

**ACT 49**

S.B. NO. 2078

A Bill for an Act Relating to Condominiums.

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

SECTION 1. The purpose of this Act is to clarify the applicability of section 205-4.6, Hawaii Revised Statutes, relating to private restrictions on agricultural uses and activities, to condominium projects on lands classified as agricultural.

SECTION 2. Section 205-4.6, Hawaii Revised Statutes, is amended to read as follows:

**“§205-4.6 Private restrictions on agricultural uses and activities; not allowed.** (a) Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any ~~deed~~;

- (1) ~~Deed~~, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes~~[-]~~; and
- (2) Condominium declaration, map, bylaws, and other documents executed and submitted in accordance with chapter 514A or 514B.

Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4; except that restrictions taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements shall not be subject to this section.

(b) For purposes of this section, “agricultural leases” means leases where the leased land is primarily utilized for purposes set forth in section 205-4.5(a).”

SECTION 3. Section 514B-5, Hawaii Revised Statutes, is amended to read as follows:

**“~~§514B-5~~ Conformance with county land use laws.** Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county, pursuant to section 514B-6, to ensure the conformance of condominium property regimes to the purposes and provisions of county zoning and development ordinances and chapter 205~~[-]~~, including section 205-4.6 where applicable. In the case of a property which includes one or more existing structures being converted to condominium status, the condominium property regime shall comply with section 514B-32(a)(13) or 514B-84(a).”

SECTION 4. Section 514B-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A declaration shall describe or include the following:

- (1) The land submitted to the condominium property regime;
- (2) The number of the condominium map filed concurrently with the declaration;
- (3) The number of units in the condominium property regime;
- (4) The unit number of each unit and common interest appurtenant to each unit;
- (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
- (6) The permitted and prohibited uses of each unit;
- (7) To the extent not shown on the condominium map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical struc-

- tures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
  - (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
  - (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
  - (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the approval of the owners of at least sixty-seven per cent of the common interest shall be required for all amendments to the declaration;
  - (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
  - (13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5[;] and [specifying in] chapter 205, including section 205-4.6 where applicable. In the case of a project in the agricultural district classified pursuant to chapter 205, the declaration, subject to the penalties set forth in section 514B-69(b), shall include an additional statement that there are no private restrictions limiting or prohibiting agricultural uses or activities in compliance with section 205-4.6. In the case of a property that includes one or more existing structures being converted to condominium property regime status[;], the declaration required by this section shall specify:
    - (A) Any variances that have been granted to achieve the compliance; and
    - (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures[;].

~~[except that a]~~ A property that is registered pursuant to section 514B-51 shall instead provide [this] the required declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain."

SECTION 5. Section 514B-52, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§514B-52]]~~ **Application for registration.** (a) An application for registration of a project shall:

- (1) Be accompanied by nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; and
- (2) Contain the documents and information concerning the project and the condominium property regime as required by sections 514B-54, 514B-83, and 514B-84, as applicable, and as otherwise may be specified by the commission.

(b) An application for registration of a project in the agricultural district classified pursuant to chapter 205 shall include a verified statement, signed by an appropriate county official, that the project as described and set forth in the project's declaration, condominium map, bylaws, and house rules does not include any restrictions limiting or prohibiting agricultural uses or activities, in compliance with section 205-4.6. The commission shall not accept the registration of a project where a county official has not signed a verified statement.

~~[(b)]~~ (c) The commission need not process any incomplete application and may return an incomplete application to the developer and require that the developer submit a new application, including nonrefundable fees. If an incomplete application is not completed within six months of the date of the original submission, it shall be deemed abandoned and registration of the project shall require the submission of a new application, including nonrefundable fees.

~~[(e)]~~ (d) A developer shall promptly file amendments to report either any actual or expected pertinent or material change, or both, in any document or information contained in the application.”

SECTION 6. Section 514B-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Prior to the issuance of an effective date for a developer's public report, the commission shall have received the following:

- (1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (2) The developer's public report prepared by the developer disclosing the information specified in section 514B-83 and, if applicable, section 514B-84;
- (3) A copy of the deed, master lease, agreement of sale, or sales contract evidencing either that the developer holds the fee or leasehold interest in the property or has a right to acquire the same;
- (4) Copies of the executed declaration, bylaws, and condominium map that meet the requirements of sections 514B-32, 514B-33, and 514B-108;
- (5) A specimen copy of the proposed contract of sale for units;
- (6) An executed copy of an escrow agreement with a third party depository for retention and disposition of purchasers' funds that meets the requirements of section 514B-91;
- (7) As applicable, the documents and information required in section 514B-92 or 514B-93;
- (8) A declaration~~[-]~~ by the developer, subject to the penalties set forth in section 514B-69(b), that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to chapter 205, including section 205-4.6, where applicable, and sections 514B-5 and 514B-32(a)(13); [and]

- (9) In the case of a project in the agricultural district classified pursuant to chapter 205, a verified statement signed by an appropriate county official that the project as described and set forth in the project's declaration, condominium map, bylaws, and house rules does not include any restrictions limiting or prohibiting agricultural uses or activities, in compliance with section 205-4.6; and
- [(9)] (10) Other documents and information that the commission may require.”

SECTION 7. Section 514B-67, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commission, after notice and hearing, may issue an order terminating the registration of a condominium project upon determination that a developer, or any officer, principal, or affiliate of a developer has:

- (1) Failed to comply with a cease and desist order issued by the commission affecting that condominium project;
- (2) Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of units in that condominium project;
- (3) Failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that condominium project;
- (4) Misrepresented or failed to disclose a material fact in the application for registration; [Ø]
- (5) Failed to meet any of the conditions described in this part necessary to qualify for registration[-]; or
- (6) Failed to conform or comply with county zoning and development ordinances as required by chapter 205, including section 205-4.6 where applicable, and section 514B-5.”

SECTION 8. Section 514B-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A developer's public report shall contain:

- (1) The name and address of the project, and the name, address, telephone number, and electronic mail address, if any, of the developer or the developer's agent;
- (2) A statement of the deadline, pursuant to section 514B-89, for completion of construction or, in the case of a conversion, for the completion of any repairs required to comply with section 514B-5, and the remedies available to the purchaser, including but not limited to cancellation of the sales contract, if the completion of construction or repairs does not occur on or before the completion deadline;
- (3) A breakdown of the annual maintenance fees and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles, and a statement regarding when a purchaser shall become obligated to start paying the fees pursuant to section 514B-41(b);
- (4) A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties, or a statement that no warranties exist;
- (5) A summary of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use;
- (6) A description of any development rights reserved to the developer or others;

**ACT 49**

- (7) A declaration, subject to the penalties set forth in section 514B-69(b), that the project is in compliance with all county zoning and building ordinances and codes, chapter 205, including section 205-4.6 where applicable, and all other county permitting requirements applicable to the project, pursuant to sections 514B-5 and 514B-32(a)(13); and
- (8) Any other facts, documents, or information that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use, or that may be required by the commission."

SECTION 9. Section 514B-84, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the information required by section 514B-83, the developer's public report for a project in the agricultural district pursuant to chapter 205 shall disclose:

- (1) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable state and county land use laws[;] and with chapter 205, including section 205-4.6 where applicable;
- (2) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable county real property tax laws, and the penalties for noncompliance; and
- (3) Other disclosures and information that the commission may require."

SECTION 10. This Act applies to a condominium project on lands classified as agricultural pursuant to chapter 205, Hawaii Revised Statutes, for which a developer submits an application for registration of a project pursuant to section 514A-31, Hawaii Revised Statutes.

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved April 23, 2014.)