

**Part III. Administration and Registration of Condominiums**

**Real Estate Commission’s Prefatory Comment to Part III**

Many states with widespread condominium activity – such as Hawaii, California, Florida, Virginia, and New York – regulate condominiums to protect consumers. Other states with substantial condominium activity – such as Illinois and Maryland – have chosen not to regulate condominiums, relying instead on the private market and lenders for consumer protection. The Commission continues to believe that adequate protection of Hawaii’s condominium purchasers requires public oversight of private compliance with law. The ability of government to adopt new regulations to meet new and changing circumstances is also valuable and should continue.

**Guiding Principles:**

1. The Commission’s role is fundamentally: a) to provide consumer protection through adequate disclosures to prospective condominium purchasers, and b) education of condominium community stakeholders (i.e., those who build, sell, buy, manage, live-in, etc. condominium projects).
2. Risk to purchasers’ funds should be correlated with the rights and obligations of developers.
3. The recodified condominium law should not result in an increase in the cost of government.

This goal is meant to limit the addition of new programs administered by government under the condominium law. It is possible that revised consumer protection requirements will affect government costs. We will not actually know if the goal of maintaining the cost of government in this area has actually been achieved until after practical experience working with the recodified condominium law. If proper administration of the new law actually requires more resources, the responsible government agency should ask for more resources or ask that particular requirements be revised.

**TABLE OF CONTENTS**

**Part III. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS**

- § \_\_\_\_: 3-1. Registration Required; Exceptions
- § \_\_\_\_: 3-2. Application for Registration
- § \_\_\_\_: 3-3. Inspection by Commission
- § \_\_\_\_: 3-4. Public Report; Requirements for Issuance of Effective Date
- § \_\_\_\_: 3-5. Public Report; Request for Hearing by Developer
- § \_\_\_\_: 3-6. Public Report; Amendments for Material Changes
- § \_\_\_\_: 3-7. Commission Oversight of Public Report
- § \_\_\_\_: 3-8. Annual Report
- § \_\_\_\_: 3-9. Expiration of Public Reports
- § \_\_\_\_: 3-10. No False or Misleading Information
- § \_\_\_\_: 3-11. General Powers and Duties of Commission
- § \_\_\_\_: 3-12. Deposit of Fees
- § \_\_\_\_: 3-13. Condominium Specialists; Appointment; Duties
- § \_\_\_\_: 3-14. Private Consultants
- § \_\_\_\_: 3-15. Investigative Powers of Commission
- § \_\_\_\_: 3-16. Cease and Desist Orders
- § \_\_\_\_: 3-17. Revocation of Registration
- § \_\_\_\_: 3-18. Power to Enjoin
- § \_\_\_\_: 3-19. Penalties
- § \_\_\_\_: 3-20. Limitation of Action
- § \_\_\_\_: 3-21. Condominium Education Trust Fund
- § \_\_\_\_: 3-22. Condominium Education Trust Fund; Payments by Associations and Developers
- § \_\_\_\_: 3-23. Condominium Education Trust Fund; Management

**PART III. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS**

**§ \_\_\_\_: 3-1. Registration Required; Exceptions.** (a) A developer may not offer for sale any units in a project unless the project is registered with the commission and an effective date for the public report is issued by the commission.

(b) The registration requirement of this section shall not apply to:

- (1) The disposition of units exempted from public report requirements pursuant to subsection \_\_\_\_: 4-1(b);
- (2) Projects in which all units are restricted to non-residential uses and all units are to be sold for \$1,000,000 or more; or
- (3) The sale of units in bulk. “The sale of units in bulk” is a circumstance where a developer undertakes to

**Part III. Administration and Registration of Condominiums**

develop and then sells all or a portion of the developer’s entire inventory of units to a purchaser who is a developer. The registration requirements of this section and the developer’s amended public report requirements of section \_\_\_: 3-6 shall apply to any sale of units to the public following a sale of units in bulk.

**Real Estate Commission’s Comment**

- 1. HRS §514A-31, UCA/UCIOA §5-102, and HAR §16-107-2.1, Proposed Rules, Draft #6 (5/17/02), combined and modified, are the sources of this section.
- 2. Under HRS Chapter 514A, the requirement for a public report is triggered by an “offer for sale”. Because the Commission’s definition of an “offer for sale” has been so strict, a public report is required for activities involving no risk to the consumer. When a developer is “testing the market” without taking any purchasers funds (e.g., taking names and addresses of interested persons, or even accepting nonbinding, no deposit reservations), the consumer is not at risk. Therefore, “testing the market” should not trigger the requirement of a public report and should be excluded from the Commission’s definition of “offer for sale”.
- 3. To lessen the regulatory burden on Hawaii’s people, earlier drafts of the recodification exempted small condominium projects (projects of five or less units) from most of the law’s requirements (unless they choose to “opt-in” to its provisions). Real Estate Branch Supervising Executive Officer Calvin Kimura objected to the exemption for small condominiums since the Real Estate Branch receives many complaints about such projects. Kauai County Deputy Planning Director Sheilah Miyake raised similar concerns.<sup>1</sup> In response, the Commission deleted the exemption for small condominium projects.

**§ \_\_\_: 3-2. Application for Registration.** (a) An application for registration of a project must:

- (1) Be accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; and
  - (2) Contain such documents and information concerning the condominium set forth in sections \_\_\_: 3-4, \_\_\_: 4-3, and \_\_\_: 4-4, as applicable, and as may otherwise be specified by the commission.
- (b) The commission need not process any incomplete application and may return such an application to the developer and require that the developer submit a new application, including 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 fees.
- (c) A developer shall promptly file amendments to report any actual or expected pertinent change in any document or information contained in the application.

**Real Estate Commission’s Comment**

- 1. HRS §514A-32 and UCA/UCIOA §5-103(a), modified, are the sources of this section.
- 2. The questionnaire required by HRS §514A-32(2) appears to be an unnecessary remnant of Hawaii’s 1961 Horizontal Property Regimes Act (RLH §170A-17). It has not been included in the recodification.

**§ \_\_\_: 3-3. Inspection by Commission.** (a) After appropriate notification has been made or additional information has been received pursuant to this part, an inspection of the project may be made by the commission.

(b) When an inspection is to be made of a project, the developer shall be required to pay an amount estimated by the commission to be necessary to cover the actual expenses of the inspection, not to exceed \$500 a day for each day consumed in the examination of the project, plus reasonable transportation expenses.

**Real Estate Commission’s Comment**

- 1. HRS §§514A-33 and -34, modified slightly, are the sources of this section. HRS §514A-35 (Waiver of Inspection) has been deleted as unnecessary since the Commission inspection pursuant to subsection (a) is discretionary.

**§ \_\_\_: 3-4. Public Report; Requirements for Issuance of Effective Date.** (a) Prior to the issuance of an effective date for a public report, the commission must 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 public report prepared by the developer disclosing the information specified in section \_\_\_: 4-3 and, if applicable, section \_\_\_: 4-4;

<sup>1</sup> See, October 7, 2003 testimony of Sheilah Miyake.

**Part III. Administration and Registration of Condominiums**

(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, by laws and condominium map that meet the requirements of sections \_\_\_: 2-2, \_\_\_: 5-8, and \_\_\_: 2-3;

(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 \_\_\_: 4-11 (Escrow of Deposits);

(7) As applicable, the documents and information required in sections \_\_\_: 4-12 or \_\_\_: 4-13;

(8) A declaration, subject to the penalties set forth in section \_\_\_: 3-19(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 sections \_\_\_: 1-5 and \_\_\_: 2-2(a)(13); and

(9) Such other documents and information that the commission may require.

(b) The public report may not be used for the purpose of selling any units in the project unless and until the commission issues an effective date for the public report. The commission's issuance of an effective date for a public report shall not be construed to constitute the commission's approval or disapproval of the project, or the commission's representation that all material facts concerning the project have been fully or adequately disclosed, or the commission's judgment of the value or merits of the project.

**Real Estate Commission's Comment**

1. HRS § 514A-61, substantially modified, with elements of HRS §§514A-36 and 514A-40 are the sources of this section.

2. Under the recodified condominium law, developers can "test the market" without a public report as there is no risk of consumer harm when no money changes hands and no binding contracts are made. *See*, § \_\_\_: 4-5. Therefore, HRS §514A-37 (Preliminary public reports) is no longer necessary and has been deleted.

3. Consistent with the UCA, UCIOA, and the laws of many other jurisdictions, a single public report ("public offering statement" in the UCA/UCIOA) is required in Hawaii's recodified condominium law. Therefore, HRS §514A-39.5 (Contingent final public report) is no longer necessary and has been deleted.

4. HRS §§514A-40(b) and 514A-61(b) use the undefined term "declarant." "Developer" is used in the recodification instead of "declarant."

5. HRS §§514A-40(b)(2) and 514A-61(b)(1) incorrectly use the term "registered" architect or engineer. The correct term is "licensed." *See*, HRS Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects).

6. HRS §514A-40(c), requiring developers to pay \$5 per project unit into the Condominium Education Trust Fund, is incorporated in § \_\_\_: 3-22.

**§ \_\_\_: 3-5. Public Report; Request for Hearing by Developer.** If an effective date for a public report is not issued within a reasonable time after compliance with registration requirements, or if the developer is materially grieved by the form or content of the public report, the developer may, in writing, request and shall be given a hearing by the commission within a reasonable time after receipt of such a request.

**Real Estate Commission's Comment**

1. HRS §514A-38, modified, is the source of this section. The first sentence in HRS §514A-38 is incorporated in § \_\_\_: 3-14 (Private Consultants).

**§ \_\_\_: 3-6. Public Report; Amendments.** (a) After the effective date for a public report has been issued by the commission, if there is any pertinent change regarding the information contained in the public report, or if the developer desires to update or change the information set forth in the public report, the developer shall immediately submit to the commission an amendment to the public report or an amended public report clearly reflecting the change, together with such supporting information as may be required by the commission, to update the information contained in the public report, accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Within a reasonable period of time, the commission shall issue an effective date for the amended public report or take other appropriate action under this part.

(b) The submission of an amendment to the public report or an amended public report shall not require the developer to suspend sales, subject to the power of the commission to order such sales to cease as set forth in section \_\_\_: 3-16;

### Part III. Administration and Registration of Condominiums

provided that the developer shall advise the appropriate real estate broker or brokers, if any, of the change and disclose to purchasers any change in the information contained in the public report pending the issuance of an effective date for any amendment to the public report or amended public report; provided further that if the amended public report is not issued within thirty days after its submission to the commission, the commission may order a suspension of sales pending the issuance of an effective date for the amended public report. Nothing in this section shall diminish the rights of purchasers under section \_\_\_\_: 4-14.

(c) The developer shall provide all purchasers with a true copy of:

(1) The amendment to the public report, if the purchaser has received copies of the public report and all prior amendments, if any; or

(2) A restated public report including all amendments.

(d) The filing of an amendment to the public report or an amended public report shall not, in and of itself, be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by sections \_\_\_\_: 4-6 and \_\_\_\_: 4-7, the terms and conditions of the purchaser's contract for sale, and applicable common law.

#### Real Estate Commission's Comment

1. HRS §514A-41, modified, is the source of this section.

2. The Commission seeks to encourage disclosure of changes to projects. Developers, however, are often reluctant to amend public reports because of the fear that buyers may attempt to rescind their purchase contracts since HRS Chapter 514A has inconsistent provisions regarding when changes in a project may give a buyer the right of rescission. The Commission believes that HRS §514A-63 contains the correct standard for determining rescission rights (i.e., a change in circumstances that directly, substantially, and adversely affects the use or value of a purchaser's unit or appurtenant limited common elements or project elements available for the purchaser's use). A particular change in a project may meet this standard for some buyers and not others. For example, internal changes in some types of units might not adversely affect buyers of different unit types. HRS §514A-41 requires a supplementary public report for any change which makes the public report misleading as to purchasers in any material respect. Once a supplementary public report is issued, the Commission appears to have required that it be provided to *all* unit buyers with a form of receipt that includes a notice of right of rescission. The Commission now believes as follows:

- The provisions of HRS §514A-63 should be the standard for rescission and is the standard incorporated in § \_\_\_\_: 4-7 (Rescission After Sales Contract Becomes Binding).
- An amended public report should disclose any pertinent change or updates; it should not automatically give every buyer a right of rescission, only those buyers who meet the rescission standard.
- The receipt for a public report or amended public report should be separate from the notice of right of rescission. All buyers would receipt for the report (or be deemed to receipt). Only buyers meeting the rescission standard would receive the notice of right of rescission.
- The developer should make the initial decision that the rescission standard is met. If a developer decides the standard has not been met, it will not send a notice of right of rescission, but if the developer is wrong the buyer may rescind anyway and be upheld by an arbitrator or court. So the developer will have a motive for erring on the side of caution and giving the notice in doubtful cases, to avoid a prolonged period during which the right of rescission could be exercised.
- Provided the buyers were notified of the change, the statutory right of rescission would terminate at closing. Thereafter the buyer would have any contractual or common law rights of rescission.

3. Subsection (b) is a substantial departure from current practice in that it allows sales in a project to continue subject to the Commission's issuance of an effective date for a supplemental public report. Consumers are still protected and still have appropriate remedies, if necessary. Prospective purchasers will have information regarding the amended public report pending the Commission's issuance of an effective date, and the sale would be voidable if the Commission does not issue an effective date for the amended public report.

**§ \_\_\_\_: 3-7. Commission Oversight of Public Report.** (a) The commission at any time may require a developer to alter or supplement the form or substance of a public report to assure adequate and accurate disclosure to prospective purchasers.

(b) The public report may not be used for any promotional purpose before registration, and afterwards only if it is used in its entirety. No person may advertise or represent that the commission has approved or recommended the condominium, the public report, or any of the documents contained in the application for registration.

**Part III. Administration and Registration of Condominiums**

**Real Estate Commission's Comment**

1. UCA/UCIOA §5-110, modified, is the source of this section. UCA/UCIOA §5-110(c) was deleted. As noted by Senior Condominium Specialist Cynthia Yee, an Attorney General's Office opinion states that HRS Chapter 514A only applies to real estate in Hawaii because only real estate in Hawaii can be recorded here.

2. This section makes it clear that, to assure that adequate and accurate disclosures are made to consumers, the Commission may require a developer to alter or supplement a public report.

**§ \_\_\_: 3-8. Annual Report.** (a) A developer shall file annually, within thirty days after the anniversary date of the effective date for a public report, a report to update the material contained in the public report. If there is no change to the public report, the developer shall so state. This subsection does not relieve the developer of the obligation to file amendments to the public report pursuant to section \_\_\_: 3-6. Failure to file the annual report required by this section may subject the developer to the penalties set forth in section \_\_\_: 3-19(b).

(b) The developer shall be relieved from filing annual reports pursuant to this section if the developer has no ownership interest in any unit in the project.

**Real Estate Commission's Comment**

1. UCA/UCIOA §5-109, modified, is the source of this section.

2. Under the recodified condominium law, public reports do not expire until the developer has sold all units in the project. Hence, there are no provisions comparable to HRS §514A-43 (Automatic expiration of public reports; exceptions). Annual reports as well as promptly amended public reports are required instead.

3. This section requires annual reports from a developer to the Commission in order to keep the information filed with the Commission current. This requirement parallels the developer's obligation to provide a current public report to unit owners. *See*, § \_\_\_: 4-3(b).

**§ \_\_\_: 3-9. Expiration of Public Reports.** Except as otherwise provided in this chapter, upon issuance of an effective date for a public report or any amendment, the public report and amendment or amendments shall not expire until such time as the developer has sold all units in the project.

**Real Estate Commission's Comment**

1. This is a new section.

**§ \_\_\_: 3-10. No False or Misleading Information.** It shall be unlawful for any person or person's agent to testify falsely or make a material misstatement of fact before the commission or to file with the commission any document required by this chapter that is false, contains a material misstatement of fact, or contains forgery. All documents (including the public report) prepared by or for the developer and submitted to the commission in connection with the developer's registration of the project, and all information contained in such documents, shall be true, complete and accurate in all respects, and shall not contain any misleading information, or omit any pertinent change in the information or documents submitted to the commission.

**Real Estate Commission's Comment**

1. HRS §§514A-98 and 514A-42, modified, are the sources of this section.

**§ \_\_\_: 3-11. General Powers and Duties of Commission.** (a) The commission may:

- (1) Adopt, amend, and repeal rules;
- (2) Assess fees;
- (3) Issue orders consistent with and in furtherance of the objectives of this chapter;
- (4) Prescribe forms and procedures for submitting information to the commission; and
- (5) Prescribe the form and content of any documents required to be submitted to the commission by this chapter.

(b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of part III (Registration and Administration of Condominiums), part IV (Protection of Condominium Purchasers), or section \_\_\_: 5-3, \_\_\_: 5-20, \_\_\_: 5-22, \_\_\_: 5-37, \_\_\_: 5-40, \_\_\_: 5-41, \_\_\_: 5-42, 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 is not required to post a bond or prove that

**Part III. Administration and Registration of Condominiums**

no adequate remedy at law exists in order to maintain such action.

(c) The commission may intervene in any action involving the powers or responsibilities of a developer under part III (Registration and Administration of Condominiums), part IV (Protection of Condominium Purchasers), or section \_\_\_: 5-3, \_\_\_: 5-20, \_\_\_: 5-22, \_\_\_: 5-37, \_\_\_: 5-40, \_\_\_: 5-41, \_\_\_: 5-42.

(d) The commission may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.

(e) The commission may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the commission's duties.

(f) In issuing any cease and desist order or order rejecting or revoking the registration of a condominium, the commission shall state the basis for the adverse determination and the underlying facts.

(g) The commission, in its sound discretion, may require bonding (at appropriate levels over time), escrow of portions of sales proceeds, or other safeguards it may prescribe by its rules to assure completion of all improvements which a developer is obligated to complete, or has represented that it will complete.

**Real Estate Commission's Comment**

1. HRS §514A-99 and UCA/UCIOA §5-107, modified, are the sources of this section.

2. Prohibition of Commission intervention in the internal activities of unit owners associations (in UCA/UCIOA §5-107(a)) was deleted to avoid any implication that the Commission will involve itself in curing violations of the condominium management provisions of this chapter.

3. The parenthetical "(at appropriate levels over time)" was added to subsection (g) to allow the Commission to adjust bonding requirements over time (e.g., reduction of bond).

**§ \_\_\_: 3-12. Deposit of Fees.** Unless otherwise provided in this chapter, all fees collected under this chapter shall be deposited by the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).

**Real Estate Commission's Comment**

1. This section is essentially identical to HRS §514A-44.

**§ \_\_\_: 3-13. Condominium Specialists; Appointment; Duties.** The director of commerce and consumer affairs may appoint condominium specialists, not subject to chapter 76, to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominiums. The director may also appoint secretaries, not subject to chapter 76, to provide assistance in carrying out these duties. The condominium specialists and secretaries shall be members of the employees retirement system of the State and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State.

**Real Estate Commission's Comment**

1. HRS §514A-7, modified, is the source of this section.

**§ \_\_\_: 3-14. Private Consultants.** The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of such review by private consultants shall be borne by the developer.

**Real Estate Commission's Comment**

1. HRS §514A-38, in pertinent part, identical, is the source of this section.

**§ \_\_\_: 3-15. Investigative Powers.** If the commission has reason to believe that any person is violating or has violated part III (Registration and Administration of Condominiums), part IV (Protection of Condominium Purchasers), or section \_\_\_: 5-3, \_\_\_: 5-20, \_\_\_: 5-22, \_\_\_: 5-37, \_\_\_: 5-40, \_\_\_: 5-41, \_\_\_: 5-42, 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 pursuant thereto, and shall make the records accessible to the commission upon reasonable notice and demand.

**Real Estate Commission's Comment**

**Part III. Administration and Registration of Condominiums**

1. This section is essentially identical to HRS §514A-46.

**§ \_\_\_\_: 3-16. Cease and Desist Orders.** In addition to its authority under sections \_\_\_\_: 3-17 and \_\_\_\_: 3-18, whenever the commission has reason to believe that any person is violating or has violated part III (Registration and Administration of Condominiums), part IV (Protection of Condominium Purchasers), or section \_\_\_\_: 5-3, \_\_\_\_: 5-20, \_\_\_\_: 5-22, \_\_\_\_: 5-37, \_\_\_\_: 5-40, \_\_\_\_: 5-41, \_\_\_\_: 5-42, 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 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.

**Real Estate Commission's Comment**

1. This section is essentially identical to HRS §514A-47.

**§ \_\_\_\_: 3-17. Revocation of Registration.** (a) The commission, after notice and hearing, may issue an order revoking the registration of a condominium upon determination that a developer or any officer or principal of a developer, or any affiliate of the developer, has:

- (1) Failed to comply with a cease and desist order issued by the commission affecting that condominium;
- (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;
- (3) Failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that condominium;
- (4) Misrepresented or failed to disclose a material fact in the application for registration; or
- (5) Failed to meet any of the conditions described in this part necessary to qualify for registration.

(b) A developer may not convey, cause to be conveyed, or contract for the conveyance of any interest in a unit while an order revoking the registration of the condominium is in effect, without the consent of the commission.

(c) In appropriate cases the commission, in its discretion, may issue a cease and desist order in lieu of an order of revocation.

**Real Estate Commission's Comment**

1. This section is essentially identical to UCA/UCIOA §5-106.

2. Although there is no comparable provision in HRS Chapter 514A, HRS Chapters 484 (Uniform Land Sales Practices Act) and 514E (Time Sharing Plans) allow for revocation of registration. (See, HRS §§484-13 and 514E-12.) Administrative revocation of registration is an appropriate intermediate means of enforcing provisions relating to the sale of condominium units.

**§ \_\_\_\_: 3-18. Power to Enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated part III (Registration and Administration of Condominiums), part IV (Protection of Condominium Purchasers), or section \_\_\_\_: 5-3, \_\_\_\_: 5-20, \_\_\_\_: 5-22, \_\_\_\_: 5-37, \_\_\_\_: 5-40, \_\_\_\_: 5-41, \_\_\_\_: 5-42, 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.

**Real Estate Commission's Comment**

1. This section is essentially identical to HRS §514A-48.

**§ \_\_\_\_: 3-19. Penalties.** (a) Any person who violates or fails to comply with part III (Registration and Administration of Condominiums), part IV (Protection of Condominium Purchasers), or section \_\_\_\_: 5-3, \_\_\_\_: 5-20, \_\_\_\_: 5-22, \_\_\_\_: 5-37, \_\_\_\_: 5-40, \_\_\_\_: 5-41, \_\_\_\_: 5-42, 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 part III (Registration and Administration of Condominiums), part IV (Protection of Condominium Purchasers), or section \_\_\_\_:

**Part III. Administration and Registration of Condominiums**

5-3, \_\_\_: 5-20, \_\_\_: 5-22, \_\_\_: 5-37, \_\_\_: 5-40, \_\_\_: 5-41, \_\_\_: 5-42, shall be punished by a fine not exceeding \$10,000.

(b) In addition to any other actions authorized by law, any person who violates part III (Registration and Administration of Condominiums), part IV (Protection of Condominium Purchasers), or section \_\_\_: 5-3, \_\_\_: 5-20, \_\_\_: 5-22, \_\_\_: 5-37, \_\_\_: 5-40, \_\_\_: 5-41, \_\_\_: 5-42, 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.

**Real Estate Commission’s Comment**

1. This section is essentially identical to HRS §514A-49.

**§ \_\_\_: 3-20. Limitation of Actions.** No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.

**Real Estate Commission’s Comment**

1. This section is identical to HRS §514A-50.

**§ \_\_\_: 3-21. Condominium Education Trust Fund.** (a) The commission shall establish a condominium education trust 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 associations; and
- (3) Expedient and inexpensive procedures for resolving association disputes.

(b) The commission may use any and all moneys in the condominium education trust fund for purposes consistent with subsection (a).

**Real Estate Commission’s Comment**

- 1. This section is essentially identical to HRS §514A-131.
- 2. The name of the fund was changed from “Condominium Management Education Fund” to “Condominium Education Trust Fund” to more accurately reflect its funding sources and permissible uses.
- 3. The provisions for the “Condominium Management Education Fund” are currently found in a separate part (HRS Chapter 514A, Part VIII).

**§ \_\_\_: 3-22. Condominium Education Trust Fund; Payments by Associations and Developers.** (a) Each project or association with more than five units shall pay to the department of commerce and consumer affairs the condominium education trust fund fee on or before June 30 of every odd-numbered year, or within thirty days of the association’s first meeting, or within one year after the recordation of the purchase of the first unit, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) 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 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 to pay a fee required under this section shall not impair the validity of any claim of the association for common expenses or other assessments, or prevent the association from defending any action in any court of this State.

(c) Each developer shall pay into the condominium education trust fund a nonrefundable fee for each unit in the project, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. The project shall not be registered and no effective date for a public report shall be issued until such payment is made.

(d) The department of commerce and consumer affairs shall allocate the fees collected to the condominium education trust fund established pursuant to section \_\_\_: 3-21.

**Real Estate Commission’s Comment**

1. HRS §514A-132 is the main source of this section. Subsection (c) above is a slightly modified version of HRS §514A-

**Part III. Administration and Registration of Condominiums**

40 (Final Reports), subsection (c).

2. HRS Chapter 514A sometimes uses the term “condominium project.” Since the term “project” is defined in HRS §514A-3 as “a real estate condominium project; a plan or project whereby a condominium of two or more apartments located within the condominium property regime are offered or proposed to be offered for sale,” it is redundant to use the term “condominium project;” “project” will suffice.

**§ \_\_\_: 3-23. Condominium Education Trust Fund; Management.** (a) The sums received by the commission for deposit in the condominium education trust 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 education trust 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 education trust 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 education trust 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.

**Real Estate Commission’s Comment**

1. This section is essentially identical to HRS §514A-133.

2. HRS §514A-134 (False statement) has not been included in the recodification. It is redundant and its criminal penalty is impractical.

3. HRS §514A-135 (Rules) has not been included in the recodification. It is redundant.