

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 a large percentage of persons in Hawaii live in condominiums and are members of their condominium unit owners' association. The legislature further finds that under existing statute, condominium unit owners are entitled to receive a variety of documents, records, and information from a condominium association, board, or managing agent within thirty days of receipt of the unit owner's written request. However, the legislature also finds that references to releasing these required documents, records, and information appear throughout chapter 514B, Hawaii Revised Statutes, which may lead to confusion among unit owners.

Therefore, the purpose of this Act is to create a new section under chapter 514B, Hawaii Revised Statutes, that:

- (1) Clarifies the documents, records, and information that must be made available to any unit owner and the unit owner's authorized agents; and
- (2) Specifies that all documents, records, and information shall be provided to a unit owner no later than thirty days after receipt of the unit owner's written request.

The legislature notes that nothing in this Act creates new requirements for the release of documents, records, or information. Rather, this Act merely consolidates into one section the existing requirements for documents, records, and information that already must be released or provided to unit owners, within thirty days, under existing statute.

SECTION 2. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514B- Association documents to be provided. (a) Notwithstanding any other provision in the declaration, bylaws, or house rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be made available to any unit owner and the owner's authorized agents by the managing agent, resident manager, board through a board member, or the association's representative:

- (1) All financial and other records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of units;
- (2) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto;
- (3) 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 and monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses;
- (4) All records and the vouchers authorizing the payments and statements kept and maintained at the address of the project, or else-

where within the State as determined by the board, subject to section 514B-152;

- (5) All signed and executed agreements for managing the operation of the property, expressing the agreement of all parties, including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments;
- (6) An accurate and current list of members of the condominium association and the members' current addresses and the names and addresses of the vendees under an agreement of sale, if any. A copy of the list shall be available, at cost, to any unit owner or owner's authorized agent who furnishes to the managing agent, resident manager, or the board a duly executed and acknowledged affidavit stating that the list:
 - (A) Shall be used by the unit owner or owner's authorized agent personally and only for the purpose of soliciting votes or proxies or for providing information to other unit owners with respect to association matters; and
 - (B) Shall not be used by the unit owner or owner's authorized agent or furnished to anyone else for any other purpose;
- (7) The association's most current financial statement, at no cost or on twenty-four-hour loan, at a convenient location designated by the board;
- (8) Meeting minutes of the association, pursuant to section 514B-122;
- (9) Meeting minutes of the board, pursuant to section 514B-126, which shall be:
 - (A) Available for examination by unit owners or owners' authorized agents at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board; or
 - (B) Transmitted to any unit owner or owner's authorized agent making a request for the minutes within fifteen days of receipt of the request by the owner or owner's authorized agent; provided that:
 - (i) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner or owner's authorized agent, if the owner or owner's authorized agent indicated a preference at the time of the request; and
 - (ii) The owner or owner's authorized agent shall pay a reasonable fee for administrative costs associated with handling the request, subject to section 514B-105(d);
- (10) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association for the duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more shall be available for examination by unit owners or owners' authorized agents at convenient hours at a place designated by the board; provided that:
 - (A) The board may require unit owners or owners' authorized agents to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association, its members, or both; and

- (B) Unit owners or owners' authorized agents shall pay for administrative costs in excess of eight hours per year;
- (11) Proxies, tally sheets, ballots, unit owners' check-in lists, and the certificate of election subject to section 514B-154(c);
 - (12) Copies of an association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154;
 - (13) A copy of the management contract from the entity that manages the operation of the property before the organization of an association; and
 - (14) Other documents requested by a unit owner or owner's authorized agent in writing; provided that the board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of a request for documents pursuant to this paragraph.
- (b) Subject to section 514B-105(d), copies of the items in subsection (a) shall be provided to any unit owner or owner's authorized agent upon the owner's or owner's authorized agent's request; provided that the owner or owner's authorized agent pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.
- (c) Notwithstanding any provision in the declaration, bylaws, or house rules providing for another period of time, all documents, records, and information listed under subsection (a), whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be provided no later than thirty days after receipt of a unit owner's or owner's authorized agent's written request, unless a lesser time is provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, and except as provided in subsection (a)(14).
- (d) Any documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, may be made available electronically to the unit owner or owner's authorized agent if the owner or owner's authorized agent requests such in writing.
- (e) An association may comply with this section or section 514B-152, 514B-153, or 514B-154 by making the required documents, records, and information available to unit owners or owners' authorized agents for download through an internet site, at the option of each unit owner or owner's authorized agent and at no cost to the unit owner or owner's authorized agent.
- (f) Any fee charged to a unit owner or owner's authorized agent to obtain copies of the association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page.
- (g) This section shall apply to condominiums organized under chapter 514A or 514B.
- (h) Nothing in this section shall be construed to create any new requirements for the release of documents, records, or information."

SECTION 3: Section 514B-61, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this part, part V, section 514B-103,

514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-, or any of the commission's related rules or orders, the commission, without prior administrative proceedings, may maintain an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The commission shall not be required to post a bond or to prove that no adequate remedy at law exists in order to maintain the action.

(c) The commission may exercise its powers in any action involving the powers or responsibilities of a developer under this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, ~~[or]~~ sections 514B-152 to 514B-154~~[-]~~, or section 514B-”

SECTION 4. Section 514B-65, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§514B-65**~~]]~~ **Investigative powers.** If the commission has reason to believe that any person is violating or has violated this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-, 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 all relevant parties. For 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 in accordance with chapter 467 and the rules of the commission, and shall make the records accessible to the commission upon reasonable notice and demand.”

SECTION 5. Section 514B-66, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§514B-66**~~]]~~ **Cease and desist orders.** In addition to its authority under sections 514B-67 and 514B-68, whenever the commission has reason to believe that any person is violating or has violated this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-, or the rules of the commission adopted pursuant thereto, it may 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 rules charged in the complaint. If the commission finds 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 514B-68, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§514B-68**~~]]~~ **Power to enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-, or the rules of the commission adopted pursuant thereto, it may conduct an investigation of the matter and bring an action against the person in

any court of competent jurisdiction on behalf of the State to enjoin the person from continuing the violation or doing any acts in furtherance thereof.”

SECTION 7. Section 514B-69, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§514B-69]]~~ **Penalties.** (a) Any person who violates or fails to comply with this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, ~~[or]~~ sections 514B-152 to 514B-154, or section 514B-, shall be 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 to comply with any rule, order, decision, demand, or requirement of the commission under this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, ~~[or]~~ sections 514B-152 to 514B-154, or section 514B-, shall be punished by a fine not exceeding \$10,000.

(b) In addition to any other actions authorized by law, any person who violates or fails to comply with this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-, or the rules of the commission adopted pursuant thereto, shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.”

SECTION 8. Section 514B-152, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§514B-152]]~~ **Association records; generally.** The association shall keep financial and other records sufficiently detailed to enable the association to comply with requests for information and disclosures related to resale of units. Except as otherwise provided by law, all financial and other records shall be made ~~[reasonably]~~ available pursuant to section 514B- for examination by any unit owner and the owner’s authorized agents. Association records shall be stored on the island on which the association’s project is located; provided that if original records, including but not limited to invoices, are required to be sent off-island, copies of the records shall be maintained on the island on which the association’s project is located.”

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect on July 1, 2014.

(Approved July 1, 2014.)

Note

1. Edited pursuant to HRS §23G-16.5.