

JAN 20 2010

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 514B-23, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§514B-23 Amendments to governing instruments.** (a) The
4 declaration, bylaws, condominium map, or other constituent
5 documents of any condominium created before July 1, 2006 may be
6 amended to achieve any result permitted by this chapter,
7 regardless of what applicable law provided before July 1, 2006.
8 (b) An amendment to the declaration, bylaws, condominium
9 map or other constituent documents authorized by [~~this section~~]
10 subsection (a) may be adopted by the vote or written consent of
11 a majority of the owners; provided that any amendment adopted
12 pursuant to this section shall not invalidate the reserved
13 rights of a developer. If an amendment grants to any person any
14 rights, powers, or privileges permitted by this chapter, all
15 correlative obligations, liabilities, and restrictions in this
16 chapter also apply to that person.



1 (c) The declaration, bylaws, condominium map, public
2 report, or designation of residential units of any condominium
3 created after July 1, 2006 may be amended pursuant to law;
4 provided that the developer provides notice of all changes
5 authorized by this subsection to:

6 (1) Affected condominium owners by means of notice to the
7 association of apartment owners of the condominium and
8 by posting in common areas of the condominium project;

9 (2) Purchasers by means of amendments to the developer's
10 public report submitted to the commission pursuant to
11 section 514B-56; and

12 (3) Prospective purchasers by means of a statement in an
13 announcement or advertisement published pursuant to
14 section 514B-95.5 that amendments have been made to
15 the developer's public report."

16 SECTION 2. Section 514B-83, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

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

19 (1) The name and address of the project, and the name,
20 address, telephone number, and electronic mail
21 address, if any, of the developer or the developer's
22 agent;



- 1 (2) A statement of the deadline, pursuant to section
2 514B-89, for completion of construction or, in the
3 case of a conversion, for the completion of any
4 repairs required to comply with section 514B-5, and
5 the remedies available to the purchaser, including but
6 not limited to cancellation of the sales contract, if
7 the completion of construction or repairs does not
8 occur on or before the completion deadline;
- 9 (3) A breakdown of the annual maintenance fees and the
10 monthly estimated cost for each unit, certified to
11 have been based on generally accepted accounting
12 principles, and a statement regarding when a purchaser
13 shall become obligated to start paying the fees
14 pursuant to section 514B-41(b);
- 15 (4) A description of all warranties for the individual
16 units and the common elements, including the date of
17 initiation and expiration of any [~~such~~] warranties, or
18 a statement that no warranties exist;
- 19 (5) A summary of the permitted uses of the units and, if
20 applicable, the number of units planned to be devoted
21 to [a] each particular use;



- 1 (6) A description of any development rights reserved to
- 2 the developer or others;
- 3 (7) A declaration, subject to the penalties set forth in
- 4 section 514B-69(b), that the project is in compliance
- 5 with all county zoning and building ordinances and
- 6 codes, and all other county permitting requirements
- 7 applicable to the project, pursuant to sections 514B-5
- 8 and 514B-32(a)(13); [and]
- 9 (8) The amount of the purchase price for each unit that is
- 10 designated for deposit into the estimated replacement
- 11 reserve fund; and
- 12 [~~8~~] (9) Any other facts, documents, or information that
- 13 would have a material impact on the use or value of a
- 14 unit or any appurtenant limited common elements or
- 15 amenities of the project available for an owner's use,
- 16 or that may be required by the commission."

17 SECTION 3. Section 514B-91, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§514B-91 Escrow of deposits.** All moneys paid by
20 purchasers shall be deposited in trust under a written escrow
21 agreement with an escrow depository licensed pursuant to chapter



1 449. An escrow depository shall not disburse purchaser deposits
2 to or on behalf of the developer prior to closing except:

3 (1) As provided in sections 514B-92 [~~and~~], 514B-93 [~~+~~], and
4 514B-98; or

5 (2) As provided in the purchaser's sales contract in the
6 event the sales contract is canceled.

7 An escrow depository shall not disburse a purchaser's deposits
8 at closing unless the escrow depository has received
9 satisfactory assurances that all blanket mortgages and liens
10 have been released from the purchaser's unit in accordance with
11 section 514B-45. Satisfactory assurances shall include a
12 commitment by a title insurer licensed under chapter 431 to
13 issue the purchaser a title insurance policy ensuring the
14 purchaser that the unit has been conveyed free and clear of the
15 liens."

16 SECTION 4. Section 514B-98, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§514B-98 Sale of residential units; developer**
19 **requirements.** (a) The developer may go to sale using either a
20 chronological system or a lottery system at any time after
21 issuance of an effective date for a developer's public report.



1 (b) For a thirty-day period following the initial date of
2 sale of units in a condominium project, at least fifty per cent
3 of the units being sold shall be offered for sale only to
4 prospective owner-occupants; provided that notwithstanding this
5 subpart, in the case of a project that includes one or more
6 existing structures being converted to condominium status, each
7 residential unit contained in the project first shall be offered
8 for sale to any individual occupying the unit immediately prior
9 to the conversion and who submits an owner-occupant affidavit
10 and an earnest money deposit in a reasonable amount designated
11 by the developer.

12 (c) Each contract for the purchase of a residential unit
13 by an owner-occupant may be conditioned upon the purchaser
14 obtaining adequate financing[7] or a commitment for adequate
15 financing. If the sales contract is canceled, the developer
16 shall re-offer the residential unit first to prospective owner-
17 occupants on the back-up reservation list described in section
18 514B-96.5, in the order in which the names appear on the
19 reservation list; provided that the prospective owner-occupant
20 shall not have already executed a sales contract or reservation
21 for a residential unit in the project.



1 (d) At any time, any prospective owner-occupant on the
2 back-up reservation list may be offered any residential unit in
3 the project that has not been sold or set aside for sale to
4 prospective owner-occupants.

5 (e) At the time of the initial date of sale of at least
6 one-half of the total number of apartments in a condominium
7 project, the developer shall collect an amount equal to
8 per cent of the total sales price of each residential apartment
9 in the condominium project to be set aside for deposit into the
10 estimated replacement reserves required by section 514B-148.
11 This amount shall be held in escrow until it is conveyed to the
12 association of apartment owners on the date of the first meeting
13 of the association as provided by section 514B-102. After that
14 date, the association of apartment owners shall collect the
15 amount designated for deposit into the estimated replacement
16 reserve fund when any remaining apartments are sold and shall
17 deposit the amount in accordance with the applicable bylaws of
18 the association."

19 SECTION 5. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



S.B. NO. 2164

1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2010.
4

INTRODUCED BY: Ronny H. Baker

Yes
And Yes
John

Chris Johnson
Erzanne Chun Oakland



Report Title:

Condominiums; Estimated Replacement Reserve Fund; Notice

Description:

Requires that the developer collect a percentage of the initial sales price of each residential apartment in a condominium project to be used to fund the project's estimated replacement reserve fund. Requires that notice of amendments to project documents be provided to owners, purchasers, and potential purchasers.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



**PRESENTATION OF THE
REAL ESTATE COMMISSION**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2010**

**Wednesday, January 27, 2010
9:00 a.m.**

TESTIMONY ON SENATE BILL NO. 2164 - RELATING TO CONDOMINIUMS.

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Michele Loudermilk and I serve as the Chairperson of the Real Estate Commission's ("Commission") Condominium Review Committee. We thank you for the opportunity to provide testimony expressing concerns with Section 1 of Senate Bill No. 2164 which amends section 514B-23, HRS, to require that notice of amendments to project documents be provided to owners, purchasers, and potential purchasers.

The Commission wishes to bring to the Committee's attention that it believes that the section being amended, 514B-23, HRS, only provides for amending the governing documents of condominiums created prior to July 1, 2006 and to allow these associations to adopt certain provisions of the new recodified condominium law where needed. It does not address condominium project documents, notice of amendments to purchasers and potential purchasers, nor documents associated with condominiums created after July 1, 2006.

Further, the Commission believes that current statutes already provide owners, purchasers, and potential purchasers notice of amendments to project documents thereby making the proposed section unnecessary. For instance, the following sections in the Condominium Act provide for amending a condominium's governing documents:

- section 514B-39, HRS, requires the consent(s) of the affected unit owner or owners on amendments to the declaration affecting limited common elements;
- section 514B-32(a)(7), HRS, requires the approval of the owners of at least 67% of the common interest for all amendments to the declaration, (including the condominium map);
- section 514B-108(e), HRS, requires that the bylaws be amended by the vote or written consent of at least 67% of all unit owners;
- section 514B-56(c), HRS, requires the developer to provide all purchasers with a true copy of an amendment to the developer's public report including all prior amendments or a restated developer's public report; and
- section 514B-86(a)(1)(A), HRS, requires the developer to deliver to prospective purchasers true copies of the developer's public report, including all amendments in order for binding sale purchases.

Thus, the Commission is unsure as to the intent and purpose of the proposed amendments of Section 1 of the bill and believes they may be unnecessary.

Thank you for the opportunity to present testimony.