134, ~~or 514B-72,~~ 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 7. Section 514A-49, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who violates or fails to comply with section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to [~~514A-106, 514A-132, or 514A-134,~~] 514A-105, 514A-134, or 514B-72 is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who 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-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to [~~514A-106, 514A-132, or 514A-134~~] 514A-105,<sup>1</sup> or 514B-72 shall be punished by a fine not exceeding \$10,000.”

SECTION 8. Section 514A-95.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each condominium project or association of apartment owners having [~~six or~~] more than five apartments shall:

- (1) Secure a fidelity bond in an amount equal to \$500 multiplied by the number of apartments, to cover all officers, directors, employees, and managing agents of the association of apartment owners who handle, control, or have custody of the funds of the association of apartment owners; provided that the amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The fidelity bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons, including any managing agent, [~~handling~~] who have access to the funds of the association of apartment owners. An association of apartment owners shall act promptly and diligently to recover from the fidelity bond required by this section. An association of apartment owners that is unable to obtain a fidelity bond may seek approval for an exemption or a bond alternative from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or a bond alternative, or permit deductibles. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide current evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. Current evidence of a fidelity bond includes a certification statement from an insurance company registered with the department of commerce and consumer affairs certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission;
- (2) Register with the commission through approval of a completed registration application, payment of fees, and submission of any [~~other~~] additional information set forth by the commission. Beginning June 30, 1997, the registration shall be for a biennial period with termination on June 30 of an odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any [~~other~~] additional information set forth by the commission. Any condominium project or association of apartment owners that has not met the submission requirements by the deadline date shall

- be considered a new applicant for registration and subject to initial registration requirements. Any new condominium project or association of apartment owners shall register within thirty days of the association of apartment owners' first meeting. If the association of apartment owners has not held its first meeting ~~[and it is at least]~~ within one year after the recordation of the purchase of the first apartment in the condominium project, the developer or developer's affiliate or the managing agent shall register on behalf of the unorganized association of apartment owners and shall comply with this section, except the fidelity bond requirement for association of apartment owners. The public information required to be submitted on any completed application form shall include but not be limited to evidence of and information on fidelity bond coverage, names and positions of the officers of the association, the name of the association of apartment owners' managing agent, if any, the street and the postal address of the condominium, and the name and current mailing address of a designated officer of the association of apartment owners where the officer can be contacted directly;
- (3) Pay a nonrefundable application fee and, upon approval, an initial registration fee ~~[and subsequently pay]~~ or a reregistration fee, and the ~~[condominium management education fund fee, as provided in]~~ condominium education trust fund fee pursuant to section 514B-72 and rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
  - (4) Register or reregister and pay the required fees by the due date. Failure to register or reregister or to pay the required fees by the due date shall result in the assessment of a penalty equal to the amount of the registration or reregistration fee; and
  - (5) Report immediately in writing to the commission any changes to the information contained on the registration or reregistration application, the evidence of the fidelity bond, or any other documents set forth by the commission. Failure to do so may result in termination of registration and subject the condominium project or the association of apartment owners to initial registration requirements.”

SECTION 9. Chapter 514A, part VIII, Hawaii Revised Statutes, is amended to read as follows:

~~“[PART VIII. CONDOMINIUM MANAGEMENT EDUCATION FUND]~~  
MISCELLANEOUS

~~[[§514A-131] Condominium management education fund. (a) The real estate commission shall establish a condominium management education fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:~~

- ~~(1) Education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under this chapter;~~
- ~~(2) The improvement and more efficient administration of condominium associations; and~~
- ~~(3) Expedient and inexpensive procedures for resolving condominium association disputes.~~
- ~~(b) The commission may use any and all moneys in the condominium management education fund for purposes consistent with subsection (a).~~

~~§514A-132 Payments to the fund.~~ (a) Each condominium project or association of apartment owners with six or more apartments shall pay to the department of commerce and consumer affairs the condominium management education fund fee on or before June 30 of an odd numbered year or within thirty days of the association of apartment owners' first meeting or within one year after the recordation of the purchase of the first apartment, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The department of commerce and consumer affairs shall allocate the fees collected to the condominium management education fund established pursuant to section 514A-131.

(c) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable. Failure to pay the required fee by the due date, shall result in a penalty assessment of ten per cent of the amount due and the association of apartment owners shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association of apartment owners to pay a fee required under this section shall not impair the validity of any claim of the association of apartment owners for common expenses or other assessments, or prevent the association of apartment owners from defending any action in any court of this State.

~~§514A-133 Management of fund.~~ (a) The sums received by the commission for deposit in the condominium management education fund shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium management education fund to employ necessary personnel not subject to chapter 76 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium management education fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees retirement system of the State. The interest from these investments shall be deposited to the credit of the condominium management education fund.

(d) The commission shall annually submit to the legislature, prior to the convening of each regular session:

- (1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund, and
- (2) A copy of the budget for the current fiscal year, including summary information on programs which were funded or are to be funded.]

~~[[§514A-134]] False statement.~~ It shall be unlawful for any association of apartment owners, its officers, its board of directors, or its agents to file with the commission any notice, statement, or other document required under this chapter that is false or untrue or contains any material misstatement of fact. Any violation of this section shall constitute a misdemeanor.

~~[[§514A-135]] Rules.~~ The real estate commission shall adopt rules pursuant to chapter 91 to effectuate fully the purpose of this ~~[[part]]~~.”

SECTION 10. Section 514B-72, Hawaii Revised Statutes, is amended follows:

1. By amending subsection (a) to read:

“(a) Each project or association with more than five units, including any project or association with more than five units subject to chapter 514A, shall pay to the department of commerce and consumer affairs a condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association’s first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91.”

2. By amending subsection (d) to read:

“(d) The department of commerce and consumer affairs shall allocate the fees collected under this section, section 514A-40, and section 514A-95.1 to the condominium education trust fund established pursuant to section 514B-71. The fees collected pursuant to this section shall be administratively and fiscally managed together as one condominium education trust fund established by section 514B-71.”

SECTION 11. Section 514B-73, Hawaii Revised Statutes, is amended to read as follows:

“~~§~~**514B-73** **Condominium education trust fund; management.** (a) The sums received by the commission for deposit in the condominium education trust fund pursuant to sections 514A-40, 514A-95.1, and 514B-72 shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium education trust fund collected pursuant to sections 514A-40, 514A-95.1, and 514B-72, and the rules of the commission to employ necessary personnel not subject to chapter 76 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium education trust fund collected pursuant to sections 514A-40, 514A-95.1, and 514B-72, and the rules of the commission may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees’ retirement system of the State. The interest and earnings from these investments shall be deposited to the credit of the condominium education trust fund.

(d) The commission shall annually submit to the legislature, no later than twenty days prior to the convening of each regular session:

- (1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund[;], including a statement of which programs were directed specifically at the education of condominium owners; and
- (2) A copy of the budget for the current fiscal year, including summary information on programs that were funded or are to be funded[-] and the target audience for each program. The budget shall include a line item reflecting the total amount collected from condominium associations.”

SECTION 12. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the condominium management education fund respectively established, managed, and containing payments pursuant to sections 514A-40(c), 514A-131, 514A-132, and 514A-133, Hawaii Revised Statutes, existing as of the effective date of this Act to the credit of the condominium education trust fund as provided in sections 514B-71,



514B-72, and 514B-73, Hawaii Revised Statutes, upon the effective date of this Act. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

**SECTION 13.** Any unencumbered and unexpended balance existing as of the effective date of this Act in the condominium management education fund established under chapter 514A, Hawaii Revised Statutes, shall be deposited into the condominium education trust fund established under chapter 514B, Hawaii Revised Statutes, and shall be held in trust by the real estate commission for carrying out the purpose of the condominium education trust fund.

**SECTION 14.** Until the real estate commission and the director of the department of commerce and consumer affairs amend the rules pursuant to chapter 91, Hawaii Revised Statutes, to change the name of the condominium management education fund, references to the condominium management education fund in the Hawaii Administrative Rules shall be deemed to be references to the condominium education trust fund.

**SECTION 15.** This Act shall be amended to conform to all other acts passed by the legislature during the regular session of 2009, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

**SECTION 16.** The revisor of statutes shall replace the term “condominium management education fund” or like term whenever it may appear in the Hawaii Revised Statutes, with the term “condominium education trust fund.”

**SECTION 17.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

**SECTION 18.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 19.** This Act shall take effect on July 1, 2009.

(Approved June 17, 2009.)

**Note**

1. Should be 514A-105.