The Expert's Guide to Hawaii's Recodified Condominium Law (Chapter 514B, Hawaii Revised Statutes)

By Gordon M. Arakaki, Esq.

(Color-coded Full Text; 514A/514B Translation Tables; Sources of Statutory Language and Legislative Intent; 2006-2018 Amendments; Recodification Workplan)

PREFACE

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By: Gordon M. Arakaki, Esq.*

In 1961, Hawaii became the first state to pass a law enabling the creation of condominiums.[1] In 2005, the Legislature completed passage of the long-awaited recodification of Hawaii's condominium property regimes law.[2] After a one-year delayed effective date allowing for additional public review and "fine-tuning" by the 2006 Legislature,[3] Hawaii's then new condominium law [Chapter 514B, Hawaii Revised Statutes ("HRS")] went into effect on July 1, 2006. HRS Chapter 514B is now twelve years old, and this publication will help you understand how, when, and why each provision of Hawaii's recodified condominium law came to be.

What Is In This Publication?

- The complete text of HRS Chapter 514B, as annotated by the Revisor of Statutes, with color-coded highlighting to indicate when particular language was added or amended. With the color-coded highlighting, you can tell at a glance if the law has changed since you last reviewed your documents and letters.

- The transition and safe harbor provisions for the adoption of HRS Chapter 514B and repeal of HRS Chapter 514A.[4]

- Translation tables showing the sources of HRS Chapter 514B [e.g., HRS Chapter 514A, Hawaii Administrative Rules, proposed drafts of the Hawaii Administrative Rules, the Uniform Common Interest Ownership Act, and other laws and treatises], with the first table sorted by HRS Chapter 514B section numbers and the second table sorted by the sources of HRS Chapter 514B.

- Annotated individual Parts of HRS Chapter 514B (i.e., Part I – General Provisions, Part II – Applicability, Part III – Creation, Alteration, and Termination of Condominiums, Part IV – Registration and Administration of Condominiums, and Part VI – Management of Condominiums).

    - Statutory language is presented in Ramseyer format (i.e., deletions are bracketed and lined-out and new material is underscored) to graphically show amendments made by the Legislature from 2006 through 2018.

    - Individual Parts contain the Real Estate Commission's official comments from its "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000)," dated December 31, 2003. It is important to note that, pursuant to Act 164 (SLH 2004), the Commission's 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B), and may therefore be cited as such. The Commission's 2003 Final Report comments are reproduced verbatim, except to fill in references to HRS Chapter 514B [since the actual chapter and section numbers were not inserted until after Acts 164 (SLH 2004) and 93 (SLH 2005) were enacted].

    - The author has inserted additional explanatory comments under "Arakaki's Comment." Where it makes sense, language from committee reports as well as purpose sections from bills that amended HRS Chapter 514B are reproduced under "Arakaki's Comment." Language from such committee

reports and purpose sections may be cited as official legislative history indicating the intent of the Legislature in amending the law.

- The Hawaii condominium law recodification work plan crafted by the author for the Hawaii Real Estate Commission. The work plan can serve as an excellent model for the drafting and passage of any major legislation. Indeed, the Campaign Spending Commission used it as a template for its recodification of Hawaii's campaign finance law (Act 211, SLH 2010). In addition, the Blue Ribbon Recodification Advisory Committee described in the work plan is an excellent example of the use of a task force in helping to craft legislation.

Why Was Hawaii's Condominium Law Recodified?

The 1961 "Horizontal Property Regime" law consisted of 33 sections covering a little more than three pages in the Revised Laws of Hawaii. Since that time, the law has been amended constantly. In 2004 (when the Legislature first considered the proposed condominium law recodification), Hawaii's existing condominium property regimes law – Chapter 514A, Hawaii Revised Statutes ("HRS") – consisted of 119 sections and over one hundred pages (including the supplement). As noted by the 2000 Legislature, "[t]he present law is the result of numerous amendments enacted over the years made in piecemeal fashion and with little regard to the law as a whole."[5]

The 2000 Legislature recognized that "[Hawaii's] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations . . . [t]he law is also overly regulatory, hinders development, and ignores technological changes and the present day development process."[6] Consequently, the Legislature directed the Real Estate Commission to conduct a review of Hawaii's condominium property regimes law and to submit draft legislation to the Legislature.

The purpose of the recodification was "to update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law."[7]

Why Should People Care?

More than 31% of Hawaii's housing units are held in condominium ownership. For decades, Hawaii has had the highest percentage of condominium housing units in the United States of America.[8] This alone makes the new condominium law extremely important for Hawaii's people.

Condominiums are important for land use, housing, and growth policy reasons. The rapid growth of condominiums, cooperatives, and planned communities (i.e., common interest ownership communities) since the 1960's has been spurred by government policies – driven by popular sentiment – requiring that new development "pay its own way." As more and more people in existing developments objected to their tax dollars being used to pay for the infrastructure necessary for new developments, government responded to such objections by shifting much of the infrastructure costs to the new developments.[9]

Condominiums and other common interest ownership communities – with their regimes of *privately enforceable* covenants governing use of property and establishing financial obligations (e.g., maintenance fees) to pay for formerly *public* facilities and services such as roads, trash collection, and recreational areas – are a fundamental necessity in having new development "pay its own way." Indeed, virtually all new development in Hawaii for the past 45 years consists of common interest ownership communities.

Given the importance of condominiums to the quality of life of Hawaii's people, the goal of the recodification was to make Hawaii's condominium property regimes law better for people who build, sell, buy, manage, and *live* in condominiums.

PREFACE

What *Is* A "Condominium Property Regimes" Law?

When reading HRS Chapter 514B, it is useful to understand exactly what a "condominium property regimes law" is – and what it isn't. A condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a *community governance* law. It is not a land *use* law (*i.e.*, it does not govern what structures may be built on real property; separate state and county land use laws control – or should control – land use matters).

A condominium property regimes law is essentially an *enabling* law, allowing people to:

- Own real estate under the condominium form of property ownership (*i.e.*, a form of real property ownership where each individual member holds title to a specific unit and an undivided interest as a "tenant-in-common" with other unit owners in common elements such as the exterior of buildings, structural components, grounds, amenities, and internal roads and infrastructure);

- Protect purchasers through adequate disclosures; and

- Manage the ongoing affairs of the condominium community.

The ability to build, sell, buy, borrow/lend money, insure title, insure property, and more are all part of real property ownership and, therefore, part of the condominium law.

Conclusion

No law is ever perfect. Even if a law were to be perfect when adopted, it would immediately begin to become obsolete as times and circumstances changed. It is a given, then, that Hawaii's recodified condominium law, HRS Chapter 514B, has been and will continue to be re-examined and, from time-to-time, amended.

The author hopes that this publication will help all members of Hawaii's condominium community better understand HRS Chapter 514B and the amendments that have been made to the chapter to date.

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*****Gordon M. Arakaki*** *has been in practice in Hawaii for over 30 years (since 1984) and has a wealth of experience in both the public and private sectors, as well as substantial experience working with communities, businesses, and government.*

Mr. Arakaki was the Hawaii Real Estate Commission's Condominium Law Recodification Project Attorney from 2000-2004, and is currently in solo practice. He has served as the Chief of Staff/Committee Clerk of the Senate Committee on Ways and Means and as Staff Attorney/Committee Clerk for the Senate Committee on Education and Technology and Senate Committee on Commerce, Consumer Protection, and Information Technology. Mr. Arakaki has also worked in various capacities for the Lt. Governor, Honolulu City Council, Land Use Research Foundation of Hawaii, and Chamber of Commerce of Hawaii.

During his time as the Recodification Project Attorney, Mr. Arakaki worked with lawmakers, the Hawaii Real Estate Commission, a blue ribbon advisory committee, and stakeholders throughout the State to "update, clarify, organize, deregulate, and provide for consistency and ease of use" of Hawaii's then 44+ year old condominium law. He is the author of the Commission's final report to the Legislature on the recodification of Hawaii's condominium property regimes law, which the Legislature stated should be used

as an aid in understanding and interpreting the law (Hawaii Revised Statutes Chapter 514B). Mr. Arakaki has lectured and written extensively on the recodification of Hawaii's condominium law, as well as a number of land use issues.

For his work with the condominium community in "helping craft and advance the next generation of the Hawaii Condominium Property Act," Mr. Arakaki received the Community Associations Institute—Hawaii Chapter's 2004 "Public Advocate Award."

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[1] Kerr, William; "Condominium – Statutory Implementation," 38 St. John's L. Rev. 1 (1963), at page 5. *See also*, Act 180, Session Laws of Hawaii ("SLH") 1961, codified as Chapter 170A, Revised Laws of Hawaii ("RLH"). In 1968, RLH Chapter 170A was redesignated Chapter 514, Hawaii Revised Statutes ("HRS") (Act 16, SLH 1968). In 1977, HRS Chapter 514 was re-enacted as a restatement without substantive change and redesignated HRS Chapter 514A (Act 98, SLH 1977).

[2] Act 93, SLH 2005, with Act 164, SLH 2004, *codified as* HRS Chapter 514B.

The drafting, introduction and passage of Hawaii's recodified condominium law represented the work of many dedicated volunteers over a number of years. HSBA Real Property & Financial Services section members Richard T. Asato, Jr., Gail O. Ayabe, Randy Brooks, Andy Bunn, David Callies, Ken Chong, Deb Chun, Lorrin B. Hirano, Mitchell A. Imanaka (also the Chair of the Real Estate Commission's Condominium Review Committee that spear-headed the recodification effort), Ray Iwamoto, Rick Kiefer, Bernice Littman, John A. Morris, Milton Motooka, Joyce Y. Neeley, Hiroshi Sakai, and Jane Sugimura were among those who helped immensely in the effort to recodify Hawaii's 40+ year old (at that time) condominium law. In addition to these HSBA-RPFS section members, the Real Estate Commission's Blue Ribbon Recodification Advisory Committee included Steve Glanstein (representing the Hawaii Chapter of the Community Associations Institute), Len Kacher (representing the Hawaii Association of Realtors), Calvin Kimura and Cynthia Yee (representing the Real Estate Branch of the State Department of Commerce & Consumer Affairs), Richard Port (representing Hawaii Independent Condominium & Cooperative Owners), and Ted Walkey (representing the Hawaii Association of Realtors). Finally, many other individuals and groups have been involved in the "fine-tuning" of HRS Chapter 514B since its passage.

[3] The Real Estate Commission explicitly made the following recommendation in its 2003 Final Report ("Miscellaneous Matters"), with the belief that the recodification would be passed by the 2004 Legislature:

> The Commission recommends that the recodified Hawaii condominium law should have a delayed effective date of July 1, 2005. The vast majority of the public does not pay close attention to potential legislation until it is adopted. Considering the scope of the recodified Hawaii condominium law and the number of people, businesses, and agencies affected by the law, it makes sense to have a delayed effective date to give people (many of whom will not have followed the proposed legislation) a chance to become educated about the new law. It will also be possible to consider recommendations received during this educational period and to fine-tune the law in the next legislative session.

[4] *See*, Act 93, §9 (SLH 2005), as amended by Act 244, §8 (2007), and Act 181, §45 (SLH 2017). Pursuant to Act 181 (SLH 2017), HRS Chapter 514A will be repealed effective January 1, 2019.

[5] Act 213, SLH 2000.

[6] *Id.*

[7] *Id.*

[8] *Community Associations Factbook*, by Clifford J. Treese (1999), at page 18; State of Hawaii Data Book (2017), compare Table 21.10 ("Condominium Associations and Apartments Registered: 1990 to 2017") and Table 21.20 ("Housing Units, by County: 2007 to 2017"). In addition, please be aware that condominium associations consisting of five or less units are ***not*** required to be registered. [*See*, HRS §514B-103(a) and HRS §514A-95.1(a).]

[9] *See, e.g.*, *Paying for Growth in Hawaii: An Analysis of Impact Fees and Housing Exactions Programs*, sponsored by the Land Use Research Foundation of Hawaii (1988).

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Part IV. Registration and Administration of Condominiums

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[1] Effective January 1, 2019, HRS Chapter 514A was repealed and amendments to HRS Chapter 514B, Part II, went into effect. [*See*, Act 181 (SLH 2017).] It is likely, however, that the 2019 State Legislature will pass a law to permit certain condominiums created before July 1, 2006 to take advantage of the safe harbor sales disclosure (i.e., developer's public report) provisions of Act 181 (SLH 2017). To that end, certain provisions of HRS Chapter 514A would remain operative for another year or so. [*See, e.g.,* SB 552 (2019 session)].

[2] Pursuant to Act 181 (SLH 2017), HRS §514B-22 (Applicability to preexisting condominiums) was repealed effective January 1, 2019.

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[Arakaki's Note: Yellow highlight = 2006 amendment; Green = 2007 amendment; Blue = 2008 amendment; Pink = 2009 amendment; Orange = 2010 amendment; Purple = 2011 amendment; Gray = 2012 amendment; Dark Green = 2013 amendment; Dark Blue = 2014 amendment; Light Brown = 2015 amendment; No 2016 amendments; Lavender = 2017-2018 amendments]

Note

L 2017, c 181, §45 (effective January 1, 2019) provides:

"SECTION 45. Condominium property regimes created prior to July 1, 2006, that were issued an effective date pursuant to [sections] 514A-40 and 514A-41, Hawaii Revised Statutes, may be sold on or after January 1, 2019, without revising any of the governing documents; provided that the developer's public report was active on January 1, 2019, and is accurate and not misleading. On January 1, 2019, all active, non-expired chapter 514A, Hawaii Revised Statutes, developer's public reports pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, along with their most recent disclosure abstract, if any, will be treated as non-expiring developer's public reports under part IV of chapter 514B, Hawaii Revised Statutes. Should any pertinent or material changes, or both, occur to the condominium project, the developer shall file an amended developer's public report superseding all prior reports pursuant to chapter 514B, Hawaii Revised Statutes; provided that such projects and their subsequent reports filed under chapter 514B, Hawaii Revised Statutes, shall be exempt from the conversion requirements under section 514B-84(a)(1) and (2), Hawaii Revised Statutes. Condominium property regimes created prior to July 1, 2006, that were not issued an effective date pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, and did not file a notice of intent pursuant to section 514A-1.5(2)(B), Hawaii Revised Statutes, shall revise their governing documents and register under chapter 514B, Hawaii Revised Statutes, for a developer to offer for sale or to sell condominiums.

Nothing contained in this Act or in the condominium property act shall be deemed to invalidate any condominium property regime that was validly created under chapter 514A, Hawaii Revised Statutes, prior to July 1, 2006."

Election to register a chapter 514A condominium under chapter 514B. L 2005, c 93, §9; L 2007, c 244, §8.

Cross References

Building permit requirements on new developments in school impact districts, see §46-142.5.

Placement of clotheslines, see §196-8.5.

[3] Arakaki's Note: The "Retaliation prohibited" section was added by the 2017 Legislature. While it would have made sense to place this new section in Part VI (Management of Condominiums) and codify it as HRS §514B-158 or a new subpart E in Part VI, the Revisor of Statutes ultimately created a new part and numbered the new section accordingly.

PART I. GENERAL PROVISIONS

[§514B-1] Short title. This chapter may be cited as the Condominium Property Act. [L 2004, c 164, pt of §2; am L 2005, c 93, §7[4]]

[§514B-2] Applicability. Applicability of this chapter is governed by part II. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§514B-3 Definitions. As used in this chapter and in the declaration and bylaws, unless specifically provided otherwise or required by the context:

"Affiliate of a developer" means a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.

"Association" means the unit owners' association organized under section 514B-102 or under prior condominium property regime statutes.

"Board" or "board of directors" means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.

"Commission" means the real estate commission of the State.

"Common elements" means:

(1) All portions of a condominium other than the units; and

(2) Any other interests in real estate for the benefit of unit owners that are subject to the declaration.

"Common expenses" means expenditures made by, or financial liabilities of, the association for operation of the property, and shall include any allocations to reserves.

"Common interest" means the percentage of undivided interest in the common elements appurtenant to each unit, as expressed in the declaration, and any specified percentage of the common interest means such percentage of the undivided interests in the aggregate.

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[4] Arakaki's Note: Until 2018, the Revisor of Statute's reference to "am L 2005, c 93, §7" was not part of HRS Chapter 514B. The reference now appears in virtually all sections of HRS Chapter 514B that were initially adopted in Act 164 (SLH 2004) (i.e., sections in HRS Chapter 514B Parts I, II, and VI).

Act 93 (SLH 2005), Section 7, amended Act 164 (SLH 2004), Section 35, which was the "effective date" provision of Act 164 (SLH 2004). In other words, Act 93 (SLH 2005), Section 7, amended a session law's "effective date" language, not statutory language. The amendment reads in full as follows:

> SECTION 7. Act 164, Session Laws of Hawaii 2004, is amended by amending section 35 to read as follows:
>
> "SECTION 35. This Act shall take effect on [~~July 1, 2005;~~] July 1, 2006; provided that:
>
> (1) [~~Section -146~~] The text of section -146 in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;
>
> [~~(2) Section -161 in part I of this Act, relating to mediation shall take effect on July 1, 2006;~~
>
> ~~(3)~~] (2) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006;
>
> [~~(4)~~] (3) Sections 30 to 33 of this Act shall take effect on July 1, 2004; and
>
> [~~(5)~~] (4) If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective [~~July 1, 2005,~~] July 1, 2006, parts I and II of this Act shall be repealed on [~~June 30, 2005.~~] June 30, 2006."

"Common profits" means the balance of all income, rents, profits, and revenues from the common elements or other property owned by the association remaining after the deduction of the common expenses.

"Completion of construction" means the earliest of:

(1) The issuance of a certificate of occupancy for the unit;

(2) The date of completion for the project, or the phase of the project that includes the unit, as defined in section 507-43;

(3) The recordation of the "as built" amendment to the declaration that includes the unit;

(4) The issuance of the architect's certificate of substantial completion for the project, or the phase of the project that includes the unit; or

(5) The date the unit is completed so as to permit normal occupancy.

"Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

"Condominium map" means, however denominated, a map or plan of the condominium property regime containing the information required by section 514B-33.

"Converted" or "conversion" means the submission of a structure to a condominium property regime more than twelve months after the completion of construction; provided that structures used as sales offices or models for a project and later submitted to a condominium property regime shall not be considered to be converted structures.

"Declaration" means any instrument, however denominated, that creates a condominium, including any amendments to the instrument.

"Developer" means a person who undertakes to develop a real estate condominium project, including a person who succeeds to the interest of the developer by acquiring a controlling interest in the developer or in the project.

"Development rights" means any right or combination of rights reserved by a developer in the declaration to:

(1) Add real estate to a condominium;

(2) Create units, common elements, or limited common elements within a condominium;

(3) Subdivide units, combine units, or convert units into common elements;

(4) Withdraw real estate from a condominium;

(5) Merge projects or increments of a project; or

(6) Otherwise alter the condominium.

"Limited common element" means a portion of the common elements designated by the declaration or by operation of section 514B-35 for the exclusive use of one or more but fewer than all of the units.

"Majority" or "majority of the unit owners" means the owners of units to which are appurtenant more than fifty per cent of the common interests. Any specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interest.

"Managing agent" means any person retained, as an independent contractor, for the purpose of managing the operation of the property.

"Master deed" or "master lease" means any deed or lease showing the extent of the interest of the person submitting the property to the condominium property regime.

"Material change" as used in parts IV and V of this chapter means any change that directly, substantially, and adversely affects the use or value of:

(1) A purchaser's unit or appurtenant limited common elements; or

(2) Those amenities of the project available for the purchaser's use.

"Material fact" means any fact, defect, or condition, past or present, that, to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale.

"Operation of the property" means the administration, fiscal management, and physical operation of the property, and includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.

"Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

"Pertinent change" means, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to:

(1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element;

(2) The size, use, location, or construction materials of the common elements of the project; or

(3) The common interest appurtenant to the unit.

A pertinent change does not necessarily constitute a material change.

"Project" means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the condominium property regime are created.

"Property" means the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances intended for use in connection with the condominium, which have been or are intended to be submitted to the regime established by this chapter. "Property" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Record", "recordation", "recorded", or "recording" means to record in the bureau of conveyances in accordance with chapter 502, or to register in the land court in accordance with chapter 501.

"Resident manager" means any person retained as an employee by the association to manage, on-site, the operation of the property.

"Structures" includes but is not limited to buildings.

"Time share unit" means the actual and promised accommodations, and related facilities, that are the subject of a time share plan as defined in chapter 514E.

"Unit" means a physical or spatial portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in the declaration or pursuant to section 514B-35, with an exit to a public road or to a common element leading to a public road.

"Unit owner" means the person owning, or the persons owning jointly or in common, a unit and its appurtenant common interest; provided that to such extent and for such purposes as provided by recorded lease, including the exercise of voting rights, a lessee of a unit shall be deemed to be the unit owner. [L 2004, c 164, pt of §2; am L 2005, c 93, §§1, 7; am L 2006, c 273, §3; am L 2014, c 189, §2]

[§514B-4] Separate titles and taxation. (a) Each unit that has been created, together with its appurtenant interest in the common elements, constitutes, for all purposes, a separate parcel of real estate.

(b) If there is any unit owner other than a developer, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements. The laws relating to home exemptions from state property taxes are applicable to individual units, which shall have the benefit of home exemption in those cases where the owner of a single-family dwelling would qualify. Property taxes assessed by the State or any county shall be assessed and collected on the individual units and not on the property as a whole. Without limitation of the foregoing, each unit and its appurtenant common interest shall be deemed to be a "parcel" and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.

(c) If there is no unit owner other than a developer, the real estate comprising the condominium may be taxed and assessed in any manner provided by law. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§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). [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2014, c 49, §3]

Note

Applicability of 2014 amendment. L 2014, c 49, §10.[5]

[§514B-6] Supplemental county rules governing a condominium property regime. Whenever any county deems it proper, the county may adopt supplemental rules governing condominium property regimes established under this chapter in order to implement this program; provided that any of the supplemental rules adopted shall not conflict with this chapter or with any of the rules adopted by the commission to implement this chapter. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-7] Construction against implicit repeal. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[5] Arakaki's Note: Act 49 (SLH 2014) Section 10 makes it clear that the Act's provisions apply to projects for which a developer submits an application for registration under HRS §514A-31 (i.e., project registration under the prior condominium law).

[§514B-8] Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-9] Obligation of good faith. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§514B-10 Remedies to be liberally administered. (a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Punitive damages may not be awarded, however, except as specifically provided in this chapter or by other rule of law.

(b) Any deed, declaration, bylaw, or condominium map shall be liberally construed to facilitate the operation of the condominium property regime.

(c) Any right or obligation declared by this chapter is enforceable by judicial proceeding. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §4]

PART II. APPLICABILITY[6]

§514B-21 Applicability. (a) This chapter applies to all condominiums created within this State; provided that such application shall not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents of those condominiums if to do so would invalidate the reserved rights of a developer. Amendments to this chapter apply to all condominiums, regardless of when the amendment is adopted.

(b) For purposes of interpreting this chapter, the terms "condominium property regime" and "horizontal property regime" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "apartment owner" shall be deemed to correspond to the term "unit owner";

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[6] Effective January 1, 2019, HRS Chapter 514A was repealed and amendments to HRS Chapter 514B, Part II, went into effect. [*See*, Act 181 (SLH 2017).] It is likely, however, that the 2019 State Legislature will pass a law to permit certain condominiums created before July 1, 2006 to take advantage of the safe harbor sales disclosure (i.e., developer's public report) provisions of Act 181 (SLH 2017). To that end, certain provisions of HRS Chapter 514A would remain operative for another year or so. [*See, e.g.*, SB 552 (2019 session)].

Before January 1, 2019, HRS §§514B-21 and 514B-22 read as follows:

> **[§514B-21] Applicability to new condominiums.** This chapter applies to all condominiums created within this State after July 1, 2006. The provisions of chapter 514A do not apply to condominiums created after July 1, 2006. Amendments to this chapter apply to all condominiums created after July 1, 2006 or subjected to this chapter, regardless of when the amendment is adopted. [L 2004, c 164, pt of §2] [L 2004, c 164, pt of §2; am L 2017, c 181, §3]
>
> **§514B-22 Applicability to preexisting condominiums.** Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72, and part VI, and section 514B-3 to the extent definitions are necessary in construing any of those provisions, and all amendments thereto, apply to all condominiums created in this State before July 1, 2006; provided that those sections:
>
> (1) Shall apply only with respect to events and circumstances occurring on or after July 1, 2006; and
>
> (2) Shall not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents of those condominiums if to do so would invalidate the reserved rights of a developer or be an unreasonable impairment of contract.
>
> For purposes of interpreting this chapter, the terms "condominium property regime" and "horizontal property regime" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "apartment owner" shall be deemed to correspond to the term "unit owner"; and the term "association of apartment owners" shall be deemed to correspond to the term "association". [L 2004, c 164, pt of §2; am L 2006, c 273, §5]
>
> **Revision Note**
>
> "July 1, 2006" substituted for "the effective date of this chapter".

[Note: The 2017 Legislature did *not* amend §514B-23 (Amendments to governing instruments).]

and the term "association of apartment owners" shall be deemed to correspond to the term "association". [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 181, §3]

§514B-22 REPEALED. L 2017, c 181, §§4, 47.

§514B-23 Amendments to governing instruments. (a) The declaration, bylaws, condominium map, or other constituent documents of any condominium created before July 1, 2006 may be amended to achieve any result permitted by this chapter, regardless of what applicable law provided before July 1, 2006.

(b) An amendment to the declaration, bylaws, condominium map or other constituent documents authorized by this section may be adopted by the vote or written consent of a majority of the unit owners; provided that any amendment adopted pursuant to this section shall not invalidate the reserved rights of a developer. If an amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §6; am L 2014, c 189, §3]

Revision Note

"July 1, 2006" substituted for "the effective date of this chapter".

PART III. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Note

Part heading amended by L 2005, c 93, pt of §2.

[§514B-31] Creation. (a) To create a condominium property regime, all of the owners of the fee simple interest in land shall execute and record a declaration submitting the land to the condominium property regime. Upon recordation of the master deed together with a declaration, the condominium property regime shall be deemed created.

(b) The condominium property regime shall be subject to any right, title, or interest existing when the declaration is recorded if the person who owns the right, title, or interest does not execute or join in the declaration or otherwise subordinate the right, title, or interest. A person with any other right, title, or interest in the land may subordinate that person's interest to the condominium property regime by executing the declaration, or by executing and recording a document joining in or subordinating to the declaration. [L 2005, c 93, pt of §2]

§514B-32 Contents of declaration. (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 structures 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 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;

A property that is registered pursuant to section 514B-51 shall instead provide 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.

(b) The declaration may contain any additional provisions that are not inconsistent with this chapter. [L 2005, c 93, pt of §2; am L 2006, c 38, §22 and c 273, §7; am L 2014, c 49, §4]

Note

Applicability of 2014 amendment. L 2014, c 49, §10.[7]

§514B-33 Condominium map. (a) A condominium map shall be recorded with the declaration. The condominium map shall contain the following:

(1) A site plan for the condominium property regime, depicting the location, layout, and access to a public road of all buildings and projects included or anticipated to be included in the condominium property regime, and depicting access for the units to a public road or to a common element leading to a public road;

(2) Elevations and floor plans of all buildings in the condominium property regime;

(3) The layout, location, boundaries, unit numbers, and dimensions of the units;

(4) To the extent that there is parking in the condominium property regime, a parking plan for the regime, showing the location, layout, and stall numbers of all parking stalls included in the condominium property regime;

(5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information of the limited common elements, if any; and

(6) A description in sufficient detail, as may be determined by the commission, to identify any land area that constitutes a limited common element.

(b) The condominium map may contain any additional information that is not inconsistent with this chapter. [L 2005, c 93, pt of §2; am L 2006, c 273, §8]

§514B-34 Condominium map; certification of architect, engineer, or surveyor. (a) The condominium map shall bear the statement of a licensed architect, engineer, or surveyor certifying that the condominium map is consistent with the plans of the condominium's building or buildings filed or to be filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located. If the building or buildings have been built at the time the condominium map is recorded, the certification shall state that, to the best of the architect's, engineer's, or surveyor's knowledge, the condominium map depicts the layout, location, dimensions, and numbers of the units substantially as built. If the building or buildings, or portions thereof, have not been built at the time the condominium map is recorded, within thirty days from the completion of construction, the developer shall execute and record an amendment to the declaration accompanied by a certification of a licensed architect, engineer, or surveyor certifying that the condominium map previously recorded, as amended by the revised pages filed with the amendment, if any, fully and accurately depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built.

(b) If the condominium property regime is a conversion and the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located is unable to locate the original permitted construction plans, the certification need only state that the condominium map depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built. If there are no buildings, no certification shall be required. [L 2005, c 93, pt of §2; am L 2006, c 273, §9]

[§514B-35] Unit boundaries. Except as provided by the declaration:

(1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials

[7] Arakaki's Note: Act 49 (SLH 2014) Section 10 makes it clear that the Act's provisions apply to projects for which a developer submits an application for registration under HRS §514A-31 (i.e., project registration under the prior condominium law).

constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings, are a part of the common elements;

(2) If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element appurtenant solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements;

(3) Subject to paragraph (2), all spaces, interior non-loadbearing partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit. [L 2005, c 93, pt of §2]

[§514B-36] Leasehold units. An undivided interest in the land that is subject to a condominium property regime equal to a unit's common interest may be leased to the unit owner, and the unit and its common interest in the common elements exclusive of the land may be conveyed to the unit owner. The conveyance of the unit with an accompanying lease of an interest in the land shall not constitute a division or partition of the common elements, or a separation of the common interest from its unit. Where a deed of a unit is accompanied by a lease of an interest in the land, the deed shall not be construed as conveying title to the land included in the common elements. [L 2005, c 93, pt of §2]

[§514B-37] Common interest. Each unit shall have the common interest it is assigned in the declaration. Except as provided in sections 514B-32(a)(12), 514B-46, and 514B-140(d) and except as provided in the declaration, a unit's common interest shall be permanent and remain undivided, and may not be altered or partitioned without the consent of the owner of the unit and the owner's mortgagee, expressed in a duly executed and recorded declaration amendment. The common interest shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned or described in the conveyance or other instrument. [L 2005, c 93, pt of §2]

§514B-38 Common elements. Each unit owner may use the common elements in accordance with the purposes permitted under the declaration, subject to:

(1) The rights of other unit owners to use the common elements;

(2) Any owner's exclusive right to use of the limited common elements as provided in the declaration;

(3) The right of the owners to amend the declaration to change the permitted uses of the common elements; provided that subject to subsection 514B-140(c):

(A) Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the declaration; and

(B) Minor additions to or alterations of the common elements for the benefit of individual units are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other owners in the common elements, as reasonably determined by the board;

(4) Any rights reserved in the declaration to amend the declaration to change the permitted uses of the common elements;

(5) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are not actually used by any of the

unit owners for a purpose permitted in the declaration. Unless the lease is approved by the owners of at least sixty-seven per cent of the common interest, the lease shall have a term of no more than five years and may be terminated by the board or the lessee on no more than sixty days prior written notice; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d); and

(6) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are actually used by one or more unit owners for a purpose permitted in the declaration. The lease or use shall be approved by the owners of at least sixty-seven per cent of the common interest, including all directly affected unit owners that the board reasonably determines actually use the common elements, and the owners' mortgagees; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d). [L 2005, c 93, pt of §2; am L 2006, c 273, §10]

[§514B-39] Limited common elements. If the declaration designates any portion of the common elements as limited common elements, those limited common elements shall be subject to the exclusive use of the owner or owners of the unit or units to which they are appurtenant, subject to the provisions of the declaration and bylaws. No amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the unit or units to which the limited common elements are appurtenant. [L 2005, c 93, pt of §2]

[§514B-40] Transfer of limited common elements. Except as provided in the declaration, any unit owner may transfer or exchange a limited common element that is assigned to the owner's unit to another unit. Any transfer shall be executed and recorded as an amendment to the declaration. The amendment need only be executed by the owner of the unit whose limited common element is being transferred and the owner of the unit receiving the limited common element; provided that unit mortgages and leases may also require the consent of mortgagees or lessors, respectively, of the units involved. A copy of the amendment shall be promptly delivered to the association. [L 2005, c 93, pt of §2]

[§514B-41] Common profits and expenses. (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners, including the developer, in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws. In a mixed-use project containing units for both residential and nonresidential use, the charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration. Except as otherwise provided in subsection (c) or the declaration or bylaws, all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and improvements, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.

(b) A unit owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to the owner's unit at the time the certificate of occupancy relating to the owner's unit is issued by the appropriate county agency; provided that a developer may assume all the actual common expenses in a project by stating in the developer's public report required by section 514B-54 that the unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time as the developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. The developer shall mail the written notice to the owners, the association, and the managing agent, if any, at least thirty days before the specified date.

(c) Unless otherwise provided in the declaration or bylaws, if the board reasonably determines that the extra cost incurred to separately account for and charge for the costs of maintenance, repair, or replacement of limited common elements is not justified, the board may adopt a resolution determining that certain limited common element expenses will be assessed in accordance with the undivided common interest appurtenant to each unit. In reaching its determination, the board shall consider:

(1) The amount at issue;

(2) The difficulty of segregating the costs;

(3) The number of units to which similar limited common elements are appurtenant;

(4) The apparent difference between separate assessment and assessment based on the undivided common interest; and

(5) Any other relevant factors, as determined by the board.

The resolution shall be final and binding in the absence of a determination that the board abused its discretion.

(d) Unless made pursuant to rights reserved in the declaration and disclosed in the developer's public report, if an association amends its declaration or bylaws to change the use of the condominium property regime from residential to nonresidential, all direct and indirect costs attributable to the newly permitted nonresidential use shall be charged only to the unit owners using or directly benefiting from the new nonresidential use, in a fair and equitable manner as set forth in the amendment to the declaration or bylaws. [L 2005, c 93, pt of §2]

§514B-42 Metering of utilities. (a) Units in a project that includes units designated for both residential and nonresidential use shall have separate meters, or calculations shall be made, or both, as may be practicable, to determine the use by the nonresidential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of the utilities shall be paid by the owners of the nonresidential units; provided that the apportionment of the charges among owners of nonresidential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws.

Notwithstanding any provision to the contrary in this chapter or in a project's declaration or bylaws the board may authorize the installation of separate meters to determine the use by each of the residential and commercial units of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage; provided that the cost of installing the meters shall be paid by the association.

(b) Notwithstanding any approval requirements and spending limits contained in a project's declaration or bylaws, the board of any association may authorize the installation of meters to determine the use by each individual unit of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage; provided that the cost of installing the meters shall be paid by the association. The cost of metered utilities shall be paid by the owners of each unit based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to owners for the cost of metered utilities. [L 2005, c 93, pt of §2; am L 2012, c 18, §3]

[§514B-43] Liens against units. (a) For purposes of this section:

"Lien" means a lien created pursuant to chapter 507, part II.

"Visible commencement of operations" shall have the meaning it has in section 507-41.

(b) If visible commencement of operations occurs prior to the creation of the condominium, then, upon creation of the condominium, liens arising from this work shall attach to all units in the condominium described in the declaration and their respective undivided interests in the common elements, but not to the common elements as a whole. If visible commencement of operations occurs after creation of the condominium, then liens arising from this work shall attach only to the unit or units described in the declaration on which the work was performed in the same manner as other real property, and shall not attach to the common elements.

(c) If the developer contracts for work on the common elements, either on its behalf or on behalf of the association prior to the first meeting of the association, then liens arising from this work may attach to all units owned by the developer described in the declaration at the time of visible commencement of operations.

(d) If the association contracts for work on the common elements after the first meeting of the association, there shall be no lien on the common elements, but the persons contracting with the association to perform the work or supply the materials incorporated in the work shall be entitled to their contractual remedies, if any. [L 2005, c 93, pt of §2; am L 2018, c 18, §33]

[§514B-44] Contents of deeds or leases of units. Deeds or leases of units adequately describe the property conveyed or leased if they contain the following information:

(1) The title and date of the declaration and the declaration's bureau of conveyances or land court document number or liber and page numbers;

(2) The unit number of the unit conveyed or leased;

(3) The common interest appurtenant to the unit conveyed or leased; provided that the common interest shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned in the conveyance or other instrument, as provided in section 514B-37;

(4) For a unit, title to which is registered in the land court, the land court certificate of title number for the unit, if available; and

(5) For a unit, title to which is not registered in the land court, the bureau of conveyances document number or liber and page numbers for the instrument by which the grantor acquired title.

Deeds or leases of units may contain additional information and details deemed desirable and consistent with the declaration and this chapter, including without limitation a statement of any encumbrances on title to the unit that are not listed in the declaration. The failure of a deed or lease to include all of the information specified in this section shall not render it invalid. [L 2005, c 93, pt of §2]

[§514B-45] Blanket mortgages and other blanket liens affecting a unit at time of first conveyance or lease. At the time of the first conveyance or lease of each unit, every mortgage and other lien, except any improvement district or utility assessment, affecting both the unit and any other unit shall be paid and satisfied of record, or the unit being conveyed or leased and its common interest shall be released therefrom by a duly recorded partial release. [L 2005, c 93, pt of §2]

[§514B-46] Merger of projects or increments. (a) Two or more projects, or increments of a project, whether or not adjacent to one another, but that are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the units in the merged projects. A merger may be implemented with the vote or consent that the declaration requires for a merger, pursuant to any reserved rights set forth in the declaration, or upon vote of sixty-seven per cent of the common interest.

(b) A merger becomes effective at the earlier of:

(1) A date certain set forth in the certificate of merger; or

(2) The date that the certificate of merger is recorded.

The certificate of merger may provide for a single association and board for the merged projects and for a sharing of the common expenses of the projects among all the owners of the units in the merged projects. The certificate of merger may also provide for a merger of the common elements of the projects so that each unit owner in the merged projects has an undivided ownership interest in the common elements of the merged projects. In the event of a merger of common elements, the common interests of each unit in the merged projects shall be adjusted in accordance with the merger provisions in the projects' declarations so that the total common interests of all units in the resulting merged project totals one hundred per cent. If the certificate of merger does not provide for a merger of

the common elements, the common elements and common interests of the merged projects shall remain separate, but shall be subject to the provisions set forth in the respective declarations with respect to merger.

(c) Upon the recording of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the registrar shall cancel all existing certificates of title for the units in the projects being merged and shall issue new certificates of title for the units in the merged project, covering all of the land of the merged projects. The new certificates of title for the units in the merged project shall describe, among other things, each unit's new common interest. The certificate of merger shall at least set forth all of the units of the merged projects, their new common interests, and to the extent practicable, their current certificate of title numbers in the common elements of the merged projects.

(d) In the event of a conflict between declarations and bylaws upon the merger of projects or increments, unless otherwise provided in the certificate of merger, the provisions of the first declaration and bylaws recorded shall control. [L 2005, c 93, pt of §2]

§514B-47 Removal from provisions of this chapter. (a) If:

(1) Owners of units to which are appurtenant at least eighty per cent of the common interests execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of such units consent thereto by duly recorded instruments; or

(2) The common elements suffer substantial damage or destruction and the damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof, or the unit owners have earlier determined as provided in the declaration that the damage or destruction shall not be rebuilt, repaired, or restored;

the property shall be subject to an action for partition by any unit owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and, except as otherwise provided in the declaration, shall be divided among all the unit owners in proportion to their respective common interests; provided that no payment shall be made to a unit owner until there has first been paid in full out of the owner's share of the net proceeds all liens on the owner's unit. Upon this sale, the property ceases to be a condominium property regime or subject to this chapter.

(b) All of the unit owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, if the holders of all liens affecting any of the units consent thereto, by duly recorded instruments. Upon this removal from this chapter, the property, or the part of the property designated in the instrument, shall cease to be the subject of a condominium property regime or subject to this chapter, and shall be deemed to be owned in common by the unit owners in proportion to their respective common interests.

(c) Notwithstanding subsections (a) and (b), if the unit leases for a leasehold condominium property regime (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

(1) The estate and interest of the unit owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the condominium property regime;

(2) The unit owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the unit owner's leasehold interest;

(3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;

(4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the unit owners of the buildings and improvements in accordance with their interests; and

(5) The unit lease rents are reduced in proportion to the land so acquired or possessed;

the lessor and the developer, if the developer retains any interests or reserved rights in the project, shall file and record an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the unit owners or their respective mortgagees shall not be required, if the land acquired or possessed constitutes no more than five per cent of the total land of the condominium property regime. Upon the recordation of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or subject to this chapter. The lessor shall notify each unit owner in writing of the filing of the amendment and the rent abatement, if any, to which the unit owner is entitled. The lessor shall provide the association, through its board, with a copy of the recorded amendment.

(d) For purposes of subsection (c), the acquisition or right to possession may be effected:

(1) By a taking or condemnation of property by the State or a county pursuant to chapter 101;

(2) By the conveyance of property to the State or county under threat of condemnation; or

(3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.

(e) The removal provided for in this section shall in no way bar the subsequent resubmission of the property to the requirements of this chapter. [L 2005, c 93, pt of §2; am L 2006, c 273, §11]

PART IV. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS

Note

Condominium property regimes created prior to July 1, 2006, etc., see L 2017, c 181, §45 set forth in Note at beginning of chapter.

Part heading amended by L 2005, c 93, pt of §3.

[§514B-51] 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 developer's 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 the developer's public report requirements pursuant to section 514B-81(b);

(2) Projects in which all units are restricted to nonresidential uses and all units are to be sold for $1,000,000 or more; or

(3) The sale of units in bulk, such as where a developer undertakes to 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 developer's public report requirements of section 514B-56 shall apply to any sale of units to the public following a sale of units in bulk. [L 2005, c 93, pt of §3]

§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.

(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.

(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. [L 2005, c 93, pt of §3; am L 2014, c 49, §5]

Note

Applicability of 2014 amendment. L 2014, c 49, §10.[8]

[§514B-53] 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. [L 2005, c 93, pt of §3]

[§514B-54] Developer's public report; requirements for issuance of effective date. (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;

[8] Arakaki's Note: Act 49 (SLH 2014) Section 10 makes it clear that the Act's provisions apply to projects for which a developer submits an application for registration under HRS §514A-31 (i.e., project registration under the prior condominium law).

(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);

(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

(10) Other documents and information that the commission may require.

(b) The developer's public report shall not be used for the purpose of selling any units in the project until the commission issues an effective date for the developer's public report. The commission's issuance of an effective date for a developer's public report shall not be construed to constitute the commission's approval or disapproval of the project; the commission's representation that either all material facts or all pertinent changes, or both, concerning the project have been fully or adequately disclosed; or the commission's judgment of the value or merits of the project. [L 2005, c 93, pt of §3; am L 2014, c 49, §6]

Note

Applicability of 2014 amendment. L 2014, c 49, §10.[9]

[§514B-55] Developer's public report; request for hearing by developer. If an effective date for a developer's 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 developer's public report, the developer, in writing, may request and shall be given a hearing by the commission within a reasonable time after receipt of the request. [L 2005, c 93, pt of §3]

[§514B-56] Developer's public report; amendments. (a) After the effective date for a developer's public report has been issued by the commission, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the developer's public report, or if the developer desires to update or change the information set forth in the developer's public report, the developer shall immediately submit to the commission an amendment to the developer's public report or an amended developer's 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 developer's public report, accompanied by nonrefundable fees 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 developer's public report or take other appropriate action under this part.

(b) The submission of an amendment to the developer's public report or an amended developer's public report shall not require the developer to suspend sales, subject to the power of the commission to order sales to cease as set forth in section 514B-66; 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 developer's public report pending the issuance of an effective date for any amendment to the developer's public report or amended developer's public report; and provided further that if the amended developer's 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

[9] Arakaki's Note: As of January 2019, this Revisor of Statutes Note is no longer part of the online version of HRS Chapter 514B. In any case, Act 49 (SLH 2014) Section 10 makes it clear that the Act's provisions apply to projects for which a developer submits an application for registration under HRS §514A-31 (i.e., project registration under the prior condominium law).

effective date for the amended developer's public report. Nothing in this section shall diminish the rights of purchasers under section 514B-94.

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

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

(2) A restated developer's public report, including all amendments.

(d) The filing of an amendment to the developer's public report or an amended developer's public report, in and of itself, shall not 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 514B-86 and 514B-87, the terms and conditions of the purchaser's contract for sale, and applicable common law. [L 2005, c 93, pt of §3]

[§514B-57] Commission oversight of developer's public report. (a) The commission at any time may require a developer to amend or supplement the form or substance of a developer's public report to assure adequate and accurate disclosure to prospective purchasers.

(b) The developer's public report shall not be used for any promotional purpose before registration, and may be used after registration only if it is used in its entirety. No person shall advertise or represent that the commission has approved or recommended the condominium project, the developer's public report, or any of the documents contained in the application for registration. [L 2005, c 93, pt of §3]

§514B-58 Annual report. (a) A developer, its successor, or assign shall file annually a report to update the material contained in the developer's public report, together with the payment of nonrefundable fees, at least thirty days prior to the anniversary date of the effective date for a developer's public report. If there is no change to the developer's public report, the developer shall so state. This subsection shall not relieve the developer, its successor, or assign of the obligation to file amendments to the developer's public report pursuant to section 514B-56. Failure to file the annual report required by this section may subject the developer to the penalties set forth in section 514B-69(b).

(b) The developer, its successor, or assign shall be relieved from filing annual reports pursuant to this section when the initial sales of all units have been completed. [L 2005, c 93, pt of §3; am L 2006, c 273, §12]

[§514B-59] Expiration of developer's public reports. Except as otherwise provided in this chapter, upon issuance of an effective date for a developer's public report or any amendment, the developer's public report and amendment or amendments shall not expire until such time as the developer has sold all units in the project. [L 2005, c 93, pt of §3]

[§514B-60] 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 that contains forgery. All documents shall be true, complete, and accurate in all respects, including the developer's 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 the documents, and shall not contain any misleading information, or omit any pertinent change in the information or documents submitted to the commission. [L 2005, c 93, pt of §3]

[§514B-61] General powers and duties of commission. (a) The commission may:

(1) Adopt, amend, and repeal rules pursuant to chapter 91;

(2) Assess fees;

(3) Conduct investigations, issue cease and desist orders, and bring an action in any court of competent jurisdiction to enjoin persons, 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 this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, 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, sections 514B-152 to 514B-154, or section 514B-154.5.

(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 project, the commission shall state the basis for the adverse determination and the underlying facts.

(g) The commission, by rule, may require bonding at appropriate levels over time, escrow of portions of sales proceeds, or other safeguards to assure completion of all improvements that a developer is obligated to complete, or has represented that it will complete. [L 2005, c 93, pt of §3; am L 2014, c 188, §3]

[§514B-62] 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). [L 2005, c 93, pt of §3]

[§514B-63] 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. [L 2005, c 93, pt of §3]

[§514B-64] 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 the review by private consultants shall be borne by the developer. [L 2005, c 93, pt of §3]

[§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-154.5, 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. [L 2005, c 93, pt of §3; am L 2014, c 188, §4]

[§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-154.5, 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. [L 2005, c 93, pt of §3; am L 2014, c 188, §5]

[§514B-67] Termination of registration. (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;

(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.

(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 project is in effect, without the consent of the commission.

(c) The commission may issue a cease and desist order in lieu of an order of revocation where appropriate. [L 2005, c 93, pt of §3; am L 2014, c 49, §7]

Note

Applicability of 2014 amendment. L 2014, c 49, §10.[10]

[§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-154.5, 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

[10] Arakaki's Note: As of January 2019, this Revisor of Statutes Note is no longer part of the online version of HRS Chapter 514B. In any case, Act 49 (SLH 2014) Section 10 makes it clear that the Act's provisions apply to projects for which a developer submits an application for registration under HRS §514A-31 (i.e., project registration under the prior condominium law).

the person from continuing the violation or doing any acts in furtherance thereof. [L 2005, c 93, pt of §3; am L 2014, c 188, §6]

[§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, sections 514B-152 to 514B-154, or section 514B-154.5, 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, sections 514B-152 to 514B-154, or section 514B-154.5, 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-154.5, 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. [L 2005, c 93, pt of §3; am L 2014, c 188, §7]

[§514B-70] 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 the actions are based or ten years after completion of the sales transaction involved, whichever has first occurred. [L 2005, c 93, pt of §3]

§514B-71 Condominium education trust fund. (a) The commission shall establish a condominium education trust fund that the commission shall use for educational purposes. Educational purposes shall include financing or promoting:

(1) Education and research in the field of condominium management, condominium project 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;

(3) Expeditious and inexpensive procedures for resolving association disputes;

(4) Support for mediation of condominium related disputes; and

(5) Support for voluntary binding arbitration between parties in condominium related disputes, pursuant to section 514B-162.5.

(b) The commission shall use all moneys in the condominium education trust fund for purposes consistent with subsection (a). [L 2005, c 93, pt of §3; am L 2013, c 187, §2; am L 2018, c 196, §3]

§514B-72[11] **Condominium education trust fund; payments by associations and developers.** (a) *[Subsection effective until January 1, 2019. For subsection effective January 2, 2019, see below.]* Each project or association with more than five units shall pay to the department of commerce and consumer affairs:

(1) 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; and

(2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of $1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation of condominium related disputes. The additional condominium education trust fund fee shall total $3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of

[11] Effective January 1, 2019, HRS Chapter 514A was repealed and conforming amendments to HRS §§514B-72(a) and (d) went into effect. [L 2017, c 181, §28]

every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation of condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3).

(a) *[Subsection effective January 2, 2019. For subsection effective until January 1, 2019, see above. Repeal and reenactment on June 30, 2023. L 2018, c 196, §9.]* Each project or association with more than five units shall pay to the department of commerce and consumer affairs:

(1) 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; and

(2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of $1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes. The additional condominium education trust fund fee shall total $3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3).

(b) Each developer shall pay to the department of commerce and consumer affairs the condominium education trust fund 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 developer's public report shall be issued until the payment has been made.

(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 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.

(d) The department of commerce and consumer affairs shall allocate the fees collected under this section 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. [L 2005, c 93, pt of §3; am L 2009, c 129, §10; am L 2013, c 187, §3; am L 2017, c 181, §28; am L 2018, c 196, §4]

§514B-73[12] **Condominium education trust fund; management.** (a) The sums received by the commission for deposit in the condominium education trust fund pursuant to section 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 section 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.

[12] Effective January 1, 2019, HRS Chapter 514A was repealed and conforming amendments to HRS §§514B-73(a), (b), and (c) went into effect. [L 2017, c 181, §29]

(c) The moneys in the condominium education trust fund collected pursuant to section 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. [L 2005, c 93, pt of §3; am L 2009, c 129, §11; am L 2017, c 181, §29]

PART V. PROTECTION OF CONDOMINIUM PURCHASERS

Note

Part heading amended by L 2005, c 93, pt of §4.

A. GENERAL PROVISIONS

[§514B-81] Applicability; exceptions. (a) This part applies to all units subject to this chapter, except as provided in subsection (b).

(b) No developer's public report shall be required in the case of:

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure; or

(5) The sale of units in bulk, as defined in section 514B-51(b); provided that the requirements of this part shall apply to any sale of units to the public following the sale of units in bulk. [L 2005, c 93, pt of §4]

[§514B-82] Sale of units. Except as provided in section 514B-85, no sale or offer of sale of units in a project by a developer shall be made prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and except as provided by law with respect to time share units, the delivery of the developer's public report to prospective purchasers. Notwithstanding any other provision to the contrary, where a time share project is duly registered under chapter 514E and a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser, the developer's public report need not be delivered to the purchaser or prospective purchaser. [L 2005, c 93, pt of §4]

[§514B-83] Developer's public report. (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;

(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.

(b) A developer shall promptly amend the developer's public report to report any pertinent or material change or both in the information required by this section. [L 2005, c 93, pt of §4; am L 2014, c 49, §8]

Note

Applicability of 2014 amendment. L 2014, c 49, §10.[13]

[§514B-84] Developer's public report; special types of condominiums. (a) In addition to the information required by section 514B-83, the developer's public report for a project containing any existing structures being converted to condominium status shall contain:

(1) Regarding units that may be occupied for residential use and that have been in existence for five years or more:

(A) A statement by the developer, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units;

(B) A statement by the developer of the expected useful life of each item reported on in subparagraph (A) or a statement that no representations are made in that regard; and

(C) A list of any outstanding notices of uncured violations of building code or other county regulations, together with the estimated cost of curing these violations;

[13] Arakaki's Note: As of January 2019, this Revisor of Statutes Note is no longer part of the online version of HRS Chapter 514B. In any case, Act 49 (SLH 2014) Section 10 makes it clear that the Act's provisions apply to projects for which a developer submits an application for registration under HRS §514A-31 (i.e., project registration under the prior condominium law).

(2) Regarding all projects containing converted structures, a verified statement signed by an appropriate county official that:

(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:

(i) Any variances or other permits that have been granted to achieve compliance;

(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and

(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance; or

(B) Based on the available information, the county official cannot make a determination with respect to the matters described in subparagraph (A); and

(3) Other disclosures and information that the commission may require.

(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.

(c) In addition to the information required by section 514B-83, the developer's public report for a project containing any assisted living facility units regulated or to be regulated pursuant to rules adopted under section 321-11(10) shall disclose:

(1) Any licensing requirements and the impact of the requirements on the costs, operations, management, and governance of the project;

(2) The nature and scope of services to be provided;

(3) Additional costs, directly attributable to the services, to be included in the association's common expenses;

(4) The duration of the provision of the services;

(5) Any other information the developer deems appropriate to describe the possible impacts on the project resulting from the provision of the services; and

(6) Other disclosures and information that the commission may require. [L 2005, c 93, pt of §4; am L 2014, c 49, §9]

Note

Applicability of 2014 amendment. L 2014, c 49, §10.[14]

Condominium property regimes created prior to July 1, 2006, etc., see L 2017, c 181, §45 set forth in Note at beginning of chapter.

[§514B-85] Preregistration solicitation. (a) Prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and the delivery of the developer's public report to prospective purchasers, and subject to the limitations set forth in subsection (b), the developer may solicit prospective purchasers and enter into nonbinding preregistration agreements with the prospective purchasers with respect to units in the project. As used in this section, "solicit" means to advertise, to induce, or to attempt in whatever manner to encourage a person to acquire a unit.

(b) The solicitation activities authorized under subsection (a) shall be subject to the following limitations:

(1) Prior to registration of the project with the commission and the issuance of an effective date for the developer's public report, the developer shall not collect any moneys from prospective purchasers or anyone on behalf of prospective purchasers, whether or not the moneys are to be placed in an escrow account, or whether or not the moneys would be refundable at the request of the prospective purchaser; and

(2) The developer shall not require or request that a prospective purchaser execute any document other than a nonbinding preregistration agreement. The preregistration agreement may, but need not, specify the unit number of a unit in the project to be reserved and may, but need not, include a price for the unit. The preregistration agreement shall not incorporate the terms and provisions of the sales contract for the unit and, by its terms, shall not become a sales contract. Notwithstanding anything contained in the preregistration agreement to the contrary, the preregistration agreement may be canceled at any time by either the developer or the prospective purchaser by written notice to the other. The commission may prepare a form of preregistration agreement for use pursuant to this section, and use of the commission-prepared form shall be deemed to satisfy the requirements of the preregistration agreement as provided in this section. [L 2005, c 93, pt of §4]

§514B-86 Requirements for binding sales contracts; purchaser's right to cancel. (a) No sales contract for the purchase of a unit from a developer shall be binding on the developer, prospective purchaser, or purchaser until:

(1) The developer has delivered to the prospective purchaser:

(A) A true copy of the developer's public report, including all amendments with an effective date issued by the commission. The developer's public report shall include the report itself, the condominium project's recorded declaration and bylaws, house rules if any, a letter-sized condominium project map, and all amendments that shall be:

(i) Attached to the developer's public report itself as exhibits or shall be concurrently and separately provided to the prospective purchaser or purchaser with the developer's public report;

(ii) Printed copies unless the commission, prospective purchaser, or purchaser indicate in a separate writing their election to receive the required condominium's declaration, bylaws, house rules, if any, letter-sized condominium map, and all amendments through means of a computer disc, email, download from an internet site, or by any other means contemplated by chapter 489E. Where it is impractical to include a letter-sized condominium project map, the prospective purchaser or purchaser shall be provided a written

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notice of an opportunity to examine the map. The copy of the recorded declaration and bylaws creating the project shall indicate the document number, land court document number, or both, as applicable; and

(B) A notice of the prospective purchaser's thirty-day cancellation right on a form prescribed by the commission, upon which the prospective purchaser may indicate that the prospective purchaser has had an opportunity to read the developer's public report, understands the developer's public report, and exercises the right to cancel or waives the right to cancel; and

(2) The prospective purchaser has waived the right to cancel or is deemed to have waived the right to cancel.

(b) Purchasers may cancel a sales contract at any time up to midnight of the thirtieth day after:

(1) The date that the purchaser signs the contract; and

(2) All of the items specified in subsection (a)(1) have been delivered to the purchaser.

(c) The prospective purchaser may waive the right to cancel, or shall be deemed to have waived the right to cancel, by:

(1) Checking the waiver box on the cancellation notice and delivering it to the developer;

(2) Letting the thirty-day cancellation period expire without taking any action to cancel; or

(3) Closing the purchase of the unit before the cancellation period expires.

(d) The receipts, return receipts, or cancellation notices obtained under this section shall be kept on file in possession of the developer and shall be subject to inspection at any reasonable time by the commission or its staff or agents for a period of three years from the date the receipt or return receipt was obtained. [L 2005, c 93, pt of §4; am L 2007, c 244, §5]

[§514B-87] Rescission after sales contract becomes binding. (a) Purchasers shall have a thirty-day right to rescind a binding sales contract for the purchase of a unit from a developer if there is a material change in the project. This rescission right shall not apply, however, in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the declaration.

(b) Upon delivery to a purchaser of a description of the material change on a form prescribed by the commission, the purchaser may waive the purchaser's rescission right provided in subsection (a) by:

(1) Checking the waiver box on the option to rescind sales contract instrument, signing it, and delivering it to the seller;

(2) Letting the thirty-day rescission period expire without taking any action to rescind; or

(3) Closing the purchase of the unit before the thirty-day rescission period expires.

(c) In order to be valid, a rescission form must be signed by all purchasers of the affected unit, and postmarked no later than midnight of the thirtieth calendar day after the date that the purchasers received the rescission form from the seller. In the event of a valid exercise of a purchaser's right of rescission pursuant to this section, the purchasers shall be entitled to a prompt and full refund of any moneys paid.

(d) The rescission form obtained by the seller under this section shall be kept on file in possession of the seller and shall be subject to inspection at a reasonable time by the commission or its staff or agents, for a period of three years from the date the receipt or return receipt was obtained.

(e) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies. [L 2005, c 93, pt of §4]

[§514B-88] Delivery. In this part, delivery shall be made by:

(1) Personal delivery;

(2) Registered or certified mail with adequate postage, to the recipient's address; provided that delivery shall be considered made three days after deposit in the mail or on any earlier date upon which the return receipt is signed;

(3) Facsimile transmission, if the recipient has provided a fax number to the sender; provided that delivery shall be considered made upon the sender's receipt of automatic confirmation of transmission; or

(4) Any other way prescribed by the commission. [L 2005, c 93, pt of §4]

[§514B-89] Sales contracts before completion of construction. If a sales contract for a unit is signed before the completion of construction or, in the case of a conversion, the completion of any repairs required to comply with section 514B-5, the sales contract shall contain an agreement of the developer that the completion of construction shall occur on or before the completion deadline, and the completion deadline shall be referenced in the developer's public report. The completion deadline may be a specific date, or the expiration of a period of time after the sales contract becomes binding, and may include a right of the developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. The sales contract may provide additional remedies to the purchaser if the actual completion of construction does not occur on or before the completion deadline as set forth in the contract. [L 2005, c 93, pt of §4]

[§514B-90] Refunds upon cancellation or termination. Upon any cancellation under section 514B-86 or 514B-89, the purchaser shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of $250. [L 2005, c 93, pt of §4]

§514B-91 Escrow of deposits. All moneys paid by purchasers shall be deposited in trust under a written escrow agreement with an escrow depository licensed pursuant to chapter 449. An escrow depository shall not disburse purchaser deposits to or on behalf of the developer prior to closing except:

(1) As provided in sections 514B-92 and 514B-93; or

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

An escrow depository shall not disburse a purchaser's deposits at closing unless the escrow depository has received satisfactory assurances that all blanket mortgages and liens have been released from the purchaser's unit in accordance with section 514B-45. Satisfactory assurances shall include a commitment by a title insurer licensed under chapter 431 to issue the purchaser a title insurance policy ensuring the purchaser that the unit has been conveyed free and clear of the liens. [L 2005, c 93, pt of §4; am L 2006, c 38, §23]

[§514B-92] Use of purchaser deposits to pay project costs. (a) Subject to the conditions set forth in subsection (b), purchaser deposits that are held in escrow pursuant to a binding sales contract may be disbursed before closing to pay for project construction costs, including, in the case of a conversion, for repairs necessary to cure violations

of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

(b) Disbursement of purchaser deposits prior to closing shall be permitted only if:

(1) The commission has issued an effective date for the developer's public report for the project;

(2) The developer has recorded the project's declaration and bylaws; and

(3) The developer has submitted to the commission:

(A) A project budget showing all costs that are required to be paid in order to complete the project, including lease payments, real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;

(B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds; and

(C) If purchaser funds are to be disbursed prior to completion of construction of the project:

(i) A copy of the executed construction contract;

(ii) A copy of the building permit for the project; and

(iii) Satisfactory evidence of security for the completion of construction, which evidence may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the developer's public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) A purchaser's deposits may be disbursed prior to closing only to pay costs set forth in the project budget submitted pursuant to subsection (b)(3)(A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, purchaser deposits may be disbursed prior to closing to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer.

(d) If purchaser deposits are to be disbursed prior to closing, the following notice shall be prominently displayed in the developer's public report for the project:

"Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer

has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."

[L 2005, c 93, pt of §4]

[§514B-93] Early conveyance to pay project costs. (a) Subject to the conditions set forth in subsection (b), if units are conveyed or leased before the completion of construction of the building or buildings for the purpose of financing the construction, all moneys from the sale of the units, including any payments made on loan commitments from lending institutions, shall be deposited by the developer under an escrow arrangement into a federally-insured, interest-bearing account designated solely for that purpose, at a financial institution authorized to do business in the State. Disbursements from the escrow account may be made to pay for project construction costs, including, in the case of a conversion, for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

(b) Conveyance or leasing of units before completion of construction shall be permitted only if:

(1) The commission has issued an effective date for the developer's public report for the project;

(2) The developer has recorded the project's declaration and bylaws; and

(3) The developer has submitted to the commission:

(A) A project budget showing all costs required to be paid in order to complete the project, including real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;

(B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds;

(C) A copy of the executed construction contract;

(D) A copy of the building permit for the project; and

(E) Satisfactory evidence of security for the completion of construction, that may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the developer's public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) Moneys from the conveyance or leasing of units before completion of construction may be disbursed only to pay costs set forth in the project budget submitted pursuant to subsection (b)(3)(A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, such moneys may be disbursed

to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer. The balance of any purchase price may be disbursed to the developer only upon completion of construction of the project and the satisfaction of any mechanic's and materialman's liens.

(d) If moneys from the conveyance or leasing of units before completion of construction are to be disbursed to pay for project costs, the following notice shall be prominently displayed in the developer's public report for the project:

"Important Notice Regarding Your Funds: Payments that you make under your sales contract for the purchase of the unit may be disbursed upon closing of your purchase to pay for project costs, including construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your payments are disbursed to pay project costs and the project is not completed, there is a risk that your payments will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."

[L 2005, c 93, pt of §4]

[§514B-94] Misleading statements and omissions; remedies. (a) No person may:

(1) Knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease; or

(2) Issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning a project that contains any false written statement or is misleading due to the omission of a material fact.

(b) Every sale made in violation of this section shall be voidable at the election of the purchaser; and the person making the sale and every director, officer, or agent of or for the seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, shall be jointly and severally liable to the purchaser in an action in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorneys' fees; provided that no action shall be brought for the recovery of the purchase price after two years from the date of the sale; and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by the purchaser, together with interest at six per cent on the amount for the period from the date of payment by the purchaser down to the date of repayment. [L 2005, c 93, pt of §4]

B. SALES TO OWNER-OCCUPANTS

Revision Note

The sections in this subpart enacted as §§514B-95.1 to 514B-95.11, are redesignated.

[§514B-95] Definitions. As used in this subpart:

"Chronological system" means a system in which the residential units designated for sale to prospective owner-occupants are offered for sale to prospective owner-occupants in the chronological order in which the prospective owner-occupants deliver to the developer or the designated real estate broker completed owner-occupant affidavits, executed sales contracts or reservations, and earnest money deposits.

"Initial date of sale" means the date of the first publication of the announcement or advertisement pursuant to section 514B-95.5.

"Lottery system" means a system in which no prospective owner-occupant has an unfair advantage in the determination of the order in which residential units designated for sale to prospective owner-occupants are offered for sale because the order is determined by a lottery.

"Owner-occupant" means any individual in whose name sole or joint legal title is held in a residential unit that, simultaneous to such ownership, serves as the individual's principal residence, as defined by the department of taxation, for a period of not less than three hundred sixty-five consecutive days; provided that the individual shall retain complete possessory control of the premises of the residential unit during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held; except that an individual shall be deemed to have complete possessory control even when the individual conveys or transfers the unit into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period.

"Residential unit" means "unit" as defined in section 514B-3, but excludes:

(1) Any unit intended for commercial use;

(2) Any unit designed and constructed for hotel or resort use that is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to section 46-4; and

(3) Any other use pursuant to authority granted by law to a county.

"Thirty-day period" or "thirty days" means thirty full consecutive calendar days, including up to midnight on the thirtieth day. [L 2005, c 93, pt of §4]

[§514B-95.5] Announcement or advertisement; publication. At least once in each of two successive weeks, and at any time following the issuance of an effective date of the first developer's public report for the condominium project, the developer shall cause to be published in at least one newspaper published daily in the State with a general circulation in the county in which the project is to be located, and, if the project is located other than on the island of Oahu, in at least one newspaper that is published at least weekly in the county in which the project is to be located, an announcement or advertisement containing at least the following information:

(1) The location of the project;

(2) The minimum price of the residential units;

(3) A designation as to whether the residential units are to be sold in fee simple or leasehold;

(4) A statement that for a thirty-day period following the initial date of sale of the condominium project, at least fifty per cent of the residential units being marketed shall be offered only to prospective owner-occupants;

(5) The name, telephone number, and address of the developer or other real estate broker designated by the developer that an interested individual may contact to secure an owner-occupant affidavit, developer's public report, and any other information concerning the project; and

(6) If applicable, a statement that the residential units will be offered to prospective purchasers through a public lottery. [L 2005, c 93, pt of §4]

[§514B-96] Designation of residential units. (a) The developer of any project containing residential units shall designate at least fifty per cent of the units for sale to prospective owner-occupants pursuant to section 514B-98. The designation shall be set forth either in the developer's public report or in the announcement or advertisement required by section 514B-95.5, and may be set forth in both. The units shall constitute a proportionate representation

of all the residential units in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not the unit has a lanai.

(b) A developer shall have the right to substitute a unit designated for owner-occupants with a unit that is not so designated; provided that the units shall be similar with regard to the factors enumerated in subsection (a). The substitution shall not require the developer's submission of a supplementary developer's public report. [L 2005, c 93, pt of §4]

[§514B-96.5] Unit selection; requirements. (a) When the chronological system is used, the developer or the developer's real estate broker, as the case may be, shall offer the residential units that have been designated pursuant to section 514B-96 as follows:

(1) For thirty days from the date of the first published announcement or advertisement required under section 514B-95.5, the developer or developer's real estate broker shall offer the residential units that have been designated pursuant to section 514B-96 to prospective purchasers chronologically in the order in which they submit to the developer or the developer's real estate broker, a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit in a reasonable amount designated by the developer. The developer or the developer's real estate broker shall maintain at all times a sufficient number of sales contracts and affidavits for prospective owner-occupants to execute and shall make them first available to prospective owner-occupants on the day immediately following the date of the first publication of the announcement or advertisement for the duration of the time period as specified in this paragraph. Prospective purchasers who do not have the opportunity to select a residential unit during the thirty-day period shall be placed on a back-up reservation list in the order in which they submit a completed owner-occupant affidavit and earnest money deposit in a reasonable amount designated by the developer;

(2) If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one residential unit designated pursuant to section 514B-96 shall be offered to them, or only one of them shall be placed on the backup reservation list;

(3) No developer, employee or agent of the developer, or any real estate licensee, either directly or through any other person, shall release any information or inform any prospective owner-occupant about the publication announcement or advertisement referred to in section 514B-95.5, including the date it is to appear and when the chronological system will be initiated, until after the announcement or advertisement is published; provided that a developer, as part of any preregistration solicitation permitted under section 514B-85, may disclose whether units will be offered to owner-occupants pursuant to this subpart and whether a chronological or lottery system will be used; and

(4) The developer shall compile and maintain a list of all prospective purchasers that submit a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit, and maintain a back-up reservation list, if any. Upon the request of the commission, the developer shall provide a copy of the list of all prospective purchasers and the back-up reservation list.

(b) When the public lottery system is used, the developer or the developer's broker, as the case may be, shall offer the residential units that have been designated pursuant to section 514B-96 as follows:

(1) From the date of the first published announcement or advertisement required under section 514B-95.5 until five calendar days after the last published announcement or advertisement, the developer or developer's real estate broker shall compile and maintain a list of all prospective owner-occupants who have submitted to the developer or the developer's real estate broker a duly executed owner-occupant affidavit. All prospective owner-occupants on this list shall be included in the public lottery described in paragraph (2). The developer and the developer's real estate broker shall maintain at all times sufficient copies of affidavits for prospective owner-occupants to

execute and shall make them first available to prospective owner-occupants on the day immediately following the date of the first publication of the announcement or advertisement for the duration of the time period as specified in this subsection. Upon the request of the commission, the developer shall provide a copy of the lottery list of prospective owner-occupants;

(2) The developer or developer's real estate broker shall conduct a public lottery on the date, time, and location as set forth in the published announcement, or advertisement. The lottery shall be held no later than the thirtieth day following the date of the first published announcement or advertisement. Any person, including all prospective owner-occupants eligible for the lottery, shall be allowed to attend the lottery;

(3) The public lottery shall be conducted so that no prospective owner-occupant shall have an unfair advantage and, as to all owner-occupants whose affidavits were submitted to the developer or the developer's real estate broker within the time period specified in paragraph (1), shall be conducted without regard to the order in which the affidavits were submitted. If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be entitled to enter the public lottery; and

(4) After the public lottery, each prospective owner-occupant purchaser, in the order in which they are selected in the lottery, shall be given the opportunity to select one of the residential units that have been designated pursuant to section 514B-96, execute a sales contract, and submit an earnest money deposit in a reasonable amount designated by the developer. The developer shall maintain a list, in the order of selection, of all prospective purchasers selected in the lottery, and maintain a list of all prospective purchasers who selected one of the residential units designated pursuant to section 514B-96. Prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential units designated pursuant to section 514B-96, but who submitted an earnest money deposit in a reasonable amount designated by the developer, shall be placed on a back-up reservation list in the order in which they were selected in the public lottery. Upon request of the commission, copies of the lists shall be submitted. [L 2005, c 93, pt of §4]

[§514B-97] Affidavit. (a) The owner-occupant affidavit required by section 514B-96.5 shall expire after three hundred sixty-five consecutive days have elapsed after the recordation of the instrument conveying the unit to the affiant. The affidavit shall expire prior to this period upon acquisition of title to the property by an institutional lender or investor through mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure.

(b) The affidavit shall include statements by the affiant affirming that the affiant shall notify the commission immediately upon any decision to cease being an owner-occupant.

(c) The affidavit shall be personally executed by all the prospective owner-occupants of the residential unit and shall not be executed by an attorney-in-fact. [L 2005, c 93, pt of §4]

[§514B-97.5] Prohibitions. (a) No person who has executed an owner-occupant affidavit shall sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, or convey the unit until at least three hundred sixty-five consecutive days have elapsed since the recordation of the purchase; provided that a person who continues in the use of the premises as the individual's principal residence during this period may convey or transfer the unit into a trust for estate planning purposes. Any contract or instrument entered into in violation of this subpart shall be subject to the remedies provided in section 514B-99(a).

(b) No developer, employee or agent of a developer, or real estate licensee shall violate or aid any other person in violating this subpart. [L 2005, c 93, pt of §4]

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

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

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

(d) At any time, any prospective owner-occupant on the back-up reservation list may be offered any residential unit in the project that has not been sold or set aside for sale to prospective owner-occupants. [L 2005, c 93, pt of §4; am L 2006, c 273, §13]

[§514B-98.5] Enforcement. (a) Whenever the commission finds based upon satisfactory evidence that any person is violating or has violated any provision of this subpart or rules of the commission adopted pursuant thereto, the commission may conduct an investigation on the matter and bring an action in the name of the commission in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or doing any acts in furtherance thereof.

(b) Before the commission brings an action in any court of competent jurisdiction pursuant to subsection (a) against any person who executed an affidavit pursuant to this subpart, it may consider whether the following extenuating circumstances affected the person's ability to comply with the law:

(1) Serious illness of any of the owner-occupants who executed the affidavit or of any other person who was to or has occupied the residential unit;

(2) Unforeseeable job or military transfer;

(3) Unforeseeable change in marital status, or change in parental status; or

(4) Any other unforeseeable occurrence subsequent to execution of the affidavit.

If the commission finds that extenuating circumstances exist, the commission may cease any further action and order release of any net proceeds held in abeyance.

(c) Any individual who executes an affidavit pursuant to this subpart and who subsequently sells or offers to sell, leases or offers to lease, rents or offers to rent, assigns or offers to assign, or otherwise transfers any interest in the residential unit that the person obtained pursuant to this subpart, shall have the burden of proving the person's compliance with the requirements of this part.

(d) Upon request, the commission may require verification that a presumed owner-occupant continues to be an "owner-occupant", as defined in this subpart. If, due to a sale, lease, assignment, or transfer of the residential unit, the presumed owner-occupant is unable to verify continuing owner-occupancy status, that person may be subject to a fine in an amount equal to the profit made from the sale, lease, assignment, or transfer.

(e) The commission shall adopt rules, pursuant to chapter 91, to carry out the purposes of this subpart. [L 2005, c 93, pt of §4]

[§514B-99] Penalties. (a) Any person who executes an affidavit required by this subpart and who violates or fails to comply with any of the provisions of this subpart or any rule adopted by the commission pursuant thereto, shall be

subject to a civil penalty of up to $10,000; or fifty per cent of the net proceeds received or to be received by the person from the sale, lease, rental, assignment, or other transfer of the residential unit to which the violation relates, whichever is the greater amount.

(b) Any developer, employee or agent of a developer, or real estate licensee who violates or fails to comply with any of the provisions of this subpart or any rule adopted by the commission pursuant thereto, shall be subject to a civil penalty of up to $10,000. Each violation shall constitute a separate offense. [L 2005, c 93, pt of §4]

[§514B-99.3] False statement. It shall be unlawful for any person to make a false statement in the affidavit required by this subpart or for any person to file with the commission any notice, statement, or other document required under this subpart or any rule adopted by the commission pursuant thereto which is false or contains a material misstatement or omission of fact. Any violation of this section shall be a misdemeanor punishable by a fine not to exceed $2,000, or by imprisonment for a term not to exceed one year, or both. [L 2005, c 93, pt of §4]

§514B-99.5 Inapplicability of laws. (a) This subpart shall not apply to:

(1) A project developed pursuant to section 46−15 or 46−15.1, or chapter 53, 201H, 206, 346, or 356D; provided that the developer of the project may elect to be subject to this subpart through a written notification to the commission;

(2) Condominium projects where the developer conveys all of the residential units in the project to a spouse, or family members related by blood, descent or adoption; and

(3) Condominium projects consisting of two or fewer units.

(b) A developer of a project specified in subsection (a)(1) who elects to be subject to this subpart, or of a project developed pursuant to an affordable housing requirement established by a state or county governmental agency, may elect to waive specific provisions of this subpart that conflict with the eligibility or preference requirements imposed by the governmental agency. The developer of a project specified in subsection (a)(1) who exercises the election shall provide detailed written notification to the commission of the specific provisions that will be waived, an explanation for each waived provision, and a statement from the affected government agency that the project is either an inapplicable project pursuant to subsection (a)(1) or a project for which a governmental agency has imposed eligibility or preference requirements. A copy of this notification shall be filed with the affected governmental agency.

(c) A filing to meet the notification requirements of subsection (a)(1) or (b) shall not be construed to be an approval or disapproval of the project by the commission. [L 2005, c 93, pt of §4; am L 2007, c 249, §26; am L 2010, c 89, §10]

PART VI. MANAGEMENT OF CONDOMINIUMS

A. POWERS, DUTIES, AND OTHER GENERAL PROVISIONS

[§514B-101] Applicability; exceptions. (a) This part applies to all condominiums subject to this chapter, except as provided in subsection (b).

(b) If so provided in the declaration or bylaws, this part shall not apply to:

(1) Condominiums in which all units are restricted to nonresidential uses; or

(2) Condominiums, not subject to any continuing development rights, containing no more than five units;

provided that section 514B-132 shall not be subject to these exceptions. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-102] Association; organization and membership. (a) The first meeting of the association shall be held not later than one hundred eighty days after recordation of the first unit conveyance; provided that forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year after recordation of the first unit conveyance, an annual meeting shall be called if ten per cent of the unit owners so request.

(b) The membership of the association shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all former unit owners entitled to distributions of proceeds under section 514B-47, or their heirs, successors, or assigns. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§514B-103 Association; registration. (a) Each project or association having more than five units shall:

(1) Secure and maintain a fidelity bond in an amount for the coverage and terms as required by section 514B-143(a)(3). An association shall act promptly and diligently to recover from the fidelity bond required by this section. An association that is unable to obtain a fidelity bond may seek approval for an exemption, a deductible, or a bond alternative from the commission. 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. The registration shall be for a biennial period with termination on June 30 of each 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 project or association that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and be subject to initial registration requirements. Any new project or association shall register within thirty days of the association's first meeting. If the association has not held its first meeting and it is at least one year after the recordation of the purchase of the first unit in the project, the developer or developer's affiliate or the managing agent shall register on behalf of the association and shall comply with this section, except for the fidelity bond requirement for associations required by section 514B-143(a)(3). 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's 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 where the officer can be contacted directly;

(3) Pay a nonrefundable application fee and, upon approval, an initial registration fee, a reregistration fee upon reregistration and the condominium education trust fund fee, as provided in 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 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 promptly in writing to the commission any changes to the information contained on the registration or reregistration application or any other documents required by the commission. Failure to do so may result in termination of registration and subject the project or the association to initial registration requirements.

(b) The commission may reject or terminate any registration submitted by a project or an association that fails to comply with this section. Any association that fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers. The failure of an association to register, or rejection or termination of its registration, shall not impair the validity of any contract or act of the association nor prevent the association from defending any action or proceeding in any court in this State. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2007, c 244, §6]

Note

L 2007, c 244, §9 provides:

"SECTION 9. Where an association is unable to obtain the required fidelity bond of section 514B-103, the real estate commission's current fidelity bond exemption policies shall be used until such time as the real estate commission adopts rules."

§514B-104 Association; powers. (a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

(1) Adopt and amend the declaration, bylaws, and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 514B-148;

(3) Hire and discharge managing agents and other independent contractors, agents, and employees;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that:

(A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners;

(B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, the requirements of this paragraph shall not apply as to those additional areas; and

(C) The requirements of this paragraph shall not apply to the purchase of a unit for a resident manager, which may be purchased with the approval of the board;

(9) Subject to section 514B-38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;

(11) Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;

(13) Provide for cumulative voting through a provision in the bylaws;

(14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;

(15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section 514B-105(e) expressly so provides;

(16) Exercise any other powers conferred by the declaration or bylaws;

(17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;

(18) Exercise any other powers necessary and proper for the governance and operation of the association; and

(19) By regulation, subject to sections 514B-146, 514B-161, and 514B-162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.

(b) If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may:

(1) Exercise directly against the tenant the powers described in subsection (a)(11);

(2) After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation, provided that a unit owner shall be responsible for the conduct of the owner's tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the declaration, bylaws, or rules and regulations of the association against the tenant; and

(3) Enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the unit owner, or both.

(c) The rights granted under subsection (b)(3) may only be exercised if the tenant or unit owner fails to cure the violation within ten days after the association notifies the tenant and unit owner of that violation; provided that no

notice shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or 521-51(6).

(d) Unless a lease otherwise provides, this section does not:

(1) Affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) Permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations. [L 2004, c 164, pt of §2; am L 2005, c 93, §7 and c 155, §2; am L 2006, c 273, §14]

§514B-105 Association; limitations on powers. (a) The declaration and bylaws may not impose limitations on the power of the association to deal with the developer which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(b) Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

(1) Prevent any use of a unit which violates the declaration or bylaws;

(2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or

(3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

Otherwise, the association may not regulate any use of or behavior in units by means of the rules and regulations.

(c) *[Repeal and reenactment on June 30, 2020. L 2018, c 195, §6.]* No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest).

(d) No unit owner who requests legal or other information from the association, the board, the managing agent, or their employees or agents, shall be charged for the reasonable cost of providing the information unless the association notifies the unit owner that it intends to charge the unit owner for the reasonable cost. The association shall notify the unit owner in writing at least ten days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the association's governing documents.

After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment

fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §15; am L 2018, c 195, §3]

Case Notes

Condominium declaration provision that in development controversies (proceedings against respondent), petitioner must, inter alia, hire an attorney with a certain quality rating, obtain an opinion letter indicating that petitioner has a substantial likelihood of success on the merits, and impose a special litigation assessment to fund arbitration or litigation, violated subsection (a) because it imposed limitations on petitioner association of apartment owners in arbitration or litigation with respondent more restrictive than those imposed on other persons. 130 H. 152, 307 P.3d 132 (2013).[15]

Given the types of proceedings categorized as "operational proceedings" by the condominium declaration in question, it could not be said that provisions in the declaration requiring approval by at least seventy-five per cent of unit owners before commencing any major litigation or arbitration and governing the funding of proceedings applied "uniquely" to proceedings between petitioner and respondent; moreover, as an action against respondent may be an action for damages wherein the total amount in controversy is not more than $10,000, it may also be possible for petitioner to initiate litigation against respondent that is an "operational proceeding", and therefore not subject to the provisions in question. 130 H. 152, 307 P.3d 132 (2013).

Condominium declaration provisions requiring approval by at least seventy-five per cent of unit owners before commencing any major litigation or arbitration and governing the funding of proceedings did not apply only to proceedings against respondent; rather the provisions applied to any proceeding other than an "operational proceeding" as defined by the declaration. Thus, the provisions did not violate subsection (a) because the provisions limited petitioner's power to institute major proceedings against any party and did not favor respondent. 129 H. 117 (App.), 295 P.3d 987 (2013).[16]

§514B-106 Board; powers and duties. (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D. Any violation by a board or its officers or members of the mandatory provisions of section 514B-161 or 514B-162 may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by indicating in writing the board member's disagreement with such board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.

(b) The board may not act on behalf of the association to amend the declaration or bylaws (sections 514B-32(a)(11) and 514B-108(b)(7)), to remove the condominium from the provisions of this chapter (section 514B-47), or to elect members of the board or determine the qualifications, powers and duties, or terms of office of board members (subsection (e)); provided that nothing in this subsection shall be construed to prohibit board members from voting proxies (section 514B-123) to elect members of the board; provided further that notwithstanding anything to the contrary in the declaration or bylaws, the board may only fill vacancies in its membership to serve until the next annual or duly noticed special association meeting. Notice of a special association meeting to fill vacancies shall include notice of the election. Any special association meeting to fill vacancies shall be held on a date that allows sufficient time for owners to declare their intention to run for election and to solicit proxies for that purpose.

[15] AOAO of the Waikoloa Beach Villas v. Sunstone Waikoloa, LLC, 130 H. 152, 307 P.3d 132 (2013).

[16] AOAO of the Waikoloa Beach Villas v. Sunstone Waikoloa, LLC, 129 H. 117 (App.), 295 P.3d 987 (2013).

(c) Within thirty days after the adoption of any proposed budget for the condominium, the board shall make available a copy of the budget to all the unit owners and shall notify each unit owner that the unit owner may request a copy of the budget.

(d) The declaration may provide for a period of developer control of the association, during which a developer, or persons designated by the developer, may appoint and remove the officers and members of the board. Regardless of the period provided in the declaration, a period of developer control terminates no later than the earlier of:

(1) Sixty days after conveyance of seventy-five per cent of the common interest appurtenant to units that may be created to unit owners other than a developer or affiliate of the developer;

(2) Two years after the developer has ceased to offer units for sale in the ordinary course of business;

(3) Two years after any right to add new units was last exercised; or

(4) The day the developer, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

A developer may voluntarily surrender the right to appoint and remove officers and members of the board before termination of that period, but in that event the developer may require, for the duration of the period of developer control, that specified actions of the association or board, as described in a recorded instrument executed by the developer, be approved by the developer before they become effective.

(e) Not later than the termination of any period of developer control, the unit owners shall elect a board of at least three members; provided that projects created after May 18, 1984, with one hundred or more individual units, shall have an elected board of at least nine members unless the membership has amended the bylaws to reduce the number of directors; and provided further that projects with more than one hundred individual units where at least seventy per cent of the unit owners do not reside at the project may amend the bylaws to reduce the board to as few as five members by the written consent of a majority of the unit owners or the vote of a majority of a quorum at any annual meeting or special meeting called for that purpose. The association may rely on its membership records in determining whether a unit is owner-occupied. A decrease in the number of directors shall not deprive an incumbent director of any remaining term of office.

(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the unit owners and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors and, if removal and replacement is to occur at a special meeting, section 514B-121(b). [L 2004, c 164, pt of §2; am L 2005, c 93, §7 and c 155, §3; am L 2006, c 273, §16; am L 2014, c 189, §4 and c 235, §3; am L 2017, c 81, §2]

[§514B-106.5] Service of process. The board shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634-21.5. [L 2009, c 158, §4; am L 2011, c 65, §1][17]

§514B-107 Board; limitations. (a) Members of the board shall be unit owners or co-owners, vendees under an agreement of sale, a trustee of a trust which owns a unit, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a unit. There shall not be more than one representative on the board from any one unit.

(b) No tenant, resident manager, or employee of a condominium shall serve on its board.

[17] Arakaki's Note: Until late 2011, the online version of HRS Chapter 514B did not contain the provision adopted by Section 4 of Act 158 (SLH 2009). This was probably because Act 158 (SLH 2009) contained an automatic repeal date of July 1, 2012 (i.e., a "sunset date") and was therefore treated as a session law. Act 65 (SLH 2011), however, repealed the sunset date of Act 158 (SLH 2009), making its provisions permanent. Therefore, in late 2011, the Revisor of Statutes codified this section as §514B-106.5 and the internal reference to "section 634-21.5".

For the purposes of this subsection, "tenant" means any person who occupies a dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same condominium.

(c) An owner shall not act as an officer of an association and an employee of the managing agent retained by the association. Any owner who is a board member of an association and an employee of the managing agent retained by the association shall not participate in any discussion regarding a management contract at a board meeting and shall be excluded from any executive session of the board where the management contract or the property manager will be discussed.

(d) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses; provided that, with the approval of the board, directors may be reimbursed for actual expenditures incurred on behalf of the association. The board meeting minutes shall reflect in detail the items and amounts of the reimbursements.

(e) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

(f) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of subsection (d). [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §17; am L 2014, c 189, §5; am L 2017, c 71, §5]

§514B-108 Bylaws. (a) A true copy of the bylaws shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded.

(b) The bylaws shall provide for at least the following:

(1) The number of members of the board and the titles of the officers of the association;

(2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies;

(4) Designation of the powers the board or officers may delegate to other persons or to a managing agent;

(5) Designation of the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) The compensation, if any, of the directors;

(7) Subject to subsection (e), a method for amending the bylaws; and

(8) The percentage, consistent with this chapter, that is required to adopt decisions binding on all unit owners; provided that votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside units shall not be cast at any association meeting, regardless of their designation in the declaration.

(c) The bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

(d) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners. Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners group. If submitted by that group, the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board or a volunteer unit owners group. If the bylaw is duly adopted, the board shall cause the bylaw amendment to be recorded. The volunteer unit owners group shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within three hundred sixty-five days after the original petition was submitted to the board.

This subsection shall not preclude any unit owner or volunteer unit owners group from proposing any bylaw amendment at any annual association meeting. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §18]

§514B-109 Restatement of declaration and bylaws. (a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association at any time may restate the declaration or bylaws of the association to set forth all amendments thereto by a resolution adopted by the board.

(b) Subject to section 514B-23, an association at any time may restate the declaration or bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority, or to correct the percentage of common interest for the project so it totals one hundred per cent, by a resolution adopted by the board. If the restated declaration is to correct the percentage of common interest for the project so that it totals one hundred per cent, the proportion of each unit owner's percentage of common interest shall remain the same in relation to the other unit owners. The restated declaration or bylaws shall be as fully effective for all purposes as if adopted by a vote or written consent of the unit owners.

Any declaration or bylaws restated pursuant to this subsection shall:

(1) Identify each portion so restated;

(2) Contain a statement that those portions have been restated solely for purposes of information and convenience;

(3) Identify the statute, ordinance, or rule implemented by the amendment; and

(4) Contain a statement that, in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, or rule.

(c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated declaration or bylaws shall set forth all of the operative provisions of the declaration or bylaws, as amended, together with a statement that the restated declaration or bylaws correctly sets forth without change the corresponding provisions of the declaration or bylaws, as amended, and that the restated declaration or bylaws supersede the original declaration or bylaws and all prior amendments thereto. If the restated declaration corrects the percentage of common interest as provided in subsection (b), the restated declaration shall also amend the recorded conveyance instruments that govern the unit owner's interest in the unit.

(d) The restated declaration or bylaws must be recorded and, upon recordation, shall supersede the original declaration or bylaws and all prior amendments thereto. In the event of any conflict, the restated declaration or bylaws shall be subordinate to the original declaration or bylaws and all prior amendments thereto. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §19]

[§514B-110] Bylaws amendment permitted; mixed use property; representation on board. (a) The bylaws of an association may be amended to provide that the composition of the board reflect the proportionate number of units for a particular use, as set forth in the declaration. For example, an association may provide that for a nine-member board where two-thirds of the units are for residential use and one-third is for nonresidential use, sixty-six and two-thirds per cent of the nine-member board, or six members, shall be owners of residential use units and thirty-three and one-third per cent, or three members, shall be owners of nonresidential use units.

(b) Any proposed bylaw amendment to modify the composition of the board in accordance with subsection (a) may be initiated by:

(1) A majority vote of the board; or

(2) A submission of the proposed bylaw amendment to the board from a volunteer unit owners group accompanied by a petition from twenty-five per cent of the unit owners of record.

(c) Within thirty days of a decision by the board or receipt of a petition to initiate a bylaw amendment, the board shall mail a ballot with the proposed bylaw amendment to all of the unit owners of record. For purposes of this section only, the bylaws may initially be amended by a vote or written consent of the majority of the unit owners; and thereafter by at least sixty-seven per cent of all unit owners; provided that each of the requirements set forth in this section shall be embodied in the bylaws.

(d) The bylaws, as amended pursuant to this section, shall be recorded.

(e) Election of the new board in accordance with an amendment adopted pursuant to this section shall be held at the next regular meeting of the association or at a meeting called in accordance with section 514B-121(b) for this purpose.

(f) As permitted in the declaration or bylaws, the vote of a nonresidential unit owner shall be cast and counted only for the nonresidential seats available on the board and the vote of a residential unit owner shall be cast and counted only for the residential seats available on the board.

(g) No petition for a bylaw amendment pursuant to subsection (b)(2) to modify the composition of the board shall be distributed to the unit owners within one year of the distribution of a prior petition to modify the composition of the board pursuant to subsection (b)(2).

(h) This section shall not preclude the removal and replacement of any one or more members of the board pursuant to section 514B-106(f); provided that any director elected by a class of unit owners may be removed or replaced only by a vote of a majority of the common interest represented by that class. Any removal and replacement shall not affect the proportionate composition of the board as prescribed in the bylaws as amended pursuant to this section. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 71, §3]

[§514B-111] Judicial power to excuse compliance with requirements of declaration or bylaws. (a) The circuit court of the judicial circuit in which a condominium is located may excuse compliance with any of the following provisions in a declaration or bylaws if it finds that the provision unreasonably interferes with the association's ability to manage the common property, administer the condominium property regime, or carry out any other function set forth in the declaration or bylaws, and that compliance is not necessary to protect the legitimate interests of the members or lenders holding security interests:

(1) A provision limiting the amount of any assessment that can be levied against individually owned property;

(2) A provision requiring that an amendment to the declaration or bylaws be approved by lenders;

(3) A provision requiring approval of at least sixty-seven per cent of the common interest to adopt an amendment pursuant to section 514B-32(a)(11) or section 514B-108(e); provided that the amendment does not:

(A) Prohibit or materially restrict the use or occupancy of, or behavior within, individually owned units;

(B) Change the basis for allocating voting rights or assessments among unit owners; or

(C) Apply to less than all of the unit owners;

(4) A requirement that an amendment to the declaration be signed by unit owners; or

(5) A quorum requirement for meetings of unit owners.

(b) The board, on behalf of the association, shall by certified mail provide all unit owners with notice of the date, time, and place of any court hearing to be held pursuant to this section. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-112] Condominium community mutual obligations. (a) All unit owners, tenants of owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the association adopted pursuant to this chapter.

(b) All agreements, decisions, and determinations lawfully made by the association in accordance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all unit owners.

(c) Each unit owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the covenants, conditions, and restrictions set forth in the declaration, the bylaws, and the house rules adopted pursuant thereto. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the managing agent, resident manager, or board on behalf of the association or, in a proper case, by an aggrieved unit owner. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-113] Medical cannabis; discrimination. A provision in any articles of incorporation, declaration, bylaws, administrative rules, house rules, or association documents of a condominium allowing for any of the discriminatory practices listed in paragraphs (1) to (7) of section 515-3 against a person residing in a unit who has a valid certificate for the medical use of cannabis as provided in section 329-123 in any form is void, unless the documents prohibit the smoking of tobacco and the medical cannabis is used by means of smoking. Nothing herein shall be construed to diminish the obligation of a condominium association to provide reasonable accommodations for persons with disabilities pursuant to section 515-3(9). [L 2015, c 242, §5; am L 2017, c 170, §2]

Cross References

For similar provisions, see §421J-16.

B. GOVERNANCE – ELECTIONS AND MEETINGS

§514B-121 Association meetings. (a) A meeting of the association shall be held at least once each year.

(b) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the

time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition.

(c) Not less than fourteen days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be:

(1) Hand-delivered;

(2) Sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or

(3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

(d) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. If so provided in the declaration or bylaws, meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion.

(e) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2008, c 13, §1]

[§514B-122] Association meetings; minutes. (a) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board, within sixty days after the meeting, if authorized by the owners at an annual meeting. If approved by the board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.

(b) Minutes of all meetings of the association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting.

(c) An owner shall be allowed to offer corrections to the minutes at an association meeting. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§514B-123 Association meetings; voting; proxies. (a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration or bylaws expressly provide otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made by any of the other owners of the unit to the person presiding over the meeting before the polls are closed.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A unit owner may vote by mail or electronic transmission through a duly executed proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice.

(c) No votes allocated to a unit owned by the association may be cast for the election or reelection of directors; provided that, notwithstanding section 514B-106(b) or any provision in an association's declaration or bylaws to the contrary, in a mixed-use project containing units for residential and nonresidential use, where the board is comprised of directors elected by owners of residential units and directors elected by owners of nonresidential units, the association, acting by and through its board, may cast the vote or votes allocated to any nonresidential unit owned by the association in any election of one or more directors where those eligible to vote in the election are limited to owners of one or more nonresidential units, which includes the nonresidential unit owned by the association.

(d) A proxy, to be valid, shall:

(1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; and

(2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given.

(e) If a proxy is a standard proxy form authorized by the association, the proxy shall comply with the following additional requirements:

(1) The proxy shall contain boxes wherein the owner may indicate that the proxy is given:

(A) For quorum purposes only;

(B) To the individual whose name is printed on a line next to this box;

(C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or

(D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage;

provided that if the proxy is returned with no box or more than one of the boxes in subparagraphs (A) through (D) checked, the proxy shall be counted for quorum purposes only; and

(2) The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150.

(f) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(g) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

(h) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

(i) With respect to the use of association funds to distribute proxies:

(1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection (e), shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the board receives within seven days of the posted notice a request by any owner for use of

association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

(A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies; and

(2) A board or member of the board may use association funds to solicit proxies as part of the distribution of proxies. If a member of the board, as an individual, seeks to solicit proxies using association funds, the board member shall proceed as a unit owner under paragraph (1).

(j) No managing agent or resident manager, or their employees, shall solicit, for use by the managing agent or resident manager, any proxies from any unit owner of the association that retains the managing agent or employs the resident manager, nor shall the managing agent or resident manager cast any proxy vote at any association meeting except for the purpose of establishing a quorum.

(k) No board shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by unit owners; provided that a board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §20; am L 2017, c 71, §4 and c 73, §2]

[§514B-124] Association meetings; purchaser's right to vote. The purchaser of a unit pursuant to a recorded agreement of sale shall have all the rights of a unit owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the unit, including but not limited to, the right to vote on:

(1) Any partition of all or part of the project;

(2) The nature and amount of any insurance covering the project and the disposition of any proceeds thereof;

(3) The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith;

(4) The payment of any amount in excess of insurance or condemnation proceeds;

(5) The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project;

(6) The special assessment of any expenses;

(7) The acquisition of any unit in the project;

(8) Any amendment to the declaration or bylaws;

(9) Any removal of the project from the provisions of this chapter; and

(10) Any other matter that would substantially affect the security interest of the seller. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-124.5] Voting for elections; cumulative voting. (a) If the bylaws provide for cumulative voting for an election at a meeting, each unit owner present in person or represented by proxy shall have a number of votes equal to the unit owner's voting percentage multiplied by the number of positions to be filled at the election.

(b) Each unit owner shall be entitled to cumulate the votes of the unit owner and give all of the votes to one nominee or distribute the votes among any or all of the nominees.

(c) The nominee or nominees receiving the highest number of votes under this section, up to the total number of positions to be filled, shall be deemed elected and shall be given the longest term.

(d) This section shall not prevent the filling of vacancies on the board of directors in accordance with this chapter and the association's governing documents. [L 2014, c 189, §1]

§514B-125 Board meetings. (a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board shall be permitted to participate in any deliberation or discussion, other than executive sessions, pursuant to owner participation rules adopted by the board.

(b) Following any election of board members by the association, the board may, at the board's next regular meeting or at a duly noticed special meeting, establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:

(1) Shall notify all owners of these rules; and

(2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all owners shall be notified of any adopted amendments.

(c) The board, by majority vote, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters:

(1) Concerning personnel;

(2) Concerning litigation in which the association is or may become involved;

(3) Necessary to protect the attorney-client privilege of the association; or

(4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.

The general nature of any business to be considered in executive session shall first be announced in open session.

(d) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.

(e) The board shall meet at least once a year. Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project seventy-two hours prior to the

meeting or simultaneously with notice to the board. The notice shall include a list of business items expected to be on the meeting agenda.

(f) A director shall not vote by proxy at board meetings.

(h) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 81, §3]

Case Notes

Where petitioners (1) presented no evidence that when director voted in favor of the pricing policy, which would set the prices at which the defendant Association would sell the leased fee interests, a real or seeming incompatibility existed between the director's private interests and the director's fiduciary duties (2) did not establish that director had a "direct personal or pecuniary interest not common to other members of the Association" and (3) company that director allegedly had potential involvement in was no longer involved in the purchase of the leased fee interest, director did not have a conflict of interest when director voted. 121 H. 474, 221 P.3d 452 (2009).[18]

[§514B-126] Board meetings; minutes. (a) Minutes of meetings of the board shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the board shall be approved no later than the second succeeding regular meeting.

(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within thirty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 81, §4]

C. OPERATIONS

[§514B-131] Operation of the property. The operation of the property shall be governed by this chapter and the declaration and bylaws. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§514B-132 Managing agents. (a) Every managing agent shall:

(1) Be a:

(A) Licensed real estate broker in compliance with chapter 467 and the rules of the commission. With respect to any requirement for a corporate managing agent in any declaration or bylaws recorded before July 1, 2006, any managing agent organized as a limited liability company shall be deemed to be organized as a corporation for the purposes of this paragraph, unless the declaration or bylaws are expressly amended after July 1, 2006 to require that the managing agent be organized as a corporation and not as a limited liability company; or

(B) Corporation authorized to do business under article 8 of chapter 412;

[18] Alvarez Family Trust v. AOAO of Kaanapali Alii, 121 Haw. 474, 481, 221 P.3d 452, 459 (2009).

(2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on December 31 of an even-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 managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include the name, business address, phone number, and names of associations managed;

(3) Obtain and keep current a fidelity bond in an amount equal to $500 multiplied by the aggregate number of units of the association managed by the managing agent; provided that the amount of the fidelity bond shall not be less than $20,000 nor greater than $500,000. Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond or a certification statement from an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The fidelity bond shall protect the managing agent against the loss of any association's moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in nonregistration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission;

(4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association, and apply the fidelity bond proceeds, if any, to reduce the association's loss. If more than one association suffers a loss, the managing agent shall divide the proceeds among the associations in proportion to each association's loss. An association may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association cannot recover its loss from the fidelity bond proceeds of the managing agent, the association may recover by court order from the real estate recovery fund established under section 467-16, provided that:

(A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;

(B) The managing agent is a licensed real estate broker; and

(C) The association fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;

(5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and

(6) Report immediately in writing to the commission any changes to the information contained on the registration application or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements.

(b) The commission may deny any registration or reregistration application or terminate a registration without hearing if the fidelity bond and supporting documents fail to meet the requirements of this chapter and the rules adopted pursuant thereto.

(c) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent.

(d) The registration requirements of this section shall not apply to active real estate brokers in compliance with and licensed under chapter 467.

(e) If a managing agent receives a request from the commission to distribute any commission-generated information, printed material, or documents to the association, its board, or unit owners, the managing agent shall make the distribution at the cost of the association within a reasonable period of time after receiving the request. The requirements of this subsection apply to all managing agents, including unregistered managing agents. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §21]

Revision Note

"July 1, 2006" substituted for "the effective date of this chapter".

[§514B-133] Association employees; background check; prohibition. (a) The board, managing agent, or resident manager, upon the written authorization of an applicant for employment as a security guard or resident manager or for a position that would allow the employee access to the keys of or entry into the units in the condominium or access to association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the board, managing agent, or resident manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as an association employee with access to association funds or the keys of or entry into the units in the condominium, and the judgment of conviction has not been vacated.

For purposes of this section, the criminal history disclosure made by the applicant may be verified by the board, managing agent, resident manager, or other responsible party, if so directed by the board, managing agent, or resident manager, by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information, which shall include, but not be limited to, the applicant's name, social security number, date of birth, and gender. This information shall be used only for the purpose of conducting the criminal history record check authorized by this section. Failure of an association, managing agent, or resident manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against an association, managing agent, or resident manager for acts and omissions of the employee hired.

(b) An association's employees shall not engage in selling or renting units in the condominium in which they are employed, except association-owned units, unless such activity is approved by sixty-seven per cent of the unit owners. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-134] Management and contracts; developer, managing agent, and association. (a) Any developer or affiliate of the developer or a managing agent, who manages the operation of the property from the date of recordation of the first unit conveyance until the organization of the association, shall comply with the requirements of sections 514B-72, 514B-103, and 514B-149.

(b) The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including, but not limited to, financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract. Prior to the organization of the association, any unit owner may request to inspect as well as receive a

copy of the management contract from the entity that manages the operation of the property. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-135] Termination of contracts and leases of developer. (a) If entered into before the board elected by the unit owners pursuant to section 514B-106(e) takes office:

(1) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(2) Any other contract or lease between the association and a developer or an affiliate of a developer; or

(3) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing;

may be terminated without penalty by the association within a period of one hundred eighty days after the board elected by the unit owners pursuant to section 514B-106(e) takes office, upon not less than ninety days notice to the other party.

(b) This section does not apply to:

(1) Any lease or other agreement the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section; or

(2) A proprietary lease. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-136] Transfer of developer rights. (a) A developer right created or reserved under this chapter may be transferred only by a recorded instrument evidencing the transfer. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any developer right, the liability of a transferor developer is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer, and remains liable for warranty obligations imposed upon the transferor by this chapter, if any. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor;

(2) If a successor to any developer right is an affiliate of a developer, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium;

(3) If a transferor retains any developer rights, but transfers other developer rights to a successor who is not an affiliate of the developer, the transferor is liable for any obligations or liabilities imposed on a developer by this chapter or by the declaration relating to the retained developer rights and arising after the transfer; and

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a developer right by a successor developer who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of any units owned by a developer or real estate in a condominium subject to development rights, a person acquiring title to all the property being foreclosed or sold, but

only upon request, succeeds to all developer rights related to that property held by that developer. The judgment or instrument conveying title must provide for the transfer of only the developer rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of all interests in a condominium owned by a developer:

(1) The developer ceases to have any developer rights; and

(2) The period of developer control under section 514B-106(d) terminates unless the judgment or instrument conveying title provides for transfer of all developer rights held by that developer to a successor developer.

(e) The liabilities and obligations of a person who succeeds to developer rights are as follows:

(1) A successor to any developer right who is an affiliate of a developer is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(2) A successor to any developer right, other than a successor described in paragraph (3) or (4) or a successor who is an affiliate of a developer, is subject to the obligations and liabilities imposed by this chapter or the declaration:

(A) On a developer which relate to the successor's exercise or nonexercise of developer rights; or

(B) On the transferor, other than:

(i) Misrepresentations by any previous developer;

(ii) Warranty obligations on improvements made by any previous developer, or made before the condominium was created;

(iii) Breach of any fiduciary obligation by any previous developer or the developer's appointees to the board; or

(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, and who may not exercise any other developer right, is not subject to any liability or obligation as a developer, except the obligation to provide a public report, any liability arising as a result thereof, and the obligations under part IV; and

(4) A successor to all developer rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all developer rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the board in accordance with section 514B-106(d) for the duration of any period of developer control, and any attempted exercise of those rights is void. So long as a successor developer may not exercise developer rights under this subsection, the successor developer is not subject to any liability or obligation as a developer other than liability for the developer's acts and omissions under section 514B-106(d).

(f) Nothing in this section subjects any successor to a developer right to any claims against or other obligations of a transferor developer, other than claims and obligations arising under this chapter or the declaration. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§514B-137 Upkeep of condominium. (a) Except to the extent provided by the declaration or bylaws, the association is responsible for the operation of the property, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to employees, independent contractors, or agents of the association or other unit owners, during reasonable hours, access through the owner's unit reasonably necessary for those purposes. Unless entry is made pursuant to subsection (b), if damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association, if it is responsible, is liable for the prompt repair thereof; provided that the association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.

(b) The association shall have the irrevocable right, to be exercised by the board, to have access to each unit at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another unit or units. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §22]

§514B-138 Upkeep of condominium; high-risk components. (a) The board, after notice to all unit owners and an opportunity for owner comment, may determine that certain portions of the units, or certain objects or appliances within the units such as washing machine hoses and water heaters, pose a particular risk of damage to other units or the common elements if they are not properly inspected, maintained, repaired, or replaced by owners. Those items determined by the board to pose a particular risk are "high-risk components" for the purposes of this section.

(b) With regard to items designated as high-risk components, the board may require any or all of the following:

(1) Inspection:

(A) At specified intervals; or

(B) Upon replacement or repair by the association or by inspectors designated by the association;

(2) Replacement or repair at specified intervals whether or not the component is deteriorated or defective; and

(3) Replacement or repair:

(A) Meeting particular standards or specifications established by the board;

(B) Including additional components or installations specified by the board; or

(C) Using contractors with specific licensing, training, or certification approved by the board.

(c) The imposition of requirements by the board under subsection (b) shall not relieve unit owners of obligations regarding high-risk components as set forth in the declaration or bylaws including, without limitation, the obligation to maintain, repair, and replace the components.

(d) If a unit owner fails to follow requirements imposed by the board pursuant to this section, the association, after reasonable notice, may enter the unit to perform the requirements with regard to such high-risk components at the sole cost and expense of the unit owner, which costs and expenses shall be a lien on the unit as provided in section 514B-146. Nothing in this section shall be deemed to limit the remedies of the association for damages, or injunctive relief, or both. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §23]

[§514B-139] Upkeep of condominium; disposition of unclaimed possessions. (a) When personalty in or on the common elements of a project has been abandoned, the board may sell the personalty in a commercially reasonable manner, store the personalty at the expense of its owner, donate the personalty to a charitable organization, or otherwise dispose of the personalty in its sole discretion; provided that no sale, storage, or donation shall occur until sixty days after the board complies with the following:

(1) The board notifies the owner in writing of:

(A) The identity and location of the personalty; and

(B) The board's intent to so sell, store, donate, or dispose of the personalty.

Notification shall be by certified mail, return receipt requested, to the owner's address as shown by the records of the association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or

(2) If the identity or address of the owner is unknown, the board shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located.

(b) The proceeds of any sale or disposition of personalty under subsection (a), after deduction of any accrued costs of mailing, advertising, storage, and sale, shall be held for the owner for thirty days. Any proceeds not claimed within this period shall become the property of the association. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§514B-140 Additions to and alterations of condominium. (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.

(b) Subject to the provisions of the declaration, no unit owner may make or allow any material addition or alteration, or excavate an additional basement or cellar, without first obtaining the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval. The declaration may limit the board's ability to approve or condition a proposed addition or alteration; provided that the board shall always have the right to disapprove a proposed addition or alteration that the board reasonably determines could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.

(c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this subsection:

"Nonmaterial additions and alterations" means an addition to or alteration of the common elements or a unit that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

"Solar energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other

equipment, it shall be installed in place and be ready to be made operational in order to qualify as a "solar energy device"; provided further that "solar energy device" shall not include skylights or windows.

"Townhouse" means a series of individual houses, having architectural unity and a common wall between each unit, provided that each unit extends from the ground to the roof.

(d) Notwithstanding any other law to the contrary in this chapter or any provisions in any declaration or bylaws:

(1) Regarding the installment of telecommunications equipment:

(A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and

(B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B−33 and 514B−34; provided that no installation shall directly affect any nonconsenting unit owner;

(2) Regarding the abandonment of telecommunications equipment:

(A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and

(B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B‑33 and 514B‑34; and

(3) Regarding the installation of solar energy devices and wind energy devices:

(A) The board shall have the authority to install or cause the installation of, or lease or license comment elements for the installation of solar energy devices and wind energy devices on the common elements of the project; provided that solar or wind energy devices shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for which use of the limited common element is reserved; and

(B) The installation of solar energy devices and wind energy devices on the common elements of the project by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, or easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34; provided that the installation does not directly affect any nonconsenting unit owner.

(e) As used in this subsection:

"Directly affect" means the installation of television signal distribution and telecommunications equipment, solar energy devices, or wind energy devices in a manner which would specially, personally, and adversely affect an individual unit owner in a manner not common to the unit owners as a whole.

"Solar energy device" means the same as in subsection (c).

"Television signal distribution" and "telecommunications equipment" shall be construed in their broadest possible senses to encompass all present and future forms of communications technology.

"Wind energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of wind energy for producing electricity or reducing the use of other types of energy that are dependent upon fossil fuel for generation; provided that if the facility, equipment, apparatus, or the like cannot be used as a wind energy device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a "wind energy device. [L 2004, c 164, pt of §2; am L 2005, c 93, §7 and c 157, §4; am L 2006, c 38, §24; am L 2010, c 53, §3]

§514B-141 Tort and contract liability; tolling of limitation period. (a) A unit owner is not liable, solely by reason of being a unit owner, for any injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the developer is liable for that developer's torts in connection with any part of the condominium that that developer has the responsibility to maintain.

(b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of developer control and the association gives the developer reasonable notice of and an opportunity to defend against the action, the developer who then controlled the association is liable to the association or to any unit owner for:

(1) All tort losses not covered by insurance suffered by the association or that unit owner; and

(2) All costs that the association would not have incurred but for a breach of contract or other wrongful act or omission, as the same may be established through adjudication.

Whenever the developer is liable to the association under this section, the developer is also liable for all expenses of litigation, including reasonable attorneys' fees, incurred by the association.

(c) Any statute of limitation affecting the association's right of action against a developer is tolled until the period of developer control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the unit owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 514B-147. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §24]

§514B-142 Aging in place or disabled; limitation on liability. (a) The association, its directors, unit owners, or residents, and their agents and tenants, acting through the board, shall not have any legal responsibility or legal liability, with respect to any actions and recommendations the board takes on any report, observation, or complaint made, or with respect to any recommendation or referral given, which relates to an elderly or disabled unit owner or resident who may require services and assistance to maintain independent living in the unit in which the elderly or disabled unit owner or resident resides, so that the elderly or disabled unit owner or resident will not pose any harm or health or safety hazards to self or to others, and will not otherwise be disruptive to the condominium community because of problems of aging and aging in place or living independently with a physical or mental disability or disabling condition. This section shall apply to elderly or disabled unit owners or residents whose actions or non-actions pose a risk to their own health or safety or to the health and safety of others, cause harm to the resident or others, or where physical or mental abuse may be life-threatening, and who exhibit the following characteristics:

(1) The inability to clean and maintain an independent unit;

(2) Mental confusion;

(3) Abusing others;

(4) Inability to care for oneself; or

(5) Inability to arrange for home care.

(b) Upon a report, observation, or complaint relating to an elderly or disabled unit owner or resident aging or aging in place or living independently with a physical or mental disability or disabling condition, which notes a problem similar in nature to the problems enumerated in subsection (a), the board, in good faith, and without legal responsibility or liability, may request a functional assessment regarding the condition of an elderly or disabled unit owner or resident as well as recommendations for services from mental health or medical practitioners, governmental agencies responsible for adult protective services, or non-profit or for-profit service entities which the elderly or disabled unit owner or resident may require to maintain a level of independence that enables the owner or resident to avoid any harm to self or to others, and to avoid disruption to the condominium community; provided that when a functional assessment is requested by the board, the unit owner or resident shall be deemed to be the client of the person or entity conducting the functional assessment. The board, upon request or unilaterally, and without legal responsibility or liability, may recommend available services, including assistance from state or county agencies and non-profit or for-profit service entities, to an elderly or disabled unit owner or resident which may enable the elderly or disabled unit owner or resident to maintain a level of independent living with assistance, enabling in turn, the elderly or disabled unit owner or resident to avoid any harm to self or others, and to avoid disruption to the condominium community.

(c) There is no affirmative duty on the part of the association, its board, the unit owners, or residents, or their agents or tenants to request or require an assessment and recommendations with respect to an elderly or disabled unit owner or resident when the elderly or disabled unit owner or resident may be experiencing the problems related to aging and aging in place or living independently with a physical or mental disability or disabling condition enumerated in subsection (a). The association, its board, unit owners, or residents, and their agents and tenants shall not be legally responsible or liable for not requesting or declining to request a functional assessment of, and recommendations for, an elderly or disabled unit owner or resident regarding problems relating to aging and aging in place or living independently with a physical or mental disability or disabling condition.

(d) If an elderly or disabled unit owner or resident ignores or rejects a request for or the results from an assessment and recommendations, the association, with no liability for cross-claims or counterclaims, may file appropriate information, pleadings, notices, or the like, with appropriate state or county agencies or courts to seek an appropriate resolution for the condominium community and for the elderly or disabled unit owner or resident.

(e) For the purposes of this section:

"Disabled" means a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

"Elderly" means age sixty-two and older.

(f) Costs and fees for assessments, recommendations, and actions contemplated in this section shall be as set forth in the declaration or bylaws.

(g) This section shall not be applicable to any condominium that seeks to become licensed as an assisted living facility pursuant to title 11, chapter 90, Hawaii Administrative Rules, as amended. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2009, c 128, §1]

Revision Note

In subsection (e), definitions rearranged pursuant to §23G-15.

§514B-143 Insurance. (a) Unless otherwise provided in the declaration or bylaws, the association shall purchase and at all times maintain the following:

(1) Property insurance:

(A) On the common elements;

(B) Providing coverage for special form causes of loss; and

(C) In a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date;

(2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of $1,000,000, or a greater amount deemed sufficient in the judgment of the board;

(3) A fidelity bond, as follows:

(A) An association with more than five dwelling units shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, in an amount equal to $500 multiplied by the number of units; provided that the amount of the fidelity bond required by this paragraph shall not be less than $20,000 nor greater than $200,000; and

(B) All management companies that are responsible for the funds held or administered by the association shall be covered by a fidelity bond as provided in section 514B-132(a)(3). The association shall have standing to make a loss claim against the bond of the managing agent as a party covered under the bond;

(4) The board shall obtain directors and officers liability coverage at a level deemed reasonable by the board, if not otherwise limited by the declaration or bylaws.

(b) If a building contains attached units, the insurance maintained under subsection (a)(1), to the extent reasonably available, shall include the units, the limited common elements, except as otherwise determined by the board, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected.

For the purposes of this section, "improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners.

(c) If a project contains detached units, then notwithstanding the requirement in this section that the association obtain the requisite coverage, if the board determines that it is in the best interest of the association to do so, the insurance to be maintained under subsection (a)(1) may be obtained separately for each unit by the unit owners; provided that the requirements of subsection (a)(1) shall be met; and provided further that evidence of such insurance coverage shall be delivered annually to the association. In such event, the association shall be named as an additional insured.

(d) The board, in the case of a claim for damage to a unit or the common elements, may:

(1) Pay the deductible amount as a common expense;

(2) After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or

(3) Require the unit owners of the units affected to pay the deductible amount.

(e) The declaration, bylaws, or the board may require the association to carry any other insurance, including workers' compensation, employment practices, environmental hazards, and equipment breakdown, that the board considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.

(f) Any loss covered by the property policy under subsection (a)(1) shall be adjusted by and with the association. The insurance proceeds for that loss shall be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear.

(g) The board, with the vote or written consent of a majority of the unit owners, may require unit owners to obtain reasonable types and levels of insurance. The liability of a unit owner shall include but not be limited to the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

If the unit owner does not purchase or produce evidence of insurance requested by the board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the unit owner. In no event is the association or board liable to any person either with regard to the failure of a unit owner to purchase insurance or a decision by the board not to purchase the insurance for the owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

(h) The provisions of this section may be varied or waived in the case of a project in which all units are restricted to nonresidential use. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §25; am L 2014, c 189, §6]

Case Notes

Defendant insurance company's motion for judgment on the pleadings granted, inter alia, where the court was not persuaded that, by explicitly mentioning subsection (a)(1) while remaining silent as to subsection (b) in subsection (f), the legislature was giving a unit owner a private right of action under subsection (b); it could just as easily be said that the legislature's failure to mention any direct action by a unit owner indicated an intent not to permit such an action at all; in effect, plaintiffs had no standing to sue. 836 F. Supp. 2d 1117 (2011).[19]

§514B-144 Association fiscal matters; assessments for common expenses. (a) Assessments shall be made based on a budget adopted and distributed or made available to unit owners at least annually by the board.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses shall be assessed against all the units in accordance with the allocations under section 514B-41. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association, provided that the rate shall not exceed eighteen per cent per year.

(c) Assessments to pay a judgment against the association under section 514B-147(a) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense allocations under section 514B-41.

[19] Peters v. Lexington Ins. Co., 836 F. Supp. 2d 1117 (2011).

(d) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.

(e) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(f) In the case of a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantor or grantee is, however, entitled to a statement from the board, either directly or through its managing agent or resident manager, setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty-day period immediately preceding the date of such statement, the grantee is not liable for, nor is the unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

(g) No unit owner may exempt the unit owner from liability for the unit owner's contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit owner's unit. Subject to such terms and conditions as may be specified in the declaration or bylaws, any unit owner, by conveying his or her unit and common interest to the association on behalf of all other unit owners, may exempt himself or herself from common expenses thereafter accruing.

(h) The board, either directly or through its managing agent or resident manager, shall notify the unit owners in writing of maintenance fee increases at least thirty days prior to such an increase. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §26]

§514B-145 Association fiscal matters; collection of unpaid assessments from tenants or rental agents. (a) If the owner of a unit rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the common expenses, the board, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit or rental agent renting the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under this section, the board shall give to the delinquent unit owner written notice of its intent to collect the rent owed. The notice shall:

(1) Be sent both by first-class and certified mail;

(2) Set forth the exact amount the association claims is due and owing by the unit owner; and

(3) Indicate the intent of the board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the unit's share of common expenses by the tenant pursuant to a written demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant.

(e) The board may not demand payment from the tenant pursuant to this section if:

(1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;

(2) A mortgagee is in possession pending a mortgage foreclosure; or

(3) The tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this section and any provision of chapter 521, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under chapter 521, the tenant may deduct the offset from the amount due to the association, up to the limits stated in chapter 521. Nothing herein precludes the unit owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

(g) Before the board may take the actions permitted under subsection (a), the board shall adopt a written policy providing for the actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners. [L 2004, c 164, pt of §2; am L 2006, c 273, §27]

§514B-146 Association fiscal matters; lien for assessments. *[Repeal and reenactment on June 30, 2020. L 2018, c 195, §6.]* (a) All sums assessed by the association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:

(1) Liens for real property taxes and assessments lawfully imposed by governmental authority against the unit; and

(2) Except as provided in subsection (j), all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in such mortgages;

provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667.

In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection (j), when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association chargeable to the unit that became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including

the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

(1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;

(2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;

(3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to chapter 667; or

(4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) A unit owner who receives a demand for payment from an association and disputes the amount of an assessment may request a written statement clearly indicating:

(1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(2) The amount of any penalty or fine, late fee, lien filing fee, and any other charge included in the assessment that is not imposed on all unit owners as a common expense; and

(3) The amount of attorneys' fees and costs, if any, included in the assessment.

(d) A unit owner who disputes the information in the written statement received from the association pursuant to subsection (c) may request a subsequent written statement that additionally informs the unit owner that:

(1) Under Hawaii law, a unit owner has no right to withhold common expense assessments for any reason;

(2) A unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's common expense assessment; provided that the unit owner immediately pays the common expense assessment in full and keeps common expense assessments current;

(3) Payment in full of the common expense assessment shall not prevent the owner from contesting the common expense assessment or receiving a refund of amounts not owed; and

(4) If the unit owner contests any penalty or fine, late fee, lien filing fee, or other charges included in the assessment, except common expense assessments, the unit owner may demand mediation as provided in subsection (g) prior to paying those charges.

(e) No unit owner shall withhold any common expense assessment claimed by the association. Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(f) A unit owner who pays an association the full amount of the common expenses claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's common expense claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under section 514B-162; provided that a unit owner may only file for arbitration if all amounts claimed by the association as common expenses are paid in full on or before the date of filing. If the unit owner fails to keep all association common expense assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association common expense assessments within thirty days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the unit owner fails to pay all association common expense assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid as common expenses to the association that are not owed.

(g) A unit owner who contests the amount of any attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments, may make a demand in writing for mediation on the validity of those charges. The unit owner has thirty days from the date of the written statement requested pursuant to subsection (d) to file demand for mediation on the disputed charges, other than common expense assessments. If the unit owner fails to file for mediation within thirty days of the date of the written statement requested pursuant to subsection (d), the association may proceed with collection of the charges. If the unit owner makes a request for mediation within thirty days, the association shall be prohibited from attempting to collect any of the disputed charges until the association has participated in the mediation. The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the unit owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.

(h) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board to, after sixty days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

(i) Before the board or managing agent may take the actions permitted under subsection (h), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.

(j) Subject to this subsection, and subsections (k) and (l), the board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a mortgagee or other purchaser who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that the mortgagee or other purchaser may require the association to provide at no charge a notice of the association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

(k) The amount of the special assessment assessed under subsection (j) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.[20]

[20] Arakaki's Note: The amendments made to HRS §514B-146(h) by Act 48 (SLH 2011) were to be repealed on September 30, 2014 and subsection (h) reenacted in the form in which it read on the day before the effective date of Act 48 (SLH 2011) (i.e., regular monthly common assessments assessed during the six months immediately preceding the completion of foreclosure and not exceeding the sum of $3,600). Act 182 (SLH 2012), however, amended HRS §514B-146(h) by reducing the relevant assessment period back to six months and eliminating the cap on the priority lien amount effective June 28, 2012.

(l) For purposes of subsections (j) and (k), the following definitions shall apply, unless the context requires otherwise:

"Completion" means:

(1) In a nonjudicial power of sale foreclosure, when the affidavit after public sale is recorded pursuant to section 667-33; and

(2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular monthly common assessments" does not include:

(1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148;

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

(4) Any lien arising out of the assessment; or

(5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.

(m) The cost of a release of any lien filed pursuant to this section shall be paid by the party requesting the release.

(n) After any judicial or non-judicial foreclosure proceeding in which the association acquires title to the unit, any excess rental income received by the association from the unit shall be paid to existing lien holders based on the priority of lien, and not on a pro rata basis, and shall be applied to the benefit of the unit owner. For purposes of this subsection, excess rental income shall be any net income received by the association after a court has issued a final judgment determining the priority of a senior mortgagee and after paying, crediting, or reimbursing the association or a third party for:

(1) The lien for delinquent assessments pursuant to subsections (a) and (b);

(2) Any maintenance fee delinquency against the unit;

(3) Attorney's fees and other collection costs related to the association's foreclosure of the unit; or

(4) Any costs incurred by the association for the rental, repair, maintenance, or rehabilitation of the unit while the association is in possession of the unit including monthly association maintenance fees, management fees, real estate commissions, cleaning and repair expenses for the unit, and general excise taxes paid on rental income;

provided that the lien for delinquent assessments under paragraph (1) shall be paid, credited, or reimbursed first. [L 2004, c 164, pt of §2 and §35(1); am L 2005, c 93, §7; am L 2006, c 273, §32; am L 2007, c 21, §1; am L 2009, c 10, §3; am L 2011, c 48, §14; am L 2012, c 182, §§10, 49; am L 2013, c 196, §1; am L 2014, c 235, §2; am L 2018, c 195, §4]

Note

Repeal and reenactment on December 31, 2007 by L 2004, c 164, §35(1), as amended by L 2005, c 93, §7 and L 2006, c 273, §32 deleted by L 2007, c 21, §1.

[§514B-147] Association fiscal matters; other liens affecting the condominium. (a) Except as provided in subsection (b), a judgment for money against the association, if recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against the common expense funds of the association. No other property of a unit owner is subject to the claims of creditors of the association.

(b) Whether perfected before or after the creation of the condominium, if a lien, other than a mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium), becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(c) A judgment against the association shall be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-148] Association fiscal matters; budgets and reserves. (a) The budget required under section 514B-144(a) shall include at least the following:

(1) The estimated revenues and operating expenses of the association;

(2) Information as to whether the budget has been prepared on a cash or accrual basis;

(3) The total replacement reserves of the association as of the date of the budget;

(4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;

(5) A general explanation of how the estimated replacement reserves are computed;

(6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and

(7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

(b) The association shall assess the unit owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan; provided that a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the association's plan.

(c) The association shall compute the estimated replacement reserves by a formula that is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the property. The estimated replacement reserves shall include:

(1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and

(2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed $10,000. Parts of the property for which capital expenditures or major maintenance will not exceed $10,000 may be aggregated in a single designated reserve.

(d) No association or unit owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated replacement reserves for an association shall be liable if the estimate subsequently proves incorrect.

(e) Except in emergency situations or with the approval of a majority of the unit owners, a board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates. Before imposing or collecting an assessment under this subsection that has not been approved by a majority of the unit owners, the board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(f) The requirements of this section shall override any requirements in an association's declaration, bylaws, or any other association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, and expenditures from reserves with the exception of:

(1) Any requirements in an association's declaration, bylaws, or any other association documents which require the association to collect more than fifty per cent of reserve requirements; or

(2) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(g) Subject to the procedures of section 514B-157 and any rules adopted by the commission, any unit owner whose association board fails to comply with this section may enforce compliance by the board. In any proceeding to enforce compliance, a board that has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with this section.

(h) As used in this section:

"Capital expenditure" means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

"Emergency situation" means any extraordinary expenses:

(1) Required by an order of a court;

(2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;

(3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;

(4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or

(5) Necessary for the association to obtain adequate insurance for the property which the association must insure.

"Major maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

§514B-149 Association fiscal matters; handling and disbursement of funds. (a) The funds in the general operating account of the association shall not be commingled with funds of other activities such as lease rent collections, rental, time share, and assisted living facility operations, nor shall a managing agent commingle any association funds with the managing agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual unit owners of a project and the payment of such ground lease rents to the ground lessor if:

(1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual unit leases of the project;

(2) A management contract requires the managing agent to collect ground lease rents from the individual unit owners and pay the ground lease rents to the ground lessor;

(3) The system of lease rent collection has been approved at a meeting of the association by a vote of a majority of the unit owners; and

(4) The managing agent or association does not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual unit owners.

(c) (1) All funds collected by an association, or by a managing agent for any association, shall be:

(A) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;

(B) Held by a corporation authorized to do business under article 8 of chapter 412;

(C) Held by the United States Treasury;

(D) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation; or

(E) Placed through a federally insured financial institution located in the State for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States.

(2) All funds collected by an association, or by a managing agent for any association, shall be invested only in:

(A) Deposits, investment certificates, savings accounts, and certificates of deposit;

(B) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than

ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners;

(C) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or

(D) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board.

(d) A managing agent or board shall not, by oral instructions over the telephone, transfer association funds between accounts, including but not limited to the general operating account and reserve fund account.

(e) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.

(f) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association shall be guilty of a class C felony. [L 2004, c 164, pt of §2; am L 2005, c 93, §§5, 7; am L 2006, c 38, §25; am L 2008, c 76, §2; am L 2014, c 189, §7]

[§514B-150] Association fiscal matters; audits, audited financial statement. (a) The association shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty units, the annual audit and the annual unannounced cash balance verification may be waived at an association meeting by a vote of a majority of the unit owners.

(b) The board shall make available a copy of the annual audit to each unit owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall not be required to submit a copy of the annual audit report to an owner if the proxy form issued pursuant to section 514B-123(e) is not marked to indicate that the owner wishes to obtain a copy of the report. If the annual audit has not been completed by that date, the board shall make available:

(1) An unaudited year end financial statement for the fiscal year to each unit owner at least thirty days prior to the annual meeting; and

(2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, but not later than six months after the annual meeting.

(c) If the association's fiscal year ends less than two months prior to the convening of the annual meeting, the year-to-date unaudited financial statement may cover the period from the beginning of the association's fiscal year to the

end of the month preceding the date on which notice of the annual meeting is mailed. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2014, c 189, §8; am L 2017, c 73, §3]

§514B-151 Association fiscal matters; lease rent renegotiation. (a) Notwithstanding any provision in the declaration or bylaws, any lease or sublease of the real estate or of a unit, or of an undivided interest in the real estate to a unit owner, whenever any lease or sublease of the real estate, a unit, or an undivided interest in the real estate to a unit owner provides for the periodic renegotiation of lease rent thereunder, the association shall represent the unit owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent; provided that the association's representation in the renegotiation of lease rent shall be on behalf of at least two lessees. All costs and expenses incurred in such representation shall be a common expense of the association.

(b) Notwithstanding subsection (a), if some, but not all of the unit owners have already purchased the leased fee interest appurtenant to their units as of the earlier of any date specified in the lease or sublease for the commencement of lease rent renegotiation or nine months prior to the commencement of the term for which lease rent is to be renegotiated, all costs and expenses of the renegotiation shall be assessed to the remaining lessees whose lease rent is to be renegotiated in the same proportion that the common interest appurtenant to each lessee's unit bears to the common interest appurtenant to all remaining lessees' units whose lease rent is to be renegotiated. The unpaid amount of this assessment shall constitute a lien upon the lessee's unit, which may be collected in accordance with section 514B-146 in the same manner as an unpaid common expense.

(c) In any project where the association is a lessor or sublessor, the association shall fulfill its obligations under this section by appointing independent counsel to represent the lessees in the negotiations and proceedings related to the rent renegotiation. The lessees' counsel shall act on behalf of the lessees in accordance with the vote or written consent of a majority of the lessees casting ballots or submitting written consents as determined by the ratio that the common interest appurtenant to each lessee's unit bears to the total common interest appurtenant to the units of participating lessees. Nothing in this subsection shall be interpreted to preclude the lessees from making a decision (by the vote or written consent of a majority of the lessees as described above) to retain other counsel or additional professional advisors as may be reasonably necessary or appropriate to complete the negotiations and proceedings. In the event of a deadlock among the lessees or other inability to proceed with the rent renegotiation on behalf of the lessees, the lessees' counsel may apply to the circuit court of the judicial circuit in which the condominium is located for instructions. The association shall not instruct or direct the lessees' counsel or other professional advisors. All costs and expenses incurred under this subsection shall be assessed by the association to the lessees as provided in subsection (a) or (b), as may be applicable.

(d) As used in this section, "lessees" or "remaining lessees" means all unit owners who have not purchased the leased fee interest appurtenant to their units as of the earlier of any date specified in the lease or sublease for the commencement of lease rent negotiation or nine months prior to the commencement of the term for which lease rent is to be renegotiated. The board's allocation of expenses under this section shall be final and binding in the absence of a determination that the board abused its discretion. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §28]

[§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 available pursuant to section 514B-154.5 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. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2014, c 188, §8]

§514B-153 Association records; records to be maintained. (a) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office.

(b) The managing agent or board shall keep 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. The managing agent or board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(c) Subject to section 514B-152, all records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board.

(d) The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract.

(e) The managing agent, resident manager, or board shall keep an accurate and current list of members of the association and their current addresses, and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board, and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the managing agent or resident manager or the board a duly executed and acknowledged affidavit stating that the list:

(1) Will be used by the owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters; and

(2) Shall not be used by the owner or furnished to anyone else for any other purpose.

A board may prohibit commercial solicitations.

Where the condominium project or any units within the project are subject to a time share plan under chapter 514E, the association shall only be required to maintain in its records the name and address of the time share association as the representative agent for the individual time share owners unless the association receives a request by a time share owner to maintain in its records the name and address of the time share owner.

(f) The managing agent or resident manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the board.

(g) All membership lists are the property of the association and any membership lists contained in the managing agent's or resident manager's records are subject to subsections (e) and (f), and this subsection. A managing agent, resident manager, or board may not use the information contained in the lists to create any separate list for the purpose of evading this section.

(h) Subsections (f) and (g) shall not apply to any time share plan regulated under chapter 514E. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2007, c 243, §2; am L 2011, c 98, §1]

§514B-154 Association records; availability; disposal; prohibitions. (a) The association's most current financial statement shall be provided to any interested unit owner at no cost or on twenty-four-hour loan, at a convenient location designated by the board. The meeting minutes of the board of directors, once approved, for the current and prior year shall either:

(1) Be available for examination by apartment owners at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board of directors; or

(2) Be transmitted to any apartment owner making a request for the minutes, by the board of directors, the managing agent, or the association's representative, within fifteen days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of

the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request.

Costs incurred by apartment owners pursuant to this subsection shall be subject to section 514B-105(d).

(b) 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 delinquencies of ninety days or more shall be available for examination by unit owners at convenient hours at a place designated by the board; provided that:

(1) The board may require owners 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

(2) Owners shall pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request; provided that the owner pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(c) After any association meeting, and not earlier, unit owners shall be permitted to examine proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election; provided that:

(1) Owners shall make a request to examine the documents within thirty days after the association meeting;

(2) The board may require owners 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 interest of the association or its members or both; and

(3) Owners shall pay for administrative costs in excess of eight hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty days after the association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty days, after which they may be destroyed. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request; provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(d) The managing agent shall provide copies of association records maintained pursuant to this section and sections 514B-152 and 514B-153 to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. If the project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the association, to whom this function is delegated.

(e) Prior to the organization of the association, any unit owner shall be entitled to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.

(f) Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.

(g) An association may comply with this part by making information available to unit owners, at the option of each unit owner and at no cost to the unit owner for downloading the information, through an internet site.

(h) A managing agent retained by one or more associations may dispose of the records of any association which are more than five years old, except for tax records, which shall be kept for seven years, without liability if the managing agent first provides the board of the association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board within sixty days, which notice shall include an itemized list of the records proposed to be disposed.

(i) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or association.

(j) Any fee charged to a member to obtain copies of association records under this section 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 the fee for pages exceeding eight and one-half inches by fourteen inches may exceed $1 per page. [L 2004, c 164, pt of §2, am L 2005, c 89, §2, c 90, §2 and c 93, §7; am L 2006, c 273, §29; am L 2007, c 241, §2]

[§514B-154.5][21] 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 elsewhere 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

[21] Effective January 1, 2019, HRS Chapter 514A was repealed and conforming amendments to HRS §514B-154.5(g) went into effect. [L 2017, c 181, §30]

(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;

(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; and

(15) A copy of any contract, written job description, and compensation between the association and any person or entity retained by the association to manage the operation of the property on-site, including but not limited to the general manager, operations manager, resident manager, or site manager; provided that personal information may be redacted from the contract copy, including but not limited to the manager's date of birth, age, signature, social security number, residence address, telephone number, non-business electronic mail address, driver's license number, Hawaii identification card number, bank account number, credit or debit card number, access code or password that would permit access to the manager's financial accounts, or any other information that may be withheld under state or federal law.

(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 all condominiums organized under this chapter or any predecessor thereto.

(h) Nothing in this section shall be construed to create any new requirements for the release of documents, records, or information. [L 2014, c 188, §2; am L 2017, c 71, §1 and c 181, §30]

[§514B-155] Association as trustee. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person shall not be bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, shall be fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person shall not be bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-156] Pets. (a) Any unit owner who keeps a pet in the owner's unit pursuant to a provision in the bylaws which allows owners to keep pets or in the absence of any provision in the bylaws to the contrary, upon the death of the animal, may replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's unit or another unit subject to the same bylaws.

(b) Any unit owner who is keeping a pet pursuant to subsection (a), as of the effective date of an amendment to the bylaws which prohibits owners from keeping pets in their units, shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a).

(c) The bylaws may include reasonable restrictions or prohibitions against excessive noise or other problems caused by pets on the property and the running of pets at large in the common areas of the property. No animals described as pests under section 150A-2, or animals prohibited from importation under section 141-2, 150A-5, or 150A-6 shall be permitted.

(d) Whenever the bylaws do not prohibit unit owners from keeping animals as pets in their units, the bylaws shall not prohibit the tenants of the unit owners from keeping pets in the units rented or leased from the owners; provided that:

(1) A unit owner consents in writing to allow the unit owner's tenant to keep a pet in the unit;

(2) A tenant keeps only those types of pets that may be kept by unit owners.

The bylaws may allow each owner or tenant to keep only one pet in the unit.

(e) Any amendments to the bylaws that provide for exceptions to pet restrictions or prohibitions for preexisting circumstances shall apply equally to unit owners and tenants.

(f) Nothing in this section shall prevent an association from immediately acting to remove vicious animals to protect persons or property. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-157] Attorneys' fees, delinquent assessments, and expenses of enforcement. (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

(1) Collecting any delinquent assessments against any owner's unit;

(2) Foreclosing any lien thereon; or

(3) Enforcing any provision of the declaration, bylaws, house rules, and this chapter, or the rules of the real estate commission;

against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to such person or persons by the association.

(b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

(1) The owner first shall have demanded and allowed reasonable time for the board to pursue such enforcement; or

(2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the board would have been fruitless.

If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the

association, unless before filing the action in court the owner has first submitted the claim to mediation, or to arbitration under subpart D, and made a good faith effort to resolve the dispute under any of those procedures. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Case Notes

Where circuit court failed to address condominium owner's argument that condominium association should be estopped pursuant to §514B-161 from seeking fees and costs for refusing to respond to condominium owner's request to mediate the issues in the case, the circuit court, on remand, shall determine whether §514B-161(a) applies in this case; if the statute applies, the circuit court should determine whether the condominium association refused to participate in mediation, and if so, the circuit court should consider, on the record, such refusal in determining whether to award attorneys' fees and costs. 134 H. 251, 339 P.3d 1052 (2014).[22]

Plaintiff condominium unit owner did not "incur" attorneys' fees and costs in owner's action against defendant condominium association and was therefore not entitled to attorneys' fees and costs beyond the portion of the total amount requested that plaintiff paid where law firm representing plaintiff's billing statements were sent to a third party and there was no agreement with law firm contractually binding plaintiff to pay those fees and costs; in order for plaintiff condominium unit owner to have "incurred" attorneys' fees and costs under subsection (b) in an action against defendant condominium association, plaintiff must have paid or be legally obligated to pay the fees and costs to the law firm representing plaintiff. 130 H. 540 (App.), 312 P.3d 1247 (2013).[23]

D. ALTERNATIVE DISPUTE RESOLUTION

§514B-161 Mediation. *[Section effective until January 1, 2019. For section effective January 2, 2019, see below.]* (a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

(1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;

(2) Actions to collect assessments;

(3) Personal injury claims; or

(4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of $2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2007, c 244, §7; am L 2008, c 205, §§2, 5; am L 2009, c 9, §2; am L 2012, c 34, §14][24]

[22] Apartment Owners, Discovery Bay v. Mitchell, 134 H. 251, 339 P.3d 1052 (2014).
[23] Vinson v. AOAO of Sands of Kahana, 130 H. 540 (App.), 312 P.3d 1247 (2013).

[24] Arakaki's Note: Act 205 (SLH 2008) was allowed to sunset on June 30, 2011. Therefore, the technical corrections made to subsection (a) and the condominium dispute resolution ("condo court") pilot project provisions that were added to HRS §514B-161 in subsections (e) through (m) by Act 205 (SLH 2008) were repealed effective June 30, 2011. The reenacted statutory language was ratified by Act 34 (SLH 2012).

§514B-161 Mediation. *[Section effective January 2, 2019. For section effective until January 1, 2019, see above. Repeal and reenactment on June 30, 2023. L 2018, c 196, §9.]* (a) The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall be mandatory upon written request to the other party when:

(1) The dispute involves the interpretation or enforcement of the association's declaration, bylaws, or house rules;

(2) The dispute falls outside the scope of subsection (b);

(3) The parties have not already mediated the same or a substantially similar dispute; and

(4) An action or an arbitration concerning the dispute has not been commenced.

(b) The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall not be mandatory when the dispute involves:

(1) Threatened property damage or the health or safety of unit owners or any other person;

(2) Assessments;

(3) Personal injury claims; or

(4) Matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of an association.

(c) If evaluative mediation is requested in writing by one of the parties pursuant to subsection (a), the other party cannot choose to do facilitative mediation instead, and any attempt to do so shall be treated as a rejection to mediate.

(d) A unit owner or an association may apply to the circuit court in the judicial circuit where the condominium is located for an order compelling mediation only when:

(1) Mediation of the dispute is mandatory pursuant to subsection (a);

(2) A written request for mediation has been delivered to and received by the other party; and

(3) The parties have not agreed to a mediator and a mediation date within forty-five days after a party receives a written request for mediation.

(e) Any application made to the circuit court pursuant to subsection (d) shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed $1,500.

(f) Each party to a mediation shall bear the attorneys' fees, costs, and other expenses of preparing for and participating in mediation incurred by the party, unless otherwise specified in:

(1) A written agreement providing otherwise that is signed by the parties;

(2) An order of a court in connection with the final disposition of a claim that was submitted to mediation;

(3) An award of an arbitrator in connection with the final disposition of a claim that was submitted to mediation; or

(4) An order of the circuit court in connection with compelled mediation in accordance with subsection (e).

(g) Any individual mediation supported with funds from the condominium education trust fund pursuant to section 514B-71:

(1) Shall include a fee of $375 to be paid by each party to the mediator;

(2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than $3,000 total;

(3) May include issues and parties in addition to those identified in subsection (a); provided that a unit owner or a developer and board are parties to the mediation at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties; and

(4) May include an evaluation by the mediator of any claims presented during the mediation.

(h) A court or an arbitrator with jurisdiction may consider a timely request to stay any action or proceeding concerning a dispute that would be subject to mediation pursuant to subsection (a) in the absence of the action or proceeding, and refer the matter to mediation; provided that:

(1) The court or arbitrator determines that the request is made in good faith and a stay would not be prejudicial to any party; and

(2) No stay shall exceed a period of ninety days. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2007, c 244, §7; am L 2008, c 205, §§2, 5; am L 2009, c 9, §2; am L 2012, c 34, §14; am L 2018, c 196, §5]

Case Notes

Where circuit court failed to address condominium owner's argument that condominium association should be estopped pursuant to this section from seeking fees and costs for refusing to respond to condominium owner's request to mediate the issues in the case, the circuit court, on remand, shall determine whether subsection (a) applies in this case; if the statute applies, the circuit court should determine whether the condominium association refused to participate in mediation, and if so, the circuit court should consider, on the record, such refusal in determining whether to award attorneys' fees and costs. 134 H. 251, 339 P.3d 1052 (2014).[25]

[§514B-162] Arbitration. (a) At the request of any party, any dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and of chapter 658A; provided that the rules of the arbitration service conducting the arbitration shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658A, chapter 658A shall prevail; and provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

[25] Apartment Owners, Discovery Bay v. Mitchell, 134 H. 251, 339 P.3d 1052 (2014).

(b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:

(1) The real estate commission;

(2) The mortgagee of a mortgage of record;

(3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a unit owner, a director, or managing agent, such person in those capacities, shall be subject to the provisions of subsection (a);

(4) Actions seeking equitable relief involving threatened property damage or the health or safety of unit owners or any other person;

(5) Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section 514B-146 shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment;

(6) Personal injury claims;

(7) Actions for amounts in excess of $2,500 against an association, a board, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association or its board would be unavailable because action by arbitration was pursued; or

(8) Any other cases which are determined, as provided in subsection (c), to be unsuitable for disposition by arbitration.

(c) At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to the circuit court in the judicial circuit in which the condominium is located for a determination that the subject matter of the dispute is unsuitable for disposition by arbitration.

In determining whether the subject matter of a dispute is unsuitable for disposition by arbitration, a court may consider:

(1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;

(2) Problems referred to the court where court regulated discovery is necessary;

(3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter;

(4) The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration under this section; and

(5) Any matters of dispute where disposition by arbitration, in the absence of complete judicial review, would not afford substantial justice to one or more of the parties.

Any such application to the circuit court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed $200.

(d) In the event of a dispute as to whether a claim shall be excluded from mandatory arbitration under subsection (b)(7), any party to an arbitration may file a complaint for declaratory relief against the involved insurer or insurers

for a determination of whether insurance coverage is unavailable due to the pursuit of action by arbitration. The complaint shall be filed with the circuit court in the judicial circuit in which the condominium is located. The insurer or insurers shall file an answer to the complaint within twenty days of the date of service of the complaint and the issue shall be disposed of by the circuit court at a hearing to be held at the earliest available date; provided that the hearing shall not be held within twenty days from the date of service of the complaint upon the insurer or insurers.

(e) Notwithstanding any provision in this chapter to the contrary, the declaration, or the bylaws, the award of any costs, expenses, and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses, and legal fees shall be binding upon all parties.

(f) The award of the arbitrator shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and shall be served by the arbitrator on each of the parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court of the judicial circuit in which the condominium is located for an order confirming the award. The court shall grant the order confirming the award pursuant to section 658A-22, unless the award is vacated, modified, or corrected, as provided in sections 658A-20, 658A-23, and 658A-24, or a trial de novo is demanded under subsection (h), or the award is successfully appealed under subsection (h). The record shall be filed with the motion to confirm award, and notice of the motion shall be served upon each other party or their respective attorneys in the manner required for service of notice of a motion.

(g) Findings of fact and conclusions of law, as requested by any party prior to the arbitration hearing, shall be promptly provided to the requesting party upon payment of the reasonable cost thereof.

(h) Any party to an arbitration under this section may apply to vacate, modify, or correct the arbitration award for the grounds set out in chapter 658A. All reasonable costs, expenses, and attorneys' fees on appeal shall be charged to the nonprevailing party. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-162.5] Voluntary binding arbitration. *[Section effective January 2, 2019, and repealed June 30, 2023. L 2018, c 196, §9.]* (a) Any parties permitted to mediate condominium related disputes pursuant to section 514B-161 may agree to enter into voluntary binding arbitration, which may be supported with funds from the condominium education trust fund pursuant to section 514B-71; provided that voluntary binding arbitration under this section may be supported with funds from the condominium education trust fund only after the parties have first attempted evaluative mediation.

(b) Any voluntary binding arbitration entered into pursuant to this section and supported with funds from the condominium education trust fund:

(1) Shall include a fee of $175 to be paid by each party to the arbitrator;

(2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than $6,000 total; and

(3) May include issues and parties in addition to those identified in subsection (a); provided that a unit owner or a developer and board are parties to the arbitration at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties. [L 2018, c 196, §2]

[§514B-163] Trial de novo and appeal. (a) The submission of any dispute to an arbitration under section 514B-162 shall in no way limit or abridge the right of any party to a trial de novo.

(b) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ten days after service of the arbitration award upon all parties and the trial de novo shall be filed in circuit court within thirty days of the written demand. Failure to meet these deadlines shall preclude a party from demanding a trial de novo.

(c) The award of arbitration shall not be made known to the trier of fact at a trial de novo.

(d) In any trial de novo demanded under this section, if the party demanding a trial de novo does not prevail at trial, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial. When there is more than one party on one or both sides of an action, or more than one issue in dispute, the court shall allocate its award of costs, expenses, and attorneys' fees among the prevailing parties and tax such fees against those nonprevailing parties who demanded a trial de novo in accordance with the principles of equity. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[PART VII. MISCELLANEOUS PROVISIONS]

Revision Note

Part designation added by revisor pursuant to §23G-15.

[§514B-191][26] Retaliation prohibited. (a) An association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner shall not retaliate against a unit owner, board member, managing agent, resident manager, or association employee who, through a lawful action done in an effort to address, prevent, or stop a violation of this chapter or governing documents of the association:

(1) Complains or otherwise reports an alleged violation;

(2) Causes a complaint or report of an alleged violation to be filed with the association, the commission, or other appropriate entity;

(3) Participates in or cooperates with an investigation of a complaint or report filed with the association, the commission, or other appropriate entity;

(4) Otherwise acts in furtherance of a complaint, report, or investigation concerning an alleged violation; or

(5) Exercises or attempts to exercise any right under this chapter or the governing documents of the association.

(b) A unit owner, board member, managing agent, resident manager, or association employee may bring a civil action in district court alleging a violation of this section. The court may issue an injunction or award damages, court costs, attorneys' fees, or any other relief the court deems appropriate.

(c) As used in this section:

"Governing documents" means an association's declaration, bylaws, or house rules; or any other document that sets forth the rights and responsibilities of the association, its board, its managing agent, or the unit owners.

"Retaliate" means to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents. [L 2017, c 190, §1]

[26] Arakaki's Note: The "Retaliation prohibited" section was added by the 2017 Legislature. While it would have made sense to place this new section in Part VI (Management of Condominiums) and codify it as HRS §514B-158 or a new subpart E in Part VI, the Revisor of Statutes ultimately created a new part and numbered the new section accordingly.

Transition and Safe Harbor Provisions for Adoption of HRS Chapter 514B and Repeal of HRS Chapter 514A
Act 93, §9 (SLH 2005) and Act 181, §45 (SLH 2017)

Act 93, §9 (SLH 2005) [am L 2007, c 244, §8]

SECTION 9. (a) Nothing contained in the new chapter of the Hawaii Revised Statutes established by section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act, shall affect the rights and obligations established under any sales contract between a developer and a purchaser of an apartment in a condominium project that was registered by the developer pursuant to part III of chapter 514A, Hawaii Revised Statutes, prior to the effective date of the new chapter. The rights and obligations of these developers and purchasers shall continue to be governed by chapter 514A, Hawaii Revised Statutes.

(b) The developer of a project created or registered pursuant to chapter 514A, Hawaii Revised Statutes, may elect to register the project under the new chapter established by section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act, by submitting the application, documentation, and fees required under sections 514B-52 and 514B-54, Hawaii Revised Statutes, in section 3 of this Act; provided the property is removed from chapter 514A in accordance with section 514A-21. Upon the issuance of an effective date for the project's public report pursuant to the new chapter, the project's registration under chapter 514A, Hawaii Revised Statutes, shall terminate, the developer shall provide copies of the new public report to all existing purchasers, and the rights and obligations of the developer and all purchasers shall thereafter be governed by the new chapter; provided that unless the new public report reflects a material change to the project:

(1) The issuance of the new public report shall not affect the enforceability of any purchase contract that previously became binding upon the purchaser;

(2) A purchaser shall have the right to rescind the purchase contract; and

(3) A developer shall not be required to deliver a notice of thirty-day right of cancellation as specified in section 514B-86, Hawaii Revised Statutes, in section 4 of this Act.

Act 181, §45 (SLH 2017)

SECTION 45. Condominium property regimes created prior to July 1, 2006, that were issued an effective date pursuant to section 514A-40 and 514A-41, Hawaii Revised Statutes, may be sold on or after January 1, 2019, without revising any of the governing documents; provided that the developer's public report was active on January 1, 2019, and is accurate and not misleading. On January 1, 2019, all active, non-expired chapter 514A, Hawaii Revised Statutes, developer's public reports pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, along with their most recent disclosure abstract, if any, will be treated as non-expiring developer's public reports under part IV of chapter 514B, Hawaii Revised Statutes. Should any pertinent or material changes, or both, occur to the condominium project, the developer shall file an amended developer's public report superseding all prior reports pursuant to chapter 514B, Hawaii Revised Statutes; provided that such projects and their subsequent reports filed under chapter 514B, Hawaii Revised Statutes, shall be exempt from the conversion requirements under section 514B-84(a)(1) and (2), Hawaii Revised Statutes. Condominium property regimes created prior to July 1, 2006, that were not issued an effective date pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, and did not file a notice of intent pursuant to section 514A-1.5(2)(B), Hawaii Revised Statutes, shall revise their governing documents and register under chapter 514B, Hawaii Revised Statutes, for a developer to offer for sale or to sell condominiums.

Nothing contained in this Act or in the condominium property act shall be deemed to invalidate any condominium property regime that was validly created under chapter 514A, Hawaii Revised Statutes, prior to July 1, 2006.

Sorted by HRS Chapter 514B Section Number

Recodification, Final REC Draft	Source	HRS Chapter 514B
___: 1-01	HRS 514A-001	514B-1 Short title
___: 1-02	UCIOA 1-102	514B-2 Applicability
___: 1-03	HAR 16-107-2	514B-3 Definitions
___: 1-03	HRS 508D-1	514B-3 Definitions
___: 1-03	HRS 514A-003	514B-3 Definitions
___: 1-03	HRS 514A-063	514B-3 Definitions
___: 1-03	HRS 514A-084(a)	514B-3 Definitions
___: 1-03	HRS 514E-1	514B-3 Definitions
___: 1-03	UCA 1-103(7), (10), (11), (16), (25)	514B-3 Definitions
___: 1-03	UCA/UCIOA 1-103(3), (4), (5)	514B-3 Definitions
___: 1-03	UCIOA 1-103(16), (26)	514B-3 Definitions
___: 1-04	HRS 514A-004	514B-4 Separate titles and taxation
___: 1-04	HRS 514A-005	514B-4 Separate titles and taxation
___: 1-04	HRS 514A-006	514B-4 Separate titles and taxation
___: 1-04	UCA/UCIOA 1-105(a), (b), (d)	514B-4 Separate titles and taxation
___: 1-05	HRS 514A-001.6	514B-5 Conformance with county land use laws
___: 1-06	HRS 514A-045	514B-6 Supplemental county rules governing a condominium property regime
___: 1-07	UCA/UCIOA 1-109	514B-7 Construction against implicit repeal
___: 1-08	UCA/UCIOA 1-111	514B-8 Severability
___: 1-09	UCA/UCIOA 1-113	514B-9 Obligation of good faith
___: 1-10	California Civil Code 1370	514B-10 Remedies to be liberally administered
___: 1-10	UCA/UCIOA 1-114	514B-10 Remedies to be liberally administered
___: 1-11	UCIOA 1-201	514B-21 Applicability to new condominiums
___: 1-12	UCIOA 1-204	514B-22 Repealed
___: 1-13	UCIOA 1-206	514B-23 Amendments to governing instruments
___: 2-01	HRS 514A-011	514B-31 Creation
___: 2-01	HRS 514A-020	514B-31 Creation
___: 2-02	HRS 514A-011	514B-32 Contents of declaration
___: 2-03	HRS 514A-012	514B-33 Condominium map
___: 2-04	HRS 514A-012	514B-34 Condominium map; certification of architect, engineer, or surveyor
___: 2-05	UCA/UCIOA 2-102	514B-35 Unit boundaries
___: 2-06	HRS 514A-013(g)	514B-36 Leasehold units
___: 2-07	HRS 514A-013(a), (b), (c)	514B-37 Common interest
___: 2-08	HRS 514A-013(d)	514B-38 Common elements
___: 2-09	HRS 514A-003	514B-39 Limited common elements
___: 2-10	HRS 514A-014	514B-40 Transfer of limited common elements
___: 2-11	HRS 514A-015	514B-41 Common profits and expenses
___: 2-12	HRS 514A-015.5	514B-42 Metering of utilities
___: 2-13	HRS 514A-016	514B-43 Liens against units
___: 2-14	HRS 514A-017	514B-44 Contents of deeds or leases of units
___: 2-15	HRS 514A-018	514B-45 Blanket mortgages and other blanket liens affecting a unit at time of first conveyance or lease
___: 2-16	HRS 514A-019	514B-46 Merger of projects or increments
___: 2-17	HRS 514A-021	514B-47 Removal from provisions of this chapter
___: 2-17	HRS 514A-022	514B-47 Removal from provisions of this chapter
___: 3-01	HAR 16-107-2.1 (Draft Rules)	514B-51 Registration required; exceptions
___: 3-01	HRS 514A-031	514B-51 Registration required; exceptions
___: 3-01	UCA/UCIOA 5-102	514B-51 Registration required; exceptions

Sorted by HRS Chapter 514B Section Number

Recodification, Final REC Draft	Source	HRS Chapter 514B
___: 3-02	HRS 514A-032	514B-52 Application for registration
___: 3-02	UCA/UCIOA 5-103(a)	514B-52 Application for registration
___: 3-03	HRS 514A-033	514B-53 Inspection by commission
___: 3-03	HRS 514A-034	514B-53 Inspection by commission
___: 3-04	HRS 514A-036	514B-54 Developer's public report; requirements for issuance of effective date
___: 3-04	HRS 514A-040	514B-54 Developer's public report; requirements for issuance of effective date
___: 3-04	HRS 514A-061	514B-54 Developer's public report; requirements for issuance of effective date
___: 3-05	HRS 514A-038	514B-55 Developer's public report; request for hearing by developer
___: 3-06	HRS 514A-041	514B-56 Developer's public report; amendments
___: 3-07	UCA/UCIOA 5-110	514B-57 Commission oversight of developer's public report
___: 3-08	UCA/UCIOA 5-109	514B-58 Annual report
___: 3-09	New	514B-59 Expiration of developer's public reports
___: 3-10	HRS 514A-042	514B-60 No false or misleading information
___: 3-10	HRS 514A-098	514B-60 No false or misleading information
___: 3-11	HRS 514A-099	514B-61 General powers and duties of commission
___: 3-11	UCA/UCIOA 5-107	514B-61 General powers and duties of commission
___: 3-12	HRS 514A-044	514B-62 Deposit of fees
___: 3-13	HRS 514A-007	514B-63 Condominium specialists; appointment; duties
___: 3-14	HRS 514A-038	514B-64 Private consultants
___: 3-15	HRS 514A-046	514B-65 Investigative powers
___: 3-16	HRS 514A-047	514B-66 Cease and desist orders
___: 3-17	UCA/UCIOA 5-106	514B-67 Termination of registration
___: 3-18	HRS 514A-048	514B-68 Power to enjoin
___: 3-19	HRS 514A-049	514B-69 Penalties
___: 3-20	HRS 514A-050	514B-70 Limitation of actions
___: 3-21	HRS 514A-131	514B-71 Condominium education trust fund
___: 3-22	HRS 514A-040(c)	514B-72 Condominium education trust fund; payments by associations and developers
___: 3-22	HRS 514A-132	514B-72 Condominium education trust fund; payments by associations and developers
___: 3-23	HRS 514A-133	514B-73 Condominium education trust fund; management
___: 4-01	UCA/UCIOA 4-101	514B-81 Applicability; exceptions
___: 4-02	HRS 514A-031	514B-82 Sale of units
___: 4-02	HRS 514A-062	514B-82 Sale of units
___: 4-02	New	514B-82 Sale of units
___: 4-03	HRS 514A-036	514B-83 Developer's public report
___: 4-03	HRS 514A-040	514B-83 Developer's public report
___: 4-03	HRS 514A-061(a)	514B-83 Developer's public report
___: 4-04	HRS 514A-040	514B-84 Developer's public report; special types of condominiums
___: 4-04	HRS 514A-061(b)	514B-84 Developer's public report; special types of condominiums
___: 4-05	New	514B-85 Preregistration solicitation
___: 4-06	HRS 514A-062	514B-86 Requirements for binding sales contracts; purchaser's right to cancel

Sorted by HRS Chapter 514B Section Number

Recodification, Final REC Draft	Source	HRS Chapter 514B
___: 4-06	New	514B-86 Requirements for binding sales contracts; purchaser's right to cancel
___: 4-07	HRS 514A-063	514B-87 Rescission after sales contract becomes binding
___: 4-08	New	514B-88 Delivery
___: 4-09	New	514B-89 Sales contracts before completion of construction
___: 4-10	HRS 514A-062(c)	514B-90 Refunds upon cancellation or termination
___: 4-11	HRS 514A-040(a)(6)	514B-91 Escrow of deposits
___: 4-11	HRS 514A-065	514B-91 Escrow of deposits
___: 4-11	New	514B-91 Escrow of deposits
___: 4-12	HRS 514A-040(a)(6)	514B-92 Use of purchaser deposits to pay project costs
___: 4-12	HRS 514A-064.5	514B-92 Use of purchaser deposits to pay project costs
___: 4-12	HRS 514A-067	514B-92 Use of purchaser deposits to pay project costs
___: 4-12	New	514B-92 Use of purchaser deposits to pay project costs
___: 4-13	HRS 514A-067	514B-93 Early conveyance to pay project costs
___: 4-13	New	514B-93 Early conveyance to pay project costs
___: 4-13	UCA/UCIOA 4-110	514B-93 Early conveyance to pay project costs
___: 4-14	HRS 514A-068	514B-94 Misleading statements and omissions; remedies
___: 4-14	HRS 514A-069	514B-94 Misleading statements and omissions; remedies
Repealed	HRS 514A-101	514B-95 Sales to Owner-Occupants; Definitions
Repealed	HRS 514A-102	514B-95.5 Sales to Owner-Occupants; Announcement or advertisement; publication
Repealed	HRS 514A-103	514B-96 Sales to Owner-Occupants; Designation of residential units
Repealed	HRS 514A-104	514B-96.5 Sales to Owner-Occupants; Unit selection; requirements
Repealed	HRS 514A-104.5	514B-97 Sales to Owner-Occupants; Affidavit
Repealed	HRS 514A-104.6	514B-97.5 Sales to Owner-Occupants; Prohibitions
Repealed	HRS 514A-105	514B-98 Sales to Owner-Occupants; Sale of residential units; developer requirements
Repealed	HRS 514A-106	Repealed
Repealed	HRS 514A-107	514B-98.5 Sales to Owner-Occupants; Enforcement
Repealed	HRS 514A-107.5	514B-99 Sales to Owner-Occupants; Penalties
Repealed	HRS 514A-107.6	514B-99.3 Sales to Owner-Occupants; False statement
Repealed	HRS 514A-108	514B-99.5 Sales to Owner-Occupants; Inapplicability of laws
___: 5-01	New	514B-101 Applicability; exceptions
___: 5-02	HRS 514A-082(a)(11)	514B-102 Association; organization and membership
___: 5-02	UCA/UCIOA 3-101	514B-102 Association; organization and membership
___: 5-03	HRS 514A-095.1	514B-103 Association; registration
___: 5-04	HRS 514A-092.1	514B-104 Association; powers
___: 5-04	UCA/UCIOA 3-102	514B-104 Association; powers
___: 5-05	HRS 514A-015.1	514B-105 Association; limitations on powers
___: 5-05	HRS 514A-082.3	514B-105 Association; limitations on powers
___: 5-05	HRS 514A-092.5	514B-105 Association; limitations on powers
___: 5-05	UCA/UCIOA 3-102(b), (c)	514B-105 Association; limitations on powers
___: 5-06	HRS 514A-082(b)(1)	514B-106 Board; powers and duties

Sorted by HRS Chapter 514B Section Number

Recodification, Final REC Draft	Source	HRS Chapter 514B
Replaced by ___:5-6(a)	HRS 514A-082.4	514B-106 Board; powers and duties
___: 5-06	UCA/UCIOA 3-103	514B-106 Board; powers and duties
	New [Act 158 (SLH 2009)]	514B-106.5 Service of process
___: 5-07	HRS 514A-082(a)(12)	514B-107 Board; limitations
___: 5-07	HRS 514A-082(a)(14)	514B-107 Board; limitations
___: 5-07	HRS 514A-082(b)(10)	514B-107 Board; limitations
___: 5-07	HRS 514A-082(b)(11)	514B-107 Board; limitations
___: 5-07	HRS 514A-082(b)(12)	514B-107 Board; limitations
___: 5-07	HRS 514A-082(b)(7)	514B-107 Board; limitations
___: 5-08	HRS 414D-136	514B-108 Bylaws
___: 5-08	HRS 514A-081	514B-108 Bylaws
___: 5-08	HRS 514A-082(a)(1)(E)	514B-108 Bylaws
___: 5-08	HRS 514A-082(a)(2)	514B-108 Bylaws
___: 5-08	HRS 514A-082(b)(2)	514B-108 Bylaws
___: 5-08	UCA/UCIOA 3-106	514B-108 Bylaws
___: 5-09	HRS 514A-082.2	514B-109 Restatement of declaration and bylaws
___: 5-10	HRS 514A-082.15	514B-110 Bylaws amendment permitted; mixed use property; representation on board
___: 5-11	Restatement of the Law, Third, Property (Servitudes) 6.12	514B-111 Judicial power to excuse compliance with requirements of declaration or bylaws
___: 5-12	HRS 514A-087	514B-112 Condominium community mutual obligations
___: 5-12	HRS 514A-088	514B-112 Condominium community mutual obligations
	New [Act 242 (SLH 2015)]	514B-113 Medical cannabis; discrimination
___: 5-13	HRS 514A-082(a)(16)	514B-121 Association meetings
___: 5-13	HRS 514A-082(a)(17)	514B-121 Association meetings
___: 5-13	HRS 514A-082(b)(1)	514B-121 Association meetings
___: 5-13	UCA/UCIOA 3-108	514B-121 Association meetings
___: 5-14	HRS 514A-083.4	514B-122 Association meetings; minutes
___: 5-15	HRS 514A-082(b)(4)	514B-123 Association meetings; voting; proxies
___: 5-15	HRS 514A-083.2	514B-123 Association meetings; voting; proxies
___: 5-15	HRS 514A-083.3	514B-123 Association meetings; voting; proxies
___: 5-15	UCA/UCIOA 3-110	514B-123 Association meetings; voting; proxies
___: 5-16	HRS 514A-083	514B-124 Association meetings; purchaser's right to vote
	New [Act 189 (SLH 2014)]	514B-124.5 Voting for elections; cumulative voting
___: 5-17	HRS 414D-143(c)	514B-125 Board meetings
___: 5-17	HRS 421J-5(d), (e)	514B-125 Board meetings
___: 5-17	HRS 514A-082(a)(13)	514B-125 Board meetings
___: 5-17	HRS 514A-082(a)(16)	514B-125 Board meetings
___: 5-17	HRS 514A-082(b)(5)	514B-125 Board meetings
___: 5-17	HRS 514A-082(b)(9)	514B-125 Board meetings
___: 5-17	HRS 514A-083.1	514B-125 Board meetings
___: 5-17	Robert's Rules of Order Newly Revised	514B-125 Board meetings
___: 5-18	HRS 514A-083.4	514B-126 Board meetings; minutes
___: 5-19	HRS 514A-081	514B-131 Operation of the property
___: 5-20	HRS 514A-095	514B-132 Managing agents
___: 5-21	HRS 514A-082(b)(8)	514B-133 Association employees; background check; prohibition

Sorted by HRS Chapter 514B Section Number

Recodification, Final REC Draft	Source	HRS Chapter 514B
___: 5-21	HRS 514A-082.1	514B-133 Association employees; background check; prohibition
___: 5-22	HRS 514A-084(b), (c)	514B-134 Management and contracts; developer, managing agent, and association
___: 5-23	UCA/UCIOA 3-105	514B-135 Termination of contracts and leases of developer
___: 5-24	UCA/UCIOA 3-104	514B-136 Transfer of developer rights
___: 5-25	HRS 514A-013(f)	514B-137 Upkeep of condominium
___: 5-25	HRS 514A-082(b)(6)	514B-137 Upkeep of condominium
___: 5-25	UCA/UCIOA 3-107(a)	514B-137 Upkeep of condominium
___: 5-26	New	514B-138 Upkeep of condominium; high-risk components
___: 5-27	HRS 514A-093.5	514B-139 Upkeep of condominium; disposition of unclaimed possessions
___: 5-28	HRS 514A-013.4	514B-140 Additions to and alterations of condominium
___: 5-28	HRS 514A-089	514B-140 Additions to and alterations of condominium
___: 5-29	UCA/UCIOA 3-111	514B-141 Tort and contract liability; tolling of limitation period
___: 5-30	New	514B-142 Aging in place or disabled; limitation on liability
___: 5-31	765 Illinois Compiled Statutes (ILCS) 605/12	514B-143 Insurance
___: 5-31	HRS 514A-086(a)	514B-143 Insurance
___: 5-31	HRS 514A-095.1(a)(1)	514B-143 Insurance
___: 5-32	HRS 514A-091	514B-144 Association fiscal matters; assessments for common expenses
___: 5-32	HRS 514A-092	514B-144 Association fiscal matters; assessments for common expenses
___: 5-32	HRS 514A-092.2	514B-144 Association fiscal matters; assessments for common expenses
___: 5-32	UCA/UCIOA 3-115	514B-144 Association fiscal matters; assessments for common expenses
___: 5-33	HRS 514A-090.5	514B-145 Association fiscal matters; collection of unpaid assessments from tenants or rental agents
___: 5-34	HRS 514A-090	514B-146 Association fiscal matters; lien for assessments
___: 5-35	UCA/UCIOA 3-117	514B-147 Association fiscal matters; other liens affecting the condominium
___: 5-36	HRS 514A-083.6	514B-148 Association fiscal matters; budgets and reserves
___: 5-37	HRS 514A-097	514B-149 Association fiscal matters; handling and disbursement of funds
___: 5-38	HRS 514A-096	514B-150 Association fiscal matters; audits, audited financial statement
___: 5-39	HRS 514A-090.6	514B-151 Association fiscal matters; lease rent renegotiation
___: 5-40	UCA/UCIOA 3-118	514B-152 Association records; generally
___: 5-41	HRS 514A-083.3	514B-153 Association records; records to be maintained
___: 5-41	HRS 514A-084(c)	514B-153 Association records; records to be maintained

Sorted by HRS Chapter 514B Section Number

Recodification, Final REC Draft	Source	HRS Chapter 514B
___: 5-41	HRS 514A-084.5	514B-153 Association records; records to be maintained
___: 5-41	HRS 514A-085(a), (b)	514B-153 Association records; records to be maintained
___: 5-42	HRS 514A-083.5	514B-154 Association records; availability; disposal; prohibitions
___: 5-42	HRS 514A-084(c)	514B-154 Association records; availability; disposal; prohibitions
___: 5-42	HRS 514A-084.5	514B-154 Association records; availability; disposal; prohibitions
___: 5-42	HRS 514A-085(c), (d)	514B-154 Association records; availability; disposal; prohibitions
	New [Act 188 (SLH 2014)]	514B-154.5 Association documents to be provided
___: 5-43	UCA/UCIOA 3-119	514B-155 Association as trustee
___: 5-44	HRS 514A-082.5	514B-156 Pets
___: 5-44	HRS 514A-082.6	514B-156 Pets
___: 5-45	HRS 514A-094	514B-157 Attorneys' fees, delinquent assessments, and expenses of enforcement
___: 5-46	HRS 421J-13(b), (c)	514B-161 Mediation
___: 5-46	HRS 514A-121.5	514B-161 Mediation
___: 5-47	HRS 514A-121	514B-162 Arbitration
___: 5-47	HRS 514A-122	514B-162 Arbitration
___: 5-47	HRS 514A-123	514B-162 Arbitration
___: 5-47	HRS 514A-124	514B-162 Arbitration
___: 5-47	HRS 514A-125	514B-162 Arbitration
___: 5-47	HRS 514A-126	514B-162 Arbitration
	New [Act 196 (SLH 2018)]	514B-162.5 Voluntary binding arbitration
___: 5-47	HRS 514A-127	514B-163 Trial de novo and appeal
	New [Act 190 (SLH 2017)]	514B-191 Retaliation prohibited
HRS 521-3(d)	HRS 521-3 (New subsection)	HRS 521-3(d)
Repealed	HRS 514A-002	Repealed
Repealed	HRS 514A-013.5	Repealed
Repealed	HRS 514A-013.6	Repealed
Repealed	HRS 514A-014.5	Repealed
Repealed	HRS 514A-035	Repealed
Repealed	HRS 514A-037	Repealed
Repealed	HRS 514A-039	Repealed
Repealed	HRS 514A-039.5	Repealed
Repealed	HRS 514A-043	Repealed
Repealed	HRS 514A-064	Repealed
Repealed	HRS 514A-066	Repealed
Repealed	HRS 514A-070	Repealed
Repealed	HRS 514A-134	Repealed
Repealed	HRS 514A-135	Repealed
Replaced by ___: 5:4(4)	HRS 514A-093	Replaced by 514B-104(4)
Replaced by Part I, Subpart 2	HRS 514A-001.5	Replaced by Part II

Sorted by Source

Recodification, Final REC Draft	Source	HRS Chapter 514B
___: 5-31	765 Illinois Compiled Statutes (ILCS) 605/12	514B-143 Insurance
___: 1-10	California Civil Code 1370	514B-10 Remedies to be liberally administered
___: 1-03	HAR 16-107-2	514B-3 Definitions
___: 3-01	HAR 16-107-2.1 (Draft Rules)	514B-51 Registration required; exceptions
___: 5-08	HRS 414D-136	514B-108 Bylaws
___: 5-17	HRS 414D-143(c)	514B-125 Board meetings
___: 5-46	HRS 421J-13(b), (c)	514B-161 Mediation
___: 5-17	HRS 421J-5(d), (e)	514B-125 Board meetings
___: 1-03	HRS 508D-1	514B-3 Definitions
___: 1-01	HRS 514A-001	514B-1 Short title
Replaced by Part I, Subpart 2	HRS 514A-001.5	Replaced by Part II
___: 1-05	HRS 514A-001.6	514B-5 Conformance with county land use laws
Repealed	HRS 514A-002	Repealed
___: 1-03	HRS 514A-003	514B-3 Definitions
___: 2-09	HRS 514A-003	514B-39 Limited common elements
___: 1-04	HRS 514A-004	514B-4 Separate titles and taxation
___: 1-04	HRS 514A-005	514B-4 Separate titles and taxation
___: 1-04	HRS 514A-006	514B-4 Separate titles and taxation
___: 3-13	HRS 514A-007	514B-63 Condominium specialists; appointment; duties
___: 2-01	HRS 514A-011	514B-31 Creation
___: 2-02	HRS 514A-011	514B-32 Contents of declaration
___: 2-03	HRS 514A-012	514B-33 Condominium map
___: 2-04	HRS 514A-012	514B-34 Condominium map; certification of architect, engineer, or surveyor
___: 2-07	HRS 514A-013(a), (b), (c)	514B-37 Common interest
___: 2-08	HRS 514A-013(d)	514B-38 Common elements
___: 5-25	HRS 514A-013(f)	514B-137 Upkeep of condominium
___: 2-06	HRS 514A-013(g)	514B-36 Leasehold units
___: 5-28	HRS 514A-013.4	514B-140 Additions to and alterations of condominium
Repealed	HRS 514A-013.5	Repealed
Repealed	HRS 514A-013.6	Repealed
___: 2-10	HRS 514A-014	514B-40 Transfer of limited common elements
Repealed	HRS 514A-014.5	Repealed
___: 2-11	HRS 514A-015	514B-41 Common profits and expenses
___: 5-05	HRS 514A-015.1	514B-105 Association; limitations on powers
___: 2-12	HRS 514A-015.5	514B-42 Metering of utilities
___: 2-13	HRS 514A-016	514B-43 Liens against units
___: 2-14	HRS 514A-017	514B-44 Contents of deeds or leases of units
___: 2-15	HRS 514A-018	514B-45 Blanket mortgages and other blanket liens affecting a unit at time of first conveyance or lease
___: 2-16	HRS 514A-019	514B-46 Merger of projects or increments
___: 2-01	HRS 514A-020	514B-31 Creation
___: 2-17	HRS 514A-021	514B-47 Removal from provisions of this chapter
___: 2-17	HRS 514A-022	514B-47 Removal from provisions of this chapter
___: 3-01	HRS 514A-031	514B-51 Registration required; exceptions
___: 4-02	HRS 514A-031	514B-82 Sale of units
___: 3-02	HRS 514A-032	514B-52 Application for registration
___: 3-03	HRS 514A-033	514B-53 Inspection by commission
___: 3-03	HRS 514A-034	514B-53 Inspection by commission

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Recodification, Final REC Draft	Source	HRS Chapter 514B
Repealed	HRS 514A-035	Repealed
___: 3-04	HRS 514A-036	514B-54 Developer's public report; requirements for issuance of effective date
___: 4-03	HRS 514A-036	514B-83 Developer's public report
Repealed	HRS 514A-037	Repealed
___: 3-05	HRS 514A-038	514B-55 Developer's public report; request for hearing by developer
___: 3-14	HRS 514A-038	514B-64 Private consultants
Repealed	HRS 514A-039	Repealed
Repealed	HRS 514A-039.5	Repealed
___: 3-04	HRS 514A-040	514B-54 Developer's public report; requirements for issuance of effective date
___: 4-03	HRS 514A-040	514B-83 Developer's public report
___: 4-04	HRS 514A-040	514B-84 Developer's public report; special types of condominiums
___: 4-11	HRS 514A-040(a)(6)	514B-91 Escrow of deposits
___: 4-12	HRS 514A-040(a)(6)	514B-92 Use of purchaser deposits to pay project costs
___: 3-22	HRS 514A-040(c)	514B-72 Condominium education trust fund; payments by associations and developers
___: 3-06	HRS 514A-041	514B-56 Developer's public report; amendments
___: 3-10	HRS 514A-042	514B-60 No false or misleading information
Repealed	HRS 514A-043	Repealed
___: 3-12	HRS 514A-044	514B-62 Deposit of fees
___: 1-06	HRS 514A-045	514B-6 Supplemental county rules governing a condominium property regime
___: 3-15	HRS 514A-046	514B-65 Investigative powers
___: 3-16	HRS 514A-047	514B-66 Cease and desist orders
___: 3-18	HRS 514A-048	514B-68 Power to enjoin
___: 3-19	HRS 514A-049	514B-69 Penalties
___: 3-20	HRS 514A-050	514B-70 Limitation of actions
___: 3-04	HRS 514A-061	514B-54 Developer's public report; requirements for issuance of effective date
___: 4-03	HRS 514A-061(a)	514B-83 Developer's public report
___: 4-04	HRS 514A-061(b)	514B-84 Developer's public report; special types of condominiums
___: 4-02	HRS 514A-062	514B-82 Sale of units
___: 4-06	HRS 514A-062	514B-86 Requirements for binding sales contracts; purchaser's right to cancel
___: 4-10	HRS 514A-062(c)	514B-90 Refunds upon cancellation or termination
___: 1-03	HRS 514A-063	514B-3 Definitions
___: 4-07	HRS 514A-063	514B-87 Rescission after sales contract becomes binding
Repealed	HRS 514A-064	Repealed
___: 4-12	HRS 514A-064.5	514B-92 Use of purchaser deposits to pay project costs
___: 4-11	HRS 514A-065	514B-91 Escrow of deposits
Repealed	HRS 514A-066	Repealed
___: 4-12	HRS 514A-067	514B-92 Use of purchaser deposits to pay project costs
___: 4-13	HRS 514A-067	514B-93 Early conveyance to pay project costs
___: 4-14	HRS 514A-068	514B-94 Misleading statements and omissions; remedies

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Recodification, Final REC Draft	Source	HRS Chapter 514B
___: 4-14	HRS 514A-069	514B-94 Misleading statements and omissions; remedies
Repealed	HRS 514A-070	Repealed
___: 5-08	HRS 514A-081	514B-108 Bylaws
___: 5-19	HRS 514A-081	514B-131 Operation of the property
___: 5-08	HRS 514A-082(a)(1)(E)	514B-108 Bylaws
___: 5-02	HRS 514A-082(a)(11)	514B-102 Association; organization and membership
___: 5-07	HRS 514A-082(a)(12)	514B-107 Board; limitations
___: 5-17	HRS 514A-082(a)(13)	514B-125 Board meetings
___: 5-07	HRS 514A-082(a)(14)	514B-107 Board; limitations
___: 5-13	HRS 514A-082(a)(16)	514B-121 Association meetings
___: 5-17	HRS 514A-082(a)(16)	514B-125 Board meetings
___: 5-13	HRS 514A-082(a)(17)	514B-121 Association meetings
___: 5-08	HRS 514A-082(a)(2)	514B-108 Bylaws
___: 5-06	HRS 514A-082(b)(1)	514B-106 Board; powers and duties
___: 5-13	HRS 514A-082(b)(1)	514B-121 Association meetings
___: 5-07	HRS 514A-082(b)(10)	514B-107 Board; limitations
___: 5-07	HRS 514A-082(b)(11)	514B-107 Board; limitations
___: 5-07	HRS 514A-082(b)(12)	514B-107 Board; limitations
___: 5-08	HRS 514A-082(b)(2)	514B-108 Bylaws
___: 5-15	HRS 514A-082(b)(4)	514B-123 Association meetings; voting; proxies
___: 5-17	HRS 514A-082(b)(5)	514B-125 Board meetings
___: 5-25	HRS 514A-082(b)(6)	514B-137 Upkeep of condominium
___: 5-07	HRS 514A-082(b)(7)	514B-107 Board; limitations
___: 5-21	HRS 514A-082(b)(8)	514B-133 Association employees; background check; prohibition
___: 5-17	HRS 514A-082(b)(9)	514B-125 Board meetings
___: 5-21	HRS 514A-082.1	514B-133 Association employees; background check; prohibition
___: 5-10	HRS 514A-082.15	514B-110 Bylaws amendment permitted; mixed use property; representation on board
___: 5-09	HRS 514A-082.2	514B-109 Restatement of declaration and bylaws
___: 5-05	HRS 514A-082.3	514B-105 Association; limitations on powers
Replaced by ___:5-6(a)	HRS 514A-082.4	514B-106 Board; powers and duties
___: 5-44	HRS 514A-082.5	514B-156 Pets
___: 5-44	HRS 514A-082.6	514B-156 Pets
___: 5-16	HRS 514A-083	514B-124 Association meetings; purchaser's right to vote
___: 5-17	HRS 514A-083.1	514B-125 Board meetings
___: 5-15	HRS 514A-083.2	514B-123 Association meetings; voting; proxies
___: 5-15	HRS 514A-083.3	514B-123 Association meetings; voting; proxies
___: 5-41	HRS 514A-083.3	514B-153 Association records; records to be maintained
___: 5-14	HRS 514A-083.4	514B-122 Association meetings; minutes
___: 5-18	HRS 514A-083.4	514B-126 Board meetings; minutes
___: 5-42	HRS 514A-083.5	514B-154 Association records; availability; disposal; prohibitions
___: 5-36	HRS 514A-083.6	514B-148 Association fiscal matters; budgets and reserves
___: 1-03	HRS 514A-084(a)	514B-3 Definitions

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Recodification, Final REC Draft	Source	HRS Chapter 514B
___: 5-22	HRS 514A-084(b), (c)	514B-134 Management and contracts; developer, managing agent, and association
___: 5-41	HRS 514A-084(c)	514B-153 Association records; records to be maintained
___: 5-42	HRS 514A-084(c)	514B-154 Association records; availability; disposal; prohibitions
___: 5-41	HRS 514A-084.5	514B-153 Association records; records to be maintained
___: 5-42	HRS 514A-084.5	514B-154 Association records; availability; disposal; prohibitions
___: 5-41	HRS 514A-085(a), (b)	514B-153 Association records; records to be maintained
___: 5-42	HRS 514A-085(c), (d)	514B-154 Association records; availability; disposal; prohibitions
___: 5-31	HRS 514A-086(a)	514B-143 Insurance
___: 5-12	HRS 514A-087	514B-112 Condominium community mutual obligations
___: 5-12	HRS 514A-088	514B-112 Condominium community mutual obligations
___: 5-28	HRS 514A-089	514B-140 Additions to and alterations of condominium
___: 5-34	HRS 514A-090	514B-146 Association fiscal matters; lien for assessments
___: 5-33	HRS 514A-090.5	514B-145 Association fiscal matters; collection of unpaid assessments from tenants or rental agents
___: 5-39	HRS 514A-090.6	514B-151 Association fiscal matters; lease rent renegotiation
___: 5-32	HRS 514A-091	514B-144 Association fiscal matters; assessments for common expenses
___: 5-32	HRS 514A-092	514B-144 Association fiscal matters; assessments for common expenses
___: 5-04	HRS 514A-092.1	514B-104 Association; powers
___: 5-32	HRS 514A-092.2	514B-144 Association fiscal matters; assessments for common expenses
___: 5-05	HRS 514A-092.5	514B-105 Association; limitations on powers
Replaced by ___: 5:4(4)	HRS 514A-093	Replaced by 514B-104(4)
___: 5-27	HRS 514A-093.5	514B-139 Upkeep of condominium; disposition of unclaimed possessions
___: 5-45	HRS 514A-094	514B-157 Attorneys' fees, delinquent assessments, and expenses of enforcement
___: 5-20	HRS 514A-095	514B-132 Managing agents
___: 5-03	HRS 514A-095.1	514B-103 Association; registration
___: 5-31	HRS 514A-095.1(a)(1)	514B-143 Insurance
___: 5-38	HRS 514A-096	514B-150 Association fiscal matters; audits, audited financial statement
___: 5-37	HRS 514A-097	514B-149 Association fiscal matters; handling and disbursement of funds
___: 3-10	HRS 514A-098	514B-60 No false or misleading information
___: 3-11	HRS 514A-099	514B-61 General powers and duties of commission
Repealed	HRS 514A-101	514B-95 Sales to Owner-Occupants; Definitions
Repealed	HRS 514A-102	514B-95.5 Sales to Owner-Occupants; Announcement or advertisement; publication

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Recodification, Final REC Draft	Source	HRS Chapter 514B
Repealed	HRS 514A-103	514B-96 Sales to Owner-Occupants; Designation of residential units
Repealed	HRS 514A-104	514B-96.5 Sales to Owner-Occupants; Unit selection; requirements
Repealed	HRS 514A-104.5	514B-97 Sales to Owner-Occupants; Affidavit
Repealed	HRS 514A-104.6	514B-97.5 Sales to Owner-Occupants; Prohibitions
Repealed	HRS 514A-105	514B-98 Sales to Owner-Occupants; Sale of residential units; developer requirements
Repealed	HRS 514A-106	Repealed
Repealed	HRS 514A-107	514B-98.5 Sales to Owner-Occupants; Enforcement
Repealed	HRS 514A-107.5	514B-99 Sales to Owner-Occupants; Penalties
Repealed	HRS 514A-107.6	514B-99.3 Sales to Owner-Occupants; False statement
Repealed	HRS 514A-108	514B-99.5 Sales to Owner-Occupants; Inapplicability of laws
___: 5-47	HRS 514A-121	514B-162 Arbitration
___: 5-46	HRS 514A-121.5	514B-161 Mediation
___: 5-47	HRS 514A-122	514B-162 Arbitration
___: 5-47	HRS 514A-123	514B-162 Arbitration
___: 5-47	HRS 514A-124	514B-162 Arbitration
___: 5-47	HRS 514A-125	514B-162 Arbitration
___: 5-47	HRS 514A-126	514B-162 Arbitration
___: 5-47	HRS 514A-127	514B-163 Trial de novo and appeal
___: 3-21	HRS 514A-131	514B-71 Condominium education trust fund
___: 3-22	HRS 514A-132	514B-72 Condominium education trust fund; payments by associations and developers
___: 3-23	HRS 514A-133	514B-73 Condominium education trust fund; management
Repealed	HRS 514A-134	Repealed
Repealed	HRS 514A-135	Repealed
___: 1-03	HRS 514E-1	514B-3 Definitions
HRS 521-3(d)	HRS 521-3 (New subsection)	HRS 521-3(d)
___: 5-01	New	514B-101 Applicability; exceptions
___: 5-26	New	514B-138 Upkeep of condominium; high-risk components
___: 5-30	New	514B-142 Aging in place or disability; limitation on liability
___: 3-09	New	514B-59 Expiration of developer's public reports
___: 4-02	New	514B-82 Sale of units
___: 4-05	New	514B-85 Preregistration solicitation
___: 4-06	New	514B-86 Requirements for binding sales contracts; purchaser's right to cancel
___: 4-08	New	514B-88 Delivery
___: 4-09	New	514B-89 Sales contracts before completion of construction
___: 4-11	New	514B-91 Escrow of deposits
___: 4-12	New	514B-92 Use of purchaser deposits to pay project costs
___: 4-13	New	514B-93 Early conveyance to pay project costs
	New [Act 158 (SLH 2009)]	514B-106.5 Service of process
	New [Act 242 (SLH 2015)]	514B-113 Medical cannabis; discrimination
	New [Act 189 (SLH 2014)]	514B-124.5 Voting for elections; cumulative voting
	New [Act 188 (SLH 2014)]	514B-154.5 Association documents to be provided

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Recodification, Final REC Draft	Source	HRS Chapter 514B
	New [Act 196 (SLH 2018)]	514B-162.5 Voluntary binding arbitration
	New [Act 190 (SLH 2017)]	514B-191 Retaliation prohibited
___: 5-11	Restatement of the Law, Third, Property (Servitudes) 6.12	514B-111 Judicial power to excuse compliance with requirements of declaration or bylaws
___: 5-17	Robert's Rules of Order Newly Revised	514B-125 Board meetings
___: 1-03	UCA 1-103(7), (10), (11), (16), (25)	514B-3 Definitions
___: 1-03	UCA/UCIOA 1-103(3), (4), (5)	514B-3 Definitions
___: 1-04	UCA/UCIOA 1-105(a), (b), (d)	514B-4 Separate titles and taxation
___: 1-07	UCA/UCIOA 1-109	514B-7 Construction against implicit repeal
___: 1-08	UCA/UCIOA 1-111	514B-8 Severability
___: 1-09	UCA/UCIOA 1-113	514B-9 Obligation of good faith
___: 1-10	UCA/UCIOA 1-114	514B-10 Remedies to be liberally administered
___: 2-05	UCA/UCIOA 2-102	514B-35 Unit boundaries
___: 5-02	UCA/UCIOA 3-101	514B-102 Association; organization and membership
___: 5-04	UCA/UCIOA 3-102	514B-104 Association; powers
___: 5-05	UCA/UCIOA 3-102(b), (c)	514B-105 Association; limitations on powers
___: 5-06	UCA/UCIOA 3-103	514B-106 Board; powers and duties
___: 5-24	UCA/UCIOA 3-104	514B-136 Transfer of developer rights
___: 5-23	UCA/UCIOA 3-105	514B-135 Termination of contracts and leases of developer
___: 5-08	UCA/UCIOA 3-106	514B-108 Bylaws
___: 5-25	UCA/UCIOA 3-107(a)	514B-137 Upkeep of condominium
___: 5-13	UCA/UCIOA 3-108	514B-121 Association meetings
___: 5-15	UCA/UCIOA 3-110	514B-123 Association meetings; voting; proxies
___: 5-29	UCA/UCIOA 3-111	514B-141 Tort and contract liability; tolling of limitation period
___: 5-32	UCA/UCIOA 3-115	514B-144 Association fiscal matters; assessments for common expenses
___: 5-35	UCA/UCIOA 3-117	514B-147 Association fiscal matters; other liens affecting the condominium
___: 5-40	UCA/UCIOA 3-118	514B-152 Association records; generally
___: 5-43	UCA/UCIOA 3-119	514B-155 Association as trustee
___: 4-01	UCA/UCIOA 4-101	514B-81 Applicability; exceptions
___: 4-13	UCA/UCIOA 4-110	514B-93 Early conveyance to pay project costs
___: 3-01	UCA/UCIOA 5-102	514B-51 Registration required; exceptions
___: 3-02	UCA/UCIOA 5-103(a)	514B-52 Application for registration
___: 3-17	UCA/UCIOA 5-106	514B-67 Termination of registration
___: 3-11	UCA/UCIOA 5-107	514B-61 General powers and duties of commission
___: 3-08	UCA/UCIOA 5-109	514B-58 Annual report
___: 3-07	UCA/UCIOA 5-110	514B-57 Commission oversight of developer's public report
___: 1-02	UCIOA 1-102	514B-2 Applicability
___: 1-03	UCIOA 1-103(16), (26)	514B-3 Definitions
___: 1-11	UCIOA 1-201	514B-21 Applicability to new condominiums
___: 1-12	UCIOA 1-204	514B-22 Repealed
___: 1-13	UCIOA 1-206	514B-23 Amendments to governing instruments

HRS Chapter 514B, Part I. General Provisions

Act 164, Session Laws of Hawaii ("SLH") (2004)

PART I.

SECTION 1. In 1961, Hawaii became the first state to pass a law enabling the creation of condominiums.

The 1961 "Horizontal Property Regime" law consisted of thirty-three sections covering a little more than three pages in the Revised Laws of Hawaii. Since that time, the law has been amended constantly. Presently, Hawaii's "Condominium Property Regime" law, chapter 514A, Hawaii Revised Statutes, consists of over one hundred sections taking up over fifty pages. As noted by the legislature in Act 213, Session Laws of Hawaii 2000, "[t]he present law is the result of numerous amendments enacted over the years made in a piecemeal fashion and with little regard to the law as a whole."

In 2000, the legislature recognized that "[Hawaii's] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations. The law is also overly regulatory, hinders development, and ignores technological changes and the present day development process." (Act 213, Session Laws of Hawaii 2000)

Consequently, the legislature directed the real estate commission (commission) to conduct a review of Hawaii's condominium property regimes law, make findings and recommendations for recodification of the law, and develop draft legislation consistent with its review and recommendations for submission to the legislature. This Act is the result of the commission's three-year effort to recodify Hawaii's condominium law. The commission's "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes), in response to Act 213, Section 4 (SLH 2000)", dated December 31, 2003, should be used as an aid in understanding and interpreting this Act. The report may be viewed electronically at http://www.hawaii.gov/dcca/reports or on the commission's website at http://www.hawaii.gov/hirec.[1]

The purpose of this part is to "update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law", as directed by Act 213, Session Laws of Hawaii 2000.

CHAPTER 514B

CONDOMINIUMS

TABLE OF CONTENTS

Part I. GENERAL PROVISIONS

PART I. GENERAL PROVISIONS

[§514B-1] Short title. This chapter may be cited as the Condominium Property Act. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Arakaki's Comment

[1] As of January 2019, the Real Estate Commission's December 31, 2003 Final Report on the condominium law recodification may be found at: http://cca.hawaii.gov/reb/condo_ed/condo_recod/condo_workingrecod/recod_final/.

1. Until 2018, the Revisor of Statute's reference to "am L 2005, c 93, §7" in the bracketed caption following the statutory language was not part of HRS Chapter 514B. The reference now appears in virtually all sections of HRS Chapter 514B that were initially adopted in Act 164 (SLH 2004) (i.e., sections in HRS Chapter 514B Parts I, II, and VI).

Act 93 (SLH 2005), Section 7, amended Act 164 (SLH 2004), Section 35, which was the "effective date" provision of Act 164 (SLH 2004). In other words, Act 93 (SLH 2005), Section 7, amended a session law's "effective date" language, not statutory language. The amendment reads in full as follows:

SECTION 7. Act 164, Session Laws of Hawaii 2004, is amended by amending section 35 to read as follows:

"SECTION 35. This Act shall take effect on [~~July 1, 2005;~~] July 1, 2006; provided that:

(1) [~~Section -146~~] The text of section -146 in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;

[~~(2) Section -161 in part I of this Act, relating to mediation shall take effect on July 1, 2006;~~

~~(3)~~] (2) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006;

[~~(4)~~] (3) Sections 30 to 33 of this Act shall take effect on July 1, 2004; and

[~~(5)~~] (4) If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective [~~July 1, 2005,~~] July 1, 2006, parts I and II of this Act shall be repealed on [~~June 30, 2005.~~] June 30, 2006."

[§514B-2] Applicability. Applicability of this chapter is governed by part II. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[~~[~~]§514B-3[~~]~~] **Definitions.** As used in this chapter and in the declaration and bylaws, unless specifically provided otherwise or required by the context:

Real Estate Commission's Comment (2003 Final Report)[2]

1. In Lewis Carroll's *Through the Looking Glass*, Alice meets up with Humpty Dumpty sitting on his wall. In the course of their conversation, the following exchange takes place:

"There are three hundred and sixty-four days when you might get un-birthday presents," [said Humpty Dumpty] "and only *one* for birthday presents, you know. There's glory for you!"

"I don't know what you mean by 'glory,'" Alice said.

"Humpty Dumpty smiled contemptuously. "Of course you don't – till I tell you. I meant, 'there's a nice knock-down argument for you!'"

"But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected.

"When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean – neither more nor less."

[2] The Real Estate Commission's "2003 Final Report" refers to the "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000)," dated December 31, 2003. Pursuant to Act 164 (SLH 2004), the Commission's 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B). The Commission's 2003 Final Report comments are reproduced verbatim, except to fill in references to HRS Chapter 514B (since the actual chapter and section numbers were not inserted until after Acts 164 (SLH 2004) and 93 (SLH 2005) were enacted). Additional comments are inserted under "Arakaki's Comment."

"The question is," said Alice, "whether you *can* make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master – that's all."

Definitions – what we mean by the words we use – are critical in "Condoland." Through interpretation and amendment, some definitions in HRS have gotten "curiouser and curiouser" over the years. With common understanding as our master, the recodified condominium law uses definitions contained in HRS Chapter 514A with, however, appropriate modifications and additions from the proposed Hawaii Administrative Rules (Title 16, Chapter 107), UCA/UCIOA, and other sources.

2. UCA/UCIOA §1-103 and HRS §514A-3 are the sources of the first sentence in this section. As noted in the official comments to §1-103 of UCA (1980) and UCIOA (1994):

> The first clause of this section permits the defined terms used in the Act to be defined differently in the declaration and bylaws. Regardless of how terms are used in those documents, however, terms have an unvarying meaning in the Act, and any restricted practice which depends on the definition of a term is not affected by a changed term in the documents.
>
> **Example**: A declarant might vary the definition of "unit owner" in the declaration to exclude himself in an attempt to avoid assessments for units which he owns. The attempt would be futile, since the Act defines a declarant who owns a unit as a unit owner and defines the liabilities of a unit owner.

3. HRS §514A-3, HAR §16-107-2, Proposed Rules, Draft #6 (5/17/02), and UCA/UCIOA §1-103, sometimes modified, are the sources of most of the definitions in this section.

Arakaki's Comment

1. The definitions of "Association," "Condominium map," "Material change," and "Structures" are presented below in Ramseyer format to reflect clarifying amendments adopted by the 2006 Legislature.

"Affiliate of a developer" means a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-84(a) is the source of the definition of "affiliate of a developer".

"Association" means the unit owners' association organized under section 514B-102 or under prior condominium property regime statutes.

"Board" or "board of directors" means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.

"Commission" means the real estate commission of the State.

"Common elements" means:

(1) All portions of a condominium other than the units; and

(2) Any other interests in real estate for the benefit of unit owners that are subject to the declaration.

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §1-103(4) is the source of the definition of "common elements". The recodification defines "units" and "limited common elements" with specificity and defines "common elements" as everything else. As noted in UCIOA Comment #1 to §2-102: "It is important for title purposes, for purposes of defining maintenance responsibilities, and other reasons to have a clear guide as to precisely which parts of a condominium constitute the units and which parts constitute the common elements.

"Common expenses" means expenditures made by, or financial liabilities of, the association for operation of the property, and shall include any allocations to reserves.

"Common interest" means the percentage of undivided interest in the common elements appurtenant to each unit, as expressed in the declaration, and any specified percentage of the common interest means such percentage of the undivided interests in the aggregate.

"Common profits" means the balance of all income, rents, profits, and revenues from the common elements or other property owned by the association remaining after the deduction of the common expenses.

"Completion of construction" means the earliest of:

(1) The issuance of a certificate of occupancy for the unit;

(2) The date of completion for the project, or the phase of the project that includes the unit, as defined in section 507-43;

(3) The recordation of the "as built" amendment to the declaration that includes the unit;

(4) The issuance of the architect's certificate of substantial completion for the project, or the phase of the project that includes the unit; or

(5) The date the unit is completed so as to permit normal occupancy.

"Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Real Estate Commission's Comment (2003 Final Report)

1. UCA §1-103(7) is the source of the definition of "condominium".

2. As noted in the official comment to UCA (1980) §1-103(7), unless the ownership interest in the common elements is vested in the owners of the units, the project is not a condominium.

"Condominium map" means, however denominated, a map or plan of the ~~[building or buildings]~~ condominium property regime containing the information required by section 514B-33.

"Converted" or "conversion" means the submission of a structure to a condominium property regime more than twelve months after the completion of construction; provided that structures used as sales offices or models for a project and later submitted to a condominium property regime shall not be considered to be converted structures.

"Declaration" means any instrument, however denominated, that creates a condominium, including any amendments to the instrument.

"Developer" means a person who undertakes to develop a real estate condominium project, including a person who succeeds to the interest of the developer by acquiring a controlling interest in the developer or in the project.

"Development rights" means any right or combination of rights reserved by a developer in the declaration to:

(1) Add real estate to a condominium;

(2) Create units, common elements, or limited common elements within a condominium;

(3) Subdivide units, combine units, or convert units into common elements;

(4) Withdraw real estate from a condominium;

(5) Merge projects or increments of a project; or

(6) Otherwise alter the condominium.

"Limited common element" means a portion of the common elements designated by the declaration or by operation of section 514B-35 for the exclusive use of one or more but fewer than all of the units.

"Majority" or "majority of the unit owners" means the owners of units to which are appurtenant more than fifty per cent of the common interests. Any specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interest.

"Managing agent" means any person retained, as an independent contractor, for the purpose of managing the operation of the property.

"Master deed" or "master lease" means any deed or lease showing the extent of the interest of the person submitting the property to the condominium property regime.

"Material change" as used in parts IV and V of this chapter means any change that directly, substantially, and adversely affects the use or value of:

(1) A purchaser's unit or appurtenant limited common elements; or

(2) Those amenities of the project available for the purchaser's use.

"Material fact" means any fact, defect, or condition, past or present, that, to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale.

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-63, modified slightly, is the source of the definition of "material change". The definition of "material change" is tied to the standard for rescission rights.

2. HRS §508D-1, modified slightly to address condominium property, is the source of the definition of "material fact".

"Operation of the property" means the administration, fiscal management, and physical operation of the property, and includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.

"Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

"Pertinent change" means, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to:

(1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element;

(2) The size, use, location, or construction materials of the common elements of the project; or

(3) The common interest appurtenant to the unit.

A pertinent change does not necessarily constitute a material change.

Real Estate Commission's Comment (2003 Final Report)

1. The definition of "material respect" in HAR §16-107-2, Proposed Rules, Draft #6 (5/17/02), modified, is the source of the definition of "pertinent change". "Pertinent change" refers to a change that would require disclosure in an amended public report. It does not automatically give a prospective purchaser the right to rescind a contract to purchase a condominium. In order to give rise to rescission rights, a material change in a project must "directly, substantially, and adversely" affect the use or value of (i) the purchaser's unit or appurtenant limited common elements, or (ii) those amenities of the project available for such purchaser's use.

"Project" means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the condominium property regime are created.

"Property" means the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances intended for use in connection with the condominium, which have been or are intended to be submitted to the regime established by this chapter. "Property" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

Real Estate Commission's Comment (2003 Final Report)

1. The last sentence of the UCIOA (1994) §1-103(26) definition of "real estate" has been added to HRS §514A-3's definition of "property." UCIOA §1-103(26) reads as follows:

> "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

As noted in the official comments to UCA §1-103(21)/UCIOA §1-103(26):

> Although often thought of in two-dimensional terms, real estate is a three-dimensional concept and the third dimension is unusually important in the condominium context. Where real estate is described in only two dimensions (length and width), it is correctly assumed that the property extends indefinitely above the earth's surface and downwards toward a point in the center of the planet. In most condominiums, however, as in so-called "air rights" projects, ownership does not extend *ab solo usque ad coelum* (*"from the center of the earth to the heavens"*), because units are stacked on top of units or units and common elements are interstratified. In such cases the upper and lower boundaries must be identified with the same precision as the other boundaries.

2. The definition of "property" specifically allows for the creation of "air space" condominiums and overrules In re: The Krieg Condominium, REC-DR-93-1 (2/10/95), in which the Commission prohibited such condominiums. Among other things, this helps to provide clearer and more accurate disclosures by doing away with the need to create "tool shed" condominiums on agricultural lands – a fiction driven by the need, under Krieg, for a physical structure to submit to the condominium property regime. (*See also*, the additional disclosures for projects on agricultural lands required by §514B-84.)

"Record", "recordation", "recorded", or "recording" means to record in the bureau of conveyances in accordance with chapter 502, or to register in the land court in accordance with chapter 501.

"Resident manager" means any person retained as an employee by the association to manage, on-site, the operation of the property.

"Structures" includes but is not limited to buildings.

"Time share unit" means the actual and promised accommodations, and related facilities, that are the subject of a time share plan as defined in chapter 514E.

"Unit" means a physical or spatial portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in the declaration or pursuant to section 514B-35, with an exit to a public road or to a common element leading to a public road.

"Unit owner" means the person owning, or the persons owning jointly or in common, a unit and its appurtenant common interest; provided that to such extent and for such purposes as provided by recorded lease, including the exercise of voting rights, a lessee of a unit shall be deemed to be the unit owner. [L 2004, c 164, pt of §2; am L 2005, c 93, §§1, 7; am L 2006, c 273, §3; am L 2014, c 189, §2]

Real Estate Commission's Comment (2003 Final Report)

1. The recodified condominium law uses the term "unit" instead of "apartment" since, as understood by the general public, "unit" more accurately reflects the fact that ownership interests in condominiums can consist of commercial spaces, parking spaces, boat slips, and other non-residential spaces.

Arakaki's Comment

1. The definition of "Majority" is presented above in Ramseyer format to reflect a technical amendment adopted by the 2014 Legislature.

[§514B-4] Separate titles and taxation. (a) Each unit that has been created, together with its appurtenant interest in the common elements, constitutes, for all purposes, a separate parcel of real estate.

(b) If there is any unit owner other than a developer, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements. The laws relating to home exemptions from state property taxes are applicable to individual units, which shall have the benefit of home exemption in those cases where the owner of a single-family dwelling would qualify. Property taxes assessed by the State or any county shall be assessed and collected on the individual units and not on the property as a whole. Without limitation of the foregoing, each unit and its appurtenant common interest shall be deemed to be a "parcel" and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.

(c) If there is no unit owner other than a developer, the real estate comprising the condominium may be taxed and assessed in any manner provided by law. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §1-105 and HRS §§514A-4, 514A-5, and 514A-6, combined and modified, are the sources of this section.

[~~[~~]§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). [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2014, c 49, §3]

Real Estate Commission's Comment (2003 Final Report)

1. This section is identical to HRS §514A-1.6.

2. The Commission made many attempts to help solve the counties' problems regarding the need for condominium projects to conform with underlying land use laws.[3] Among other things, the Commission attempted to help prevent the inappropriate condominiumization of farm structures on agricultural lands[4] by proposing to specifically delegate power to the counties (in HRS §§205-

[3] Hawaii and Kauai counties have had problems regarding the conformance of condominium projects with underlying land use laws. Maui County raised some questions in a December 8, 2003 telephone call and e-mail with Mark E. Recktenwald, Director of the State Department of Commerce & Consumer Affairs. The City & County of Honolulu does not appear to have problems requiring the conformance of condominium projects with its Land Use Ordinance.

[4] The condominium form of ownership of agricultural lands has become a symbol of illegal and irresponsible development, particularly on the islands of Hawaii and Kauai. *See, e.g.*, testimony of Mark Van Pernis, Esq., dated September 29, 2003, in which Mr. Van Pernis recommends banning the submission of land designated "agriculture" or "conservation" to a condominium property regime. (Such suggestions ignore the fact that similar

4.5(a)(4) and 205-5(b)) to adopt "reasonable standards, including but not limited to, the form of ownership under which property may be held." This was provided, however, as an exception to the general rule that county laws not discriminate against the condominium form of ownership (adopted from UCA/UCIOA §1-106). In response, the Hawaii County Planning Director stated that he and other planning directors would oppose, on "homerule" grounds, any language that appeared to preempt the county in any way.[5]

In a letter received by the Commission on October 16, 2003 (dated October 2, 2003), the Department of Business, Economic Development & Tourism – Office of Planning ("DBEDT-OP") and the four counties requested that the Commission eliminate its Public Hearing Discussion Draft version of §___: 1-5 and retain the language of HRS §§514A-1.6 and 514A-45.[6] DBEDT-OP and the four counties also stated that they would be "discussing possible recommendations for specific language for amendments" that would be forwarded to the Commission "if and when they are developed."[7] Therefore, in the final draft of the recodification, the Commission incorporated the current language of HRS §§514A-1.6 and 514A-45, and also retained a provision (added in earlier recodification drafts) requiring special disclosures for condominium projects proposed to be built on agricultural land.[8]

Background

There appears to have been much confusion over the fact that condominium property is a land *ownership*, as opposed to a land *use*, concept. In response to the Commission's requests for comments from the community, various parties have asked that Hawaii's condominium property regimes law be used to ensure compliance with land *use* laws (e.g., HRS Chapter 205 and county zoning, subdivision, and building ordinances).[9]

Hawaii's counties (particularly the Neighbor Island counties) have long complained that developers were using HRS Chapter 514A to circumvent underlying county land use laws. However, the counties have always had the power to regulate the *uses* of land

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results could be achieved under forms of land ownership other than condominium.) Many of the problems faced by Hawaii County were, however, actually caused by the failure of the county under previous administrations to enforce the county's land use and real property tax laws.

Furthermore, true agricultural condominiums are valuable. As noted by the Department of Business, Economic Development & Tourism – Office of Planning ("DBEDT-OP") in its September 20, 2001 memorandum to Gordon M. Arakaki, while DBEDT-OP is very concerned about condominium property regimes used to create projects for primarily residential purposes on agricultural lands:

> [DBEDT-OP] would not support a blanket ban on CPRs on agricultural lands. The State created its agricultural park in Hamakua as a CPR. This permits farmers access to agricultural land and financing without having to subdivide or break up large agricultural parcels.

Finally, as long as a county's real property tax laws are not completely coordinated with its land use laws, the condominium form of land ownership can be quite useful in protecting and preserving agricultural lands by allowing the appropriate transition from one type of crop to another as well as from large scale agricultural operations to smaller boutique farms. (*See,* 1993 speech on real property taxation of agricultural lands by Gordon M. Arakaki, Deputy Director, Land Use Research Foundation of Hawaii, to the Hawaii State Association of Counties.)

See also, e.g., testimony of Sheilah N. Miyake, Deputy Director, Department of Planning, County of Kauai, dated September 16, 2003, and testimony of Judy Dalton, Conservation Committee Member, Sierra Club Kauai Group, Hawaii Chapter.

[5] October 31, 2003 telephone conversation between Christopher J. Yuen and Gordon M. Arakaki.

[6] October 2, 2003 letter from DBEDT-OP to Mitchell A. Imanaka and Gordon M. Arakaki.

[7] *Id.* After a June 24, 2002 meeting, and by letter dated September 19, 2002, DBEDT-OP and the four counties had committed to drafting language for the recodification regarding conformance with county land use laws that would be acceptable to all four counties. No such language was ever given to the Commission by DBEDT-OP or any of the counties.

[8] In a telephone conversation with Commissioner Mitchell A. Imanaka in November 2003, Hawaii County Planning Director Christopher J. Yuen said that he would support the recodification if the provisions of HRS §§514A-1.6 and 514A-45 were kept "status quo." It should also be noted that some Blue Ribbon Recodification Advisory Committee members were concerned about what the counties might do with additional delegated powers.

[9] The County of Hawaii initially suggested that Hawaii's condominium law be amended to: 1) require county certification of compliance with applicable codes for all condominium projects before final public reports may be issued (not just condominium conversions, as is currently the case under HRS §514A-40); 2) require minimum value for condominium apartments (to prevent "toolshed" apartments); 3) explicitly require that condominium property regimes follow county subdivision codes; and 4) ensure that county planning departments are allowed to comment on notice of intention for all condominium projects, at an early stage. (May 29, 2001 letter from County of Hawaii Planning Department to Mitchell A. Imanaka and Gordon M. Arakaki.)

In September 2002, the County of Hawaii passed an ordinance purporting to "regulate CPRs that are the equivalent of subdivisions of land." (Ordinance 02-111, effective 9/25/02.) Whether the ordinance can survive legal (e.g., denial of equal protection under the law) and practical challenges remains to be seen.

The counties, along with the Department of Business, Economic Development & Tourism – Office of Planning ("DBEDT-OP"), argue that "land ownership and land use are intertwined, especially when a [condominium property regime] is used to create what is, in material respect, a subdivision." (October 2, 2003 letter from DBEDT-OP to Mitchell A. Imanaka and Gordon M. Arakaki.) The counties have always had, however, the power to adopt land development codes and other measures to address physical development and infrastructure requirements without discriminating against the condominium form of land ownership (as opposed to other forms of ownership, such as cooperatives).

pursuant to their police powers (i.e., their powers to protect the public health and safety – the legal basis for zoning laws) under HRS Chapter 46.[10] HRS §514A-1.6, passed by the Legislature in 2000, simply made this explicit in the condominium property regimes law.[11]

Analysis

The counties have raised legitimate concerns over the current interplay between HRS Chapter 514A and state and county land use laws. The question remains how to properly address the problem. In attempting to craft a provision to prevent abuse of the condominium property regimes law as it relates to underlying land use laws, the Commission considered the following factors:

● Purpose of Condominium Property Regimes Law. As previously noted, a condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a community *governance* law. It is not a land *use* law. As a consumer protection law, the primary purpose of Hawaii's condominium property regimes law is to make sure that buyers can know what they are buying. Theoretically, if a sophisticated buyer wants to take a chance on being able to get government approval to build a structure that is not allowed under State or county land use laws at the time of purchase, that should be the buyer's choice. The key is to give the buyer a chance to make an informed decision (i.e., proper *disclosure* of material facts).

● Purpose of the Real Estate Commission. The Real Estate Commission is a consumer protection body established under HRS Chapter 467 (Real Estate Brokers and Salespersons) to regulate real estate licensees. The purpose of HRS Chapter 467 (and the Commission) is to protect the general public in its real estate transactions. Pursuant to HRS §467-3, the Real Estate Commission consists of nine members, at least four of whom must be licensed real estate brokers.

● Need for Appropriate and Consistent Lines of Authority. All parties need to make sure that the appropriate governmental entities enforce the appropriate laws. County land use agencies – i.e., planning and permitting departments – have the responsibility for ensuring that all proposed development projects comply with county land use laws. County councils have the authority to pass laws giving county land use agencies the tools to ensure that any proposed condominium development complies with county land use laws.

● Timing. Under Hawaii's condominium property regimes law, condominiums are created upon proper filing with Bureau of Conveyances or Land Court. The Real Estate Commission's involvement begins when condominium units are offered for sale. In other words, the *ownership* interest in condominium property may be created without any approval or involvement of the Real Estate Commission.

Throughout the recodification process, the Commission tried to keep the condominium law (and the Real Estate Commission itself) true to its purposes while making it clear that HRS Chapter 205 and county land use laws control land use matters. Indeed, one of the Commission's guiding principles in the recodification is that problems should be fixed in the statutory provisions that created the problems in the first place. It does not appear to be necessary or appropriate to have blanket requirements in the recodified Hawaii condominium law that make the recordation of all condominium property regime declarations or sale of all condominium units contingent upon county certification of compliance with county land use laws.

Finally, consistent with the principle that physically identical developments should be treated equally, the counties can simply draft land use ordinances governing the development of condominiums.[12] The ordinances should hold condominium developments to the same standards as physically identical developments under different forms of ownership.[13] In other words, the ordinances should require that condominium developments follow the same physical requirements (density, bulk, height, setbacks, water, sewerage, etc.) as physically identical developments under existing land use requirements (e.g., zoning, subdivision, building code, and cluster development laws). If a

[10] *See*, HRS §§46-1.5(13) and 46-4.

[11] The Commission has incorporated HRS §514A-1.6 in §___: 1-5 of the final draft of the recodification.

[12] DBEDT – Office of Planning and the county planning directors object to the principal that physically identical developments should be treated equally. *See*, September 19, 2002, and October 2, 2003 letters from DBEDT – Office of Planning to Mitchell Imanaka and Gordon Arakaki. *See also*, County of Hawaii's Ordinance 02-111 (effective 9/25/02).

[13] An exception to the general rule that physically identical developments should be treated equally is the City and County of Honolulu's prohibition on condominiumizing Ohana units created pursuant to HRS §46-4. *See*, Revised Ordinances of Honolulu §21-8.20. An Ohana unit is a second home permitted on a lot where the underlying zoning normally allows only one house. Infrastructure adequacy and other conditions determine whether an Ohana unit may be built, and an applicant for an Ohana building permit must file a restrictive covenant agreeing *not* to register the property as a condominium and to abide by a family occupancy requirement. Ohana units are the result of the State Legislature's attempt to address a shortage of affordable housing by essentially forcing the counties to accept housing densities double that allowed by county zoning. Under this circumstance, it is appropriate for the counties to have the power to prohibit the condominiumization of Ohana units. The counties' authority to do so is made clear in HRS §46-4(c) (i.e., the specific delegation of power to adopt "reasonable standards" to achieve the purpose of the subsection), however, *not* the condominium property regimes law.

particular development proposal is inconsistent with state and county land use laws under forms of real estate ownership other than condominium ownership, the condominium property regimes law does not and will not somehow allow the project to be built.

Land *use* laws should control land *use* matters. The condominium property regimes law should continue to encompass and control land *ownership*, *consumer protection*, and condominium *community governance* matters. And just as it would be inappropriate for the Real Estate Commission to control land *use* matters, it would be inappropriate for land use agencies to control condominium property regime matters.

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature. Act 49 (SLH 2014) clarified that condominium property regimes on agricultural lands cannot place any restrictions on agricultural uses or activities that are permitted on those lands pursuant to HRS Chapter 205.

[§514B-6] Supplemental county rules governing a condominium property regime. Whenever any county deems it proper, the county may adopt supplemental rules governing condominium property regimes established under this chapter in order to implement this program; provided that any of the supplemental rules adopted shall not conflict with this chapter or with any of the rules adopted by the commission to implement this chapter. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. This section, edited for clarity, is essentially identical to HRS §514A-45. The Commission believed that HRS §514A-45 heightened confusion over land *use* and land *ownership* issues, so it was not incorporated in earlier drafts of the recodification. The provision has been reinserted at the request of the counties and DBEDT-OP. (*See*, Comment #2 to §514B-5.)

[§514B-7] Construction against implicit repeal. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

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

[§514B-8] Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §1-111 is the source of this section.

[§514B-9] Obligation of good faith. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §1-113 is the source of this section.

[~~[~~]**§514B-10**[~~]~~] **Remedies to be liberally administered.** (a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. [~~Consequential, special, or punitive~~] Punitive damages may not be awarded, however, except as specifically provided in this chapter or by other rule of law.

(b) Any deed, declaration, bylaw, or condominium map shall be liberally construed to facilitate the operation of the condominium property regime.

(c) Any right or obligation declared by this chapter is enforceable by judicial proceeding. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §4]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §1-114 and California Civil Code §1370 are the sources of this section.

2. Subsection (b) is intended to *negate* any implication that the Hawaii Supreme Court holdings regarding restrictive covenants/equitable servitudes in Hiner v. Hoffman, 90 Haw. 188, 977 P.2d 878 (1999), and Fong v. Hashimoto, 92 Haw. 568, 994 P.2d 500 (2000), apply to condominium communities. Given the importance of condominiums to the quality of life of Hawaii's people, laws must support the fair and efficient functioning of our condominium communities (and other common interest ownership communities).

In Hiner, defendants-appellants ("Hoffmans") constructed a three story house on a lot which was (along with 118 other lots) subject to a restrictive covenant prohibiting any dwelling "which exceeds two stories in height." The Hoffmans had actual knowledge of the restrictive covenant. After warning the Hoffmans of their violation of the restrictive covenant, neighboring homeowners and the community association sued to have the Hoffmans remove the third story of their house.

At the trial court level, the Hoffmans argued that their house consisted of "two stories and a basement." The trial court rejected the Hoffmans' argument and ordered them to remove the third (top) story of their house.

On appeal, the Hoffmans changed their argument and claimed that the term "two stories in height" was ambiguous. In a 3-2 decision, the Hawaii Supreme Court ruled that the term "two stories in height" was ambiguous since it did not provide any dimensions for the term "story" and was therefore unenforceable in light of the restrictive covenant's undisputed purpose (to protect views by restricting the height of homes within the neighborhood). The majority on the Court stated that it was following a "long-standing policy favoring the unrestricted use of property" when construing "instruments containing restrictions and prohibitions as to the use of property." Finally, the majority noted that "such 'free and unrestricted use of property' is favored only to the extent of applicable State land use and County zoning regulations."

In so doing, the majority appeared to ignore the massive growth of servitude regimes over the past forty years and the corresponding importance of ensuring the fair and efficient functioning of such communities (whether they be condominiums or, as in this case, planned communities). As noted by the dissent in Hiner, "where one hundred or more homeowners in the Pacific Palisades community have limited their own property rights in reliance that their neighbors will duly reciprocate, . . . it [is] manifestly unjust to sanction the Hoffmans' willful non-compliance based on the 'policy favoring the unrestricted use of property.'" The dissent concluded with the observation that "the majority opinion over-emphasizes the rights of the Hoffmans without due regard to the rights of their neighbors."

Eight and a half months after deciding Hiner, the Hawaii Supreme Court in Fong invalidated as ambiguous a restrictive covenant limiting certain houses to "one-story in height." (The Court also found that there was no common scheme to support an equitable servitude and that the restrictive covenant was unenforceable since it was improperly created.)

The archaic body of servitudes law from which the Hawaii Supreme Court fashioned its decisions in Hiner and Fong evolved from rules developed to govern relatively small groupings of property owners (compared to today's condominium and planned development communities) in contexts largely unrelated to modern common interest ownership communities.[14]

Contrast the Hawaii Supreme Court's current approach regarding servitudes in common interest ownership communities with that of the *Restatement of the Law, Third, Property (Servitudes).* As stated in the *Restatement's* introductory note to Chapter 6 – Common-Interest-Communities:

> The primary assumption underlying Chapter 6 is that common-interest communities provide a socially valuable means of providing housing opportunities in the United States. The law should facilitate the operation of common-interest

[14] The *Restatement of the Law, Third, Property (Servitudes)* defines "servitude" as "a legal device that creates a right or an obligation that runs with land or an interest in land." This covers "easements, profits, and covenants that run with the land," and encompasses both "restrictive covenants" and "equitable servitudes."

communities at the same time as it protects their long-term attractiveness by protecting the legitimate expectations of their members.

The *Restatement's* position on servitudes should be used by courts as a guide in resolving disputes over servitudes in condominiums and other common interest ownership communities.

An earlier incarnation of the Hawaii Supreme Court said it well. In State Savings & Loan Association v. Kauaian Development Company, Inc., et al., the Court stated that:

> The [Horizontal Property Regimes Act] has profound social and economic overtones, not only in Hawaii but also in every densely populated area of the United States. Our construction of such legislation must be imaginative and progressive rather than restrictive.
>
> . . . .
>
> This court will not follow a common law rule relating to property where to do so would constitute a quixotic effort to conform social and economic realities to the rigid concepts of property law which developed when jousting was a favorite pastime.[15]

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect clarifying amendments adopted by the 2006 Legislature. The terms "consequential" and "special" damages are subject to varying interpretations by the courts, so prohibiting their recovery may have, in effect, deprived consumers of any remedy in some instances. Therefore, the limitation on recovery of such damages has been deleted.

2. Pursuant to Act 70 (SLH 2008), subsection (b) was adopted for planned community associations governed by HRS Chapter 421J, and the rationale for HRS §514B-10(b) applies equally to HRS §421J-1.5, which reads as follows:

> **[§421J-1.5] Interpretation.** This chapter and any association document subject thereto shall be liberally construed to facilitate the operation of the planned community association.

3. For a discussion of the practical implications of this section's statutory overturning of Hiner v. Hoffman and its progeny, *see*, Arakaki, Gordon M., "Hawaii's New Condominium Law: Facilitating the Fair and Efficient Functioning of Condominium Communities," *Hawaii Bar Journal*, (June 2013), at pages 4-11.

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-2 (Chapter not exclusive), which reads as follows, has been deleted:

> "This chapter is in addition and supplemental to all other provisions of the Revised Statutes; provided that this chapter shall not change the substantive law relating to land court property, and provided further that if this chapter conflicts with chapters 501 and 502, chapters 501 and 502 shall prevail."

HRS §514A-2 makes Hawaii's condominium law "supplemental" to other laws, with potentially disastrous results. A good example is the 2001 Nonprofit Corporations Act (Act 105, SLH 2001), as passed that year, if it were to be applied to nonprofit corporation condominium associations (or any other common interest ownership community associations).

§ -88 of the law as originally enacted would have allowed members of nonprofit corporations to resign at any time. This is clearly impossible for common interest ownership communities, where membership in the community association (with all of its rights and obligations) is mandatory and runs with the land. As defined in §1.8 of the *Restatement of the Law, Third, Property (Servitudes)*:

[15] State Savings & Loan Association v. Kauaian Development Company, Inc., et al., 50 Haw.540 (1968), at 552 and 555.

A "common-interest community" is a real-estate development or neighborhood in which individually owned lots or units are burdened by a servitude that imposes an obligation that cannot be avoided by nonuse or withdrawl

(1) to pay for the use of, or contribute to the maintenance of, property held or enjoyed in common by the individual owners, or

(2) to pay dues or assessments to an association that provides services or facilities to the common property or to the individually owned property, or that enforces other servitudes burdening the property in the development or neighborhood.

Other sections of the new nonprofit corporation law required notice that may have been different from existing provisions in declarations and bylaws. Many other provisions would have been inappropriate for nonprofit corporation condominium (and community) associations, but § -321 (a transition provision) could have been read to mandate application of the new law to all nonprofit corporations in existence on the effective date of the Act.

2. HRS §514A-7 (Condominium specialist; appointment; duties) has been moved from Part I (General Provisions) to Part III (Administration and Registration of Condominiums), §514B-63.

HRS Chapter 514B, Part II. Applicability

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Part II. APPLICABILITY

PART II. APPLICABILITY[1]

[~~[~~§514B-21[~~]~~] Applicability [~~to new condominiums~~]. (a) This chapter applies to all condominiums created within this State [~~after July 1, 2006. The provisions of chapter 514A do not apply to condominiums created after July 1, 2006.~~]; provided that such application shall not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents of those condominiums if to do so would invalidate the reserved rights of a developer. Amendments to this chapter apply to all condominiums [~~created after July 1, 2006 or subjected to this chapter~~], regardless of when the amendment is adopted.

(b) For purposes of interpreting this chapter, the terms "condominium property regime" and "horizontal property regime" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "apartment owner" shall be deemed to correspond to the term "unit owner"; and the term "association of apartment owners" shall be deemed to correspond to the term "association". [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 181, §3]

Real Estate Commission's Comment (2003 Final Report)[2]

1. UCIOA §1-201 is the source of this section.

Arakaki's Comment

1. This section makes amendments to HRS Chapter 514B applicable to all condominiums subject to HRS Chapter 514B, regardless of when the amendment is adopted. In other words, condominiums subject to HRS Chapter 514B should pay attention to proposals to amend the law. (Proposed amendments to the condominium law are introduced in every legislative session.)

2. *Before* January 1, 2019, HRS §514B-21 read as follows:

> **[§514B-21] Applicability to new condominiums.** This chapter applies to all condominiums created within this State after July 1, 2006. The provisions of chapter 514A do not apply to condominiums created after July 1, 2006. Amendments to this chapter apply to all condominiums created after July 1, 2006 or subjected to this chapter, regardless of when the amendment is adopted. [L 2004, c 164, pt of §2]

3. Until 2018, the Revisor of Statute's reference to "am L 2005, c 93, §7" in the bracketed caption following the statutory language was not part of HRS Chapter 514B. The reference now appears in virtually all sections of HRS Chapter 514B that were initially adopted in Act 164 (SLH 2004) (i.e., sections in HRS Chapter 514B Parts I, II, and VI).

Act 93 (SLH 2005), Section 7, amended Act 164 (SLH 2004), Section 35, which was the "effective date" provision of Act 164 (SLH 2004). In other words, Act 93 (SLH 2005), Section 7, amended a session law's "effective date" language, not statutory language. The amendment reads in full as follows:

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[1] Effective January 1, 2019, HRS Chapter 514A was repealed and amendments to HRS Chapter 514B, Part II, went into effect. [*See,* Act 181 (SLH 2017).] It is likely, however, that the 2019 State Legislature will pass a law to permit certain condominiums created before July 1, 2006 to take advantage of the safe harbor sales disclosure (i.e., developer's public report) provisions of Act 181 (SLH 2017). To that end, certain provisions of HRS Chapter 514A would remain operative for another year or so. [*See, e.g.,* SB 552 (2019 session)].

[2] The Real Estate Commission's "2003 Final Report" refers to the "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000)," dated December 31, 2003. Pursuant to Act 164 (SLH 2004), the Commission's 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B). The Commission's 2003 Final Report comments are reproduced verbatim, except to fill in references to HRS Chapter 514B (since the actual chapter and section numbers were not inserted until after Acts 164 (SLH 2004) and 93 (SLH 2005) were enacted). Additional comments are inserted under "Arakaki's Comment."

SECTION 7. Act 164, Session Laws of Hawaii 2004, is amended by amending section 35 to read as follows:

"SECTION 35. This Act shall take effect on [~~July 1, 2005;~~] July 1, 2006; provided that:

(1) [~~Section -146~~] The text of section -146 in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;

[~~(2) Section -161 in part I of this Act, relating to mediation shall take effect on July 1, 2006;~~

~~(3)~~] (2) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006;

[~~(4)~~] (3) Sections 30 to 33 of this Act shall take effect on July 1, 2004; and

[~~(5)~~] (4) If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective [~~July 1, 2005,~~] July 1, 2006, parts I and II of this Act shall be repealed on [~~June 30, 2005.~~] June 30, 2006."

§514B-22 REPEALED. L 2017, c 181, §§4, 47.

Real Estate Commission's Comment (2003 Final Report)

1. UCIOA §1-204, modified by the addition of the second paragraph (similar to §55-79.40 of the Virginia Condominium Act), is the source of this section. *[Arakaki's Note: Effective January 1, 2019, §55-79.40 of the Virginia Condominium Act has been the inspiration for HRS §514B-21(b) rather than the second paragraph of HRS §514B-22, which has been repealed.]*

Arakaki's Comment

1. This section, which was repealed pursuant to Act 181 (SLH 2017), is presented in paragraph 2 below in Ramseyer format to reflect amendments adopted by the 2006 Legislature. The following comments refer to the now repealed section.

Throughout the recodification process, many existing condominiums expressed interest in taking advantage of the new law. During the 2006 legislative session, stakeholders considered various ways to make it easier for existing condominiums to do so, while still protecting developers' reserved rights and protecting against the unreasonable impairment of contract rights [i.e., the standard for invoking protection under Article I, Section 10 (the Contracts Clause) of the U.S. Constitution]. The amendments reflected above appear to accomplish that.

Please note that the second proviso of HRS §514B-22 does not have anything to do with a condominium association continuing to be governed by HRS Chapter 514A. It simply recognizes that certain contractual rights may exist under a condominium project's constituent documents, and *if* invalidating a provision in the project's constituent documents would: (i) invalidate the developer's reserved rights (i.e., rights specifically reserved in the project's declaration or other constituent document), or (ii) be an *unreasonable impairment* of contract (i.e., the U.S. Constitution's Contracts Clause standard), *then* the provision(s) of the condominium project's constituent documents would not be invalidated by the new condominium law.

Note further that HRS §§514B-35 and 514B-41(c) were added to the list of provisions that apply automatically to existing condominiums (unless doing so would invalidate the developer's reserved rights or be an unreasonable impairment of contract).

HRS §514B-35 provides a statutory basis for differentiating between units, common elements, and limited common elements. This is often a matter of dispute and misunderstanding because the old law (HRS Chapter 514A) and many condominium documents do not adequately define what is included in and excluded from each category. All condominium associations and unit owners should be able to benefit from the more precise and comprehensive definitions provided by HRS §514B-35.

HRS §514B-41(c) addresses another problem that frequently confronts condominiums: accounting and charging for the costs of maintenance, repair, or replacement of limited common elements when the project documents require such costs to be charged to the individual unit owners. For example, the project documents of many condominium projects provide that parking

stalls are limited common elements appurtenant to specific units and require that all costs of maintenance, repair and replacement of those stalls be charged to the unit owners on a per capita basis rather than as a common expense. Although this makes sense in certain situations, such as when a stall is damaged by oil leaking from the owner's car, it is very difficult to administer when an entire parking lot is being repaved and re-striped. Consequently, it is not uncommon for associations to simply ignore such provisions in their project documents and treat such costs as a common expense. Making HRS §514B-41(c) applicable to existing condominiums allows the boards of such condominiums to determine that the extra cost incurred to separately account for and charge for the costs of maintenance, repair, or replacement of limited common elements is not justified, and pay for those costs as a common expense, just as new condominiums will be able to do.

2. *Before* January 1, 2019, HRS §514B-22 read as follows:

[~~[~~]**§514B-22**[~~]~~] **Applicability to preexisting condominiums.** Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72, and part VI, and section 514B-3 to the extent definitions are necessary in construing any of those provisions, and all amendments thereto, apply to all condominiums created in this State before July 1, 2006; [~~but~~] provided that those sections [~~apply~~]:

(1) Shall apply only with respect to events and circumstances occurring on or after July 1, 2006; and [~~do~~]

(2) Shall not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents of those condominiums if to do so would invalidate the reserved rights of a developer or be an unreasonable impairment of contract.

For purposes of interpreting this chapter, the terms "condominium property regime" and "horizontal property regime" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "apartment owner" shall be deemed to correspond to the term "unit owner"; and the term "association of apartment owners" shall be deemed to correspond to the term "association". [L 2004, c 164, pt of §2; am L 2006, c 273, §5]

[~~[~~]**§514B-23**[~~]~~] **Amendments to governing instruments.** (a) The declaration, bylaws, condominium map, or other constituent documents of any condominium created before July 1, 2006 may be amended to achieve any result permitted by this chapter, regardless of what applicable law provided before July 1, 2006.

(b) An amendment to the declaration, bylaws, condominium map or other constituent documents authorized by this section [~~shall be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this chapter~~] may be adopted by the vote or written consent of a majority of the unit owners; provided that any amendment adopted pursuant to this section shall not invalidate the reserved rights of a developer. If an amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §6; am L 2014, c 189, §3]

Real Estate Commission's Comment (2003 Final Report)

1. UCIOA §1-206 is the source of this section.

Arakaki's Comment

1. Subsection (b) is presented above in Ramseyer format to reflect an amendment adopted by the 2006 Legislature. As noted above, many existing condominiums wanted to take advantage of the new law. This amendment made it *easier* for such condominiums to *amend* their governing documents to achieve any *result permitted by the new law*, while still protecting developers' reserved rights.

2. The double-underlined word "unit" in subsection (b) reflects a technical amendment adopted by the 2014 Legislature.

Arakaki's Comment on the Repeal of HRS Chapter 514A (effective January 1, 2019)

1. Section 1 of Act 181 (SLH 2017) explains the purpose of repealing HRS Chapter 514A as follows:

The legislature finds that two condominium chapters are currently maintained: chapter 514A, Hawaii Revised Statutes ("chapter 514A"), and chapter 514B, Hawaii Revised Statutes ("chapter 514B"). Chapter 514A is relevant only to condominium property regimes that were created before July 1, 2006, but not yet brought to market for sale. Chapter 514B alone has applied to all condominiums created within the State since July 1, 2006.

The legislature further finds that virtually all provisions of chapter 514B that affect the management of condominiums have applied automatically to condominiums in existence before July 1, 2006, the effective date of chapter 514B, subject to two provisos:

(1) The specified provisions automatically apply only to events and circumstances occurring on or after July 1, 2006; and

(2) Such automatic application shall not invalidate existing provisions of a condominium's governing documents if to do so would invalidate a developer's reserved rights or be an unreasonable impairment of contract, i.e., the United States Constitution's Contracts Clause standard.

Furthermore, the applicability provisions of chapter 514B, which are based on sections 1-201, 1-204, and 1-206 of the Uniform Common Interest Ownership Act (1994), seek to balance the benefits of having the improved condominium law apply to all condominiums against reasonable contractual expectations of condominiums in existence before July 1, 2006.

However, the legislature also finds that maintaining two condominium chapters within the Hawaii Revised Statutes has caused confusion for some condominium owners, boards, realtors, and attorneys. Additionally, although there are still some condominium projects that were created before July 1, 2006, but have never been built and sold to anyone in the general public, the legislature notes that the developers of such projects have had more than a decade to bring their condominium projects created under chapter 514A to market. Chapter 514B has superior consumer protection provisions, and since it has been over ten years since chapter 514B was enacted, the legislature finds that it is appropriate to end any confusion, repeal the outdated chapter 514A, and have the documents of any remaining projects created under chapter 514A conform to chapter 514B.

Accordingly, the purpose of this Act is to end confusion and have only one condominium chapter in the Hawaii Revised Statutes by:

(1) Repealing chapter 514A;

(2) Making it clear that chapter 514B applies to all condominiums in the State, provided that such application shall not invalidate existing provisions of a condominium's governing documents, if to do so would invalidate a developer's reserved rights; and

(3) Removing associated references to the repealed chapter 514A.

2. For all of the reasons set forth in Section 1 of Act 181 (SLH 2017), maintaining HRS Chapter 514A has unnecessarily confused too many people in the condominium community and industry for far too long. Indeed, in an abundance of caution, even the Legislature has often amended both HRS Chapters 514A and 514B when there was no need to amend Chapter 514A.

For example, any law adopted after July 1, 2006 that amended a portion of Part VI (Management of Condominiums) of HRS Chapter 514B did not have to amend corresponding provisions of HRS Chapter 514A, which was irrelevant to condominium management matters at that point. Nevertheless, both chapters were often amended between 2007 and now, which only added to the confusion of some people regarding the fact that HRS Chapter 514B applies to all condominium management "events and circumstances occurring on or after July 1, 2006." (*See*, HRS §514B-22.)

As noted in Section 1 of Act 181 (SLH 2017), the applicability provisions of HRS Chapter 514B seek to balance the benefits of having the improved condominium law apply to all condominiums against reasonable contractual expectations of condominiums in existence before July 1, 2006.

It is important to note that the "reasonable contractual expectations" of condominiums in existence before July 1, 2006 are in regards to the condominium's recorded governing documents (i.e., its master deed, declaration, bylaws, and condominium map). When such condominiums "opted-in" to HRS Chapter 514B, they were "opting-in" to the few relevant provisions of Chapter 514B

that did not already automatically apply over the existing governing documents of the condominiums, which usually contained language required by Chapter 514A.

In other words, the "opt-in" had nothing to do with "opting-in" to HRS Chapter 514B over Chapter 514A. It had to do with "opting-in" to Chapter 514B over the language of a condominium's governing documents that were drafted under Chapter 514A. Nevertheless, the fact that Chapter 514A was still being maintained caused some to mistakenly believe that because they had not "opted-in" to Chapter 514B, Chapter 514A somehow still applied to their condominiums, even for things that happened after July 1, 2006.

Continuing to unnecessarily cause confusion by continuing to maintain two condominium statutes (HRS Chapters 514A and 514B) made no sense. Act 181 (SLH 2017) appropriately repealed HRS Chapter 514A, effective January 1, 2019.

3. Some projects were created under HRS Chapter 514A (i.e., the condominium's master deed, declaration, bylaws, and condominium map were recorded in the Bureau of Conveyances or Land Court before July 1, 2006), but had not yet been brought to market for sale at the time Act 181 (SLH 2017) was enacted. There were also active HRS Chapter 514A projects registered with the Real Estate Commission at that time. Section 45 of Act 181 (SLH 2017) served as a "safe harbor" provision for such projects. [*See*, page VIII-1.]

For various reasons, as of January 2019, there are still HRS Chapter 514A projects that would like to take advantage of the "safe harbor" provision for such projects. It is likely that the 2019 State Legislature will pass a law making this possible. [*See, e.g.*, SB 552 (2019 session)]

HRS Chapter 514B, Part III. Creation, Alteration, and Termination of Condominiums

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Part III. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

PART III. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

[§514B-31] Creation. (a) To create a condominium property regime, all of the owners of the fee simple interest in land shall execute and record a declaration submitting the land to the condominium property regime. Upon recordation of the master deed together with a declaration, the condominium property regime shall be deemed created.

(b) The condominium property regime shall be subject to any right, title, or interest existing when the declaration is recorded if the person who owns the right, title, or interest does not execute or join in the declaration or otherwise subordinate the right, title, or interest. A person with any other right, title, or interest in the land may subordinate that person's interest to the condominium property regime by executing the declaration, or by executing and recording a document joining in or subordinating to the declaration. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)[1]

1. HRS §§514A-11 and 514A-20, modified, are the sources of this section.

[~~[~~]**§514B-32**[~~]~~] **Contents of declaration.** (a) A declaration shall describe or include the following:

(1) The land submitted to the condominium property regime;

(2) The number of the condominium [~~property regime~~] 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;

[1] The Real Estate Commission's "2003 Final Report" refers to the "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000)," dated December 31, 2003. Pursuant to Act 164 (SLH 2004), the Commission's 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B). The Commission's 2003 Final Report comments are reproduced verbatim, except to fill in references to HRS Chapter 514B (since the actual chapter and section numbers were not inserted until after Acts 164 (SLH 2004) and 93 (SLH 2005) were enacted). Additional comments are inserted under "Arakaki's Comment."

(6) The permitted and prohibited uses of each unit;

(7) To the extent not shown on the condominium [~~property regime~~] map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures 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 [~~property regime~~] 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.

(b) The declaration may contain any additional provisions that are not inconsistent with this chapter. [L 2005, c 93, pt of §2; am L 2006, c 38, §22 and c 273, §7; am L 2014, c 49, §4]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-11, modified, is the source of this section.

2. In 1982, the Legislature lowered the approval percentage required to amend condominium bylaws from 75% to 65% and established a 75% approval percentage for amending declarations. FannieMae Section 601.03 requires at least 67% approval to make "amendments of a material nature" to project documents. Among the "material amendments" listed are:

- Voting rights;

- Increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;

- Reductions in reserves for maintenance, repair, and replacement of common elements;

- Responsibility for maintenance and repairs;

- Reallocation of interests in the general or limited common elements, or rights to their use;

- Redefinition of any unit boundaries;

- Convertibility of units into common elements or vice versa;

- Expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;

- Hazard or fidelity insurance requirements;

- Imposition of any restrictions on the leasing of units;

- Imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;

- A decision by the owners' association of a project that consists of 50 or more units to establish self-management if professional management had been required previously by the project documents or by an eligible mortgage holder;

- Restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or

- Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Therefore, the Commission used 67% as the base percentage for amending condominium governing documents (i.e., declaration, bylaws, and condominium map). (There are some exceptions, of course; e.g., in HRS §514A-47, 80% to remove from the provisions of this chapter.)

3. The last paragraph of paragraph (a)(13) is meant to allow a developer of a conversion project to complete a project registration and use project funds to complete repairs necessary to comply with HRS §514B-5. This was frequently done (either with the developer doing the work or leaving funds to the AOAO), before the developer's certification requirement was added to HRS §514A-40(b). Now that the developer must certify in the declaration and report that the project is in compliance, it appears that the developer must cure all code violation prior to filing the declaration (which may result in the developer having to go significantly out-of -pocket before having commitments for sales). Paragraph (a)(13) specifically allows developers to use purchasers funds to cure violations in the same manner that they can use purchasers funds to complete new construction pursuant to HRS §§514A-91 and 514B-912. This gives the developer a practical means to get the work done with committed funds, and provides purchasers with the protections of HRS §§514B-91, and 514B-92. The Commission hopes this will encourage the preservation and use of buildings requiring significant rehabilitation. Conforming revisions have been made to HRS §§514B-54(8), 514B-83(2) and (7), 514B-84(2), 514B-89, 514B-92(a), and 514B-93(a).

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect nonsubstantive amendments adopted by the 2006 Legislature. "Condominium map" is a defined term in HRS §514B-3, and a well-accepted term of art. Indeed, sections other than HRS §§514B-32, 33, and 34 use the term "condominium map."

2. Note that Act 38 (SLH 2006) was the annual housekeeping bill "relating to statutory revision: amending, reenacting, or repealing various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the purpose of correcting errors

and references, clarifying language, and deleting obsolete or unnecessary provisions." In this case, the housekeeping Act correctly separated as a paragraph the language after "… or structures;" in paragraph (a)(13).

3. Paragraph (a)(13) is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature. Act 49 (SLH 2014) clarified that condominium property regimes on agricultural lands cannot place any restrictions on agricultural uses or activities that are permitted on those lands pursuant to HRS Chapter 205.

[~~†~~]**§514B-33[~~†~~] Condominium [~~property regime~~] map.** (a) A condominium [~~property regime~~] map shall be recorded with the declaration. The condominium [~~property regime~~] map shall contain the following:

(1) A site plan for the condominium property regime, depicting the location, layout, and access to a public road of all buildings and projects included or anticipated to be included in the condominium property regime, and depicting access for the units to a public road or to a common element leading to a public road;

(2) Elevations and floor plans of all buildings in the condominium property regime;

(3) The layout, location, boundaries, unit numbers, and dimensions of the units;

(4) To the extent that there is parking in the condominium property regime, a parking plan for [~~a project~~] the regime, showing the location, layout, and stall numbers of all parking stalls included in [~~the project and~~] the condominium property regime;

(5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information of the limited common elements, if any; and

(6) A description in sufficient detail, as may be determined by the commission, to identify any land area that constitutes a limited common element.

(b) The condominium [~~property regime~~] map may contain any additional information that is not inconsistent with this chapter. [L 2005, c 93, pt of §2; am L 2006, c 273, §8]

Real Estate Commission's Comment (2003 Final Report)

1. Part of HRS §514A-12, modified, is the source of this section.

2. Paragraph (a)(6) gives needed flexibility to developers and the Commission regarding the description of limited common element land areas. Pursuant to a November 30, 2000 "Non-binding informal Real Estate Commission decision affecting the registration of condominium projects," developers were required to provide metes and bounds descriptions of "land areas of the project which are designated as limited common element areas." This requirement proved to be onerous and perhaps redundant for some developers.[2] On August 30, 2002, in response to concerns raised by the Hawaii Association of Land Surveyors,[3] the Commission adopted an informal non-binding opinion that metes and bounds descriptions are not required "to define limited common element areas where there are 'visible demarcations,' 'physical boundaries,' or 'structural monuments,' including, without limitation, roads, walls, fences and parking stall striping." Metes and bounds descriptions are still required "to define limited common element areas where there are no 'visible demarcations,' 'physical boundaries,' 'permanent' or 'structural' monuments to

[2] *See, e.g.,* July 3, 2001 e-mail from Nelson Lee of Haseko to Gordon M. Arakaki, in which Mr. Lee states: "I understand the need in most condo projects to identify by survey or other means elements that most people understand to be an important appurtenance to their units. This was a concern with the City in our Cluster and Condo processing since we pioneered with them a condo within a cluster to implement the unique site planning that distinguishes Ocean Pointe. To address the City's concern of identifying common elements, we now file with the City at the time of permitting, drawings that are dimensionally very specific to common and limited common elements. These drawings are not part of the State and/or Real Estate Commission processing and, therefore, they may not be aware of these consumer protection controls already deliberated and implemented with the City during our land use and building permit processing with the City. My point being that, in our case, to survey these common elements in the condo filing process may be redundant."

[3] *See,* August 5, 2002 letter from the Hawaii Association of Land Surveyors to the Hawaii Real Estate Commission.

aide in the description of limited common element areas." Paragraph (a)(6), incorporating a concept from California Civil Code §1351(e), simply allows developers to select the most appropriate means to describe limited common element land areas.[4]

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect nonsubstantive amendments adopted by the 2006 Legislature. "Condominium map" is a defined term in HRS §514B-3, and a well-accepted term of art. Indeed, sections other than HRS §§514B-32, 33, and 34 use the term "condominium map."

[~~[~~]§514B-34[~~]~~] **Condominium [~~property regime~~] map; certification of architect, engineer, or surveyor.** (a) The condominium [~~property regime~~] map shall bear the statement of a licensed architect, engineer, or surveyor certifying that the condominium [~~property regime~~] map is consistent with the plans of the condominium's building or buildings filed or to be filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located. If the building or buildings have been built at the time the condominium [~~property regime~~] map is recorded, the certification shall state that, to the best of the architect's, engineer's, or surveyor's knowledge, the condominium [~~property regime~~] map depicts the layout, location, dimensions, and numbers of the units substantially as built. If the building or buildings, or portions thereof, have not been built at the time the condominium [~~property regime~~] map is recorded, within thirty days from the completion of construction, the developer shall execute and record an amendment to the declaration accompanied by a certification of a licensed architect, engineer, or surveyor certifying that the condominium [~~property regime~~] map previously recorded, as amended by the revised pages filed with the amendment, if any, fully and accurately depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built.

(b) If the condominium property regime is a conversion and the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located is unable to locate the original permitted construction plans, the certification need only state that the condominium [~~property regime~~] map depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built. If there are no buildings, no certification shall be required. [L 2005, c 93, pt of §2; am L 2006, c 273, §9]

Real Estate Commission's Comment (2003 Final Report)

1. A part of HRS §514A-12, modified, is the source of this section.

2. Certifications by licensed surveyors have been added consistent with the Commission's informal non-binding decision on this issue.

3. Although UCA, UCIOA, and even HRS Chapter 514A (in some places) use the term "registered" or "professional" engineer, surveyor, or architect, the proper term for Hawaii's level of regulation is "licensed." *See*, HRS Chapter 464.

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect nonsubstantive amendments adopted by the 2006 Legislature. "Condominium map" is a defined term in HRS §514B-3, and a well-accepted term of art. Indeed, sections other than HRS §§514B-32, 33, and 34 use the term "condominium map."

[§514B-35] Unit boundaries. Except as provided by the declaration:

(1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished

[4] *See also*, comments (9) and (10) to UCIOA (1994) §2-109 (Plats and Plans). The comments note: "The 1994 amendments … seek to balance the need for disclosure and certainty in understanding what a unit owner 'owns,' with the practical limitations of the surveying profession. The balance struck in the 1994 amendments to this section requires that the plat or survey – as a minimum – actually show only the kinds of limited common elements that most people would understand to be an important appurtenance to their units. All other kinds of limited common elements – parking spaces, window boxes, etc., – may be either shown on the survey or simply described in words. … New subsection (h) eliminates the need for any unit boundary survey so long as the building location is shown on the project survey and a practical means exists by which the potential purchaser can understand the unit layout and its assigned common elements. This is a common practice in the sale of cooperative units."

surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings, are a part of the common elements;

(2) If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element appurtenant solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements;

(3) Subject to paragraph (2), all spaces, interior non-loadbearing partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §2-102, modified slightly, is the source of this section.

2. As noted in the official comments to UCIOA: "It is important for title purposes, for purposes of defining maintenance responsibilities, and other reasons to have a clear guide as to precisely which parts of a condominium constitute the units and which parts constitute the common elements. This section fills the gap left when the declaration merely defines unit boundaries in terms of floor, ceilings, and perimetric walls."

[§514B-36] Leasehold units. An undivided interest in the land that is subject to a condominium property regime equal to a unit's common interest may be leased to the unit owner, and the unit and its common interest in the common elements exclusive of the land may be conveyed to the unit owner. The conveyance of the unit with an accompanying lease of an interest in the land shall not constitute a division or partition of the common elements, or a separation of the common interest from its unit. Where a deed of a unit is accompanied by a lease of an interest in the land, the deed shall not be construed as conveying title to the land included in the common elements. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-13(g), clarified, is the source of this section.

[§514B-37] Common interest. Each unit shall have the common interest it is assigned in the declaration. Except as provided in sections 514B-32(a)(12), 514B-46, and 514B-140(d) and except as provided in the declaration, a unit's common interest shall be permanent and remain undivided, and may not be altered or partitioned without the consent of the owner of the unit and the owner's mortgagee, expressed in a duly executed and recorded declaration amendment. The common interest shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned or described in the conveyance or other instrument. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-13(a), (b), and (c), modified, are the sources of this section.

[~~[~~]**§514B-38**[~~]~~] **Common elements.** Each unit owner may use the common elements in accordance with the purposes permitted under the declaration, subject to:

(1) The rights of other unit owners to use the common elements;

(2) Any owner's exclusive right to use of the limited common elements as provided in the declaration;

(3) The right of the owners to amend the declaration to change the permitted uses of the common elements [~~or to designate any portion of the common elements as a limited common element~~]; <u>provided that subject to subsection 514B-140(c):</u>

(A) Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the declaration; and

(B) Minor additions to or alterations of the common elements for the benefit of individual units are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other owners in the common elements, as reasonably determined by the board;

(4) Any rights reserved in the declaration to amend the declaration to change the permitted uses of the common elements;

(5) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are not actually used by any of the unit owners for a purpose permitted in the declaration. Unless the lease is approved by the owners of at least sixty-seven per cent of the common interest, the lease shall have a term of no more than five years and may be terminated by the board or the lessee on no more than sixty days prior written notice; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d); and

(6) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are actually used by one or more unit owners for a purpose permitted in the declaration. The lease or use shall be approved by the owners of at least sixty-seven per cent of the common interest, including all directly affected unit owners that the board reasonably determines actually use the common elements, and the owners' mortgagees[~~.~~]; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by subsection 514B-140(d). [L 2005, c 93, pt of §2; am L 2006, c 273, §10]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-13(d), modified, is the source of this section.

2. HRS §§514B-37 together with 514B-38(3) negate Penney v. AOAO of Hale Kaanapali.[5] Penney involved Hale Kaanapali Hotel Associates' attempted conversion of a clubhouse (including restrooms) from a common element to a limited common element. Hale Kaanapali Hotel Associates owned 72.3% of the common interest and controlled another 4.53% interest by proxies, so they were able to get an amendment to the declaration allowing them to do so (i.e., claim exclusive use of the formerly common element clubhouse and restrooms). In overruling a circuit court decision upholding the amendment, the Hawaii Supreme Court correctly recognized that the conversion in Penney involved a situation where the benefit to all unit owners was significantly diminished by the restricted exclusive use of the clubhouse and restrooms. The Supreme Court's ruling, however, that 100% of the unit owners' approval is required any time a common element is converted into a limited common element, is too broad. For example, under Penney, the piping from a split system air conditioner passing through a common element area in the ceiling would require approval of 100% of the unit owners. Therefore, the Commission chose to negate Penney's overbroad rule of law.

Arakaki's Comment

1. Subsection (3) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. As noted above, the provisos to this subsection address problems created by the Penney v. AOAO Hale Kaanapali case, which the deleted phrase attempted (and failed) to properly address. Proviso (i) addresses situations where there are open spaces which are intended to remain as such, allowing them to be protected/preserved by careful drafting. For example, if an open, common area gives unit owners a desirable view, document drafters should have the ability to assure the owners that that open area will not be changed to something different that might block a view. Proviso (ii) allows, for example, split system air conditioning units to be installed without requiring the approval of all owners for the pipes that go through common element walls and air space. The language of proviso (ii) is adapted from Comment "b" to Section 6.6 of the Restatement of the Law, Third, Property (Servitudes).

The original proposed amendment has been further amended to subject both provisos to the protections of HRS §514B-140(c) (i.e., subject to the provisions of the declaration, the changes cannot "interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner," among other things).

[5] 70 Haw. 469, 776 P.2d 393 (1989).

2. Subsections (5) and (6) are presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. These subsections have been amended to incorporate the amendments made to HRS §514A-13 by Act 72 (SLH 2004), which appear to have been mistakenly left out of Act 93 (SLH 2005).

[§514B-39] Limited common elements. If the declaration designates any portion of the common elements as limited common elements, those limited common elements shall be subject to the exclusive use of the owner or owners of the unit or units to which they are appurtenant, subject to the provisions of the declaration and bylaws. No amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the unit or units to which the limited common elements are appurtenant. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-3, modified, is the source of this section.

2. A member of the Commission's advisory committee recommended using the term "private elements" rather than "limited common elements". (California uses the term "exclusive use common elements".) The Commission chose to keep the term "limited common elements" since it is essentially a term of art already defined by Hawaii courts.

[§514B-40] Transfer of limited common elements. Except as provided in the declaration, any unit owner may transfer or exchange a limited common element that is assigned to the owner's unit to another unit. Any transfer shall be executed and recorded as an amendment to the declaration. The amendment need only be executed by the owner of the unit whose limited common element is being transferred and the owner of the unit receiving the limited common element; provided that unit mortgages and leases may also require the consent of mortgagees or lessors, respectively, of the units involved. A copy of the amendment shall be promptly delivered to the association. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-14, modified, is the source of this section. The section now applies to all limited common elements, not just parking stalls.

[§514B-41] Common profits and expenses. (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners, including the developer, in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws. In a mixed-use project containing units for both residential and nonresidential use, the charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration. Except as otherwise provided in subsection (c) or the declaration or bylaws, all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and improvements, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.

(b) A unit owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to the owner's unit at the time the certificate of occupancy relating to the owner's unit is issued by the appropriate county agency; provided that a developer may assume all the actual common expenses in a project by stating in the developer's public report required by section 514B-54 that the unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time as the developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. The developer shall mail the written notice to the owners, the association, and the managing agent, if any, at least thirty days before the specified date.

(c) Unless otherwise provided in the declaration or bylaws, if the board reasonably determines that the extra cost incurred to separately account for and charge for the costs of maintenance, repair, or replacement of limited common elements is not justified, the board may adopt a resolution determining that certain limited common element expenses will be assessed in accordance with the undivided common interest appurtenant to each unit. In reaching its determination, the board shall consider:

(1) The amount at issue;

(2) The difficulty of segregating the costs;

(3) The number of units to which similar limited common elements are appurtenant;

(4) The apparent difference between separate assessment and assessment based on the undivided common interest; and

(5) Any other relevant factors, as determined by the board.

The resolution shall be final and binding in the absence of a determination that the board abused its discretion.

(d) Unless made pursuant to rights reserved in the declaration and disclosed in the developer's public report, if an association amends its declaration or bylaws to change the use of the condominium property regime from residential to nonresidential, all direct and indirect costs attributable to the newly permitted nonresidential use shall be charged only to the unit owners using or directly benefiting from the new nonresidential use, in a fair and equitable manner as set forth in the amendment to the declaration or bylaws. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-15, modified, is the source of this section. Subsection (b) has been amended to allow a developer to assume all of the actual common expenses for any project, not just 100% residential projects. Subsections (c) and (d) have been added.

2. Subsection (d) recognizes that the use of a condominium may be changed from residential to non-residential (e.g., from residential to condominium hotel or assisted living facility) by less than 100% of the unit owners. The subsection is intended to protect unit owners in the minority of such a vote by ensuring that the costs attributable to the new non-residential use are allocated to those unit owners who choose to use or are directly benefitted by the new use. Such fair and equitable cost allocation is already common practice for condominium hotels.

[~~[~~]§514B-42[~~]~~] **Metering of utilities.** (a) Units in a project that includes units designated for both residential and nonresidential use shall have separate meters, or calculations shall be made, or both, as may be practicable, to determine the use by the nonresidential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of [~~such~~] the utilities shall be paid by the owners of the nonresidential units; provided that the apportionment of the charges among owners of nonresidential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. [~~The requirements of this subsection shall not apply to projects for which construction commenced before January 1, 1978.~~]

Notwithstanding any provision to the contrary in this chapter or in a project's declaration or bylaws the board may authorize the installation of separate meters to determine the use by each of the residential and commercial units of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage; provided that the cost of installing the meters shall be paid by the association.

(b) [~~Subject to~~] Notwithstanding any approval requirements and spending limits contained in a project's declaration or bylaws, [~~a~~] the board of any association may authorize the installation of meters to determine the use by [~~the~~] each individual [~~units~~] unit of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage[~~.~~]; provided that the cost of installing the meters shall be paid by the association. The cost of metered utilities shall be paid by the owners of [~~the units~~] each unit based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to owners for the cost of metered utilities. [L 2005, c 93, pt of §2; am L 2012, c 18, §3]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-15.5, clarified, is the source of this section.

Arakaki's Comment

1. Subsections (a) and (b) are presented above in Ramseyer format to reflect amendments adopted by the 2012 Legislature. Section 1 of Act 18 (SLH 2012) explains the amendments as follows:

SECTION 1. The legislature finds that many older condominium projects in Hawaii operate with only a single meter measuring the aggregate consumption of utilities such as gas, water, and electricity for all units

within the condominium project. Consequently, utility expenses are paid for as a common expense based on each unit's undivided interest in the condominium, rather than individual units' actual utility usage.

The legislature finds that this method of apportioning utility costs is unfair to both unit owners and the condominium association. A unit owner faces no consequences for wasteful energy consumption, such as leaving lights or air conditioning on at all times. Unit owners with vacant units, such as part-time residents or owners of unoccupied rental units, are also at a disadvantage. For example, a three-bedroom unit with a higher undivided interest than a studio apartment will pay a higher utility cost, regardless of whether the unit is occupied or vacant. The legislature further finds that wasteful or excessive utility use results in higher costs for the association when utility costs are paid for as a common expense.

The legislature also finds that the patent unfairness of common utility metering in condominium associations was addressed by Act 176, Session Laws of Hawaii 1977, and Act 93, Session Laws of Hawaii 2005, which added new sections to chapters 514A and 514B, Hawaii Revised Statutes, respectively, to require separate metering of nonresidential and residential units and to allow individual metering of condominium units. However, the requirement for separate monitoring of nonresidential units only applies to projects for which construction commenced after 1978. Condominiums constructed before 1978 are not required to adhere to those laws. The legislature finds that recent technology permits the individual metering of utilities in many instances for a reasonable cost regardless of the age or construction design of the condominium project.

The purpose of this Act is to permit a condominium board of directors to authorize the installation of utility meters to measure utility use by individual units; provided that the condominium association bears the cost of installing the utility meters.

Regarding the language added to subsection (a), please note that the term "nonresidential" should have been used instead of "commercial" to be consistent with the terminology of HRS Chapter 514B.

[§514B-43] Liens against units. (a) For purposes of this section:

[~~(1) "Visible commencement of operations" shall have the meaning it has in section 507-41; and~~

~~(2)~~] "Lien" means a lien created pursuant to chapter 507, part II.

"Visible commencement of operations" shall have the meaning it has in section 507-41.

(b) If visible commencement of operations occurs prior to the creation of the condominium, then, upon creation of the condominium, liens arising from this work shall attach to all units in the condominium described in the declaration and their respective undivided interests in the common elements, but not to the common elements as a whole. If visible commencement of operations occurs after creation of the condominium, then liens arising from this work shall attach only to the unit or units described in the declaration on which the work was performed in the same manner as other real property, and shall not attach to the common elements.

(c) If the developer contracts for work on the common elements, either on its behalf or on behalf of the association prior to the first meeting of the association, then liens arising from this work may attach to all units owned by the developer described in the declaration at the time of visible commencement of operations.

(d) If the association contracts for work on the common elements after the first meeting of the association, there shall be no lien on the common elements, but the persons contracting with the association to perform the work or supply the materials incorporated in the work shall be entitled to their contractual remedies, if any. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-16, clarified, is the source of this section.

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect nonsubstantive housekeeping amendments adopted by the 2018 Legislature. Note that Act 18 (SLH 2018) was the annual housekeeping bill "relating to statutory revision: amending or

repealing various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the purpose of correcting errors and references, clarifying language, and deleting obsolete or unnecessary provisions." In this case, the housekeeping Act correctly lists the definitions of "Liens" and "Visible commencement of operations" in alphabetical order.

[§514B-44] Contents of deeds or leases of units. Deeds or leases of units adequately describe the property conveyed or leased if they contain the following information:

(1) The title and date of the declaration and the declaration's bureau of conveyances or land court document number or liber and page numbers;

(2) The unit number of the unit conveyed or leased;

(3) The common interest appurtenant to the unit conveyed or leased; provided that the common interest shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned in the conveyance or other instrument, as provided in section 514B-37;

(4) For a unit, title to which is registered in the land court, the land court certificate of title number for the unit, if available; and

(5) For a unit, title to which is not registered in the land court, the bureau of conveyances document number or liber and page numbers for the instrument by which the grantor acquired title.

Deeds or leases of units may contain additional information and details deemed desirable and consistent with the declaration and this chapter, including without limitation a statement of any encumbrances on title to the unit that are not listed in the declaration. The failure of a deed or lease to include all of the information specified in this section shall not render it invalid. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-17, clarified, is the source of this section.

[§514B-45] Blanket mortgages and other blanket liens affecting a unit at time of first conveyance or lease. At the time of the first conveyance or lease of each unit, every mortgage and other lien, except any improvement district or utility assessment, affecting both the unit and any other unit shall be paid and satisfied of record, or the unit being conveyed or leased and its common interest shall be released therefrom by a duly recorded partial release. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. This section is identical to HRS §514A-18.

[§514B-46] Merger of projects or increments. (a) Two or more projects, or increments of a project, whether or not adjacent to one another, but that are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the units in the merged projects. A merger may be implemented with the vote or consent that the declaration requires for a merger, pursuant to any reserved rights set forth in the declaration, or upon vote of sixty-seven per cent of the common interest.

(b) A merger becomes effective at the earlier of:

(1) A date certain set forth in the certificate of merger; or

(2) The date that the certificate of merger is recorded.

The certificate of merger may provide for a single association and board for the merged projects and for a sharing of the common expenses of the projects among all the owners of the units in the merged projects. The certificate of merger may also provide for a merger of the common elements of the projects so that each unit owner in the merged projects has an undivided ownership interest in the common elements of the merged projects. In the event of a merger of common elements, the common interests of each unit in the merged projects shall be adjusted in accordance with the merger provisions in the projects' declarations so that the total

common interests of all units in the resulting merged project totals one hundred per cent. If the certificate of merger does not provide for a merger of the common elements, the common elements and common interests of the merged projects shall remain separate, but shall be subject to the provisions set forth in the respective declarations with respect to merger.

(c) Upon the recording of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the registrar shall cancel all existing certificates of title for the units in the projects being merged and shall issue new certificates of title for the units in the merged project, covering all of the land of the merged projects. The new certificates of title for the units in the merged project shall describe, among other things, each unit's new common interest. The certificate of merger shall at least set forth all of the units of the merged projects, their new common interests, and to the extent practicable, their current certificate of title numbers in the common elements of the merged projects.

(d) In the event of a conflict between declarations and bylaws upon the merger of projects or increments, unless otherwise provided in the certificate of merger, the provisions of the first declaration and bylaws recorded shall control. [L 2005, c 93, pt of §2]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-19, modified, is the source of this section.

2. Subsection (b) is intended to address the so-called "administrative merger" (i.e., a merger for administrative purposes but where title does not merge).

[~~†~~]**§514B-47**[~~†~~] **Removal from provisions of this chapter.** (a) If:

(1) Owners of units to which are appurtenant at least eighty per cent of the common interests execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of such units consent thereto by duly recorded instruments; or

(2) The common elements suffer substantial damage or destruction and the damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof, or the unit owners have earlier determined as provided in the declaration that the damage or destruction shall not be rebuilt, repaired, or restored;

the property shall be subject to an action for partition by any unit owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and, except as otherwise provided in the declaration, shall be divided among all the unit owners in proportion to their respective common interests; provided that no payment shall be made to a unit owner until there has first been paid in full out of the owner's share of the net proceeds all liens on the owner's unit. Upon this sale, the property ceases to be a condominium property regime or subject to this chapter.

(b) All of the unit owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, if the holders of all liens affecting any of the units consent thereto, by duly recorded instruments. Upon this removal from this chapter, the property, or the part of the property designated in the instrument, shall cease to be the subject of a condominium property regime or subject to this chapter, and shall be deemed to be owned in common by the unit owners in proportion to their respective common interests.

(c) Notwithstanding subsections (a) and (b), if the unit leases for a leasehold condominium property regime (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

(1) The estate and interest of the unit owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the condominium property regime;

(2) The unit owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the unit owner's leasehold interest;

(3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;

(4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the unit owners of the buildings and improvements in accordance with their interests; and

(5) The unit lease rents are reduced in proportion to the land so acquired or possessed;

the lessor and the developer, if the developer retains any interests or reserved rights in the project, shall file and record an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the unit owners or their respective mortgagees shall not be required, if the land acquired or possessed constitutes no more than five per cent of the total land of the condominium property regime. Upon the recordation of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or subject to this chapter. The lessor shall notify each unit owner in writing of the filing of the amendment and the rent abatement, if any, to which the unit owner is entitled. The lessor shall provide the association, through its board, with a copy of the recorded amendment.

(d) For purposes of subsection (c), the acquisition or right to possession may be effected:

(1) By a taking or condemnation of property by the State or a county pursuant to chapter 101;

(2) By the conveyance of property to the State or county under threat of condemnation; or

(3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.

(e) The removal provided for in this section shall in no way bar the subsequent resubmission of the property to the requirements of this chapter. [L 2005, c 93, pt of §2; am L 2006, c 273, §11]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §§514A-21 and 514A-22 are the sources of, and essentially identical to, this section.

Arakaki's Comment

1. Subsection (c) is presented above in Ramseyer format to reflect a clarifying amendment adopted by the 2006 Legislature. HRS §514B-47 requires developer consent to termination of a condominium in certain circumstances. Requiring developer consent makes little sense, however, if the developer retains no interests or reserved rights in the condominium, and may no longer even exist. The 2006 amendment clarifies that a developer's consent to termination of a condominium under subsection (c) is required only where the developer retains an interest in the condominium.

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-13.5 (Remuneration to allow ingress and egress prohibited) has not been included in the recodification.

2. HRS §514A-13.5 (Mailboxes for each dwelling required) has not been included in the recodification. If separate mailboxes are not to be provided, that fact should simply be disclosed to prospective purchasers in the public offering statement.

3. HRS §514A-14.5 (Ownership of parking stalls) has not been included in the recodification. Parking requirements should be governed by state and county land use laws.

4. HRS §514A-15.1 (Common expenses; prior late charges) has been incorporated in Part V – Management of Condominium, HRS §514B-105(c).

HRS Chapter 514B, Part IV. Registration and Administration of Condominiums

Real Estate Commission's Prefatory Comment to Part IV
(2003 Final Report to Legislature)[1]

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.

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Part IV. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS

[1] The Real Estate Commission's "2003 Final Report" refers to the "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000)," dated December 31, 2003. Pursuant to Act 164 (SLH 2004), the Commission's 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B). The Commission's 2003 Final Report comments are reproduced verbatim, except to fill in references to HRS Chapter 514B (since the actual chapter and section numbers were not inserted until after Acts 164 (SLH 2004) and 93 (SLH 2005) were enacted). Additional comments are inserted under "Arakaki's Comment."

PART IV. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS

[§514B-51] 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 developer's 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 the developer's public report requirements pursuant to section 514B-81(b);

(2) Projects in which all units are restricted to nonresidential uses and all units are to be sold for $1,000,000 or more; or

(3) The sale of units in bulk, such as where a developer undertakes to 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 developer's public report requirements of section 514B-56 shall apply to any sale of units to the public following a sale of units in bulk. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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.[2] In response, the Commission deleted the exemption for small condominium projects.

[ǂ]§514B-52[ǂ] 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.

[2] *See*, October 7, 2003 testimony of Sheilah Miyake.

[~~(c)~~] (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. [L 2005, c 93, pt of §3; am L 2014, c 49, §5]

Real Estate Commission's Comment (2003 Final Report)

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.

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature. Act 49 (SLH 2014) clarified that condominium property regimes on agricultural lands cannot place any restrictions on agricultural uses or activities that are permitted on those lands pursuant to HRS Chapter 205.

[§514B-53] 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. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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.

[§514B-54] Developer's public report; requirements for issuance of effective date. (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.

(b) The developer's public report shall not be used for the purpose of selling any units in the project until the commission issues an effective date for the developer's public report. The commission's issuance of an effective date for a developer's public report shall not be construed to constitute the commission's approval or disapproval of the project; the commission's representation that either all material facts or all pertinent changes, or both, concerning the project have been fully or adequately disclosed; or the commission's judgment of the value or merits of the project. [L 2005, c 93, pt of §3; am L 2014, c 49, §6]

Real Estate Commission's Comment (2003 Final Report)

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*, §514B-85. 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 §514B-72.

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature. Act 49 (SLH 2014) clarified that condominium property regimes on agricultural lands cannot place any restrictions on agricultural uses or activities that are permitted on those lands pursuant to HRS Chapter 205.

[§514B-55] Developer's public report; request for hearing by developer. If an effective date for a developer's 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 developer's public report, the developer, in writing, may request and shall be given a hearing by the commission within a reasonable time after receipt of the request. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-38, modified, is the source of this section. The first sentence in HRS §514A-38 is incorporated in §514B-64 (Private Consultants).

[§514B-56] Developer's public report; amendments. (a) After the effective date for a developer's public report has been issued by the commission, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the developer's public report, or if the developer desires to update or change the information set forth in the developer's public report, the developer shall immediately submit to the commission an amendment to the developer's public report or an amended developer's 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 developer's public report, accompanied by nonrefundable fees 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 developer's public report or take other appropriate action under this part.

(b) The submission of an amendment to the developer's public report or an amended developer's public report shall not require the developer to suspend sales, subject to the power of the commission to order sales to cease as set forth in section 514B-66; 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 developer's public report pending the issuance of an effective date for any amendment to the developer's public report or amended developer's public report; and provided further that if the amended developer's 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 developer's public report. Nothing in this section shall diminish the rights of purchasers under section 514B-94.

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

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

(2) A restated developer's public report, including all amendments.

(d) The filing of an amendment to the developer's public report or an amended developer's public report, in and of itself, shall not 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 514B-86 and 514B-87, the terms and conditions of the purchaser's contract for sale, and applicable common law. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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 §514B-87 (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.

§514B-57] Commission oversight of developer's public report. (a) The commission at any time may require a developer to amend or supplement the form or substance of a developer's public report to assure adequate and accurate disclosure to prospective purchasers.

(b) The developer's public report shall not be used for any promotional purpose before registration, and may be used after registration only if it is used in its entirety. No person shall advertise or represent that the commission has approved or recommended the condominium project, the developer's public report, or any of the documents contained in the application for registration. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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.

§514B-58 Annual report. (a) A developer, its successor, or assign shall file annually a report to update the material contained in the developer's public report, together with the payment of nonrefundable fees, at least thirty days prior to the anniversary date of the effective date for a developer's public report. If there is no change to the developer's public report, the developer shall so state. This subsection shall not relieve the developer, its successor, or assign of the obligation to file amendments to the developer's public report pursuant to section 514B-56. Failure to file the annual report required by this section may subject the developer to the penalties set forth in section 514B-69(b).

(b) The developer, its successor, or assign shall be relieved from filing annual reports pursuant to this section when the initial sales of all units have been completed [~~and the developer, its successor, or assign has no ownership interest in any unit in the project~~]. [L 2005, c 93, pt of §3; am L 2006, c 273, §12]

Real Estate Commission's Comment (2003 Final Report)

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*, §514B-83(b).

Arakaki's Comment

1. Subsection (b) is presented above in Ramseyer format to reflect the amendment adopted by the 2006 Legislature.

[§514B-59] Expiration of developer's public reports. Except as otherwise provided in this chapter, upon issuance of an effective date for a developer's public report or any amendment, the developer's public report and amendment or amendments shall not expire until such time as the developer has sold all units in the project. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section.

§514B-60] 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 that contains forgery. All documents shall be true, complete, and accurate in all respects, including the developer's 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 the documents, and shall not contain any misleading information, or omit any pertinent change in the information or documents submitted to the commission. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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

[§514B-61] General powers and duties of commission. (a) The commission may:

(1) Adopt, amend, and repeal rules pursuant to chapter 91;

(2) Assess fees;

(3) Conduct investigations, issue cease and desist orders, and bring an action in any court of competent jurisdiction to enjoin persons, 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 this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, 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-154.5.

(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 project, the commission shall state the basis for the adverse determination and the underlying facts.

(g) The commission, by rule, may require bonding at appropriate levels over time, escrow of portions of sales proceeds, or other safeguards to assure completion of all improvements that a developer is obligated to complete, or has represented that it will complete. [L 2005, c 93, pt of §3; am L 2014, c 188, §3]

Real Estate Commission's Comment (2003 Final Report)

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).

Arakaki's Comment

1. The parentheses in the Commission's original version of subsection (g) were removed by the Legislature when it adopted this part in 2005.

2. Subsections (b) and (c) are presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature.

[§514B-62] 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). [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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

[§514B-63] 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. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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

[§514B-64] 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 the review by private consultants shall be borne by the developer. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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

[§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-154.5, 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. [L 2005, c 93, pt of §3; am L 2014, c 188, §4]

Real Estate Commission's Comment (2003 Final Report)

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

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect an amendment adopted by the 2014 Legislature.

[§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-154.5, 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. [L 2005, c 93, pt of §3; am L 2014, c 188, §5]

Real Estate Commission's Comment (2003 Final Report)

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

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect an amendment adopted by the 2014 Legislature.

[§514B-67] Termination of registration. (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; [~~or~~]

(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.

(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 project is in effect, without the consent of the commission.

(c) The commission may issue a cease and desist order in lieu of an order of revocation where appropriate. [L 2005, c 93, pt of §3; am L 2014, c 49, §7]

Real Estate Commission's Comment (2003 Final Report)

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.

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature. Act 49 (SLH 2014) clarified that condominium property regimes on agricultural lands cannot place any restrictions on agricultural uses or activities that are permitted on those lands pursuant to HRS Chapter 205.

[§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-154.5, 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. [L 2005, c 93, pt of §3; am L 2014, c 188, §6]

Real Estate Commission's Comment (2003 Final Report)

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

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect an amendment adopted by the 2014 Legislature.

[§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-154.5, 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-154.5, 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-154.5, 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. [L 2005, c 93, pt of §3; am L 2014, c 188, §7]

Real Estate Commission's Comment (2003 Final Report)

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

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature.

[§514B-70] 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 the actions are based or ten years after completion of the sales transaction involved, whichever has first occurred. [L 2005, c 93, pt of §3]

Real Estate Commission's Comment (2003 Final Report)

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

[~~,~~]§514B-71[~~,~~] Condominium education trust fund. (a) The commission shall establish a condominium education trust fund that the commission [~~may~~] shall use for educational purposes. Educational purposes shall include financing or promoting:

(1) Education and research in the field of condominium management, condominium project 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) Expeditious and inexpensive procedures for resolving association disputes[~~.~~] [~~and;~~]

(4) Support for mediation of condominium related disputes[.] and;

(5) Support for voluntary binding arbitration between parties in condominium related disputes, pursuant to section 514B-162.5.

(b) The commission [~~may~~] shall use [~~any and~~] all moneys in the condominium education trust fund for purposes consistent with subsection (a). [L 2005, c 93, pt of §3; am L 2013, c 187, §2; am L 2018, c 196, §3]

Real Estate Commission's Comment (2003 Final Report)

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).

Arakaki's Comment

1. Subsections (a) and (b) are presented above in Ramseyer format to reflect amendments adopted by the 2013 and 2018 Legislatures in Act 187 (SLH 2013) and Act 196 (SLH 2018).

2. Section 1 of Act 187 (SLH 2013) explains the 2013 amendments as follows:

SECTION 1. The legislature finds that mediation is an informal, inexpensive, and confidential process for resolving disputes quickly. Mediation may be particularly advantageous in a condominium setting because of the potential to preserve or to restore harmony within a condominium community.

The legislature further finds that fees paid into the condominium education trust fund come from condominium owners and developers. Dedicating a portion of the fund to support the mediation of condominium related disputes will benefit condominium owners and associations.

The purpose of this Act is to:

(1) Add support for mediation of condominium related disputes as one of the educational purposes that shall be supported by the condominium education trust fund;

(2) Beginning with the July 1, 2015, biennium registration, impose an additional annual condominium education trust fund fee dedicated to supporting mediation of condominium related disputes and specify the total fee into the condominium education trust fund. The additional fee shall be in addition to any fee prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes; and

(3) Require the real estate commission to make adjustments to the condominium education trust fund to ensure adequate funds are available for mediation of condominium related disputes, and enable the commission to fully accommodate any mediation requests received prior to the commencement of the additional annual condominium education trust fund fee.

3. Section 1 of Act 196 (SLH 2018) explains the 2018 amendments as follows:

SECTION 1. The legislature finds that mediation is an existing and appropriate method of alternative dispute resolution to address condominium related disputes. While the courts are available to resolve conflicts, condominium law should provide incentives for the meaningful use of alternative dispute resolution mechanisms. Thus, the legislature further finds that clarifying the conditions that mandate mediation and exceptions to mandatory mediation is appropriate. The legislature notes that the mandatory mediation proposed by this Act is intended to require parties to resolve condominium related disputes through the use of alternative dispute resolution.

The legislature also finds that authorizing the condominium education trust fund, which is currently dedicated to supporting mediation, to also be used for voluntary binding arbitration will further encourage the use of alternative dispute resolution for condominium related disputes.

Accordingly, the purpose of this Act is to:

(1) Expand the scope of the condominium education trust fund to cover voluntary binding arbitration between interested parties; and

(2) Amend the conditions that mandate mediation and exceptions to mandatory mediation.

4. Section 6 of Act 196 (SLH 2018) makes a conforming amendment to the language of Act 187 (SLH 2013), Section 5, which relates to Department of Commerce and Consumer Affairs' budget ceiling. The amendment is to session laws language only, not statutory language.

[~~[~~§514B-72]~~]~~ Condominium education trust fund; payments by associations and developers. (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~~]:

(1) 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[~~.~~]; and

(2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of $1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes. The additional condominium education trust fund fee shall total $3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3).

(b) Each developer shall pay to the department of commerce and consumer affairs the condominium education trust fund 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 developer's public report shall be issued until the payment has been made.

(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 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.

(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. [L 2005, c 93, pt of §3; am L 2009, c 129, §10; am L 2013, c 187, §3; am L 2017, c 181, §28; am L 2018, c 196, §4]

Real Estate Commission's Comment (2003 Final Report)

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

Arakaki's Comment

1. Subsections (a) and (d) are presented above in Ramseyer format to reflect amendments adopted by the 2009, 2013, 2017, and 2018 Legislatures in Act 129 (SLH 2009), Act 187 (SLH 2013), Act 181 (SLH 2017), and Act 196 (SLH 2018).

2. Section 1 of Act 129 (SLH 2009), which somewhat inaccurately describes the evolution of HRS Chapter 514A as it relates to HRS Chapter 514B, explains the 2009 amendments as follows:

> 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.

3. Section 1 of Act 187 (SLH 2013), set forth in Arakaki's comment for HRS§514B-71 above, explains the 2013 amendments.

4. Effective January 1, 2019, HRS Chapter 514A was repealed and conforming amendments to HRS §§514B-72(a) and (d) went into effect. [L 2017, c 181, §28]

5. Section 1 of Act 196 (SLH 2018), set forth in Arakaki's comment for HRS§514B-71 above, explains the 2018 amendments. The double-underlined phrases "or voluntary binding arbitration" in subsection (a)(2) reflect the amendments adopted by the 2018 Legislature

[~~:~~]§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~~] section 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~~] section 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~~] section 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. [L 2005, c 93, pt of §3; am L 2009, c 129, §11; am L 2017, c 181, §29]

Real Estate Commission's Comment (2003 Final Report)

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.

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect amendments adopted by the 2009 and 2017 Legislatures in Act 129 (SLH 2009) and Act 181 (SLH 2017).

2. Section 1 of Act 129 (SLH 2009), which is reproduced in "Arakaki's Comment" to HRS §514B-72, explains the reasons for the amendments.

3. Effective January 1, 2019, HRS Chapter 514A was repealed and conforming amendments to HRS §§514B-73(a), (b), and (c) went into effect. [L 2017, c 181, §29]

HRS Chapter 514B, Part V. Protection of Condominium Purchasers.

Real Estate Commission's Prefatory Comment to Part V
(2003 Final Report to Legislature)[1]

Guiding Principles:

1. Adequate disclosure to prospective condominium purchasers is the foundation of Part V.

As noted in the Uniform Condominium Act (1980) and Uniform Common Interest Ownership Act (1994), "[t]he best 'consumer protection' that the law can provide to any purchaser is to insure that he has an opportunity to acquire an understanding of the nature of the products which he is purchasing." (*See*, Comment to UCA/UCIOA §4-103.)

2. "Adequate disclosure" to prospective condominium purchasers involves more than disclosures involving the sale of real property in non-common interest ownership community projects.

Such a result is difficult to achieve, however, in the case of the condominium purchaser because of the complex nature of the bundle of rights and obligations which each unit owner obtains. As noted in the Uniform Condominium Act (1980) and Uniform Common Interest Ownership Act (1994), "[f]or this reason, the Act, adopting the approach of many so-called 'second generation' condominium statutes, sets forth a lengthy list of information which must be provided to each purchaser before he contracts for a unit. This list includes a number of important matters not typically required in public offering statements under existing law." (*See*, Comment to UCA/UCIOA §4-103.)

3. Risk to purchasers' funds should be correlated with the rights and obligations of developers.

4. The recodified condominium law should not result in an increase in the cost of government.

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[1] The Real Estate Commission's "2003 Final Report" refers to the "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000)," dated December 31, 2003. Pursuant to Act 164 (SLH 2004), the Commission's 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B). The Commission's 2003 Final Report comments are reproduced verbatim, except to fill in references to HRS Chapter 514B (since the actual chapter and section numbers were not inserted until after Acts 164 (SLH 2004) and 93 (SLH 2005) were enacted). Additional comments are inserted under "Arakaki's Comment."

HRS Chapter 514B, Part V. Protection of Condominium Purchasers.

PART V. PROTECTION OF CONDOMINIUM PURCHASERS

A. General Provisions

[§514B-81] Applicability; exceptions. (a) This part applies to all units subject to this chapter, except as provided in subsection (b).

(b) No developer's public report shall be required in the case of:

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure; or

(5) The sale of units in bulk, as defined in section 514B-51(b); provided that the requirements of this part shall apply to any sale of units to the public following the sale of units in bulk. [L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §4-101, modified, is the source of this section. The Commission decided not to incorporate UCA/UCIOA's "resale certificate" provisions as two standard Hawaii Association of Realtor disclosure forms generally used in connection with the resale of condominium units (i.e., the RR105C, which associations complete, and the seller disclosure form) already adequately serve that purpose.

2. Paragraph (b)(4) addresses the problem, raised by various stakeholders, of lenders being considered "successor developers" in foreclosure/deed in lieu of foreclosure situations.

[§514B-82] Sale of units. Except as provided in section 514B-85, no sale or offer of sale of units in a project by a developer shall be made prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and except as provided by law with respect to time share units, the delivery of the developer's public report to prospective purchasers. Notwithstanding any other provision to the contrary, where a time share project is duly registered under chapter 514E and a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser, the developer's public report need not be delivered to the purchaser or prospective purchaser. [L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section based on some of the concepts contained in HRS §§514A-31 and 514A-62.

[§514B-83] Developer's public report. (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;

(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.

(b) A developer shall promptly amend the developer's public report to report any pertinent or material change or both in the information required by this section. [L 2005, c 93, pt of §4; am L 2014, c 49, §8]

Real Estate Commission's Comment (2003 Final Report)

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 minimal risk of consumer harm when no money changes hands and no binding contracts are made. *See*, §514B-85.

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 the recodified condominium law.

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).

Arakaki's Comment

1. Subsection (a)(7) is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature. Act 49 (SLH 2014) clarified that condominium property regimes on agricultural lands cannot place any restrictions on agricultural uses or activities that are permitted on those lands pursuant to HRS Chapter 205.

[§514B-84] Developer's public report; special types of condominiums. (a) In addition to the information required by section 514B-83, the developer's public report for a project containing any existing structures being converted to condominium status shall contain:

(1) Regarding units that may be occupied for residential use and that have been in existence for five years or more:

(A) A statement by the developer, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units;

(B) A statement by the developer of the expected useful life of each item reported on in subparagraph (A) or a statement that no representations are made in that regard; and

(C) A list of any outstanding notices of uncured violations of building code or other county regulations, together with the estimated cost of curing these violations;

(2) Regarding all projects containing converted structures, a verified statement signed by an appropriate county official that:

(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:

(i) Any variances or other permits that have been granted to achieve compliance;

(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and

(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance; or

(B) Based on the available information, the county official cannot make a determination with respect to the matters described in subparagraph (A); and

(3) Other disclosures and information that the commission may require.

(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.

(c) In addition to the information required by section 514B-83, the developer's public report for a project containing any assisted living facility units regulated or to be regulated pursuant to rules adopted under section 321-11(10) shall disclose:

(1) Any licensing requirements and the impact of the requirements on the costs, operations, management, and governance of the project;

(2) The nature and scope of services to be provided;

(3) Additional costs, directly attributable to the services, to be included in the association's common expenses;

(4) The duration of the provision of the services;

(5) Any other information the developer deems appropriate to describe the possible impacts on the project resulting from the provision of the services; and

(6) Other disclosures and information that the commission may require. [L 2005, c 93, pt of §4; am L 2014, c 49, §9]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-61(b), modified, and elements of HRS §514A-40 are the basic sources of subsection (a), regarding condominium conversion projects. Since condominium conversions involve existing structures and a county might not otherwise have the opportunity to address land *use* matters in these situations, it is appropriate to require county certification of compliance with its land *use* laws when converting existing structures to the condominium form of *ownership*.

2. Subsections (b), regarding projects on agricultural land, and (c), regarding projects containing assisted living facility units, are new.

3. Consistent with the condominium law's consumer protection purpose, subsection (c) requires additional disclosures for projects containing assisted living facility units.

One of the new century's major challenges for condominium associations nationwide is the aging of populations within condominium units and the problems that accompany diminishing health and capacity. Recent controversies in a condominium with assisted living facility services helped to direct the Commission's attention to this issue.[2] More broadly, however, in addition to assisted living facilities in condominiums, a growing number of senior citizens are choosing to remain in their homes and familiar surroundings rather than moving to traditional retirement destinations. This trend is creating what has become known as "Naturally Occurring Retirement Communities" (NORCs).[3] Regardless of whether a condominium is an assisted living facility or NORC, "self-governance" may not truly work for aged and infirm condominium owners. Some such matters may be addressed in Hawaii's condominium law, while others may be better handled in the governing documents of condominiums. More questions in this area are sure to arise in the near future.

[*See also*, Act 185 (SLH, 2003), which directs the State Department of Health and the Real Estate Commission to conduct a study and report to the Legislature on the impact and feasibility of allowing condominium and cooperative housing corporation projects to become licensed as assisted living facilities to provide such services for its residents. §514B-142 (Aging In Place, Limitation on Liability) was added to the recodification at the request of the Act 185 (SLH, 2003) working group.]

Arakaki's Comment

1. Subsection (b)(1) is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature. Act 49 (SLH 2014) clarified that condominium property regimes on agricultural lands cannot place any restrictions on agricultural uses or activities that are permitted on those lands pursuant to HRS Chapter 205.

[§514B-85] Preregistration solicitation. (a) Prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and the delivery of the developer's public report to prospective purchasers, and subject to the limitations set forth in subsection (b), the developer may solicit prospective purchasers and enter into nonbinding preregistration agreements with the prospective purchasers with respect to units in the project. As used in this section, "solicit" means to advertise, to induce, or to attempt in whatever manner to encourage a person to acquire a unit.

(b) The solicitation activities authorized under subsection (a) shall be subject to the following limitations:

(1) Prior to registration of the project with the commission and the issuance of an effective date for the developer's public report, the developer shall not collect any moneys from prospective purchasers or anyone on behalf of prospective purchasers, whether or not the moneys are to be placed in an escrow account, or whether or not the moneys would be refundable at the request of the prospective purchaser; and

[2] *See*, "Raising Cane – Complaints fly at condo for seniors," Honolulu Star-Bulletin, Sunday, July 14, 2002. The article, by Rob Perez, details the problems of One Kalakaua, the condominium at the center of a number of disputes. (http://starbulletin.com/2002/07/14/news/perez.html)

[3] de Haan, Ellen Hirsch; "Aging in Place – Naturally Occurring Retirement Communities and Condominium Living," Law Offices of Becker & Poliakoff website (2000). (http://www.association-law.net/publications/article/aging_in_place.htm) It appears that this article was first published in Elder's Advisor, The Journal of Elder Law and Post Retirement Planning, Volume 1, Number 2, (Fall 1999). The article contains a number of suggestions regarding legal and management issues in this area.

(2) The developer shall not require or request that a prospective purchaser execute any document other than a nonbinding preregistration agreement. The preregistration agreement may, but need not, specify the unit number of a unit in the project to be reserved and may, but need not, include a price for the unit. The preregistration agreement shall not incorporate the terms and provisions of the sales contract for the unit and, by its terms, shall not become a sales contract. Notwithstanding anything contained in the preregistration agreement to the contrary, the preregistration agreement may be canceled at any time by either the developer or the prospective purchaser by written notice to the other. The commission may prepare a form of preregistration agreement for use pursuant to this section, and use of the commission-prepared form shall be deemed to satisfy the requirements of the preregistration agreement as provided in this section. [L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section.

~~[~~**§514B-86**~~]~~ **Requirements for binding sales contracts; purchaser's right to cancel.** (a) No sales contract for the purchase of a unit from a developer shall be binding on the developer, prospective purchaser, or purchaser until:

(1) The developer has delivered to the prospective purchaser:

(A) A true copy of the developer's public report, including all amendments with an effective date issued by the commission. The developer's public report shall include the report itself, the condominium project's recorded declaration and bylaws, house rules if any, a letter-sized condominium project map, and all amendments[~~. Where it is impractical to include a letter-sized condominium project map, the prospective purchaser or purchaser shall be provided a written notice of an opportunity to examine the map. The copy of the recorded declaration and bylaws creating the project shall indicate the document number or land court document number, or both, as applicable;~~] that shall be:

(i) Attached to the developer's public report itself as exhibits or shall be concurrently and separately provided to the prospective purchaser or purchaser with the developer's public report;

(ii) Printed copies unless the commission, prospective purchaser, or purchaser indicate in a separate writing their election to receive the required condominium's declaration, bylaws, house rules, if any, letter-sized condominium map, and all amendments through means of a computer disc, email, download from an Internet site, or by any other means contemplated by chapter 489E. Where it is impractical to include a letter-sized condominium project map, the prospective purchaser or purchaser shall be provided a written notice of an opportunity to examine the map. The copy of the recorded declaration and bylaws creating the project shall indicate the document number, land court document number, or both, as applicable; and

(B) A notice of the prospective purchaser's thirty-day cancellation right on a form prescribed by the commission, upon which the prospective purchaser may indicate that the prospective purchaser has had an opportunity to read the developer's public report, understands the developer's public report, and exercises the right to cancel or waives the right to cancel; and

(2) The prospective purchaser has waived the right to cancel or is deemed to have waived the right to cancel.

(b) Purchasers may cancel a sales contract at any time up to midnight of the thirtieth day after:

(1) The date that the purchaser signs the contract; and

(2) All of the items specified in subsection (a)(1) have been delivered to the purchaser.

(c) The prospective purchaser may waive the right to cancel, or shall be deemed to have waived the right to cancel, by:

(1) Checking the waiver box on the cancellation notice and delivering it to the developer;

(2) Letting the thirty-day cancellation period expire without taking any action to cancel; or

(3) Closing the purchase of the unit before the cancellation period expires.

(d) The receipts, return receipts, or cancellation notices obtained under this section shall be kept on file in possession of the developer and shall be subject to inspection at any reasonable time by the commission or its staff or agents for a period of three years from the date the receipt or return receipt was obtained. [L 2005, c 93, pt of §4; am L 2007, c 244, §5]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section based on concepts contained in HRS §514A-62.

2. The purchaser's right to cancel is a one time right that is strictly tied to the statutory "cooling off" period.

3. Rather than set the purchaser's right to cancel document in statute, the recodification allows the Real Estate Commission to prescribe the form and content of the document (which must still, of course, be consistent with statutory requirements). This will allow the Commission to react more quickly in clarifying any ambiguities in the form.

4. Many small developers have objected to HRS §514A-62's 30-day right to cancel period as a "free 30-day option to purchase" ripe for abuse by speculators. In response to this concern (and consistent with the UCA, UCIOA, and the laws of many other jurisdictions) the right to cancel ("cooling off") period was reduced from 30 to 15 days in earlier drafts of the recodification. As a practical matter under HRS Chapter 514A, large developers have encouraged prospective purchasers to close early or to waive their right to cancel. Reducing the prospective purchaser's one-time "cooling off" right to cancel period to 15 days appeared to provide for adequate consumer protection without unduly burdening small developers. The Commission's advisory committee and Real Estate Branch staff, however, recommended keeping the right to cancel period at 30 days. Real Estate Branch staff stated that, "besides the public report, there are a number of exhibits attached that are voluminous to review." The "right to cancel" period of 30 days was kept in the final draft of the recodification.

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2007 Legislature.

[§514B-87] Rescission after sales contract becomes binding. (a) Purchasers shall have a thirty-day right to rescind a binding sales contract for the purchase of a unit from a developer if there is a material change in the project. This rescission right shall not apply, however, in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the declaration.

(b) Upon delivery to a purchaser of a description of the material change on a form prescribed by the commission, the purchaser may waive the purchaser's rescission right provided in subsection (a) by:

(1) Checking the waiver box on the option to rescind sales contract instrument, signing it, and delivering it to the seller;

(2) Letting the thirty-day rescission period expire without taking any action to rescind; or

(3) Closing the purchase of the unit before the thirty-day rescission period expires.

(c) In order to be valid, a rescission form must be signed by all purchasers of the affected unit, and postmarked no later than midnight of the thirtieth calendar day after the date that the purchasers received the rescission form from the seller. In the event of a valid exercise of a purchaser's right of rescission pursuant to this section, the purchasers shall be entitled to a prompt and full refund of any moneys paid.

(d) The rescission form obtained by the seller under this section shall be kept on file in possession of the seller and shall be subject to inspection at a reasonable time by the commission or its staff or agents, for a period of three years from the date the receipt or return receipt was obtained.

(e) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies. [L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-63, modified, is the source of this section.

2. "Cancellation " under the "cooling off" period of §514B-86 differs from "rescission" under §514B-87 in that cancellation under §514B-86 can be for any reason, while rescission under §514B-87 must be based on a material change in circumstances that "directly, substantially, and adversely" affects the purchaser's use or value of the purchaser's unit or appurtenant limited common elements or the project amenities available to the purchaser.

3. As made clear by subsection (e), purchasers may still exercise all applicable common law remedies (including common law rescission rights).

[§514B-88] Delivery. In this part, delivery shall be made by:

(1) Personal delivery;

(2) Registered or certified mail with adequate postage, to the recipient's address; provided that delivery shall be considered made three days after deposit in the mail or on any earlier date upon which the return receipt is signed;

(3) Facsimile transmission, if the recipient has provided a fax number to the sender; provided that delivery shall be considered made upon the sender's receipt of automatic confirmation of transmission; or

(4) Any other way prescribed by the commission. [L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section.

[§514B-89] Sales contracts before completion of construction. If a sales contract for a unit is signed before the completion of construction or, in the case of a conversion, the completion of any repairs required to comply with section 514B-5, the sales contract shall contain an agreement of the developer that the completion of construction shall occur on or before the completion deadline, and the completion deadline shall be referenced in the developer's public report. The completion deadline may be a specific date, or the expiration of a period of time after the sales contract becomes binding, and may include a right of the developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. The sales contract may provide additional remedies to the purchaser if the actual completion of construction does not occur on or before the completion deadline as set forth in the contract. [L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section.

[§514B-90] Refunds upon cancellation or termination. Upon any cancellation under section 514B-86 or 514B-89, the purchaser shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of $250. [L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section based on HRS §514A-62(c).

HRS Chapter 514B, Part V. Protection of Condominium Purchasers.

§514B-91 Escrow of deposits. All moneys paid by purchasers shall be deposited in trust under a written escrow agreement with an escrow depository licensed pursuant to chapter 449. An escrow depository shall not disburse purchaser deposits to or on behalf of the developer prior to closing except:

(1) As provided in sections 514B-92 and 514B-93; or

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

An escrow depository shall not disburse a purchaser's deposits at closing unless the escrow depository has received satisfactory assurances that all blanket mortgages and liens have been released from the purchaser's unit in accordance with section 514B-45. Satisfactory assurances shall include a commitment by a title insurer licensed under chapter 431 to issue the purchaser a title insurance policy ensuring the purchaser that the unit has been conveyed free and clear of the liens. [L 2005, c 93, pt of §4; am L 2006, c 38, §23]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section based on HRS §§514A-40(a)(6) and 514A-65.

Arakaki's Comment

1. Note that Act 38 (SLH 2006) was the annual housekeeping bill "relating to statutory revision: amending, reenacting, or repealing various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the purpose of correcting errors and references, clarifying language, and deleting obsolete or unnecessary provisions." In this case, the housekeeping Act correctly separated as a paragraph the language beginning with "An escrow depository shall not disburse a purchaser's deposits …." The amendment mirrors what was submitted to the Legislature in the Commission's 2003 Final Report.

[§514B-92] Use of purchaser deposits to pay project costs. (a) Subject to the conditions set forth in subsection (b), purchaser deposits that are held in escrow pursuant to a binding sales contract may be disbursed before closing to pay for project construction costs, including, in the case of a conversion, for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

(b) Disbursement of purchaser deposits prior to closing shall be permitted only if:

(1) The commission has issued an effective date for the developer's public report for the project;

(2) The developer has recorded the project's declaration and bylaws; and

(3) The developer has submitted to the commission:

(A) A project budget showing all costs that are required to be paid in order to complete the project, including lease payments, real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;

(B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds; and

(C) If purchaser funds are to be disbursed prior to completion of construction of the project:

(i) A copy of the executed construction contract;

(ii) A copy of the building permit for the project; and

(iii) Satisfactory evidence of security for the completion of construction, which evidence may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount

equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the developer's public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) A purchaser's deposits may be disbursed prior to closing only to pay costs set forth in the project budget submitted pursuant to subsection (b)(3)(A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, purchaser deposits may be disbursed prior to closing to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer.

(d) If purchaser deposits are to be disbursed prior to closing, the following notice shall be prominently displayed in the developer's public report for the project:

"Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."

[L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section based on HRS §§514A-40(a)(6), 514A-64.5, and 514A-67, and 7/1/99 draft REC rules.

2. Regarding paragraph (b)(3)(D)(iii):

- The requirement was originally changed from "performance bond" (which is typically issued in conjunction with a payment bond and insures the performance of the contractor) to "completion bond" (which insures the performance of the developer and is the format required to obtain a final subdivision approval prior to completion of construction). However, after further debate, "performance bond" was added back to this paragraph.

- Since financial institutions on the mainland can issue letters of credit that are enforceable anywhere, and since anyone can issue letters of credit, the language has been changed to simply require that it be issued by a federally insured financial institution.

- Rather than going into detail as to the requirements of the bond forms and letter of credit forms, the revisions simply provides for the forms to be as approved by the Commission.

[§514B-93] Early conveyance to pay project costs. (a) Subject to the conditions set forth in subsection (b), if units are conveyed or leased before the completion of construction of the building or buildings for the purpose of financing the construction, all moneys from the sale of the units, including any payments made on loan commitments from lending institutions, shall be deposited by the developer under an escrow arrangement into a federally-insured, interest-bearing account designated solely for that purpose, at a financial institution authorized to do business in the State. Disbursements from the escrow account may be made to pay for project construction costs, including, in the case of a conversion, for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

(b) Conveyance or leasing of units before completion of construction shall be permitted only if:

(1) The commission has issued an effective date for the developer's public report for the project;

(2) The developer has recorded the project's declaration and bylaws; and

(3) The developer has submitted to the commission:

(A) A project budget showing all costs required to be paid in order to complete the project, including real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;

(B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds;

(C) A copy of the executed construction contract;

(D) A copy of the building permit for the project; and

(E) Satisfactory evidence of security for the completion of construction, that may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the developer's public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) Moneys from the conveyance or leasing of units before completion of construction may be disbursed only to pay costs set forth in the project budget submitted pursuant to subsection (b)(3)(A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, such moneys may be disbursed to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer. The balance of any purchase price may be disbursed to the developer only upon completion of construction of the project and the satisfaction of any mechanic's and materialman's liens.

(d) If moneys from the conveyance or leasing of units before completion of construction are to be disbursed to pay for project costs, the following notice shall be prominently displayed in the developer's public report for the project:

"Important Notice Regarding Your Funds: Payments that you make under your sales contract for the purchase of the unit may be disbursed upon closing of your purchase to pay for project costs, including construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your payments are disbursed to pay project costs and the project is not completed, there is a risk that your payments will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."

[L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section based on HRS §514A-67, UCA/UCIOA §4-110, and § ___: 4-11, Recodification Draft #2.

[§514B-94] Misleading statements and omissions; remedies. (a) No person may:

(1) Knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease; or

(2) Issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning a project that contains any false written statement or is misleading due to the omission of a material fact.

(b) Every sale made in violation of this section shall be voidable at the election of the purchaser; and the person making the sale and every director, officer, or agent of or for the seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, shall be jointly and severally liable to the purchaser in an action in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorneys' fees; provided that no action shall be brought for the recovery of the purchase price after two years from the date of the sale; and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by the purchaser, together with interest at six per cent on the amount for the period from the date of payment by the purchaser down to the date of repayment. [L 2005, c 93, pt of §4]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §§514A-68 and 514A-69, combined, but essentially identical, are the sources of this section.

2. Under Hawaii caselaw, proof of scienter is not required and proof of reliance is not an element of the cause of action under HRS §§514A-68 and 69.[4]

B. Sales to Owner-Occupants

Real Estate Commission's Comment (2003 Final Report)

1. **HRS Chapter 514A Part VI (Sales to Owner-Occupants)** has not been included in the recodification.

Part VI of HRS Chapter 514A ("Part VI") was enacted in 1980 to require developers to offer to owner-occupants, at least 50% of a representative sampling of units in a project before offering them to the public. The intent of the law was to prevent speculation by investors at the expense of owner-occupants.

Part VI, however, only applies to condominiums. Hawaii law does not require owner-occupants to be given any preference in the sale of single-family homes, subdivisions, planned-unit developments or cooperatives.

Also, of the states where condominiums are common, Hawaii appears to be the only state which mandates this preference. The requirement does not appear in the condominium/common interest ownership acts of Florida, California, New York or Virginia, nor in the Uniform Condominium Act or the Uniform Common Interest Ownership Act.

Since its enactment, the intended benefits of Part VI have been outweighed by resulting problems, and a repeal of Part VI would not adversely affect the consumer protections contained in Chapter 514A.

The requirements of Part VI are complicated, cumbersome and expensive. Developers must publish special owner-occupant advertisements and hold a public lottery or use a chronological system to determine which owner-occupants can purchase which units. Also, since the law does not specify how to contend with certain issues, such as back-up offers, developers end up using their own methods, which may or may not be correct. In addition, the costs for complying with these requirements are passed on to buyers through increased sales prices.

Part VI is ineffective because compliance is virtually impossible to monitor and enforce. There is substantial anecdotal evidence of cheating by investors who pose as owner-occupants. Because the Real Estate Commission does not have sufficient personnel to monitor compliance with the owner-occupant requirements, there is nothing to prevent this cheating from continuing.

[4] *See*, DiSandro v. Makahuena Corp., 588 F.Supp. 889 (D.Hawaii 1984).

And although there are civil and criminal penalties for violating these laws, there is no record of any civil or criminal enforcement action having been brought against any developer or buyer. If Part VI cannot be enforced, its purpose is defeated.

Arakaki's Comment

1. In the interim between the 2004 legislative session (when Parts I, II, and VI of HRS Chapter 514B were adopted) and 2005 legislative session (when Parts III, IV, and V of HRS Chapter 514B were adopted), the Commission changed its position regarding the repeal of HRS Chapter 514A Part VI (Sales to Owner-Occupants). Therefore, the old sales to owner-occupants provisions (with clarifying amendments suggested by the Commission's Senior Condominium Specialist) were inserted into the new condominium law (HRS Chapter 514B).

[§514B-95] Definitions. As used in this subpart:

"Chronological system" means a system in which the residential units designated for sale to prospective owner-occupants are offered for sale to prospective owner-occupants in the chronological order in which the prospective owner-occupants deliver to the developer or the designated real estate broker completed owner-occupant affidavits, executed sales contracts or reservations, and earnest money deposits.

"Initial date of sale" means the date of the first publication of the announcement or advertisement pursuant to section 514B-95.5.

"Lottery system" means a system in which no prospective owner-occupant has an unfair advantage in the determination of the order in which residential units designated for sale to prospective owner-occupants are offered for sale because the order is determined by a lottery.

"Owner-occupant" means any individual in whose name sole or joint legal title is held in a residential unit that, simultaneous to such ownership, serves as the individual's principal residence, as defined by the department of taxation, for a period of not less than three hundred sixty-five consecutive days; provided that the individual shall retain complete possessory control of the premises of the residential unit during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held; except that an individual shall be deemed to have complete possessory control even when the individual conveys or transfers the unit into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period.

"Residential unit" means "unit" as defined in section 514B-3, but excludes:

(1) Any unit intended for commercial use;

(2) Any unit designed and constructed for hotel or resort use that is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to section 46-4; and

(3) Any other use pursuant to authority granted by law to a county.

"Thirty-day period" or "thirty days" means thirty full consecutive calendar days, including up to midnight on the thirtieth day. [L 2005, c 93, pt of §4]

[§514B-95.5] Announcement or advertisement; publication. At least once in each of two successive weeks, and at any time following the issuance of an effective date of the first developer's public report for the condominium project, the developer shall cause to be published in at least one newspaper published daily in the State with a general circulation in the county in which the project is to be located, and, if the project is located other than on the island of Oahu, in at least one newspaper that is published at least weekly in the county in which the project is to be located, an announcement or advertisement containing at least the following information:

(1) The location of the project;

(2) The minimum price of the residential units;

(3) A designation as to whether the residential units are to be sold in fee simple or leasehold;

(4) A statement that for a thirty-day period following the initial date of sale of the condominium project, at least fifty per cent of the residential units being marketed shall be offered only to prospective owner-occupants;

(5) The name, telephone number, and address of the developer or other real estate broker designated by the developer that an interested individual may contact to secure an owner-occupant affidavit, developer's public report, and any other information concerning the project; and

(6) If applicable, a statement that the residential units will be offered to prospective purchasers through a public lottery. [L 2005, c 93, pt of §4]

[§514B-96] Designation of residential units. (a) The developer of any project containing residential units shall designate at least fifty per cent of the units for sale to prospective owner-occupants pursuant to section 514B-98. The designation shall be set forth either in the developer's public report or in the announcement or advertisement required by section 514B-95.5, and may be set forth in both. The units shall constitute a proportionate representation of all the residential units in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not the unit has a lanai.

(b) A developer shall have the right to substitute a unit designated for owner-occupants with a unit that is not so designated; provided that the units shall be similar with regard to the factors enumerated in subsection (a). The substitution shall not require the developer's submission of a supplementary developer's public report. [L 2005, c 93, pt of §4]

[§514B-96.5] Unit selection; requirements. (a) When the chronological system is used, the developer or the developer's real estate broker, as the case may be, shall offer the residential units that have been designated pursuant to section 514B-96 as follows:

(1) For thirty days from the date of the first published announcement or advertisement required under section 514B-95.5, the developer or developer's real estate broker shall offer the residential units that have been designated pursuant to section 514B-96 to prospective purchasers chronologically in the order in which they submit to the developer or the developer's real estate broker, a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit in a reasonable amount designated by the developer. The developer or the developer's real estate broker shall maintain at all times a sufficient number of sales contracts and affidavits for prospective owner-occupants to execute and shall make them first available to prospective owner-occupants on the day immediately following the date of the first publication of the announcement or advertisement for the duration of the time period as specified in this paragraph. Prospective purchasers who do not have the opportunity to select a residential unit during the thirty-day period shall be placed on a back-up reservation list in the order in which they submit a completed owner-occupant affidavit and earnest money deposit in a reasonable amount designated by the developer;

(2) If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one residential unit designated pursuant to section 514B-96 shall be offered to them, or only one of them shall be placed on the backup reservation list;

(3) No developer, employee or agent of the developer, or any real estate licensee, either directly or through any other person, shall release any information or inform any prospective owner-occupant about the publication announcement or advertisement referred to in section 514B-95.5, including the date it is to appear and when the chronological system will be initiated, until after the announcement or advertisement is published; provided that a developer, as part of any preregistration solicitation permitted under section 514B-85, may disclose whether units will be offered to owner-occupants pursuant to this subpart and whether a chronological or lottery system will be used; and

(4) The developer shall compile and maintain a list of all prospective purchasers that submit a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit, and maintain a back-up reservation list, if any. Upon the request of the commission, the developer shall provide a copy of the list of all prospective purchasers and the back-up reservation list.

(b) When the public lottery system is used, the developer or the developer's broker, as the case may be, shall offer the residential units that have been designated pursuant to section 514B-96 as follows:

(1) From the date of the first published announcement or advertisement required under section 514B-95.5 until five calendar days after the last published announcement or advertisement, the developer or developer's real estate broker shall compile and maintain a list of all prospective owner-occupants who have submitted to the developer or the developer's real estate broker a duly executed owner-occupant affidavit. All prospective owner-occupants on this list shall be included in the public lottery described in paragraph (2). The developer and the developer's real estate broker shall maintain at all times sufficient copies of affidavits for prospective owner-occupants to execute and shall make them first available to prospective owner-occupants on the day immediately following the date of the first publication of the announcement or advertisement for the duration of the time period as specified in this subsection. Upon the request of the commission, the developer shall provide a copy of the lottery list of prospective owner-occupants;

(2) The developer or developer's real estate broker shall conduct a public lottery on the date, time, and location as set forth in the published announcement, or advertisement. The lottery shall be held no later than the thirtieth day following the date of the first published announcement or advertisement. Any person, including all prospective owner-occupants eligible for the lottery, shall be allowed to attend the lottery;

(3) The public lottery shall be conducted so that no prospective owner-occupant shall have an unfair advantage and, as to all owner-occupants whose affidavits were submitted to the developer or the developer's real estate broker within the time period specified in paragraph (1), shall be conducted without regard to the order in which the affidavits were submitted. If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be entitled to enter the public lottery; and

(4) After the public lottery, each prospective owner-occupant purchaser, in the order in which they are selected in the lottery, shall be given the opportunity to select one of the residential units that have been designated pursuant to section 514B-96, execute a sales contract, and submit an earnest money deposit in a reasonable amount designated by the developer. The developer shall maintain a list, in the order of selection, of all prospective purchasers selected in the lottery, and maintain a list of all prospective purchasers who selected one of the residential units designated pursuant to section 514B-96. Prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential units designated pursuant to section 514B-96, but who submitted an earnest money deposit in a reasonable amount designated by the developer, shall be placed on a back-up reservation list in the order in which they were selected in the public lottery. Upon request of the commission, copies of the lists shall be submitted. [L 2005, c 93, pt of §4]

[§514B-97] Affidavit. (a) The owner-occupant affidavit required by section 514B-96.5 shall expire after three hundred sixty-five consecutive days have elapsed after the recordation of the instrument conveying the unit to the affiant. The affidavit shall expire prior to this period upon acquisition of title to the property by an institutional lender or investor through mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure.

(b) The affidavit shall include statements by the affiant affirming that the affiant shall notify the commission immediately upon any decision to cease being an owner-occupant.

(c) The affidavit shall be personally executed by all the prospective owner-occupants of the residential unit and shall not be executed by an attorney-in-fact. [L 2005, c 93, pt of §4]

[§514B-97.5] Prohibitions. (a) No person who has executed an owner-occupant affidavit shall sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, or convey the unit until at least three hundred sixty-five consecutive days have elapsed since the recordation of the purchase; provided that a person who continues in the use of the premises as the individual's principal residence during this period may convey or transfer the unit into a trust for estate planning purposes. Any contract or instrument entered into in violation of this subpart shall be subject to the remedies provided in section 514B-99(a).

(b) No developer, employee or agent of a developer, or real estate licensee shall violate or aid any other person in violating this subpart. [L 2005, c 93, pt of §4]

HRS Chapter 514B, Part V. Protection of Condominium Purchasers.

§514B-98 Sale of residential units; developer requirements. (a) The developer may go to sale using either a chronological system or a lottery system at any time after issuance of an effective date for a developer's public report [~~for which the effective date has not expired~~].

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

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

(d) At any time, any prospective owner-occupant on the back-up reservation list may be offered any residential unit in the project that has not been sold or set aside for sale to prospective owner-occupants. [L 2005, c 93, pt of §4; am L 2006, c 273, §13]

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect the amendment adopted by the 2006 Legislature.

[§514B-98.5] Enforcement. (a) Whenever the commission finds based upon satisfactory evidence that any person is violating or has violated any provision of this subpart or rules of the commission adopted pursuant thereto, the commission may conduct an investigation on the matter and bring an action in the name of the commission in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or doing any acts in furtherance thereof.

(b) Before the commission brings an action in any court of competent jurisdiction pursuant to subsection (a) against any person who executed an affidavit pursuant to this subpart, it may consider whether the following extenuating circumstances affected the person's ability to comply with the law:

(1) Serious illness of any of the owner-occupants who executed the affidavit or of any other person who was to or has occupied the residential unit;

(2) Unforeseeable job or military transfer;

(3) Unforeseeable change in marital status, or change in parental status; or

(4) Any other unforeseeable occurrence subsequent to execution of the affidavit.

If the commission finds that extenuating circumstances exist, the commission may cease any further action and order release of any net proceeds held in abeyance.

(c) Any individual who executes an affidavit pursuant to this subpart and who subsequently sells or offers to sell, leases or offers to lease, rents or offers to rent, assigns or offers to assign, or otherwise transfers any interest in the residential unit that the person obtained pursuant to this subpart, shall have the burden of proving the person's compliance with the requirements of this part.

(d) Upon request, the commission may require verification that a presumed owner-occupant continues to be an "owner-occupant", as defined in this subpart. If, due to a sale, lease, assignment, or transfer of the residential unit, the presumed owner-occupant is unable to verify continuing owner-occupancy status, that person may be subject to a fine in an amount equal to the profit made from the sale, lease, assignment, or transfer.

(e) The commission shall adopt rules, pursuant to chapter 91, to carry out the purposes of this subpart. [L 2005, c 93, pt of §4]

HRS Chapter 514B, Part V. Protection of Condominium Purchasers.

[§514B-99] Penalties. (a) Any person who executes an affidavit required by this subpart and who violates or fails to comply with any of the provisions of this subpart or any rule adopted by the commission pursuant thereto, shall be subject to a civil penalty of up to $10,000; or fifty per cent of the net proceeds received or to be received by the person from the sale, lease, rental, assignment, or other transfer of the residential unit to which the violation relates, whichever is the greater amount.

(b) Any developer, employee or agent of a developer, or real estate licensee who violates or fails to comply with any of the provisions of this subpart or any rule adopted by the commission pursuant thereto, shall be subject to a civil penalty of up to $10,000. Each violation shall constitute a separate offense. [L 2005, c 93, pt of §4]

[§514B-99.3] False statement. It shall be unlawful for any person to make a false statement in the affidavit required by this subpart or for any person to file with the commission any notice, statement, or other document required under this subpart or any rule adopted by the commission pursuant thereto which is false or contains a material misstatement or omission of fact. Any violation of this section shall be a misdemeanor punishable by a fine not to exceed $2,000, or by imprisonment for a term not to exceed one year, or both. [L 2005, c 93, pt of §4]

§514B-99.5 Inapplicability of laws. (a) This subpart shall not apply to:

(1) A project developed pursuant to section 46−15 or 46−15.1, or chapter 53, [~~201G, or~~] 201H, 206[~~;~~], 346, or 356D; provided that the developer of the project may elect to be subject to this subpart through a written notification to the commission;

(2) Condominium projects where the developer conveys all of the residential units in the project to a spouse, or family members related by blood, descent or adoption; and

(3) Condominium projects consisting of two or fewer units.

(b) A developer of a project specified in subsection (a)(1) who elects to be subject to this subpart, or of a project developed pursuant to an affordable housing requirement established by a state or county governmental agency, may elect to waive specific provisions of this subpart that conflict with the eligibility or preference requirements imposed by the governmental agency. The developer of a project specified in subsection (a)(1) who exercises the election shall provide detailed written notification to the commission of the specific provisions that will be waived, an explanation for each waived provision, and a statement from the affected government agency that the project is either an inapplicable project pursuant to subsection (a)(1) or a project for which a governmental agency has imposed eligibility or preference requirements. A copy of this notification shall be filed with the affected governmental agency.

(c) A filing to meet the notification requirements of subsection (a)(1) or (b) shall not be construed to be an approval or disapproval of the project by the commission. [L 2005, c 93, pt of §4; am L 2007, c 249, §26; am L 2010, c 89, §10]

Arakaki's Comment

1. Subsection (a)(1) is presented above in Ramseyer format to reflect the amendments adopted by the 2007 Legislature. The amendments were part of a number of technical amendments being made to State laws to implement the recommendations of the Legislative Reference Bureau report to the Legislature [pursuant to Section 14 of Act 180 (SLH 2006)] regarding references that should be substituted in place of references to the Housing and Community Development Corporation of Hawaii, which was repealed.

2. Subsection (a)(1) is presented above in Ramseyer format to reflect an additional amendment adopted by the 2010 Legislature, adding HRS Chapter 346 to the list of projects that are not subject to Subpart B, Part V, of HRS Chapter 514B. Act 89 (SLH 2010) dealt with the transfer of the functions and duties of the Homeless Programs Branch of the Hawaii Public Housing Authority to the Benefit, Employment, and Support Services Division of the Department of Human Services.

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-70 (Warranty against structural and appliance defects; notice of expiration required) has been deleted. It is overly paternalistic, adds unnecessary costs ("notice by certified mail to all members" of the AOAO, etc.), provides unclear

parameters ("normal one-year period"), and results in little additional consumer protection, if any. Appropriate disclosure of warranties is the key.

HRS Chapter 514B, Part VI. Management of Condominiums

Real Estate Commission's Prefatory Comment to Part VI (2003 Final Report to Legislature)[1]

"Every [unit owners' association] has three functions –
to serve as a business, a governance structure, and a community."

~ Community Associations Factbook (1999)

As explained in the *Community Associations Factbook (1999)*, the business, governance, and community functions of community associations (including condominium unit owners' associations) have evolved over time. Early in the history of community associations, "business" meant "austerity", "governance" meant "compliance", and "community" meant "conformity". As the movement matured, "business" has come to mean "prudence", "governance" has come to mean "justice", and "community" has come to mean "harmony".

"Community/harmony" is obviously not something we can mandate by State law. Just as obviously, State law can help (or hinder) associations in their "business" and "governance" functions. The Commission has kept these functions and principles in mind as it has crafted the provisions for management of condominiums.

To paraphrase the *Restatement of the Law, Third, Property (Servitudes)* introductory note to Chapter 6:

> The law of residential condominium communities reflects tensions between protecting freedom of contract, protecting private and public interests in the home both as a personal base and as a financial asset, and protecting the public interest in the ongoing financial stability of condominium communities. It also reflects the tensions between protecting the democratic process at work in condominium communities and protecting the interests of individual community members from imposition by those who control the association. This Chapter should balance such concerns with the overall purpose of enabling condominium communities to carry out their potential for creating enduring and desirable communities.
>
> Determining the law that applies to unit owners' associations has proven to be challenging at times because the associations share some characteristics of business corporations, nonprofit organizations, local governments, and private trusts, but differ significantly from all of them. Often incorporated under nonprofit corporation statutes (HRS Chapter 414D in Hawaii), most associations are managed by a board of directors (usually unpaid volunteers) elected by the members. Like business corporations, votes are allocated on the basis of the number of units owned. The votes assigned to condominium units may be equal or weighted in accord with an initial allocation or specified formula. The developer may hold special voting rights. Unlike most corporations, but like municipal governments, associations have the power to raise funds by levying assessments on individually owned properties and charging fees. Like a private trust, the purpose of an association is to manage property for the benefit of its members, but unlike trustees, the directors are elected by popular vote and answer to political considerations. Like business organizations and municipalities, associations often manage substantial property and handle significant cash flows, but unlike businesses, their purpose is not to make money by taking entrepreneurial risks. Unlike the boards of either business or nonprofit charitable corporations, association board members have strong personal as well as financial stakes in the success of the association, because it is usually their home as well as a significant investment.
>
> Like local governments, associations have the power to make rules governing some behavior within the community, and the power to enforce the servitudes through judicial action. Like local governments, associations often administer land use regulations and provide utility services to their members. Unlike local governments, however, association charters are created by private contract and, absent other circumstances, the associations' actions are not state action sufficient to subject them to challenge under the U.S. Constitution or §1983 liability.
>
> Ultimately, this Chapter should facilitate the operation of condominium communities at the same time as it protects their long-term attractiveness by protecting the legitimate expectations of their members.

[1] The Real Estate Commission's "2003 Final Report" refers to the "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000)," dated December 31, 2003. Pursuant to Act 164 (SLH 2004), the Commission's 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B). The Commission's 2003 Final Report comments are reproduced verbatim, except to fill in references to HRS Chapter 514B (since the actual chapter and section numbers were not inserted until after Acts 164 (SLH 2004) and 93 (SLH 2005) were enacted). Additional comments are inserted under "Arakaki's Comment."

HRS Chapter 514B, Part VI. Management of Condominiums

Guiding Principles:

1. The philosophy guiding Part VI (Management of Condominium) continues to be **minimal government involvement** and **self-governance** by the condominium community.

This also means that the condominium community (both owners and management) should have the tools with which to govern itself. Self-governance (e.g., conduct of meetings, voting) should be enhanced. This does not mean that every problem and contingency should be addressed in State law (as happened too often in the past, one of the causes of the need to recodify Hawaii's condominium law). Addressing problems in State law is appropriate in some areas. Other problems may more appropriately be handled in condominium governing documents or through other private mechanisms. And some matters simply must be resolved in court.

2. The recodified condominium law should recognize the difficulty of a "one size fits all" approach to management provisions.

3. The recodified condominium law should enhance clarity of Condominium Property Act.

Provisions on a single issue (e.g., proxies) should be consolidated or grouped together. The artificial approach regarding the contents of bylaws developed in HRS §514A-82(a) and (b) should be eliminated. And the statutory requirements for condominium governing documents should be minimized while incorporating certain provisions currently in HRS §514A-82(a) and (b) in more appropriate statutory sections.

4. The recodified condominium law should help to make sure that the right people pay for the right things.

5. The recodified condominium law should not result in an increase in the cost of government.

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PART VI. MANAGEMENT OF CONDOMINIUMS

A. POWERS, DUTIES, AND OTHER GENERAL PROVISIONS

[§514B-101] Applicability; exceptions. (a) This part applies to all condominiums subject to this chapter, except as provided in subsection (b).

(b) If so provided in the declaration or bylaws, this part shall not apply to:

(1) Condominiums in which all units are restricted to nonresidential uses; or

(2) Condominiums, not subject to any continuing development rights, containing no more than five units;

provided that section 514B-132 shall not be subject to these exceptions. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section.

2. 100% non-residential condominiums may choose to exempt themselves from the provisions of this Part by so providing in their declarations or bylaws. (Earlier drafts of the recodification exempted such condominiums from the entire Chapter unless they chose to "opt-in" to its provisions.)

Arakaki's Comment

1. Until 2018, the Revisor of Statute's reference to "am L 2005, c 93, §7" in the bracketed caption following the statutory language was not part of HRS Chapter 514B. The reference now appears in virtually all sections of HRS Chapter 514B that were initially adopted in Act 164 (SLH 2004) (i.e., sections in HRS Chapter 514B Parts I, II, and VI).

Act 93 (SLH 2005), Section 7, amended Act 164 (SLH 2004), Section 35, which was the "effective date" provision of Act 164 (SLH 2004). In other words, Act 93 (SLH 2005), Section 7, amended a session law's "effective date" language, not statutory language. The amendment reads in full as follows:

SECTION 7. Act 164, Session Laws of Hawaii 2004, is amended by amending section 35 to read as follows:

"SECTION 35. This Act shall take effect on [~~July 1, 2005;~~] July 1, 2006; provided that:

(1) [~~Section 146~~] The text of section -146 in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;

[~~(2) Section 161 in part I of this Act, relating to mediation shall take effect on July 1, 2006;~~

~~(3)~~] (2) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006;

[~~(4)~~] (3) Sections 30 to 33 of this Act shall take effect on July 1, 2004; and

[~~(5)~~] (4) If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective [~~July 1, 2005,~~] July 1, 2006, parts I and II of this Act shall be repealed on [~~June 30, 2005.~~] June 30, 2006."

[§514B-102] Association; organization and membership. (a) The first meeting of the association shall be held not later than one hundred eighty days after recordation of the first unit conveyance; provided that forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year after recordation of the first unit conveyance, an annual meeting shall be called if ten per cent of the unit owners so request.

(b) The membership of the association shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all former unit owners entitled to distributions of proceeds under section 514B-47, or their heirs, successors, or assigns. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-82(a)(11) is the source of subsection (a).[2] UCA/UCIOA §3-101 is the source of subsection (b).

2. From a legal standpoint, an association (and its powers and duties) exists at recordation of the legal documents creating the condominium. While the developer inevitably acts as the association for some period of time, nevertheless, the association exists as an entity independent of the developer and the developer has a fiduciary obligation to act on behalf of the association from the time the declaration is recorded.[3]

3. As noted in the official commentary to UCA/UCIOA §3-101: "The first purchaser of a unit is entitled to have in place the legal structure of the unit owners' association. The existence of the structure clarifies the relationship between the developer

[2] For background regarding the use of first recordation of a unit conveyance versus certificate of occupancy, *see*, A Study of Problems in the Condominium Owner-Developer Relationship, by Office of Consumer Protection, Office of the Legislative Reference Bureau, and Real Estate Commission, State of Hawaii (December 1976) at page 16.

[3] *See*, State Savings & Loan Association v. Kauaian Development Company, Inc., et al., 50 Haw. 540, 445 P.2d 109 (1968); Hawaii Real Estate Law Manual, "Community Associations," by J. Neeley (1997).

and other unit owners and makes it easy for the developer to involve unit owners in the governance of the condominium even during a period of declarant control …"

[~~§~~]**§514B-103**[**]**] **Association; registration.** (a) Each project or association having more than five units shall:

(1) Secure and maintain a fidelity bond in an amount for the coverage and terms as required by section 514B-143(a)(3). An association shall act promptly and diligently to recover from the fidelity bond required by this section. An association that is unable to obtain a fidelity bond may seek approval for an exemption, a deductible, or a bond alternative from the commission. 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;

[~~(1)~~] (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. The registration shall be for a biennial period with termination on June 30 of each 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 project or association that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and be subject to initial registration requirements. Any new project or association shall register within thirty days of the association's first meeting. If the association has not held its first meeting and it is at least one year after the recordation of the purchase of the first unit in the project, the developer or developer's affiliate or the managing agent shall register on behalf of the association and shall comply with this section, except for the fidelity bond requirement for associations required by section 514B-143(a)(3). 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's 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 where the officer can be contacted directly;

[~~(2)~~] (3) Pay a nonrefundable application fee and, upon approval, an initial registration fee, a reregistration fee upon reregistration and the condominium education trust fund fee, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;

[~~(3)~~] (4) Register or reregister and pay the required fees by the due date. Failure to register or reregister or 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

[~~(4)~~] (5) Report promptly in writing to the commission any changes to the information contained on the registration or reregistration application or any other documents required by the commission. Failure to do so may result in termination of registration and subject the project or the association to initial registration requirements.

(b) The commission may reject or terminate any registration submitted by a project or an association that fails to comply with this section. Any association that fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers. The failure of an association to register, or rejection or termination of its registration, shall not impair the validity of any contract or act of the association nor prevent the association from defending any action or proceeding in any court in this State. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2007, c 244, §6]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-95.1 is the source of this section. In pertinent part, it has been modified slightly. HRS §514A-95.1 contains both registration requirements and fidelity bond requirements for associations. The fidelity bond provisions of HRS §514A-95.1(1) have been incorporated in a separate insurance section. *See*, §514B-143.

2. Keeping the association registration requirement is important to continued support of alternative dispute resolution and condominium education efforts.

3. Requiring associations to register with the Commission is not meant to imply that the Commission has jurisdiction over condominium governance matters. (The Commission's powers and duties are described in Part IV, §514B-61.) As provided in

subsection (b) above, failure of a unit owners' association to register results in a self-enforcing sanction – the association's lack of standing to maintain actions in State court until properly registered with the Commission.

Arakaki's Comment

1. Paragraph (a)(1) was added by the 2007 Legislature. Amendments (i.e., the addition of the new paragraph (a)(1) and renumbering of the following paragraphs) are presented above in Ramseyer format.

[~~†~~]**§514B-104**[~~†~~] **Association; powers.** (a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

(1) Adopt and amend the declaration, bylaws, and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 514B-148;

(3) Hire and discharge managing agents and other independent contractors, agents, and employees;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that [~~designation~~]:

(A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners; [~~provided further that if~~]

(B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, [~~this requirement~~] the requirements of this paragraph shall not apply as to those additional areas; and [~~provided further that~~]

(C) The requirements of this paragraph shall not apply to the purchase of a unit for a resident manager, which may be purchased with the approval of the board;

(9) Subject to section 514B-38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;

(11) Impose charges and penalties, including late fees and interest, for late payment of assessments and[~~, after notice and an opportunity to be heard,~~] levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, [~~for condominiums created after May 17, 1983,~~] if the bylaws are silent, pursuant to a resolution adopted by the board [~~and approved by sixty-seven per cent of all unit owners at an annual meeting of the association or by the written consent of sixty-seven per cent of all unit owners;~~] that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that the fine is paid, the unit owner shall have the right to

initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;

(13) Provide for cumulative voting through a provision in the bylaws; [~~provided that an owner shall provide notice of the owner's intent to cumulatively vote before voting commences;~~]

(14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;

(15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section 514B-105(e) expressly so provides;

(16) Exercise any other powers conferred by the declaration or bylaws;

(17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;

(18) Exercise any other powers necessary and proper for the governance and operation of the association; and

(19) By regulation, subject to sections 514B-146, 514B-161, and 514B-162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.

(b) If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may:

(1) Exercise directly against the tenant the powers described in subsection (a)(11);

(2) After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation, provided that a unit owner shall be responsible for the conduct of the owner's tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the declaration, bylaws, or rules and regulations of the association against the tenant; and

(3) Enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the unit owner, or both.

(c) The rights granted under subsection (b)(3) may only be exercised if the tenant or unit owner fails to cure the violation within ten days after the association notifies the tenant and unit owner of that violation; provided that no notice shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or 521-51(6).

(d) Unless a lease otherwise provides, this section does not:

(1) Affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) Permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations. [L 2004, c 164, pt of §2; am L 2005, c 93, §7 and c 155, §2; am L 2006, c 273, §14]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-102 is the source of this section. Some provisions have been modified using language of similar provisions in HRS Chapter 514A. Others have been modified to address problems that have arisen over time. [For example,

paragraph (a)(9) helps correct problems created by encroachments on common elements.] UCA/UCIOA §3-102 (b) and (c) have been moved to §514B-105 (Limitations on Powers).

2. Under paragraph (a)(4), associations are deemed to be "consumers" for the purposes of HRS Chapter 480 (Unfair and Deceptive Practices) actions. Although associations are collections of "consumers," they have sometimes been denied rights to pursue claims under HRS Chapter 480 (a powerful consumer protection statute) that are enjoyed by owners of single family houses.

3. Some stakeholders opposed paragraph (a)(11) as originally drafted (i.e., without the requirement that the board's resolution to establish a fining system be approved by a majority of all unit owners), and claimed that it would be a "weapon of mass destruction" in the hands of the wrong board.[4] They stated that associations without fining provisions in their bylaws should amend their bylaws or hire an attorney to send a letter demanding compliance. This makes little sense for the following reasons:

- The failure to follow condominium rules and regulations disrupts the quiet enjoyment of condominium residents and ultimately affects the reputation of the building and the value of its units. Allowing boards to impose fines, by law, helps to encourage compliance with project documents. The application of fair and reasonable fining systems has been instrumental in gaining owners' attention, and action, to correct behavioral problems of the residents of their units.

- Fining is an intermediate sanction, not a "weapon of mass destruction." If boards are prohibited from fining (as an early option) to resolve an issue, they must choose between two options: take legal action or do nothing.

- Legal action is expensive and time-consuming. An attorney's letter to an owner can easily cost the owner $150 to $200 in legal charges. Boards must carefully weigh the merits of legal action for minor rules infractions.

- In contrast, fines can act as an effective alternative and supplement to legal action. Fines can be imposed quickly and in much smaller increments than the cost of a letter from an attorney. Therefore, they are particularly effective for dealing with minor infractions.

- Legal fees are out-of-pocket costs, and they cannot easily be waived as a means of compromising with a violator.

- In contrast, fines are not out-of-pocket costs and the board can easily waive them if doing so will encourage the violator to comply. Indeed, suspending fines and penalties on the condition that violators "behave" is a common regulatory tool.

- As a further safeguard, the proposed law provides for notice and an opportunity to be heard (i.e., due process).

- If fining is not an option, most fiscally responsible boards will do nothing until such time as the situation becomes unbearable, the violation spreads to other units, or other unit owners threaten the directors for inaction.

- There is always a possibility that a board will impose an unreasonable fine, but that can occur whether the authority to fine is in the law or in the association's bylaws. Therefore, requiring associations to amend their bylaws to be able fine does not appear to serve any real purpose.

The Commission believes that paragraph (a)(11), in its final form (i.e., with the additional language requiring that that the board's resolution to establish a fining system be "approved by a majority of all unit owners at an annual meeting of the association or by the written consent of a majority of all unit owners") is a satisfactory resolution to the concerns raised.

4. "Notice and hearing" requirements such as those in paragraph (b)(2) are not meant to prohibit the association from taking immediate corrective action in appropriate situations. Just as traffic citations are given at the time of the infraction and may be contested at a later date, so may fines pursuant to paragraph (b)(2) be assessed at the time of infraction, with the opportunity to contest the fine at a later date. [A stakeholder expressed concern that paragraph (b)(2) might be read to prohibit associations from exercising "immediate fine" systems for unit owner/tenant actions that are hazardous and not immediately stopped, e.g., throwing items off balconies.]

Arakaki's Comment

[4] *See, e.g.*, October 7, 2003 testimony of Richard J. Port.

1. Paragraph (a)(8) is presented above in Ramseyer format to reflect clarifying amendments adopted by the 2006 Legislature.

2. Paragraph (a)(11) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. As initially revised and adopted in Act 164 (SLH 2004), if the bylaws of an association created after May 17 (*sic*), 1983 were silent on the matter of penalties and fines, the bylaws, in essence, were required to be amended. [Note: May 28, 1983 is the effective date of the Act 137, SLH 1983, which required that penalties and fines provisions be part of the bylaws if an association is to have the power to assess penalties and fines. As part of subsection (a) of HRS §514A-82, the requirement applied prospectively to condominium projects created on or after the effective date of Act 137, SLH 1983 (i.e., May 28, 1983, *not* May 17, 1983).]

Under the 2006 amendment, if the association bylaws already permit fines, the association must follow the procedure in the bylaws. Otherwise, the law will require a clear statement of the basis for the fine and a process to appeal it that includes notice and an opportunity to be heard. In that way, owners will be protected without undermining the value of fines as a quick and effective means of enforcing the rules.

3. Paragraph (a)(13) is presented above in Ramseyer format to reflect an amendment adopted by the 2006 Legislature. The amendment deletes an unnecessary and potentially problematic proviso that was added by Act 155 (SLH 2005). The deleted proviso could have had unintended consequences such as limiting a right to cumulative voting found in the bylaws and creating practical difficulties in balloting at a meeting. Please note that the paragraph on cumulative voting is *permissive*, ***not*** *mandatory*.

[~~[~~]**§514B-105**[~~]~~] **Association; limitations on powers.** (a) The declaration and bylaws may not impose limitations on the power of the association to deal with the developer which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(b) Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

(1) Prevent any use of a unit which violates the declaration or bylaws;

(2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or

(3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

Otherwise, the association may not regulate any use of or behavior in units by means of the rules and regulations.

(c) *[Repeal and reenactment on June 30, 2020. L 2018, c 195, §6.]* No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest) [~~unless the board adopts and distributes to all owners a policy stating that:~~

~~(1) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist; and~~

~~(2) Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment~~].

(d) No unit owner who requests legal or other information from the association, the board, the managing agent, or their employees or agents, shall be charged for the reasonable cost of providing the information unless the association notifies the unit owner that it intends to charge the unit owner for the reasonable cost. The association shall notify the unit owner in writing at least ten days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the association's governing documents.

After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §15; am L 2018, c 195, §3]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-102(b) is the source of subsection (a). UCIOA §3-102(c) is the source of subsection (b). HRS §514A-15.1, clarified, is the source of subsection (c). Subsection (d) is identical to HRS §514A-92.5. HRS §514A-82.3, modified, is the source of subsection (e).

2. In subsection (b), the term "adversely affects" (from UCIOA §3-102(c)) was changed to "unreasonably interferes with" (from HRS §514A-82(a)(10)).

3. Subsection (c) is intended to require prior written notice of assessment of all costs of collection.

4. Although some stakeholders object to the broadening of the authority of associations to borrow money under subsection (e), others note that borrowing money is a very consumer/association friendly way of getting funds (as opposed to raising annual fees or special assessments).

Arakaki's Comment

1. The 2004 Legislature added the qualifier "reasonable" to all references to the cost of providing information to unit owners requesting such information. This was in response to the complaints by some unit owners that they were being overcharged for the provision of information.

2. Subsection (e) is presented above in Ramseyer format to reflect an amendment adopted by the 2006 Legislature. Many associations finance payment of insurance premiums in order to spread the costs out over the budget year. Therefore, the right to finance insurance premiums without a vote of owners is expressly recognized in the 2006 amendment.

Generally, borrowing funds for condominium association capital improvement projects is analogous to public bond financing of public capital improvement projects, where the public policy rationale is that those using a public facility (e.g., roads, water, and sewage systems) should be helping to retire the debt on the bonds used to finance the building or major replacement of components (e.g., roofs) of such facilities.

3. Subsection (c) is presented above in Ramseyer format to reflect an amendment adopted by the 2006 Legislature. Section 1 of Act 195 (SLH 2018) explains the 2018 amendments to HRS §§514B-5(c) and 514B-146 as follows:

> SECTION 1. The legislature finds that it is important to have clear and effective rules related to association foreclosures on condominiums, including which actions successfully cure a default. The legislature further finds that a condominium owner and an association agreeing to a payment plan is not sufficient to cure a default. Rather, agreeing to a payment plan and paying the delinquency in full is required for a unit owner to cure a nonjudicial foreclosure on a condominium.
>
> The legislature further finds that existing law requires condominium owners to pay all assessments claimed by an association first, prior to initiating a dispute over assessments. The legislature additionally finds that preserving this pay first, dispute later provision as it applies to common expense assessments is important.

However, encouraging the use of mediation for all other penalties or fines, late fees, lien filing fees, or other charges in an assessment will be beneficial to condominium owners and associations.

Accordingly, the purpose of this Act is to:

(1) Clarify that an association does not have to rescind the notice of default and intention to foreclose or restart the foreclosure by filing a new notice of default and intent to foreclose if a unit owner defaults on a payment plan to cure a nonjudicial foreclosure agreed to by the parties;

(2) Specify that if a unit owner and an association have agreed on a payment plan to prevent a nonjudicial foreclosure from proceeding, any association fines imposed while the payment plan is in effect shall not be deemed a default under the payment plan;

(3) Clarify the obligations of a unit owner and an association while a unit owner is not otherwise in default under a payment plan;

(4) Clarify that the pay first, dispute later provisions in Hawaii's condominium law apply only to common expense assessments claimed by an association;

(5) Specify that a unit owner who disputes the amount of an assessment may request a written statement about the assessment from the association, including that a unit owner may demand mediation prior to paying contested charges, other than common expense assessments; and

(6) Specify requirements for mediation on contested charges, except for common expense assessments.

[~~:~~]**§514B-106**[~~:~~] **Board; powers and duties.** (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D. Any violation by a board or its officers or members of the mandatory provisions of section 514B-161 or 514B-162 may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by indicating in writing the board member's disagreement with such board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.

(b) The board may not act on behalf of the association to amend the declaration or bylaws (sections 514B-32(a)(11) and 514B-108(b)(7)), to remove the condominium from the provisions of this chapter (section 514B-47), or to elect members of the board or determine the qualifications, powers and duties, or terms of office of board members (subsection (e)); provided that nothing in this subsection shall be construed to prohibit board members from voting proxies (section 514B-123) to elect members of the board; [~~and~~] provided further that notwithstanding anything to the contrary in the declaration or bylaws, the board may only fill vacancies in its membership to serve until the next annual or duly noticed special association meeting. Notice of a special association meeting to fill vacancies shall include notice of the election. Any special association meeting to fill vacancies shall be held on a date that allows sufficient time for owners to declare their intention to run for election and to solicit proxies for that purpose.

(c) Within thirty days after the adoption of any proposed budget for the condominium, the board shall make available a copy of the budget to all the unit owners and shall notify each unit owner that the unit owner may request a copy of the budget.

(d) The declaration may provide for a period of developer control of the association, during which a developer, or persons designated by the developer, may appoint and remove the officers and members of the board. Regardless of the period provided in the declaration, a period of developer control terminates no later than the earlier of:

(1) Sixty days after conveyance of seventy-five per cent of the common interest appurtenant to units that may be created to unit owners other than a developer or affiliate of the developer;

(2) Two years after the developer has ceased to offer units for sale in the ordinary course of business;

(3) Two years after any right to add new units was last exercised; or

(4) The day the developer, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

A developer may voluntarily surrender the right to appoint and remove officers and members of the board before termination of that period, but in that event the developer may require, for the duration of the period of developer control, that specified actions of the association or board, as described in a recorded instrument executed by the developer, be approved by the developer before they become effective.

(e) Not later than the termination of any period of developer control, the unit owners shall elect a board of at least three members; provided that [~~condominiums~~] projects created after May [~~17,~~] 18, 1984, with one hundred or more individual units, shall have an elected board of at least nine members unless [~~at least sixty-seven per cent of all unit owners vote by mail ballot, or at a special or annual meeting,~~] the membership has amended the bylaws to reduce the number of directors; and provided further that [~~condominiums~~] projects with more than one hundred individual units where at least [~~seventy-five~~] seventy per cent of the unit owners do not reside [~~outside of the State~~] at the project may [~~have an elected board of at least three members. The board shall elect the officers. Board members and officers shall take office upon election.~~] amend the bylaws to reduce the board to as few as five members by the written consent of a majority of the unit owners or the vote of a majority of a quorum at any annual meeting or special meeting called for that purpose. The association may rely on its membership records in determining whether a unit is owner-occupied. A decrease in the number of directors shall not deprive an incumbent director of any remaining term of office.

(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the unit owners and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors and, if removal and replacement is to occur at a special meeting, section 514B-121(b). [L 2004, c 164, pt of §2; am L 2005, c 93, §7 and c 155, §3; am L 2006, c 273, §16; am L 2014, c 189, §4 and c 235, §3; am L 2017, c 81, §2]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-103, modified, is the source of this section. HRS §514A-82(b)(1) is the source of subsection (f).

2. HRS §514A-82.4 (Duty of directors) states that "[e]ach director shall owe the association of apartment owners a fiduciary duty in the performance of the director's responsibilities." Subsection (a), by referencing HRS Chapter 414D and using the nonprofit corporate model, allows board members to obtain the benefits of the business judgment rule, now commonly applied by courts in the nonprofit context.[5]

3. The official comments to UCIOA (1994) §3-103 explains subsection (d), regarding transition of developer control to unit owner control of the association, as follows:

> [Subsection (d) recognizes] the practical necessity for the declarant to control the association during the developmental phases of a project. However, any executive board member appointed by the declarant pursuant to subsection (d) is liable as a fiduciary to any unit owner for his acts or omissions in such capacity. … Subsection (d) permits a declarant to surrender his right to appoint and remove officers and executive board members prior to the termination of the period of declarant control in exchange for a veto right over certain actions of the association or its executive board. This provision is designed to encourage transfer of control by declarants to unit owners as early as possible, without impinging upon the declarant's rights (for the duration of the period of declarant control) to maintain ultimate control of those matters which he may deem particularly important to him. It might be noted that the declarant at all times (even after the expiration of the period of declarant control) is entitled to cast the votes allocated to his units in the same manner as any other unit owner. …. Subsection (d) has been amended in the 1994 amendment to add a new fourth category regarding voluntary relinquishment of retained rights to control any aspect of the affairs of the association. This category frequently has been written into declarations under the Act. The amendment incorporates this practice and is important in order to track the time when statutes of limitation involving the declarant begin to run.

4. Subsection (e) requires that a board consist of a minimum of three members. The requirement in HRS §514A-82(a)(1)(B) that: "condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than sixty-five per cent of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce the minimum number of directors" has not been incorporated in the recodified condominium law. The

[5] *See, e.g.*, Levandusky v. One Fifth Avenue Apartment Corp., 75 N.Y.2d 530 (1990).

minimum nine-member board requirement has been problematic for resort projects and projects with a substantial number of off-island owners.

Arakaki's Comment

1. The 2005 Legislature's amendments to subsection (f) are incorporated above but are not presented in Ramseyer format. Act 155 (SLH 2005) amended HRS §514B-106(f) to require that removal and replacement be "by a vote of a majority of the unit owners." Act 155 (SLH 2005) also deleted a reference in subsection (f) to cumulative voting.

2. Subsection (e) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. Because of concerns raised by some legislators and stakeholders regarding the possibility that large condominium associations might be allowed to have as few as three directors, subsection (e) was amended in Act 164 (SLH 2004) to revert to the status quo (i.e., for condominium projects created on or after May 18, 1984, with more than 100 units, a nine-member board was required unless the owners amended the bylaws to reduce the size of the board). [Note that the effective date of Act 112, SLH 1984, which established the nine member statutory minimum for associations with more than 100 units, was May 18, 1984. As part of subsection (a) of HRS §514A-82, the requirement applied prospectively to condominium projects created on or after May 18, 1984.] Associations, however, should not be subject to a blanket requirement for a specific number of directors without regard for the needs of the association. That is particularly true when many associations are having problems even finding owners to serve on the board. The 2006 amendments reflect a compromise among stakeholders involved in this matter.

The double-underlined words "the unit" in subsection (e) reflect a technical amendment adopted by the 2014 Legislature.

3. Subsection (b) is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature, which make it clear that a condominium board may only fill board vacancies temporarily until the next annual or duly noticed election.

4. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2017 Legislature. In Conference Committee Rep. No. 2-2017 at page 2, the Legislature stipulated that "a violation of the mediation and arbitration requirements of sections 514B-161 and 514B-162, Hawaii Revised Statutes, by a condominium board of directors or its officers or members may constitute a violation of fiduciary duty." An earlier version of the bill that became Act 81 (SLH 2017) included violations of the records requirements of HRS §514B-154 as violations of a board's fiduciary duty, but that was rejected by the conference committee on the measure.

[§514B-106.5] Service of process. The board shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634-21.5. [L 2009, c 158, §4; am L 2011, c 65, §1]

Arakaki's Comment

1. Until late 2011, the online version of HRS Chapter 514B did not contain the provision adopted by Section 4 of Act 158 (SLH 2009), which read as follows:

> **§514B- Service of process.** The board shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634- .

This was probably because Act 158 (SLH 2009) contained an automatic repeal date of July 1, 2012 (i.e., a "sunset date") and was therefore treated as a session law. Act 65 (SLH 2011), however, repealed the sunset date of Act 158 (SLH 2009), making its provisions permanent. Therefore, in late 2011, the Revisor of Statutes codified this section as §514B-106.5 and the internal reference to "section 634-21.5".

[~~[~~§514B-107[~~]~~] **Board; limitations.** (a) Members of the board shall be unit owners or co-owners, vendees under an agreement of sale, a trustee [~~or beneficiary~~] of a trust which owns a unit, [~~an officer of any corporate owner, including a limited liability corporation, of a unit, or a representative~~] or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a unit. [~~The partners in a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be the owners of a unit for the purpose of serving on the board.~~] There shall not be more than one representative on the board from any one unit.

(b) No tenant, resident manager, or employee of a condominium shall serve on its board.

For the purposes of this subsection, "tenant" means any person who occupies a dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same condominium.

(c) An owner shall not act as [~~a director~~] an officer of an association and an employee of the managing agent retained by the association. Any owner who is a board member of an association and an employee of the managing agent retained by the association shall not participate in any discussion regarding a management contract at a board meeting and shall be excluded from any executive session of the board where the management contract or the property manager will be discussed.

(d) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses; provided that, with the approval of the board, directors may be reimbursed for actual expenditures incurred on behalf of the association. The board meeting minutes shall reflect in detail the items and amounts of the reimbursements.

(e) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

(f) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of subsection (d). [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §17; am L 2014, c 189, §5; am L 2017, c 71, §5]

Real Estate Commission's Comment (2003 Final Report)

1. Consistent with the goal of eliminating the artificial approach regarding bylaws in HRS §514A-82(a) and (b), and to help reduce the statutory requirements for condominium governing documents, appropriate provisions have been consolidated under separate sections (i.e., separate from the bylaws section). The following provisions from HRS Chapter 514A have been consolidated in this section: HRS §§514A-82(a)(12), modified, -82(a)(14), modified, -82(b)(7), modified, -82(b)(10), modified, -82(b)(11), identical, and -82(b)(12), identical.

2. Some stakeholders suggested that (in addition to resident managers, who are already prohibited from serving on the boards of their associations) managing agents, rental agents, any employees of associations, and their spouses be prohibited from serving on the boards of those associations because of potential conflicts of interest. Others pointed out that conflict of interest provisions are already in statute and should be enforced, it is not fair to turn these individuals into second class citizens when they have an ownership interest and the owners have elected them to the board, and the federal Fair Housing Act would prohibit discrimination against spouses. In the final draft of the recodification, employees of the association (including, but not limited to, resident managers) and owners who are employees of the managing agent retained by the association are prohibited from serving on the boards of those associations.

Arakaki's Comments

1. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. An LLC does not have officers. An entity that owns a unit should have the right to have any official representative qualified to be on the board. Moreover, it would be very difficult for an AOAO to confirm who is authorized to run for the board on behalf of a unit owned in trust as the AOAO has no access to records regarding beneficiaries – the unit is owned by the trustee.

2. Subsection (c) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. Note that there is no compelling reason to prohibit an owner from serving as a director on an association's board simply because the owner is also an employee of the managing agent retained by the association. Doing so would take away one of the "bundle of rights" such an owner is entitled to as a property owner.

Some stakeholders, however, were concerned about the potential conflict of interest if a board member is also an employee of the managing agent for the project and, in 2006, sought to include such employees of managing agents in subsection (b)'s prohibition on serving as condominium board members. The 2006 amendments to subsection (c) reflect a compromise among stakeholders involved in this matter.

3. In Act 164 (SLH 2004), the Legislature amended subsection (d) to add that "[t]he minutes shall reflect in detail the items and amounts of the reimbursements."

4. In Act 189 (SLH 2014), the Legislature further amended subsection (d) to specify that the "board meeting" minutes must detail reimbursement items and amounts.

5. Subsection (b) is presented above in Ramseyer format to reflect amendments adopted by the 2017 Legislature, which added "tenants" to the list of people prohibited from serving as condominium board members. It should be noted that while working on the recodification (2001-2003), the Real Estate Commission's Blue Ribbon Advisory Committee considered and rejected the idea of having non-owners serving on condominium boards. The Commission and its advisory committee believed that the existing statutory language would not permit non-owners (such as tenants) to serve on condominium boards. In 2017, however, some condominium boards said that certain corporations have designated their tenants as "authorized to act" on their behalf and can serve on their condominium boards. Therefore, "tenants" are now explicitly prohibited from serving on condominium boards.

[~~§~~]**§514B-108**[~~§~~] **Bylaws.** (a) A true copy of the bylaws shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded.

(b) The bylaws shall provide for at least the following:

(1) The number of members of the board and the titles of the officers of the association;

(2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies;

(4) Designation of the powers the board or officers may delegate to other persons or to a managing agent;

(5) Designation of the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) The compensation, if any, of the directors;

(7) Subject to subsection [~~(d)~~] (e), a method for amending the bylaws; and

(8) The percentage, consistent with this chapter, that is required to adopt decisions binding on all unit owners; provided that votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside units shall not be cast at any association meeting, regardless of their designation in the declaration.

(c) The bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

(d) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners. Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners group. If submitted by that group, the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board or a volunteer unit owners group. If the bylaw is duly adopted, the board shall cause the bylaw amendment to be recorded. The volunteer unit owners group

shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within three hundred sixty-five days after the original petition was submitted to the board.

This subsection shall not preclude any unit owner or volunteer unit owners group from proposing any bylaw amendment at any annual association meeting. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §18]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-81, in part, is the source of subsection (a). UCA/UCIOA §3-106, modified, and HRS §§514A-82(a)(1)(E), identical, and 514A-82(a)(2), in part, are the sources of subsections (b) and (d). HRS §414D-136 is the source of subsection (c). 514A-82(b)(2), essentially identical, is the source of subsection (e). Consistent with the goal of eliminating the artificial approach regarding bylaws in HRS §514A-82(a) and (b), and to help reduce the statutory requirements for condominium governing documents, certain provisions currently in HRS §514A-82(a) and (b) have been incorporated in more appropriate statutory sections.

2. Regarding subsection (a), a stakeholder noted that there has sometimes been confusion between "recording" bylaws with the Bureau of Conveyances (or Land Court) versus the Department of Commerce and Consumer Affairs. There should have been no confusion. "To record", in HRS §514A-3, means "to record in accordance with chapter 502 *(Bureau of Conveyances)*, or to register in accordance with chapter 501 *(Land Court)*." In any case, the recodified condominium law leaves no room for confusion, as "Record, recordation, recorded, recording, etc." is defined in §514B-3 as "to record in the bureau of conveyances in accordance with chapter 502, or to register in the land court in accordance with chapter 501."

3. Regarding subsection (e), a property manager noted that, where time share owners are "owners," 1500 time share owners may own 10% of the project. It is important to remember, however, that time share governance issues are covered by HRS Chapter 514E, related administrative rules, and the time share governing documents.

Arakaki's Comment

1. The amendment to paragraph (b)(7) reflected above is a housekeeping amendment adopted by the 2006 Legislature.

2. In Act 164 (SLH 2004), the Legislature further amended subsection (e) to add the qualifier "detailed" to the rationale necessary for proposed bylaws amendments.

[~~[~~]**§514B-109**[~~]~~] **Restatement of declaration and bylaws.** (a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association at any time may restate the declaration or bylaws of the association to set forth all amendments thereto by a resolution adopted by the board.

(b) Subject to section 514B-23, an association at any time may restate the declaration or bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority, or to correct the percentage of common interest for the project so it totals one hundred per cent, by a resolution adopted by the board. If the restated declaration is to correct the percentage of common interest for the project so that it totals one hundred per cent, the proportion of each unit owner's percentage of common interest shall remain the same in relation to the other unit owners. The restated declaration or bylaws shall be as fully effective for all purposes as if adopted by a vote or written consent of the unit owners.

Any declaration or bylaws restated pursuant to this subsection shall:

(1) Identify each portion so restated;

(2) Contain a statement that those portions have been restated solely for purposes of information and convenience;

(3) Identify the statute, ordinance, or rule implemented by the amendment; and

(4) Contain a statement that, in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, or rule.

(c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated declaration or bylaws shall set forth all of the operative provisions of the declaration or bylaws, as amended, together with a statement that the restated declaration or bylaws correctly sets forth without change the corresponding provisions of the declaration or bylaws, as amended, and that the restated declaration or bylaws supersede the original declaration or bylaws and all prior amendments thereto. If the restated declaration corrects the percentage of common interest as provided in subsection (b), the restated declaration shall also amend the recorded conveyance instruments that govern the unit owner's interest in the unit.

(d) The restated declaration or bylaws must be recorded and, upon recordation, shall supersede the original declaration or bylaws and all prior amendments thereto. In the event of any conflict, the restated declaration or bylaws shall be subordinate to the original declaration or bylaws and all prior amendments thereto. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §19]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-82.2, essentially identical, is the source of this section.

Arakaki's Comment

1. Subsections (b) and (c) are presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. These amendments correct practical problems that sometimes arise with merged projects, human error, etc.

[§514B-110] Bylaws amendment permitted; mixed use property; representation on board. (a) The bylaws of an association may be amended to provide that the composition of the board reflect the proportionate number of units for a particular use, as set forth in the declaration. For example, an association may provide that for a nine-member board where two-thirds of the units are for residential use and one-third is for nonresidential use, sixty-six and two-thirds per cent of the nine-member board, or six members, shall be owners of residential use units and thirty-three and one-third per cent, or three members, shall be owners of nonresidential use units.

(b) Any proposed bylaw amendment to modify the composition of the board in accordance with subsection (a) may be initiated by:

(1) A majority vote of the board; or

(2) A submission of the proposed bylaw amendment to the board from a volunteer unit owners group accompanied by a petition from twenty-five per cent of the unit owners of record.

(c) Within thirty days of a decision by the board or receipt of a petition to initiate a bylaw amendment, the board shall mail a ballot with the proposed bylaw amendment to all of the unit owners of record. For purposes of this section only, the bylaws may initially be amended by a vote or written consent of the majority of the unit owners; and thereafter by at least sixty-seven per cent of all unit owners; provided that each of the requirements set forth in this section shall be embodied in the bylaws.

(d) The bylaws, as amended pursuant to this section, shall be recorded.

(e) Election of the new board in accordance with an amendment adopted pursuant to this section shall be held at the next regular meeting of the association or at a meeting called in accordance with section 514B-121(b) for this purpose.

(f) As permitted in the declaration or bylaws, the vote of a nonresidential unit owner shall be cast and counted only for the nonresidential seats available on the board and the vote of a residential unit owner shall be cast and counted only for the residential seats available on the board.

(g) No petition for a bylaw amendment pursuant to subsection (b)(2) to modify the composition of the board shall be distributed to the unit owners within one year of the distribution of a prior petition to modify the composition of the board pursuant to subsection (b)(2).

(h) This section shall not preclude the removal and replacement of any one or more members of the board pursuant to section 514B-106(f)[~~.~~]; provided that any director elected by a class of unit owners may be removed or replaced only by a vote of a majority of the common interest represented by that class. Any removal and replacement shall not affect the proportionate

composition of the board as prescribed in the bylaws as amended pursuant to this section. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 71, §3]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-82.15, modified slightly, is the source of this section. Rather than requiring election of the new board to be held within 60 days of the recordation of the amended bylaws, subsection (e) has been modified to allow the election to be held at the next regular meeting of the association or by special meeting in accordance with §514B-121(b).

Arakaki's Comment

1. Subsection (h) is presented above in Ramseyer format to reflect amendments adopted by the 2017 Legislature. [*See also*, HRS §514B-123(c) as amended by Act 71 (SLH 2017).] As found by the Legislature in Section 2 of Act 71 (SLH 2017):

> [E]xisting condominium law permits different classes of directors in mixed-use projects and provides for the removal of directors by a majority of unit owners. However, clarification is needed in the law regarding the removal of directors in a mixed-use project.
>
> [E]xisting law specifies that no votes allocated to a unit owned by a condominium association may be cast for the election or reelection of directors. This prohibition may be an issue for mixed-use condominium projects where directors are elected by different classes of owners. For example, in a mixed-use project that contains residential and commercial units, the board of directors may be comprised of directors elected by residential unit owners and directors elected by commercial unit owners. A condominium association that owns the single commercial unit in a mixed-use project would, therefore, be unable to elect or reelect the directors needed to represent that commercial unit.
>
> Accordingly, the purpose of this part is to:
>
> (1) Clarify that the removal or replacement of a director elected by a class of unit owners shall be by a majority of only the members of that class; and
>
> (2) Specify that for an election in a mixed-use condominium project where directors are elected by different classes of owners, an association is permitted to cast a vote or votes allocated to any nonresidential unit owned by the association where those eligible to vote in the election are limited to owners of one or more nonresidential units, including the nonresidential unit owned by the association.

[§514B-111] Judicial power to excuse compliance with requirements of declaration or bylaws. (a) The circuit court of the judicial circuit in which a condominium is located may excuse compliance with any of the following provisions in a declaration or bylaws if it finds that the provision unreasonably interferes with the association's ability to manage the common property, administer the condominium property regime, or carry out any other function set forth in the declaration or bylaws, and that compliance is not necessary to protect the legitimate interests of the members or lenders holding security interests:

(1) A provision limiting the amount of any assessment that can be levied against individually owned property;

(2) A provision requiring that an amendment to the declaration or bylaws be approved by lenders;

(3) A provision requiring approval of at least sixty-seven per cent of the common interest to adopt an amendment pursuant to section 514B-32(a)(11) or section 514B-108(e); provided that the amendment does not:

(A) Prohibit or materially restrict the use or occupancy of, or behavior within, individually owned units;

(B) Change the basis for allocating voting rights or assessments among unit owners; or

(C) Apply to less than all of the unit owners;

(4) A requirement that an amendment to the declaration be signed by unit owners; or

(5) A quorum requirement for meetings of unit owners.

(b) The board, on behalf of the association, shall by certified mail provide all unit owners with notice of the date, time, and place of any court hearing to be held pursuant to this section. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. The *Restatement of the Law, Third, Property (Servitudes)* §6.12, modified, is the source of this section.

2. Several practitioners, management companies, and unit owners have commented on the virtual impossibility of changing obsolete provisions (among others) contained in condominium declarations.

For example, in one old condominium, the elevator was so small that no one could fit any furniture bigger than a love seat into the elevator. The majority of unit owners (over 70%) wanted to modify the elevator so they could move bigger pieces of furniture up to their apartments. However, the declaration contained an owner-approval requirement for spending more than $2,000. Since first and second floor owners and others (for various reasons, including apathy) didn't care to approve spending for enlarging the elevator, it was not possible to get the necessary 75% unit owners' consent.[6] Ultimately, while such "spending limit" provisions might have had appeal to a buyer (initially) or to a developer who believes that it is the right "democratic" thing to do, it makes little sense in the long run for the people who have to live in the condominium since it becomes virtually impossible to change the declaration (even with its outdated dollar figure limits).

The *Restatement of the Law, Third, Property (Servitudes)*, recognizes this problem and addresses it in §6.12 – Judicial Power to Excuse Compliance with Requirements of the Governing Documents.[7] In its comments to §6.12, the Restatement explains its rationale as follows:

> The public and the property owners have substantial interests in the long-term viability of the common-interest community. The declaration, the foundational document setting the parameters of the community's authority, is usually drafted by the developer for whom the project's immediate financial success is generally more important than creation of a community that will function successfully in the long term. Through ignorance, inadvertence, reliance on poorly drafted forms, or lack of foresight, many declarations include provisions that impair the ability of the community or its association to function over the long term. The resulting problems have sometimes been corrected or ameliorated by legislation. However, remedial legislation is not yet available in many states and may not apply to some common-interest communities. A court has a general dispensing power, under principles of equity jurisdiction, to excuse compliance with requirements that significantly impede the functioning of common-interest communities and their associations. The interests of property owners and lenders who relied on the provisions of the declaration are protected by the requirement that the court find that compliance with the provision in question is unnecessary to protect their legitimate interests.

3. Restatement §6.12 is patterned after California Civil Code §§1356 and 1366. It also finds some support in case law (listed in Reporter's Note). Florida also has provisions allowing for the courts to excuse compliance with condominium governing documents under very specific circumstances.

[§514B-112] Condominium community mutual obligations. (a) All unit owners, tenants of owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the association adopted pursuant to this chapter.

(b) All agreements, decisions, and determinations lawfully made by the association in accordance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all unit owners.

(c) Each unit owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the covenants, conditions, and restrictions set forth in the declaration, the bylaws, and the house rules adopted pursuant thereto. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both,

[6] HRS §514A-11(11) allows declarations to be amended if at least 75% of the unit owners consent.

[7] Restatement §6.10, referenced in §6.12, deals with the common interest community's power to amend the declaration. The extensive comments, illustrations, Reporter's notes, and cross-references to §6.12 provide an excellent analysis of the issues surrounding the amendment of common interest community declarations.

maintainable by the managing agent, resident manager, or board on behalf of the association or, in a proper case, by an aggrieved unit owner. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. This section is identical to HRS §§514A-87 and 514A-88.

[§514B-113] Medical [~~marijuana~~] cannabis; discrimination. A provision in any articles of incorporation, declaration, bylaws, administrative rules, house rules, or association documents of a condominium allowing for any of the discriminatory practices listed in paragraphs (1) to (7) of section 515-3 against a person residing in a unit who has a valid certificate for the medical use of [~~marijuana~~] cannabis as provided in section 329-123 in any form is void, unless the documents prohibit the smoking of tobacco and the medical [~~marijuana~~] cannabis is used by means of smoking. Nothing herein shall be construed to diminish the obligation of a condominium association to provide reasonable accommodations for persons with disabilities pursuant to section 515-3(9). [L 2015, c 242, §5; am L 2017, c 170, §2]

Arakaki's Comment

1. This section was added by the 2015 Legislature.

2. This section is presented above in Ramseyer format to reflect amendments adopted by the 2017 Legislature, which substitute "cannabis" for "marijuana" as the more accurate and appropriate term. [*See*, Section 1 of Act 170 (SLH 2017).]

B. GOVERNANCE – ELECTIONS AND MEETINGS

[~~[~~]**§514B-121**[~~]~~] **Association meetings.** (a) A meeting of the association shall be held at least once each year.

(b) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part[~~.~~]; provided further that a special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition.

(c) Not less than fourteen days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be:

(1) Hand-delivered;

(2) Sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or

(3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

(d) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. If so provided in the declaration or bylaws, meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion.

(e) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2008, c 13, §1]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-108, modified, is the source of subsections (a), (b), and (c). Subsection (b) includes language from HRS §514A-82(b)(1), slightly modified. HRS §§514A-82(a)(16) and 514A-82(a)(17) – edited to separate association and board meetings – are the sources subsections (d) and (e), respectively.

2. Subsection (c) makes it clear that no prior notice is required for proposed bylaws amendments and board removals at annual association meetings. Professional registered parliamentarian Steve Glanstein notes that bylaws amendments and board removals can be considered at the annual meeting under new business. If this were not the case, boards could prevent bylaws amendments and board removals from being considered by simply not placing the proposals on the annual meeting agendas.

3. The Modern Rules of Order was initially added to subsection (d). After further consideration, reference to the Modern Rules of Order was deleted. Parliamentarian Glanstein notes that: "The Modern Rules of Order presents numerous problems. It fails to include numerous important parliamentary points that are relevant to any organization. It has incomplete methodology for handling points of order, appeals, and the motion to amend, and provides minimal guidance for interpreting bylaws."

4. Subsection (c) permits electronic mail (Internet) notice of unit owners' association meetings at the option of the unit owner. [Note: The Commission also considered, but did not incorporate, HRS §414D-105 (Notice of Meeting), which allows nonprofit corporations to "give notice consistent with its bylaws of meetings of members in a fair and reasonable manner" and goes on to define "fair and reasonable."]

5. Subsection (d) authorizes conducting association meetings by teleconference, videoconference, or other means of conducting remote meetings if it is provided for in the declaration or bylaws. Associations (especially larger associations) should exercise caution in adopting such a provision in their declaration or bylaws, however, because allowing such meetings may interfere with the conduct of business. In addition, some bylaws require secret ballots for elections, which would not be possible in teleconference or videoconference meetings.

Arakaki's Comment

1. Subsection (b) is presented above in Ramseyer format to reflect amendments adopted by the 2008 Legislature.

[§514B-122] Association meetings; minutes. (a) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board, within sixty days after the meeting, if authorized by the owners at an annual meeting. If approved by the board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.

(b) Minutes of all meetings of the association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting.

(c) An owner shall be allowed to offer corrections to the minutes at an association meeting. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-83.4 – edited to separate association and board meetings – is the source of this section.

2. Subsection (a) has been modified to allow boards to approve minutes of association meetings if authorized by the owners at an annual meeting. Permitting the association to authorize the board to approve association minutes is consistent with all of the editions of Robert's Rules of Order since 1876. Robert's Rules of Order Newly Revised 10th edition, page 457 (lines 21-26) states that: "When the next regular business session will not be held within a quarterly time interval (see p. 88), and the session does not last longer than one day, or in an organization in which there will be a change or replacement of a portion of the

membership, the executive board or a committee appointed for the purpose should be authorized to approve the minutes." (Emphasis added.)

Arakaki's Comment

1. Subsection (c) was added by the Legislature in Act 164 (SLH 2004).

[~~[~~1~~]~~§514B-123[~~]~~1] **Association meetings; voting; proxies.** (a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration or bylaws expressly [~~provides~~] provide otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made by any of the other owners of the unit to the person presiding over the meeting before the polls are closed.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A unit owner may vote by mail or electronic transmission through a duly executed [~~directed~~] proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice.

(c) No votes allocated to a unit owned by the association may be cast for the election or reelection of directors[~~.~~]; provided that, notwithstanding section 514B-106(b) or any provision in an association's declaration or bylaws to the contrary, in a mixed-use project containing units for residential and nonresidential use, where the board is comprised of directors elected by owners of residential units and directors elected by owners of nonresidential units, the association, acting by and through its board, may cast the vote or votes allocated to any nonresidential unit owned by the association in any election of one or more directors where those eligible to vote in the election are limited to owners of one or more nonresidential units, which includes the nonresidential unit owned by the association.

(d) A proxy, to be valid, shall:

(1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; and

(2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given[~~; and~~].

[~~(3)~~] (e) If [~~it~~] a proxy is a standard proxy form authorized by the association, the proxy shall comply with the following additional requirements:

(1) The proxy shall contain boxes wherein the owner [~~has indicated~~] may indicate that the proxy is given:

(A) For quorum purposes only;

(B) To the individual whose name is printed on a line next to this box;

(C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or

(D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage[~~.~~];

provided that if the proxy is returned with no box or more than one of the boxes in subparagraphs (A) through (D) checked, the proxy shall be counted for quorum purposes only; and

(2) The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150.

[~~(e)~~] (f) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

[~~(f)~~] (g) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

[~~(g)~~] (h) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

[~~(h)~~] (i) With respect to the use of association funds to distribute proxies:

(1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection [~~(d)(3),~~] (e), shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

(A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies; and

(2) A board or member of the board may use association funds to solicit proxies as part of the distribution of proxies. If a member of the board, as an individual, seeks to solicit proxies using association funds, the board member shall proceed as a unit owner under paragraph (1).

[~~(i)~~] (j) No managing agent or resident manager, or their employees, shall solicit, for use by the managing agent or resident manager, any proxies from any unit owner of the association that retains the managing agent or employs the resident manager, nor shall the managing agent or resident manager cast any proxy vote at any association meeting except for the purpose of establishing a quorum.

[~~(j)~~] (k) No board shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by unit owners; provided that a board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §20; am L 2017, c 71, §4 and c 73, §2]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-110, modified, is the source of subsections (a), (b), and (c). HRS §514A-83.2, modified, is the source of subsections (d), (e), (f), [~~and~~] (g), and (h). HRS §514A-82(b)(4), modified, is the source of subsections [~~(h) and~~] (i) and (j). HRS §514A-83.3, in part, is the source of subsection [~~(j)~~] (k).

2. Voting processes should, in addition to being fundamentally fair, be practical. To that end, subsection (b) explicitly allows voting by mail and electronic transmission (i.e., Internet voting). Requiring votes by mail or electronic transmission to be done through "duly executed directed proxies" resolves procedural concerns relating to mail-in and electronic voting (e.g., ability to revoke the proxy) raised by some stakeholders. Some stakeholders are uncomfortable with electronic voting, but as long as security, validation, and auditing concerns are addressed, it makes no sense to prohibit such a valuable tool of democracy.

Ultimately, permitting voting by mail and electronic transmission encourages participation by as many association members as possible.

3. The statutory requirement for a "for quorum purposes only" box on the standard proxy form authorized by the association (HRS §514A-83.2(a)(3)(A)), which tends to encourage the submission of "for quorum purposes only" proxies, has been deleted. Such proxies often result in "opening meeting doors" but not allowing any business to be done. Associations suffer almost pointless additional mailing and meeting expenses because of this. Contrary to the assertion of some stakeholders, "for quorum purposes only" proxies are not neutral.[8] They count as "no" votes for any business at the association's meeting, making it much more difficult for any business to be done since all "for quorum purposes only" proxies are counted against any proposal (including elections) actually voted on by the association. It should be noted that unit owners will still be able to execute a proxy stating that their proxy can only be used for quorum purposes; it just won't be a statutorily required box on the standard proxy form authorized by the association.

4. Note that unit owners, including directors, using their own funds are not restricted by the provisions of subsection [~~(h)~~] (i).

5. Subsection [~~(h)~~] (i) codifies a property manager's suggestion that the 100 word limit to proxy solicitation statements be eliminated in favor of providing that the association will mail a single-sided 8 ½" x 11" proxy solicitation at the association's expense. This is consistent with the provision's original intent (i.e., limiting the cost of producing large amounts of information for an owner at the association's expense). To "level the playing field" regarding the physical appearance of the proxy solicitations, the 2004 Legislature added language limiting the statement to black text on white paper.

6. Some stakeholders suggested that (in addition to managing agents and resident managers, who are already prohibited from soliciting proxies) rental agents, any employees of associations, and their spouses be prohibited from soliciting proxies because of potential conflicts of interest. Others pointed out that it is not fair to turn these individuals into second class citizens when they have an ownership interest and the federal Fair Housing Act would prohibit discrimination against spouses. In the final draft of the recodification, employees of the managing agent and resident manager retained by the association are prohibited from soliciting proxies.

Arakaki's Comments

1. Subsection (a) is presented above in Ramseyer format to reflect an amendment adopted by the 2006 Legislature. This type of information is usually found in the bylaws, not the declaration, so subsection (a) was amended accordingly.

2. Subsection (b) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. The amendments clarify the subsection to avoid any notion that a proxy must be a directed proxy and to recognize that, in the absence of protest, any one owner can cast the votes allocated to the unit.

3. Because of concerns raised by a few stakeholders, in Act 164 (2004), the Legislature reinserted the "quorum purposes only" box requirement in subsection (d)(3) [renumbered as subsection (e) in Act 73 (SLH 2017)]. Note, however, that the old law required that *any* proxies without the "quorum purposes only" box had to be disqualified, while the recodification limits the requirement to standard proxy forms authorized by the association.

4. Subsection (c) is presented above in Ramseyer format to reflect amendments adopted by the 2017 Legislature. [*See also*, HRS §514B-110(h) as amended by Act 71 (SLH 2017).] As found by the Legislature in Section 2 of Act 71 (SLH 2017):

> [E]xisting condominium law permits different classes of directors in mixed-use projects and provides for the removal of directors by a majority of unit owners. However, clarification is needed in the law regarding the removal of directors in a mixed-use project.
>
> [E]xisting law specifies that no votes allocated to a unit owned by a condominium association may be cast for the election or reelection of directors. This prohibition may be an issue for mixed-use condominium projects where directors are elected by different classes of owners. For example, in a mixed-use project that contains residential and commercial units, the board of directors may be comprised of directors elected by residential unit owners and directors elected by commercial unit owners. A condominium association that owns the single

[8] *See, e.g.*, October 7, 2003 testimony of Richard J. Port.

commercial unit in a mixed-use project would, therefore, be unable to elect or reelect the directors needed to represent that commercial unit.

Accordingly, the purpose of this part is to:

(1) Clarify that the removal or replacement of a director elected by a class of unit owners shall be by a majority of only the members of that class; and

(2) Specify that for an election in a mixed-use condominium project where directors are elected by different classes of owners, an association is permitted to cast a vote or votes allocated to any nonresidential unit owned by the association where those eligible to vote in the election are limited to owners of one or more nonresidential units, including the nonresidential unit owned by the association.

5. This section [from subsection (e) as renumbered, generally] is presented above in Ramseyer format to reflect amendments adopted by the 2017 Legislature. As found by the Legislature in Section 1 of Act 73 (SLH 2017):

[E]xisting law on voting pursuant to a proxy at a meeting of a condominium association specifies that a standard proxy form must contain boxes for a condominium owner to check and indicate how a proxy is given. However, proxy forms may sometimes be returned to an association's secretary or managing agent with more than one box checked, or with nothing marked on the proxy form. This situation may lead to confusion over how the proxy should be counted.

Accordingly, the purpose of this Act is to clarify that if a proxy is a standard proxy form authorized by an association, and the proxy is returned with no box checked or more than one box checked, the proxy shall be counted for quorum purposes only.

[§514B-124] Association meetings; purchaser's right to vote. The purchaser of a unit pursuant to a recorded agreement of sale shall have all the rights of a unit owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the unit, including but not limited to, the right to vote on:

(1) Any partition of all or part of the project;

(2) The nature and amount of any insurance covering the project and the disposition of any proceeds thereof;

(3) The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith;

(4) The payment of any amount in excess of insurance or condemnation proceeds;

(5) The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project;

(6) The special assessment of any expenses;

(7) The acquisition of any unit in the project;

(8) Any amendment to the declaration or bylaws;

(9) Any removal of the project from the provisions of this chapter; and

(10) Any other matter that would substantially affect the security interest of the seller. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. This section is essentially identical to HRS §514A-83.

[§514B-124.5] Voting for elections; cumulative voting. (a) If the bylaws provide for cumulative voting for an election at a meeting, each unit owner present in person or represented by proxy shall have a number of votes equal to the unit owner's voting percentage multiplied by the number of positions to be filled at the election.

(b) Each unit owner shall be entitled to cumulate the votes of the unit owner and give all of the votes to one nominee or distribute the votes among any or all of the nominees.

(c) The nominee or nominees receiving the highest number of votes under this section, up to the total number of positions to be filled, shall be deemed elected and shall be given the longest term.

(d) This section shall not prevent the filling of vacancies on the board of directors in accordance with this chapter and the association's governing documents. [L 2014, c 189, §1]

Arakaki's Comment

1. This section was added by the 2014 Legislature to clarify the process for cumulative voting – i.e., a method for minority representation on a board of directors.

[~~:~~]§514B-125[~~:~~] Board meetings. (a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board [~~may~~] shall be permitted to participate in any deliberation or discussion, other than executive sessions, [~~unless a majority of a quorum of the board votes otherwise.~~] pursuant to owner participation rules adopted by the board.

(b) Following any election of board members by the association, the board may, at the board's next regular meeting or at a duly noticed special meeting, establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:

(1) Shall notify all owners of these rules; and

(2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all owners shall be notified of any adopted amendments.

[~~(b)~~] (c) The board, [~~with the approval of a majority of a quorum of its members,~~] by majority vote, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters:

(1) Concerning personnel;

(2) Concerning litigation in which the association is or may become involved;

(3) Necessary to protect the attorney-client privilege of the association; or

(4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.

The general nature of any business to be considered in executive session shall first be announced in open session.

[~~(c)~~] (d) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.

[~~(d)~~] (e) The board shall meet at least once a year. Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board. The notice shall include a list of business items expected to be on the meeting agenda.

[~~(e)~~] (f) A director shall not vote by proxy at board meetings.

[~~(f)~~] (g) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 81, §3]

Real Estate Commission's Comment (2003 Final Report)

1. Subsection (a) is identical to HRS §514A-83.1(a). HRS §§514A-83.1(b) and 421J-5(d), modified, are the sources of subsection [~~(b)~~] (c). HRS §§514A-82(a)(16) and 414D-143(c) are the sources of subsection [~~(c)~~] (d). HRS §514A-82(b)(9), modified, is the source of subsection [~~(d)~~] (e). Subsection [~~(e)~~] (f) is identical to HRS §421J-5(e). Subsection [~~(f)~~] (g) is identical to the pertinent provisions of HRS §§514A-82(a)(13), 514A-82(b)(5), and Robert's Rules of Order Newly Revised.

2. Paragraph [~~(b)(4)~~] (c)(4) recognizes that, in addition to personnel and litigation matters, it is appropriate to allow boards to go into executive session to discuss and vote on matters dealing with contracts, leases, and other commercial transactions while they are being negotiated. Such negotiations often involve confidential information (e.g., an association's appraiser's estimates and advice during lease-to-fee negotiations, and review of competing bids from vendors during a sealed bidding process). Paragraph [~~(b)(4)~~] (c)(4) allows associations to protect their interests during the pendency of these negotiations.

3. Some stakeholders suggested that the Commission make it clear that directors have the right to attend any committee meetings, whether they sit on the committee or not, unless they have a conflict of interest on the subject matter. Others disagree. They point out that associations could be damaged by such a requirement.

Example: A director (otherwise very helpful) is known for asking questions of prospective employees that are illegal under current law. The director has no conflict of interest, but the director's participation in the interview process would subject the association to significant liability. Should State law force the association to allow this director's participation in its personnel committee's interview process? The Commission does not believe so.

4. The Modern Rules of Order was initially added to subsection [~~(c)~~] (d). After further consideration, reference to the Modern Rules of Order was deleted. Parliamentarian Glanstein notes that: "The Modern Rules of Order presents numerous problems. It fails to include numerous important parliamentary points that are relevant to any organization. It has incomplete methodology for handling points of order, appeals, and the motion to amend, and provides minimal guidance for interpreting bylaws."

5. Subsection [~~(c)~~] (d) authorizes teleconferencing, videoconferencing, and other means of conducting remote meetings.

6. Stakeholders questioned the qualifier "practicable" in HRS §514A-82(b)(9). It is deleted from the language of subsection [~~(d)~~] (e).

7. Regarding subsection [~~(f)~~] (g), some stakeholders proposed that the "nature of the conflict of interest" be recorded in meeting minutes, not just the fact that a disclosure was made. Others disagreed, citing privacy issues (e.g., issues involving AIDS or other health matters), and noted that the director with a conflict abstaining from voting is the key. More importantly, consistent with Robert's Rules of Order Newly Revised, minutes should reflect what was done at a meeting, not what was said. While it might be good practice for a director to protect himself or herself by providing written disclosure of a conflict of interest, it should not be mandated in State law.

Arakaki's Comment

1. This section and the Real Estate Commission's Comment are presented above in Ramseyer format to reflect amendments adopted by the 2017 Legislature. As found by the Legislature in Section 1 of Act 81 (SLH 2017):

[T]he board of directors of each association of apartment owners has broad powers that impact its members, such as adopting and amending budgets for revenues, expenditures, and reserves; hiring and discharging management agents and other independent contractors, agents, and employees; instituting, defending, or intervening in litigation or administrative proceedings affecting the condominium; regulating the use, maintenance, repair, replacement, and modification of common elements; imposing and receiving payments, fees, or charges for the use, rental, or operation of the common elements; imposing charges and penalties, including late fees and interest, for late payment of assessments; and levying fines for violations of the association's declaration, bylaws, and rules and regulations.

… [T]he boards of directors of associations of apartment owners represent the homeowners in managing a condominium, but the homeowners are vested with the ultimate decision-making power. Clarifying board member responsibilities regarding board meetings and the nature and process of an owner's participation in deliberations or discussions of a board will help foster accountability and transparency for owners and board members in a condominium association.

The purpose of this Act is to: … Balance the right of association members to speak and participate in deliberations and discussions of a board, while ensuring that a board is able to complete its agenda in a timely manner; [and] … [r]equire the notice for board meetings to include a list of items expected to be on the meeting agenda.

[§514B-126] Board meetings; minutes. (a) Minutes of meetings of the board shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the board shall be approved no later than the second succeeding regular meeting.

(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within [~~sixty~~] thirty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2017, c 81, §4]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-83.4 – edited to separate association and board meetings – is the source of this section.

Arakaki's Comment

1. Subsection (c) is presented above in Ramseyer format to reflect an amendment adopted by the 2017 Legislature.

C. OPERATIONS

§[§514B-131] Operation of the property. The operation of the property shall be governed by this chapter and the declaration and bylaws. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-81, modified, is the source of this section.

[~~]~~§514B-132[~~]~~ **Managing agents.** (a) Every managing agent shall:

(1) Be a:

(A) Licensed real estate broker in compliance with chapter 467 and the rules of the commission. With respect to any requirement for a corporate managing agent in any declaration or bylaws recorded before July 1, 2006, any managing agent organized as a limited liability company shall be deemed to be organized as a corporation for the purposes of this paragraph, unless the declaration or bylaws are expressly amended after

July 1, 2006 to require that the managing agent be organized as a corporation and not as a limited liability company; or

(B) Corporation authorized to do business under article 8 of chapter 412;

(2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on December 31 of an even-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 managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include the name, business address, phone number, and names of associations managed;

(3) Obtain and keep current a fidelity bond in an amount equal to $500 multiplied by the aggregate number of units of the association managed by the managing agent; provided that the amount of the fidelity bond shall not be less than $20,000 nor greater than $500,000. Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond or a certification statement from an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The fidelity bond shall protect the managing agent against the loss of any association's moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in nonregistration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission;

(4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association, and apply the fidelity bond proceeds, if any, to reduce the association's loss. If more than one association suffers a loss, the managing agent shall divide the proceeds among the associations in proportion to each association's loss. An association may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association cannot recover its loss from the fidelity bond proceeds of the managing agent, the association may recover by court order from the real estate recovery fund established under section 467-16, provided that:

(A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;

(B) The managing agent is a licensed real estate broker; and

(C) The association fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;

(5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and

(6) Report immediately in writing to the commission any changes to the information contained on the registration application or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements.

(b) The commission may deny any registration or reregistration application or terminate a registration without hearing if the fidelity bond and supporting documents fail to meet the requirements of this chapter and the rules adopted pursuant thereto.

(c) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent.

(d) The registration requirements of this section shall not apply to active real estate brokers in compliance with and licensed under chapter 467.

(e) If a managing agent receives a request from the commission to distribute any commission-generated information, printed material, or documents to the association, its board, or unit owners, the managing agent shall make the distribution at the cost of the association within a reasonable period of time after receiving the request. The requirements of this subsection apply to all managing agents, including unregistered managing agents. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §21]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-95, modified, is the source of this section. Subsection (e) is new.

2. Paragraph (a)(1) has been amended to allow a managing agent to organize as limited liability company or a limited partnership. The Uniform Limited Liability Company Act was not enacted until 1996, and many of the largest condominium management firms in recent years have organized as limited liability companies or limited partnerships.

3. After further consideration, the Commission does not believe that the change made by Act 129 (SLH, 2002) was wise. At least part of the theory behind exempting licensed, active, real estate brokers from the registration and fidelity bond requirements of this section is that victims of such real estate brokers would have recourse against the Real Estate Recovery Fund. *See*, HRS §467-16, et seq. Such a remedy, however, is woefully inadequate as a few "bad acts" involving large condominiums managed by such real estate brokers could easily result in claims exceeding available Recovery Fund monies. The exemption from the fidelity bond requirement for licensed, active real estate brokers has been deleted in subsection (d).

4. The 2003 Legislature passed a resolution (SCR 62) directing the Auditor to conduct a "sunrise review" regarding certification or licensure of condominium managing agents.

Arakaki's Comment

1. The Hawaii Regulatory Licensing Act declares that the State's policy is to regulate professions and vocations only when reasonably necessary to protect the health, safety, or welfare of consumers. Accordingly, before regulation of a profession or vocation can be legislated, the Auditor is required to analyze the probable effects of the proposed regulation, assess whether regulation is consistent with the Act's policies, and assess alternative forms of regulation.

In 2005, the Legislature directed the Auditor to conduct a "sunrise" analysis of condominium association managers. (House Concurrent Resolution No. 204 of the 2005 legislative session requested an analysis of Senate Bill No. 1454 (2003), which proposed to regulate condominium association managers.) The Auditor recommended against such regulation, finding it unnecessary because: (i) there is little evidence that condominium association managers have presented a danger to the health, safety, and welfare of the public; (ii) complainants have many remedies available to them, including, but not limited to, mediation and the Condominium Dispute Resolution Pilot Program established in the Department of Commerce and Consumer Affairs' Office of Administrative Hearings; and (iii) the recent recodification of the condominium law makes it premature to do so. (*See*, "Sunrise Analysis: Condominium Association Managers, A Report to the Governor and the Legislature of the State of Hawai'i," Report No. 05-10 (December 2005), The Auditor, State of Hawaii. The public can access the report on the Auditor's website at: http://www.hawaii.gov/auditor/Reports/2005/05-10.pdf)

2. Subsection (e) is presented above in Ramseyer format to reflect an amendment adopted by the 2006 Legislature. The amendment makes it clear that the managing agent distributes Real Estate Commission-generated information (e.g., printed materials) at the cost of the association.

[§514B-133] Association employees; background check; prohibition. (a) The board, managing agent, or resident manager, upon the written authorization of an applicant for employment as a security guard or resident manager or for a position that would allow the employee access to the keys of or entry into the units in the condominium or access to association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the board, managing agent, or resident manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as an association employee with access to association funds or the keys of or entry into the units in the condominium, and the judgment of conviction has not been vacated.

For purposes of this section, the criminal history disclosure made by the applicant may be verified by the board, managing agent, resident manager, or other responsible party, if so directed by the board, managing agent, or resident manager, by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information, which shall include, but not be limited to, the applicant's name, social security number, date of birth, and gender. This information shall be used only for the purpose of conducting the criminal history record check authorized by this section. Failure of an association, managing agent, or resident manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against an association, managing agent, or resident manager for acts and omissions of the employee hired.

(b) An association's employees shall not engage in selling or renting units in the condominium in which they are employed, except association-owned units, unless such activity is approved by sixty-seven per cent of the unit owners. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. Subsection (a) is essentially identical to HRS §514A-82.1. Subsection (b) is essentially identical to HRS §514A-82(b)(8).

[§514B-134] Management and contracts; developer, managing agent, and association. (a) Any developer or affiliate of the developer or a managing agent, who manages the operation of the property from the date of recordation of the first unit conveyance until the organization of the association, shall comply with the requirements of sections 514B-72, 514B-103, and 514B-149.

(b) The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including, but not limited to, financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract. Prior to the organization of the association, any unit owner may request to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. This section is essentially identical to HRS §514A-84(b) and (c). HRS §514A-84(a) has been replaced by the provisions of §514B-135.

[§514B-135] Termination of contracts and leases of developer. (a) If entered into before the board elected by the unit owners pursuant to section 514B-106(e) takes office:

(1) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(2) Any other contract or lease between the association and a developer or an affiliate of a developer; or

(3) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing;

may be terminated without penalty by the association within a period of one hundred eighty days after the board elected by the unit owners pursuant to section 514B-106(e) takes office, upon not less than ninety days notice to the other party.

(b) This section does not apply to:

(1) Any lease or other agreement the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section; or

(2) A proprietary lease. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-105, modified, is the source of this section.

[§514B-136] Transfer of developer rights. (a) A developer right created or reserved under this chapter may be transferred only by a recorded instrument evidencing the transfer. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any developer right, the liability of a transferor developer is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer, and remains liable for warranty obligations imposed upon the transferor by this chapter, if any. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor;

(2) If a successor to any developer right is an affiliate of a developer, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium;

(3) If a transferor retains any developer rights, but transfers other developer rights to a successor who is not an affiliate of the developer, the transferor is liable for any obligations or liabilities imposed on a developer by this chapter or by the declaration relating to the retained developer rights and arising after the transfer; and

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a developer right by a successor developer who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of any units owned by a developer or real estate in a condominium subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon request, succeeds to all developer rights related to that property held by that developer. The judgment or instrument conveying title must provide for the transfer of only the developer rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of all interests in a condominium owned by a developer:

(1) The developer ceases to have any developer rights; and

(2) The period of developer control under section 514B-106(d) terminates unless the judgment or instrument conveying title provides for transfer of all developer rights held by that developer to a successor developer.

(e) The liabilities and obligations of a person who succeeds to developer rights are as follows:

(1) A successor to any developer right who is an affiliate of a developer is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(2) A successor to any developer right, other than a successor described in paragraph (3) or (4) or a successor who is an affiliate of a developer, is subject to the obligations and liabilities imposed by this chapter or the declaration:

(A) On a developer which relate to the successor's exercise or nonexercise of developer rights; or

(B) On the transferor, other than:

(i) Misrepresentations by any previous developer;

(ii) Warranty obligations on improvements made by any previous developer, or made before the condominium was created;

(iii) Breach of any fiduciary obligation by any previous developer or the developer's appointees to the board; or

(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, and who may not exercise any other developer right, is not subject to any liability or obligation as a developer, except the obligation to provide a public report, any liability arising as a result thereof, and the obligations under part IV; and

(4) A successor to all developer rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all developer rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the board in accordance with section 514B-106(d) for the duration of any period of developer control, and any attempted exercise of those rights is void. So long as a successor developer may not exercise developer rights under this subsection, the successor developer is not subject to any liability or obligation as a developer other than liability for the developer's acts and omissions under section 514B-106(d).

(f) Nothing in this section subjects any successor to a developer right to any claims against or other obligations of a transferor developer, other than claims and obligations arising under this chapter or the declaration. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-104, modified slightly, is the source of this section.

[~~[~~]§514B-137[~~]~~] **Upkeep of condominium.** (a) Except to the extent provided by the declaration or bylaws, the association is responsible for the operation of the property, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to [~~their agents or employees~~] employees, independent contractors, or agents of the association or other unit owners, during reasonable hours, access through the owner's unit reasonably necessary for those purposes. [~~If~~] Unless entry is made pursuant to subsection (b), if damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association, if it is responsible, is liable for the prompt repair thereof; provided that the association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.

(b) The association shall have the irrevocable right, to be exercised by the board, to have access to each unit at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another unit or units. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §22]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-107, modified, is the source of subsection (a). HRS §§514A-13(f) and 514A-82(b)(6), clarified, are the sources of subsection (b).

2. Earlier drafts of the recodification incorporated UCA/UCIOA §3-107(b), which among other things mandates that "the developer alone is liable for all expenses in connection with real estate subject to development rights," as subsection (c). The subsection has been deleted in the final draft because it may create confusion (regarding who is responsible for what) where none exists now.

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. The amendments are intended to clarify the scope of this provision.

[~~[~~]§514B-138[~~]~~] **Upkeep of condominium; high-risk components.** (a) The board, after notice to all unit owners and an opportunity for owner comment, may determine that certain portions of the units, or certain objects or appliances within the units such as washing machine hoses and water heaters, pose a particular risk of damage to other units or the common elements if they

are not properly inspected, maintained, repaired, or replaced by owners. Those items determined by the board to pose a particular risk are "high-risk components" for the purposes of this section.

(b) With regard to items designated as high-risk components, the board may require any or all of the following:

(1) Inspection:

(A) At specified intervals; or

(B) Upon replacement or repair by the association or by inspectors designated by the association;

(2) Replacement or repair at specified intervals whether or not the component is deteriorated or defective; and

(3) Replacement or repair:

(A) Meeting particular standards or specifications established by the board;

(B) Including additional components or installations specified by the board; or

(C) Using contractors with specific licensing, training, or certification approved by the board.

(c) The imposition of requirements by the board under subsection (b) shall not relieve unit owners of obligations regarding high-risk components as set forth in the declaration or bylaws including, without limitation, the obligation to maintain, repair, and replace the components.

(d) If a unit owner fails to follow requirements imposed by the board pursuant to this section, the association, after reasonable notice, [~~shall~~] may enter the unit to perform the requirements with regard to such high-risk components at the sole cost and expense of the unit owner, which costs and expenses shall be a lien on the unit as provided in section 514B-146. Nothing in this section shall be deemed to limit the remedies of the association for damages, or injunctive relief, or both. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §23]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section. It is based on an article entitled "Create Policy to Deal with 'High-Risk Components' Before Disaster Strikes" from the Community Association Management Insider (July 2003).

Arakaki's Comment

1. Subsection (d) is presented above in Ramseyer format to reflect an amendment adopted by the 2006 Legislature. This amendment makes it clear that, while the association is *authorized* to replace or repair high-risk components if an owner fails to do so, the association is not subject to potential liability if it fails to do so.

[§514B-139] Upkeep of condominium; disposition of unclaimed possessions. (a) When personalty in or on the common elements of a project has been abandoned, the board may sell the personalty in a commercially reasonable manner, store the personalty at the expense of its owner, donate the personalty to a charitable organization, or otherwise dispose of the personalty in its sole discretion; provided that no sale, storage, or donation shall occur until sixty days after the board complies with the following:

(1) The board notifies the owner in writing of:

(A) The identity and location of the personalty; and

(B) The board's intent to so sell, store, donate, or dispose of the personalty.

Notification shall be by certified mail, return receipt requested, to the owner's address as shown by the records of the association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or

(2) If the identity or address of the owner is unknown, the board shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located.

(b) The proceeds of any sale or disposition of personalty under subsection (a), after deduction of any accrued costs of mailing, advertising, storage, and sale, shall be held for the owner for thirty days. Any proceeds not claimed within this period shall become the property of the association. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. This section is identical to HRS §514A-93.5.

[~~[~~]**§514B-140**[~~]~~] **Additions to and alterations of condominium.** (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.

(b) Subject to the provisions of the declaration, no unit owner may make or allow any material addition or alteration, or excavate an additional basement or cellar, without first obtaining the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval. The declaration may limit the board's ability to approve or condition a proposed addition or alteration; provided that the board shall always have the right to disapprove a proposed addition or alteration that the board reasonably determines could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.

(c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this subsection:

"Nonmaterial additions and alterations"[~~,~~] means an addition to or alteration of the common elements or a unit that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

"Solar energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and be ready to be made operational in order to qualify as a "solar energy device"; provided further that "solar energy device" shall not include skylights or windows.

"Townhouse" means a series of individual houses, having architectural unity and a common wall between each unit, provided that each unit extends from the ground to the roof.

(d) Notwithstanding any other [~~provisions~~] law to the contrary in this chapter or any provisions in any declaration or bylaws:

(1) Regarding the installment of telecommunications equipment:

(A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element

without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and

(B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B−33 and 514B−34; provided that no [~~such~~] installation shall directly affect any nonconsenting unit owner; [~~and~~]

(2) Regarding the abandonment of telecommunications equipment:

(A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and

(B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B‑33 and 514B‑34[~~.~~]; and

(3) Regarding the installation of solar energy devices and wind energy devices:

(A) The board shall have the authority to install or cause the installation of, or lease or license comment elements for the installation of solar energy devices and wind energy devices on the common elements of the project; provided that solar or wind energy devices shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for which use of the limited common element is reserved; and

(B) The installation of solar energy devices and wind energy devices on the common elements of the project by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, or easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34; provided that the installation does not directly affect any nonconsenting unit owner.

(e) As used in this subsection:

"Directly affect" means the installation of television signal distribution and telecommunications equipment, solar energy devices, or wind energy devices in a manner which would specially, personally, and adversely affect [~~a~~] an individual unit owner in a manner not common to the unit owners as a whole.

"Solar energy device" means the same as in subsection (c).

"Television signal distribution" and "telecommunications equipment" shall be construed in their broadest possible senses [~~in order~~] to encompass all present and future forms of communications technology.

"Wind energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of wind energy for producing electricity or reducing the use of other types of energy that are dependent upon fossil fuel for generation; provided that if the facility, equipment, apparatus, or the like cannot be used as a wind energy device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a "wind energy device. [L 2004, c 164, pt of §2; am L 2005, c 93, §7 and c 157, §4; am L 2006, c 38, §24; am L 2010, c 53, §3]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-89, rewritten for clarity and modified slightly, is the source of subsections (a), (b), and (c). Subsection (d) is essentially identical to HRS §514A-13.4.

2. HRS §514A-89's mandate that solar energy devices are, by definition, "nonmaterial structural additions to the common elements" (incorporated in the recodification), has the laudable goal of increasing use of alternative energy sources and lessening Hawaii's dependence on fossil fuels. Some stakeholders have stated, however, that allowing unit owners to install solar energy devices at condominium projects with just the approval of the board and such other owners as may be required by the declaration or bylaws creates serious problems. For example, such installations can and do invalidate roof warranties for entire buildings, increase maintenance costs, and create the potential of roof problems that all owners will have to pay for. Moreover, it is virtually impossible to reasonably decide which owner gets which portion of the common element rooftop for installation of his or her solar energy device. The United States Supreme Court has held that a state statute that allowed a cable operator to install its cable facilities on a landlord's property constituted a taking under the Fifth Amendment.[9] A similar analysis applies here. One owner is taking the common element rooftop for his or her exclusive use without compensation to other owners and with the potential for creating serious problems for the association. Ultimately, this is a matter of legitimate, but competing, public policies that the Legislature should consider further and resolve. The Real Estate Commission is not the proper body to make this decision.

Arakaki's Comment

1. The 2005 Legislature's amendments to this section are incorporated above but are *not* presented in Ramseyer format. Act 157 (SLH 2005) amended HRS §§196-7, 514A-89, and 514B-140(c) to allow for "the installation of solar energy devices on any privately owned single-family residential dwelling or townhouse, with limited restrictions" and require that private entities "adopt rules regarding the placement of solar energy devices."

2. The amendment in subsection (c) to the definition of "nonmaterial additions and alterations" reflected above in Ramseyer format (i.e., the deletion of a comma) is a housekeeping amendment adopted by the 2006 Legislature.

3. Subsections (d) and newly designated subsection (e) are presented above in Ramseyer format to reflect the amendments adopted by the 2010 Legislature. Section 1 of Act 53 (SLH 2010) explains the amendments as follows:

> SECTION 1. Presently, the law does not provide boards of directors broad authority on behalf of their associations to install solar energy devices, even though associations can benefit from installing solar energy or wind energy devices on the common elements to reduce Hawaii's dependence on fossil fuels. Some companies are now proposing to lease areas of the common elements from associations to install solar energy or wind energy devices, thereby reducing the association's energy costs and dependence on fossil fuels.
>
> The purpose of this Act is to amend sections 514A-13.4 and 514B-140, Hawaii Revised Statutes, to specifically provide boards of directors with the authority to install or allow the installation of solar energy or wind energy devices on the common elements under appropriate circumstances to further reduce Hawaii's dependence on energy generated from fossil fuels.

4. The separation of the definitions that were previously part of subsection (d) as a new subsection (e) appears to be a drafting error in Act 53 (SLH 2010).

[~~§~~]**§514B-141**[~~§~~] **Tort and contract liability; tolling of limitation period.** (a) A unit owner is not liable, solely by reason of being a unit owner, for any injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the developer is liable for that developer's torts in connection with any part of the condominium that that developer has the responsibility to maintain.

(b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of developer control and the association gives the developer reasonable notice of and an opportunity to defend against the action, the developer who then controlled the association is liable to the association or to any unit owner for:

(1) All tort losses not covered by insurance suffered by the association or that unit owner; and

[9] Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

(2) All costs that the association would not have incurred but for a breach of contract or other wrongful act or omission, as the same may be established through adjudication.

Whenever the developer is liable to the association under this section, the developer is also liable for all expenses of litigation, including reasonable attorneys' fees, incurred by the association.

(c) Any statute of limitation affecting the association's right of action against a developer [~~under this chapter~~] is tolled until the period of developer control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the unit owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 514B-147. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §24]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-111, modified, is the source of this section.

Arakaki's Comment

1. Subsection (c) is presented above in Ramseyer format to reflect an amendment adopted by the 2006 Legislature. The amendment makes it clear that the protections of this provision are not limited to association rights under this chapter alone.

[~~:~~]§514B-142[~~:~~] Aging in place[~~:~~] or disabled; limitation on liability. (a) The association, its directors, unit owners, or residents, and their agents and tenants, acting through the board, shall not have any legal responsibility or legal liability, with respect to any actions and recommendations the board takes on any report, observation, or complaint made, or with respect to any recommendation or referral given, which relates to an elderly or disabled unit owner or resident who[~~,~~] may require services and assistance to maintain independent living in the unit in which the elderly or disabled unit owner or resident resides, so that the elderly or disabled unit owner or resident will not pose any harm or health or safety hazards to self or to others, and will not otherwise be disruptive to the condominium community because of [~~the following~~] problems of aging and aging in place[~~:~~] or living independently with a physical or mental disability or disabling condition. This section shall apply to elderly or disabled unit owners or residents whose actions or non-actions pose a risk to their own health or safety or to the health and safety of others, cause harm to the resident or others, or where physical or mental abuse may be life-threatening, and who exhibit the following characteristics:

(1) The inability to clean and maintain an independent unit;

(2) Mental confusion;

(3) Abusing others;

(4) Inability to care for oneself; or

(5) Inability to arrange for home care[~~;~~

~~(6) Loneliness and neglect; or~~

~~(7) Inappropriate requests of others for assistance.~~

~~For purposes of this section, "elderly" means age sixty-two and older~~].

(b) Upon a report, observation, or complaint relating to an elderly or disabled unit owner or resident aging or aging in place or living independently with a physical or mental disability or disabling condition, which notes a problem similar in nature to the problems enumerated in subsection (a), the board, in good faith, and without legal responsibility or liability, may request a functional assessment regarding the condition of an elderly or disabled unit owner or resident as well as recommendations for [~~the~~] services from mental health or medical practitioners, governmental agencies responsible for adult protective services, or non-profit or for-profit service entities which the elderly or disabled unit owner or resident may require to maintain a level of independence that enables the owner or resident to avoid any harm to self or to others, and to avoid disruption to the condominium community[~~.~~]; provided that when a functional assessment is requested by the board, the unit owner or resident shall be deemed to be the client of the person or entity conducting the functional assessment. The board, upon request or unilaterally, and without legal responsibility

or liability, may recommend available services, including assistance from state or county agencies and non-profit or for-profit service entities, to an elderly or disabled unit owner or resident which [~~might~~] may enable the elderly or disabled unit owner or resident to maintain a level of independent living with assistance, enabling in turn, the elderly or disabled unit owner or resident to avoid any harm to self or others, and to avoid disruption to the condominium community.

(c) There is no affirmative duty on the part of the association, its board, the unit owners, or residents, or their agents or tenants to request or require an assessment and recommendations with respect to an elderly or disabled unit owner or resident when the elderly or disabled unit owner or resident may be experiencing the problems related to aging and aging in place or living independently with a physical or mental disability or disabling condition enumerated in subsection (a). The association, its board, unit owners, or residents, and their agents and tenants shall not be legally responsible or liable for not requesting or declining to request a functional assessment of, and recommendations for, an elderly or disabled unit owner or resident regarding problems relating to aging and aging in place[~~.~~] or living independently with a physical or mental disability or disabling condition.

(d) If an elderly or disabled unit owner or resident ignores or rejects a request for or the results from an assessment and recommendations, the association, with no liability for cross-claims or counterclaims, may file appropriate information, pleadings, notices, or the like, with appropriate state or county agencies or courts to seek an appropriate resolution for the condominium community and for the elderly or disabled unit owner[~~.~~] or resident.

(e) For the purposes of this section:

"Disabled" means a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

"Elderly" means age sixty-two and older.

[~~(e)~~] (f) Costs and fees for assessments, recommendations, and actions contemplated in this section shall be as set forth in the declaration or bylaws.

[~~(f)~~] (g) This section shall not be applicable to any condominium that seeks to become licensed as an assisted living facility pursuant to title 11, chapter 90, Hawaii Administrative Rules, as amended. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2009, c 128, §1]

Real Estate Commission's Comment (2003 Final Report)

1. This is a new section. It was added at the request of the working group convened pursuant to Act 185 (SLH, 2003).[10] The Commission notes that associations should undertake assessments pursuant to this section only as a last resort after notice to the resident, next of kin, or other responsible party fails to gain the cooperation and behavior necessary to live independently in the condominium community.

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect the amendments adopted by the 2009 Legislature. The 2009 amendments expand the "Good Samaritan" limitations on association liability for elderly unit owners aging in place to include residents and disabled persons.

2. *See also*, definition of "disability" in HRS §515-2, which (as of July 2017) reads as follows:

"Disability" means having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to a controlled substance or alcohol or drug abuse that threatens the property or safety of others.

[~~†~~]**§514B-143**[~~†~~] **Insurance.** (a) Unless otherwise provided in the declaration or bylaws, [~~and to the extent reasonably available,~~] the association shall purchase and at all times maintain the following:

[10] *See*, e-mail testimony of Dianne M. Okumura, RN, MPH, Department of Health, Health Care Assurance, and Emmet T. White, Jr., dated October 7, 2003.

(1) Property insurance:

(A) On the common elements;

(B) Providing coverage for special form causes of loss; and

(C) In a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date;

(2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of $1,000,000, or a greater amount deemed sufficient in the judgment of the board[~~, insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer shall be included as an additional insured in its capacity as a unit owner, managing agent or resident manager, board member, or officer. The unit owners shall be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.~~];

(3) A fidelity bond, as follows:

(A) An association with more than five dwelling units shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, in an amount equal to $500 multiplied by the number of units; provided that the amount of the fidelity bond required by this paragraph shall not be less than $20,000 nor greater than $200,000; and

(B) All management companies that are responsible for the funds held or administered by the association shall be covered by a fidelity bond as provided in section 514B-132(a)(3). The association shall have standing to make a loss claim against the bond of the managing agent as a party covered under the bond[~~; and~~];

[~~(C)~~] (4) The board shall obtain directors and officers liability coverage at a level deemed reasonable by the board, if not otherwise [~~established~~] limited by the declaration or bylaws. [~~Directors and officers liability coverage shall extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but shall exclude actions for which the directors are not entitled to indemnification under chapter 414D or the declaration and bylaws.~~]

(b) If a building contains attached units, the insurance maintained under subsection (a)(1), to the extent reasonably available, shall include the units, the limited common elements, except as otherwise determined by the board, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected.

For the purposes of this section, "improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners.

(c) If a project contains detached units, then notwithstanding the requirement in this section that [~~associations~~] the association obtain the requisite coverage, if the board determines that it is in the best interest of the association to do so, the insurance to be maintained under subsection (a)(1) may be obtained separately for each unit by the unit owners; provided that the requirements of subsection (a)(1) shall be met; and provided further that evidence of such insurance coverage shall be delivered annually to the association. In such event, the association shall be named as an additional insured.

(d) The board, in the case of a claim for damage to a unit or the common elements, may:

(1) Pay the deductible amount as a common expense;

(2) After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or

(3) Require the unit owners of the units affected to pay the deductible amount.

(e) The declaration [~~or~~], bylaws, or the board may require the association to carry any other insurance, including workers' compensation, employment practices, environmental hazards, and equipment breakdown, that the board considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.

[~~(f) Insurance policies carried pursuant to subsections (a) and (b) shall include each of the following provisions:~~

~~(1) Each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association;~~

~~(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board; and~~

~~(3) The unit owner waives the unit owner's right to subrogation under the association policy against the association and the board.~~

~~(g) If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy shall be the primary insurance.~~]

[~~(h)~~] (f) Any loss covered by the property policy under subsection (a)(1) shall be adjusted by and with the association. The insurance proceeds for that loss shall be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. [~~The proceeds shall be disbursed first for the repair or restoration of the damaged common elements, the bare walls, ceilings, and floors of the units, and then to any improvements and betterments the association may insure. Unit owners shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the association has been terminated as trustee.~~]

[~~(i)~~] (g) The board, [~~under the declaration or bylaws,~~] with the vote or written consent of a majority of the unit owners, may require unit owners to obtain reasonable types and levels of insurance [~~covering their personal liability and compensatory but not consequential damages to another unit caused by the negligence of the owner or the owner's guests, tenants, or invitees, or regardless of any negligence originating from the unit~~]. The [~~personal~~] liability of a unit owner shall include but not be limited to the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

If the unit owner does not purchase or produce evidence of insurance requested by the board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the unit owner. In no event is the association or board liable to any person either with regard to [~~its~~] the failure of a unit owner to purchase insurance or a decision by the board not to purchase the insurance[~~,~~] for the owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

[~~(j) Contractors and vendors, except public utilities doing business with an association, shall provide certificates of insurance naming the association, its board, and its managing agent as additional insured parties.~~]

[~~(k)~~] (h) The provisions of this section may be varied or waived in the case of a [~~condominium community~~] project in which all units are restricted to nonresidential use.

[~~(l) Any insurer defending a liability claim against an association shall notify the association of the terms of the settlement no less than ten days before settling the claim. The association may not veto the settlement unless otherwise provided by contract or statute.~~] [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §25; am L 2014, c 189, §6]

Real Estate Commission's Comment (2003 Final Report)

1. §765 Illinois Compiled Statutes (ILCS) 605/12, modified, is the basic source of this section. Paragraph (a)(3)(A) incorporates the language of HRS §514A-95.1(a)(1) regarding fidelity bonds, modified by raising the maximum amount of the

fidelity bond required by law from $100,000 to $200,000. Subsection (e) incorporates language from HRS §514A-86(a) regarding flood insurance.

2. Subsections (b) and (c) distinguish between buildings containing attached and detached units.[11]

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. The amendments are based on additional reviews and comments by insurance experts and practitioners. Needless to say, it is very important that the insurance provisions of the new condominium law actually work in practice.

2. Until the enactment of subsection (g), the condominium law and most association bylaws did not require that individual owners obtain insurance to protect themselves from personal liability, cover damage to their apartment contents or upgrades, or cover damage the owners may cause to others that is not covered by the association's insurance. Coverage for individual owners is relatively cheap – usually $200-$400 per year – and provides many benefits for both the individual owners and the association in all those areas. Therefore, the 2006 amendment to subsection (g) requires owners in a condominium to obtain insurance for themselves upon the vote of majority of the owners at a meeting or the written consent of a majority of the owners. Note that in 2004, the chair of the House Committee on Consumer Protection and Commerce inserted in subsection (g) the qualifiers "reasonable levels" of insurance, "good faith", and "reasonable" premium cost because of his concern regarding force-placed insurance.

3. The double-underlined word "unit" in subsection (g) reflects a technical amendment adopted by the 2014 Legislature.

[~~§~~]**§514B-144**[~~§~~] **Association fiscal matters; assessments for common expenses.** (a) [~~Except as provided in section 514B-41, until the association makes a common expense assessment, the developer shall pay all common expenses. After an assessment has been made by the association, assessments~~] Assessments shall be made [~~at least annually,~~] based on a budget adopted and distributed or made available to unit owners at least annually by the board.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses shall be assessed against all the units in accordance with the allocations under section 514B-41. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association, provided that the rate shall not exceed eighteen per cent per year.

(c) Assessments to pay a judgment against the association under section 514B-147(a) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense allocations under section 514B-41.

(d) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.

(e) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(f) In the case of a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantor or grantee is, however, entitled to a statement from the board, either directly or through its managing agent or resident manager, setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty-day period immediately preceding the date of such statement, the grantee is not liable for, nor is the unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

[11] For an excellent discussion of the issue, *see*, the official comment to UCA/UCIOA §3-113(b). The Acts do not mandate association insurance on units in town house or other arrangements in which there are no stacked units. If the developer wishes, however, the declaration may require association insurance as to units having shared walls or as to all units in the development. Many developments will have some units with horizontal boundaries and other units with no horizontal boundaries. In that case, association insurance as to the units having horizontal boundaries is required, but it is not necessary as to other units. UCA/UCIOA §3-113 and their official comments also attempt to clarify the complex issue of what is a common element and what is a unit with respect to insurance coverage.

(g) No unit owner may exempt the unit owner from liability for the unit owner's contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit owner's unit. Subject to such terms and conditions as may be specified in the declaration or bylaws, any unit owner, by conveying [~~the unit owner's~~] his or her unit and common interest to the [~~board~~] association on behalf of all other unit owners, may exempt [~~the unit owner's self~~] himself or herself from common expenses thereafter accruing.

(h) The board, either directly or through its managing agent or resident manager, shall notify the unit owners in writing of maintenance fee increases at least thirty days prior to such an increase. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §26]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-115, modified, is the source of subsections (a) through (e).

2. Subsections (f) through (h) are essentially identical to HRS §§514A-91, 514A-92, and 514A-92.2, respectively.

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. The amendments to subsection (a) are meant to make the subsection consistent with §514B-41. [Note: The trigger in §514B-41 for transferring obligation for payment of assessments is written notice from developer.]

2. Subsection (g) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. The amendments to this section are intended to clarify its language. Some of the attempts made in Act 164 (SLH 2004) to have gender neutral language in this subsection resulted in awkward and possibly confusing language.

[~~†~~]**§514B-145**[~~†~~] **Association fiscal matters; collection of unpaid assessments from tenants[~~,~~] or rental agents.** (a) If the owner of a unit rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the common expenses, the board, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit[~~,~~] or rental agent renting the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under this section, the board shall give to the delinquent unit owner written notice of its intent to collect the rent owed. The notice shall:

(1) Be sent both by first-class and certified mail;

(2) Set forth the exact amount the association claims is due and owing by the unit owner; and

(3) Indicate the intent of the board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the unit's share of common expenses by the tenant pursuant to a written demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant.

(e) The board may not demand payment from the tenant pursuant to this section if:

(1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;

(2) A mortgagee is in possession pending a mortgage foreclosure; or

(3) The tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this section and any provision of chapter 521, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under chapter 521, the tenant may deduct the offset from the amount due to the association, up to the limits stated in chapter 521. Nothing herein precludes the unit owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

(g) Before the board may take the actions permitted under subsection (a), the board shall adopt a written policy providing for the actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners. [L 2004, c 164, pt of §2; am L 2006, c 273, §27]

Real Estate Commission's Comment (2003 Final Report)

1. This section is essentially identical to HRS §514A-90.5.

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. In many resort projects, the right granted by subsection (a) would not be workable unless the association can work through the rental agent, since the tenants are short term tenants (e.g., transient vacation renters).

2. Although the online caption at the end of the statutory language (as of late 2017) indicated that Section 32 of Act 273 (SLH 2006) amended HRS §514B-145, it was actually Section 27 of the Act that did so. The correct citation is now reflected.

Unlike virtually every other section of HRS Chapter 514B that was adopted in Act 164 (SLH 2004), however, the bracketed caption for this section contains no reference to Act 93 (SLH 2005) (i.e., "am L 2005, c 93, §7"). This is not significant. As noted above in Arakaki's Comment to HRS §514B-101, Act 93 (SLH 2005), Section 7, amended Act 164 (SLH 2004), Section 35, which was the "effective date" provision of Act 164 (SLH 2004). In other words, Act 93 (SLH 2005), Section 7, amended a session law's "effective date" language, not statutory language.

[~~[~~]**§514B-146**[~~]~~] **Association fiscal matters; lien for assessments.** *[Repeal and reenactment on June 30, 2020. L 2018, c 195, §6.]* (a) All sums assessed by the association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:

(1) Liens for real property taxes and assessments lawfully imposed by governmental authority against the unit; and

(2) [~~All~~] Except as provided in subsection [~~(g)~~] (j), all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in such mortgages[~~.~~];

provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association[~~, in like manner as a mortgage of real property.~~] and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667.

In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws[~~,~~] or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed[~~.~~] by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to

collect the rent from the tenant. The managing agent or board, acting on behalf of the association[~~,~~] and in the name of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection [~~(g)~~] (j), when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association chargeable to the unit [~~which~~] that became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

(1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;

(2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;

(3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to [~~section 667-5;~~] chapter 667; or

(4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) [~~No unit owner shall withhold any assessment claimed by the association.~~] A unit owner who receives a demand for payment from an association and disputes the amount of an assessment may request a written statement clearly indicating:

(1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(2) The amount of any penalty[~~,~~] or fine, late fee, lien filing fee, and any other charge included in the assessment[~~;~~] that is not imposed on all unit owners as a common expense; and

(3) The amount of attorneys' fees and costs, if any, included in the assessment[~~;~~].

(d) A unit owner who disputes the information in the written statement received from the association pursuant to subsection (c) may request a subsequent written statement that additionally informs the unit owner that:

[~~(4)~~ ~~That under~~] (1) Under Hawaii law, a unit owner has no right to withhold common expense assessments for any reason;

[~~(5)~~ ~~That a~~] (2) A unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's common expense assessment[~~,~~]; provided that the unit owner immediately pays the common expense assessment in full and keeps common expense assessments current; [~~and~~

[~~(6)~~ ~~That payment~~] (3) Payment in full of the common expense assessment [~~does~~] shall not prevent the owner from contesting the common expense assessment or receiving a refund of amounts not owed[~~.~~]; and

(4) If the unit owner contests any penalty or fine, late fee, lien filing fee, or other charges included in the assessment, except common expense assessments, the unit owner may demand mediation as provided in subsection (g) prior to paying those charges.

(e) No unit owner shall withhold any common expense assessment claimed by the association. Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

[~~(d)~~] (f) A unit owner who pays an association the full amount of the common expenses claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's common expense claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under section 514B-162; provided that a unit owner may only file for arbitration if all amounts claimed by the association as common expenses are paid in full on or before the date of filing. If the unit owner fails to keep all association common expense assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association common expense assessments within thirty days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the unit owner fails to pay all association common expense assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid as common expenses to the association [~~which~~] that are not owed.

(g) A unit owner who contests the amount of any attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments, may make a demand in writing for mediation on the validity of those charges. The unit owner has thirty days from the date of the written statement requested pursuant to subsection (d) to file demand for mediation on the disputed charges, other than common expense assessments. If the unit owner fails to file for mediation within thirty days of the date of the written statement requested pursuant to subsection (d), the association may proceed with collection of the charges. If the unit owner makes a request for mediation within thirty days, the association shall be prohibited from attempting to collect any of the disputed charges until the association has participated in the mediation. The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the unit owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.

[~~(e)~~] (h) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board to, after sixty days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

[~~(f)~~] (i) Before the board or managing agent may take the actions permitted under subsection [~~(e)~~] (h), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.

[~~(g)~~] (j) Subject to this subsection, and subsections [~~(h)~~] (k) and [~~(i),~~] (l), the board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a [~~person~~] mortgagee or other purchaser who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that [~~:~~

~~(1) A purchaser who holds a mortgage on a delinquent unit that was recorded prior to the filing of a notice of lien by the association and who acquires the delinquent unit through a judicial or nonjudicial foreclosure proceeding, including purchasing the delinquent unit at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and~~

~~(2) A person who subsequently purchases the delinquent unit from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; and provided further that~~] the mortgagee or [~~subsequent~~] other purchaser may require the association to provide at no charge a notice of the association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

[~~(h)~~] (k) The amount of the special assessment assessed under subsection [~~(g)~~] (j) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the [~~twelve~~] six months immediately preceding the completion of

the judicial or nonjudicial power of sale foreclosure. [~~In no event shall the amount of the special assessment exceed the sum of $7,200.~~]

[~~(i)~~] (l) For purposes of subsections [~~(g)~~] (j) and [~~(h),~~] (k), the following definitions shall apply, unless the context requires otherwise:

"Completion" means:

(1) In a nonjudicial power of sale foreclosure, when the affidavit [~~required under section 667-5 is filed;~~] after public sale is recorded pursuant to section 667-33; and

(2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular monthly common assessments" does not include:

(1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148;

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

(4) Any lien arising out of the assessment; or

(5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.

[~~(j)~~] (m) The cost of a release of any lien filed pursuant to this section shall be paid by the party requesting the release.

[~~(k)~~] (n) After any judicial or non-judicial foreclosure proceeding in which the association acquires title to the unit, any excess rental income received by the association from the unit shall be paid to existing lien holders based on the priority of lien, and not on a pro rata basis, and shall be applied to the benefit of the unit owner. For purposes of this subsection, excess rental income shall be any net income received by the association after a court has issued a final judgment determining the priority of a senior mortgagee and after paying, crediting, or reimbursing the association or a third party for:

(1) The lien for delinquent assessments pursuant to subsections (a) and (b);

(2) Any maintenance fee delinquency against the unit;

(3) Attorney's fees and other collection costs related to the association's foreclosure of the unit; or

(4) Any costs incurred by the association for the rental, repair, maintenance, or rehabilitation of the unit while the association is in possession of the unit including monthly association maintenance fees, management fees, real estate commissions, cleaning and repair expenses for the unit, and general excise taxes paid on rental income;

provided that the lien for delinquent assessments under paragraph (1) shall be paid, credited, or reimbursed first. [L 2004, c 164, pt of §2 and §35(1); am L 2005, c 93, §7; am L 2006, c 273, §32; am L 2007, c 21, §1; am L 2009, c 10, §3; am L 2011, c 48, §14; am L 2012, c 182, §§10, 49; am L 2013, c 196, §1; am L 2014, c 235, §2; am L 2018, c 195, §4]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-90, as amended and re-enacted by the 2003 Legislature and as further amended for style by the 2004 Legislature, is the source of this section.

2. The condominium association "priority of lien" issue has been a contentious one for years. The first draft of the recodification incorporated the provisions of UCA/UCIOA § 3-116 (Lien for Assessments).[12] A number of stakeholders opposed the provisions of UCA/UCIOA §3-116,[13] and the existing provisions of HRS §514A-90 were incorporated without change.

Arakaki's Comment

1. This section has been amended many times by the Legislature. The 2006 and 2007 amendments to this section both related to a repeal and reenactment clause tied to the sunset (expiration) date originally adopted for the special assessment provided for in subsection (h). In 2006, Section 35 of Act 164, SLH 2004, as amended by Act 93, SLH 2005, was further amended to delete language relating to the repeal of the new condominium law if Parts III (Creation, Alteration, and Termination of Condominiums), IV (Registration and Administration of Condominiums), and V (Protection of Condominium Purchasers) were not adopted effective July 1, 2006. The repeal and reenactment clause for HRS §514B-146 was then deleted by the 2007 Legislature in Act 21 (SLH 2007). In so doing, the 2007 Legislature made permanent (at that time) the amendments made by Act 39 (SLH 2000), which allowed condominium associations to file liens for six months of maintenance fees or $1,800 (at that time), whichever is less. [*See*, Act 182 (SLH 2012), discussed below.]

2. Subsection (h) was amended by the 2009 Legislature [Act 10 (SLH 2009)] to increase the amount that condominium associations may recover in maintenance fees from the foreclosure of a unit from $1,800 to $3,600. In Ramseyer format, the 2009 amendment read as follows:

> (h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of [~~$1,800.~~] $3,600.

Section 1 of Act 10 (SLH 2009) explains its amendment as follows:

> SECTION 1. Act 39, Session Laws of Hawaii 2000, took effect in April 2000 and authorized condominium associations to collect up to six months of maintenance fees or $1,800, whichever was less, in connection with the foreclosure of a condominium apartment. Prior to Act 39, associations frequently received nothing from the sale of an apartment in foreclosure because all of the proceeds from the foreclosure auction would go to the holder of the first mortgage. The purpose of Act 39 was to allow condominium associations some recovery from the foreclosure of the condominium apartment, even if the holder of the first mortgage was not paid in full. The provision recognized that, since the association maintained and insured the condominium apartment and the project in which it was located, the association should recover something from the foreclosure of the apartment.
>
> The "cap" or limit of $1,800 on the association's recovery was based on information that the average monthly maintenance fee in 2000 was $300 per month. However, nine years later, the average monthly maintenance fee is now well over $400 per month. Therefore, retaining the $300 amount unfairly limits the association's recovery in a foreclosure.
>
> The purpose of this Act is to increase the cap on an association's recovery to six months of maintenance fees or $3,600, whichever is less. In this way, associations will continue to receive a fair share of the proceeds from the foreclosure auction of a condominium apartment, to compensate the association for its role in maintaining the value of the condominium apartment, before, during, and after the foreclosure.

Subsection (h) was further amended by the 2011 Legislature [Act 48 (SLH 2011)] to increase the amount from $3,600 to $7,200 (in regular monthly assessments over twelve months rather than six months). In Ramseyer format, the 2011 amendments read as follows:

> (h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the [~~six~~] twelve months immediately

[12] For an excellent discussion of the issues involved with the UCA/UCIOA limited lien priority, *see*, Winokur, James L., "Meaner Lienor Community Associations: The 'Super Priority' Lien and Related Reforms Under the Uniform Common Interest Ownership Act," 27 *Wake Forest L. Rev.*353 (1992).

[13] *See*, *e.g.*, May 18, 2001 letter from the Hawaii Bankers Association to Gordon M. Arakaki.

preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of [~~$3,600.~~] $7,200.

Act 48 (SLH 2011) incorporated recommendations of the Mortgage Foreclosure Task Force convened pursuant to Act 162 (SLH 2010) and was a nonjudicial foreclosure reform measure intended to provide relief to distressed Hawaii homeowners. It was directed at mortgage lenders, not condominium and other common interest ownership community associations, which were addressed by the Mortgage Foreclosure Task Force in proposed legislation for the 2012 legislative session. As the Legislature explicitly noted in Conference Committee Rep. No. 133-2011 at pages 3-4:

> … Your Committee on Conference notes that the Task Force is directed by its authorizing statute to continue its work throughout the coming year and plans to make recommendations to the Legislature prior to the 2012 Regular Session for further reform of the foreclosure system, particularly in regards to the nonjudicial foreclosure process and its use by condominium associations for collection of common area maintenance fee assessments. The moratorium on nonjudicial foreclosures under part I of chapter 667, Hawaii Revised Statutes, is included in this measure in anticipation of task force recommendations that may include significant changes to the current foreclosure process.
>
> Your Committee on Conference is mindful that the ability of condominium associations to foreclose on liens for past-due assessments for common expenses is affected by this measure. Recognizing that non-payment of common expenses by any one unit in a condominium, planned community, or cooperative housing project results in an increased burden on other homeowners within the association, the Legislature has preserved the right of associations to foreclose on liens under part II of chapter 667, Hawaii Revised Statutes, and has exempted lien foreclosures by an association from dispute resolution and judicial conversion requirements. The special situation of association lien foreclosures and the interests of all association members in timely collection of assessments for common expenses merits special consideration by the Task Force in its recommendations to the Legislature.

The amendments made to HRS §514B-146(h) by Act 48 (SLH 2011) were to be repealed on September 30, 2014 and subsection (h) reenacted in the form in which it read on the day before the effective date of Act 48 (SLH 2011) (i.e., regular monthly common assessments assessed during the six months immediately preceding the completion of foreclosure and not exceeding the sum of $3,600). Act 182 (SLH 2012), however, amended HRS §514B-146(h) by reducing the relevant assessment period back to six months and eliminating the cap on the priority lien amount effective June 28, 2012.

3. Subsections (a), (b), (h), and (i) are presented above in Ramseyer format to reflect the amendments adopted by the 2012 Legislature. As noted in Section 1 of Act 182 (SLH 2012), the amendments "implement the recommendations of the mortgage foreclosure task force submitted to the legislature for the regular session of 2012, and other best practices to address mortgage foreclosures and related issues."

Section 49 of Act 182 (SLH 2012), cited in the caption to HRS §514B-146, amended Act 48 (SLH 2011) by amending its Section 45 to read as follows:

> "SECTION 45. This Act shall take effect upon its approval; provided that:
>
> (1) The mortgage foreclosure dispute resolution program established by section 1 of this Act shall be operative no later than October 1, 2011; and
>
> [~~(2) Sections 1, 13, and 14 shall be repealed on September 30, 2014, and sections 514A-90(h) and 514B-146(h), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act;~~
>
> ~~(3)~~] (2) Section 10 shall take effect on July 1, 2012[~~;~~
>
> ~~(4) Section 5 shall be repealed on December 31, 2012;~~
>
> ~~(5) Section 7 shall be repealed on September 30, 2014, and section 26-9(o), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and~~

~~(6) Upon the repeal of section 1, all moneys remaining in the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes, shall be transferred to the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes~~]."

For an overview of Act 182 (SLH 2012)'s new nonjudicial foreclosure process for condominium and planned community associations, *see*, Arakaki, Gordon M., "Act 182 (SLH 2012): Analysis of New Nonjudicial Foreclosure Law Provisions and Additional Collections Options for Condominium and Planned Community Associations," *Hawaii Bar Journal*, (October 2012), at pages 12-15.

4. Subsections (a)(2), (g), and (k) are presented above in Ramseyer format to reflect the amendments adopted by the 2013 Legislature. As found by the Legislature in Conference Committee Rep. No. 57-2013 at page 2:

> [T]he costs of default in a condominium are substantially born by condominium associations and non-defaulting unit owners and mortgagors in the affected communities. The lending industry also has an interest in preserving the value of the condominium projects that make up part of the lending industry's collateral.
>
> … [B]ecause there are legitimate but competing issues relating to common assessments, the needs of the lending industry and condominium associations and non-defaulting unit owners must be appropriately balanced when attempting to create a priority lien for common assessments. This measure achieves this balance by providing condominium associations and non-defaulting unit owners with relief while also addressing interests of the lending industry.

The findings of the Senate Committee on Commerce and Consumer Protection in Stand. Com. Rep. No. 1002-2013 are particularly enlightening. In pertinent part, they read as follows:

> Your Committee further finds that this measure, as it was originally introduced, provided associations with an absolute unlimited priority for monthly common assessments over the lien of any mortgage. Although your Committee has heard testimony stating that this measure in its original form is preferable, your Committee notes that no other state permits an unlimited super lien for common assessments. Your Committee additionally finds that imposing such an unlimited super lien for common assessments would likely have many unintended consequences on Hawaii's mortgage market, including Hawaii condominium projects being ineligible for VA and FHA loans or Fannie Mae declining to buy Hawaii mortgage loans.
>
> However, your Committee understands the concerns shared by condominium associations and non-defaulting unit owners and mortgagors. Your Committee finds that the costs of default in a condominium are substantially born by condominium associations and non-defaulting unit owners and mortgagors in the affected communities. Your Committee further finds that the lending industry has an interest in preserving the value of the condominium projects that make up part of the lending industry's collateral. Repairs, maintenance, security, and insurance provided by a condominium association and paid for through common assessments are essential to preserving that value.
>
> Your Committee additionally finds that because there are legitimate but competing issues relating to common assessments, the needs of the lending industry and condominium associations and non-defaulting unit owners must be appropriately balanced when attempting to create a priority lien for common assessments. As a preliminary note, your Committee finds that Hawaii does not currently have a true six-month priority super lien. Under true super priority liens, a lender must pay an association the amount of the super lien when the lender acquires a unit in foreclosure. In comparison, section 514B-146, Hawaii Revised Statutes, requires the person who purchases a unit from the lender to pay the association.
>
> Your Committee also finds that section 3-116 of the Uniform Common Interest Ownership Act can be used as a starting point to create a true six-month super priority lien for common assessments in Hawaii. The Uniform Common Interest Ownership Act was originally adopted by the Uniform Law Commission in 1984, with the most recent amendments adopted in 2008, and is a comprehensive act that governs the formation, management, and termination of common interest communities, including condominiums. Section 3-116 of the Uniform Common Interest Ownership Act, as appropriately modified to apply to Hawaii's condominium law, is a reasonable approach that will permit a six-month super lien for common assessments. This will provide condominium associations and non-defaulting unit owners with relief while also addressing some of the concerns

of the lending industry. Amendments to this measure that incorporate certain elements of section 3-116 of the Uniform Common Interest Ownership Act are therefore necessary.

5. Subsections (a)(1) and (g) are presented above in Ramseyer format to reflect the amendments adopted by the 2014 Legislature. The amendment to subsection (a)(1) specifies that "a condominium association's lien for unpaid assessments is subordinate to real property taxes, rather than all taxes." The amendment to subsection (g) corrected an inadvertent drafting error in Act 196 (SLH 2013). (*See*, Conference Committee Rep. No. 68-2014 at pages 1-2.)

6. The 2018 amendments to this section are presented above in a modified Ramseyer format to reflect the amendments adopted by the 2018 Legislature in Act 195 (SLH 2018). (The modification is that new statutory material is double-underscored rather than single-underscored.) If the Legislature does not make the 2018 amendments to this section permanent by amending Section 6 of Act 195 (SLH 2018), they will be repealed on June 30, 2020, and HRS §§514B-105 and 514B-146 will be reenacted in the form in which they read on June 30, 2018. [*See*, Act 195 (SLH 2018), Section 6.]

Section 1 of Act 195 (SLH 2018) explains the 2018 amendments to HRS §§514B-5(c) and 514B-146 as follows:

SECTION 1. The legislature finds that it is important to have clear and effective rules related to association foreclosures on condominiums, including which actions successfully cure a default. The legislature further finds that a condominium owner and an association agreeing to a payment plan is not sufficient to cure a default. Rather, agreeing to a payment plan and paying the delinquency in full is required for a unit owner to cure a nonjudicial foreclosure on a condominium.

The legislature further finds that existing law requires condominium owners to pay all assessments claimed by an association first, prior to initiating a dispute over assessments. The legislature additionally finds that preserving this pay first, dispute later provision as it applies to common expense assessments is important. However, encouraging the use of mediation for all other penalties or fines, late fees, lien filing fees, or other charges in an assessment will be beneficial to condominium owners and associations.

Accordingly, the purpose of this Act is to:

(1) Clarify that an association does not have to rescind the notice of default and intention to foreclose or restart the foreclosure by filing a new notice of default and intent to foreclose if a unit owner defaults on a payment plan to cure a nonjudicial foreclosure agreed to by the parties;

(2) Specify that if a unit owner and an association have agreed on a payment plan to prevent a nonjudicial foreclosure from proceeding, any association fines imposed while the payment plan is in effect shall not be deemed a default under the payment plan;

(3) Clarify the obligations of a unit owner and an association while a unit owner is not otherwise in default under a payment plan;

(4) Clarify that the pay first, dispute later provisions in Hawaii's condominium law apply only to common expense assessments claimed by an association;

(5) Specify that a unit owner who disputes the amount of an assessment may request a written statement about the assessment from the association, including that a unit owner may demand mediation prior to paying contested charges, other than common expense assessments; and

(6) Specify requirements for mediation on contested charges, except for common expense assessments.

[§514B-147] Association fiscal matters; other liens affecting the condominium. (a) Except as provided in subsection (b), a judgment for money against the association, if recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against the common expense funds of the association. No other property of a unit owner is subject to the claims of creditors of the association.

(b) Whether perfected before or after the creation of the condominium, if a lien, other than a mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium), becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and

the lienholder, upon receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(c) A judgment against the association shall be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-117, modified, is the source of this section.

[§514B-148] Association fiscal matters; budgets and reserves. (a) The budget required under section 514B-144(a) shall include at least the following:

(1) The estimated revenues and operating expenses of the association;

(2) Information as to whether the budget has been prepared on a cash or accrual basis;

(3) The total replacement reserves of the association as of the date of the budget;

(4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;

(5) A general explanation of how the estimated replacement reserves are computed;

(6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and

(7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

(b) The association shall assess the unit owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan; provided that a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the association's plan.

(c) The association shall compute the estimated replacement reserves by a formula that is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the property. The estimated replacement reserves shall include:

(1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and

(2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed $10,000. Parts of the property for which capital expenditures or major maintenance will not exceed $10,000 may be aggregated in a single designated reserve.

(d) No association or unit owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated replacement reserves for an association shall be liable if the estimate subsequently proves incorrect.

(e) Except in emergency situations or with the approval of a majority of the unit owners, a board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates. Before imposing or collecting an assessment under this subsection that has not been approved by a majority of the unit owners, the board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or

could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(f) The requirements of this section shall override any requirements in an association's declaration, bylaws, or any other association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, and expenditures from reserves with the exception of:

(1) Any requirements in an association's declaration, bylaws, or any other association documents which require the association to collect more than fifty per cent of reserve requirements; or

(2) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(g) Subject to the procedures of section 514B-157 and any rules adopted by the commission, any unit owner whose association board fails to comply with this section may enforce compliance by the board. In any proceeding to enforce compliance, a board that has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with this section.

(h) As used in this section:

"Capital expenditure" means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

"Emergency situation" means any extraordinary expenses:

(1) Required by an order of a court;

(2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;

(3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;

(4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or

(5) Necessary for the association to obtain adequate insurance for the property which the association must insure.

"Major maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-83.6, modified slightly, is the source of this section.

2. Some property managers strongly recommended that only accrual basis accounting be allowed. They believe that a cash system does not reflect the true financial position of an association. They believe that receivables and payables must be

recorded and that, essentially, is part of an accrual accounting system.[14] Others cautioned that there must be a clear distinction between "budget" and "reporting". Accrual budgets provide that all income and charges be recorded in the period in which they occur, while cash budgets may not account for everything and that would be a problem. Monthly financial reports are a different matter. Proponents of cash basis month financial reports state that it takes much more work to prepare an accrual basis financial report. They say that, if accrual reporting is required, the cost of accounting will increase and it will take longer to get reports out (i.e., instead of getting financial reports in three weeks, it could take twice as long to get a true accrual report). Late reports are of less value in managing a property. Finally, most small condominiums do not need to know about things like depreciation on a monthly basis. Ultimately, proponents of cash basis financial reports worry that accounting purists want GAAP,[15] no matter what the practical concerns or cost. Paragraph (a)(2) incorporates, without change, the language of HRS §514A-83.6(a)(2) regarding the use of cash or accrual basis.

3. There may be potential to use community facilities district bond financing in some situations. (*See*, HRS §46-80.1.) The philosophical basis for bond financing of public facilities is that those who use such facilities should pay for them. When government builds a public facility, money is borrowed through the sale of bonds secured by the full faith and credit of the governmental body. The bond is repaid with tax dollars over a period of time that roughly corresponds to the life of the public facility. The bottom line is that taxpayers are paying for the public facility during the time they are using the facility.

Arakaki's Comment

1. In 2006, the Real Estate Commission requested that a Session Laws proviso regarding "Requirements for Replacement Reserves" be added. Therefore, the following provision was adopted by the 2006 Legislature as part of the Session Laws:

> "Chapter 16-107, subchapter 6, Hawaii Administrative Rules, shall remain in effect until the real estate commission adopts rules pursuant to section 514B-61 to implement section 514B-148."

[~~[~~]**§514B-149**[~~]~~] **Association fiscal matters; handling and disbursement of funds.** (a) The funds in the general operating account of the association shall not be commingled with funds of other activities such as lease rent collections, rental, time share, and assisted living facility operations, nor shall a managing agent commingle any association funds with the managing agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual unit owners of a project and the payment of such ground lease rents to the ground lessor if:

(1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual unit leases of the project;

(2) A management contract requires the managing agent to collect ground lease rents from the individual unit owners and pay the ground lease rents to the ground lessor;

(3) The system of lease rent collection has been approved at a meeting of the association by a [~~majority~~] vote of [~~all~~] a majority of the unit owners [~~at a meeting of the association~~]; and

(4) The managing agent or association does not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual unit owners.

(c) (1) All funds collected by an association, or by a managing agent for any association, shall be:

[14] *See also*, CAI Best Practices publication: http://www.cairf.org/research/bpfinancial.pdf). For another fairly good explanation of cash basis accounting, accrual basis accounting, and tax basis accounting, see: http://www.commercialcarrieruniversity.com/book1/bk1_ch6.htm.

[15] Generally accepted accounting principles (GAAP) are those principles established by the Financial Accounting Standards Board (FASB), the AICPA, and other published literature. These principles set forth how specific transactions should be reported; i.e., investments should be reported at fair value, while property and equipment should be reported at depreciated cost. In contrast to other forms of accounting, such as the cash basis, GAAP financial statements are prepared on the accrual basis. Certain standards and disclosures are additionally required.

[~~(1)~~] (A) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;

[~~(2)~~] (B) Held by a corporation authorized to do business under article 8 of chapter 412;

[~~(3)~~] (C) Held by the United States Treasury; [~~or~~]

[~~(4)~~] (D) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation[~~.~~]; or

(E) Placed through a federally insured financial institution located in the State for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States.

(2) All funds collected by an association, or by a managing agent for any association, shall be invested only in:

[~~(1)~~] (A) Deposits, investment certificates, savings accounts, and certificates of deposit;

[~~(2)~~] (B) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; [~~or~~]

[~~(3)~~] (C) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or

(D) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board.

(d) A managing agent or board shall not, by oral instructions over the telephone, transfer association funds between accounts, including but not limited to the general operating account and reserve fund account.

(e) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.

(f) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association shall be guilty of a class C felony. [L 2004, c 164, pt of §2; am L 2005, c 93, §§5, 7; am L 2006, c 38, §25; am L 2008, c 76, §2; am L 2014, c 189, §7]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-97, modified, is the source of this section.

2. Some stakeholders mistakenly characterized proposed changes to HRS §514A-97(c) [subsection (c) above; §___: 5-37(c) in the Commission's final draft of the recodification] contained in earlier drafts of the recodification as allowing "speculation with association funds." In all earlier versions of the recodification, the only change was removing the "in-State" deposit requirement and adding additional, stricter, requirements regarding the types of financial institutions into which association funds may be deposited. No "speculation with association funds" was ever allowed by changes made in §___: 5-37(c). The additional, stricter, requirements regarding the types of financial institutions into which association funds may be deposited was deleted, however, in the Commission's final draft of the recodification because of the confusion caused by the mischaracterizations. The Commission also added a requirement that the board adopt a resolution if association funds are to be deposited in an out-of-state financial institution.

3. It has also been suggested that State law explicitly allow a prudent percentage of association funds to be invested in higher yielding instruments. Some stakeholders, however, strongly object to allowing association funds to be deposited or invested in anything other than banks, credit unions, and Treasury bills.

4. Subsection (e) [formerly HRS §514A-97(d)] was amended to clarify that only unverifiable orally instructed transfers over the telephone are prohibited. Facsimile and e-mail transfers, as well as properly set up automatic bill payments through electronic transfers are obviously permitted. The key is to have a verifiable "paper trail."

Arakaki's Comment

1. Except for HRS §§514B-149(c)(1)(E) and 514B-149(c)(2)(D), discussed in more detail in paragraph 4 below, this section is essentially identical to HRS §514A-97. [Act 93 (SLH 2005) amended subsection (a) to add "time share" and "assisted living facility" operations to the examples of funds of "other activities" that should not be commingled with association funds.]

As introduced, the recodification allowed condominium associations to deposit their funds in federally-insured, out-of-state financial institutions. As adopted in Act 164 (SLH 2004), however, because of heavy lobbying of the House Committee on Consumer Protection and Commerce by the Hawaii Bankers Association and a few other stakeholders, the Legislature deleted the provision allowing associations to deposit funds in federally-insured, out-of-state financial institutions, and also eliminated the ability of associations to invest their funds through securities brokers who are registered with the Securities and Exchange Commission, have an office in the State, and whose accounts are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation.

In Act 93 (SLH 2005), the Legislature restored the statutory authorization of associations to invest their funds through securities brokers who are registered with the Securities and Exchange Commission, have an office in the State, and whose accounts are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation. Funds invested through such securities brokers actually have layers of protection over and above what is provided for funds deposited in banks.

2. As noted in Ledger Quarterly – Financial News for Condominium & Homeowner Associations & Cooperatives, Community Associations Institute (Winter 2003, Vol. 14, No. 3), there are three basic elements when associations are considering an investment: (i) Safety; (ii) Liquidity; and (iii) Return on investment. Safety of the association's fund principal is normally the overriding consideration, followed by liquidity and return on investment.

Association cash and investments are usually composed of funds being maintained for different purposes, including operations, capital replacement reserves, and other special purposes. Operations funds should be very liquid, while capital replacement reserves may be invested in longer term instruments or with staggered maturities if the association has projected its future needs (i.e., conducted a proper reserves study). Once the safety and liquidity of funds issues have been determined, return on investment may be considered.

3. The renumbering amendments to subsection (c) reflected above in Ramseyer format are housekeeping amendments adopted by the 2006 Legislature.

4. HRS §§514B-149(c)(1)(E) and 514B-149(c)(2)(D) are presented above in Ramseyer format to reflect amendments adopted by the 2008 Legislature. Subparagraphs (1)(E) and (2)(D) were added to allow condominium associations to invest funds in certificates of deposit through the Certificate of Deposit Account Registry Service network.

5. Subsection (b)(3) is presented above in Ramseyer format to reflect technical amendments adopted by the 2014 Legislature.

[§514B-150] Association fiscal matters; audits, audited financial statement. (a) The association shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty units, the annual audit and the annual unannounced cash balance verification may be waived at an association meeting by a [~~majority~~] vote of [~~all~~] a majority of the unit owners [~~taken at an association meeting~~].

(b) The board shall make available a copy of the annual audit to each unit owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall not be required to submit a copy of the annual audit report to an owner if the proxy form issued pursuant to section [~~514B-123(d)~~] 514B-123(e) is not marked to indicate that the owner wishes to obtain a copy of the report. If the annual audit has not been completed by that date, the board shall make available:

(1) An unaudited year end financial statement for the fiscal year to each unit owner at least thirty days prior to the annual meeting; and

(2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, but not later than six months after the annual meeting.

(c) If the association's fiscal year ends less than two months prior to the convening of the annual meeting, the year-to-date unaudited financial statement may cover the period from the beginning of the association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2014, c 189, §8; am L 2017, c 73, §3]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-96, clarified, is the source of this section.

Arakaki's Comment

1. Subsection (a) is presented above in Ramseyer format to reflect technical amendments adopted by the 2014 Legislature.

2. Subsection (b) is presented above in Ramseyer format to reflect a conforming amendment adopted by the 2017 Legislature.

[~~§~~]**§514B-151**[~~§~~] **Association fiscal matters; lease rent renegotiation.** (a) Notwithstanding any provision in the declaration or bylaws, any lease or sublease of the real estate or of a unit, or of an undivided interest in the real estate to a unit owner, whenever any lease or sublease of the real estate, a unit, or an undivided interest in the real estate to a unit owner provides for the periodic renegotiation of lease rent thereunder, the association shall represent the unit owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent; provided that the association's representation in the renegotiation of lease rent shall be on behalf of at least two lessees. All costs and expenses incurred in such representation shall be a common expense of the association.

(b) Notwithstanding subsection (a), if some, but not all of the unit owners have already purchased the leased fee interest appurtenant to their units [~~at the time of renegotiation,~~] as of the earlier of any date specified in the lease or sublease for the commencement of lease rent renegotiation or nine months prior to the commencement of the term for which lease rent is to be renegotiated, all costs and expenses of the renegotiation shall be assessed to the remaining lessees whose lease rent is to be renegotiated in the same proportion that the common interest appurtenant to each lessee's unit bears to the common interest appurtenant to all remaining lessees' units[~~.~~] whose lease rent is to be renegotiated. The unpaid amount of this assessment shall constitute a lien upon the lessee's unit, which may be collected in accordance with section 514B-146 in the same manner as an unpaid common expense.

(c) In any project where the association is a lessor or sublessor, the association shall fulfill its obligations under this section by appointing independent counsel to represent the lessees in the negotiations and proceedings related to the rent renegotiation. The lessees' counsel shall act on behalf of the lessees in accordance with the vote or written consent of a majority of the lessees casting ballots or submitting written consents as determined by the ratio that the common interest appurtenant to each lessee's unit bears to

the total common interest appurtenant to the units of participating lessees. Nothing in this subsection shall be interpreted to preclude the lessees from making a decision (by the vote or written consent of a majority of the lessees as described above) to retain other counsel or additional professional advisors as may be reasonably necessary or appropriate to complete the negotiations and proceedings. In the event of a deadlock among the lessees or other inability to proceed with the rent renegotiation on behalf of the lessees, the lessees' counsel may apply to the circuit court of the judicial circuit in which the condominium is located for instructions. The association shall not instruct or direct the lessees' counsel or other professional advisors. All costs and expenses incurred under this subsection shall be assessed by the association to the lessees as provided in subsection (a) or (b), as may be applicable.

(d) As used in this section, "lessees" or "remaining lessees" means all unit owners who have not purchased the leased fee interest appurtenant to their units as of the earlier of any date specified in the lease or sublease for the commencement of lease rent negotiation or nine months prior to the commencement of the term for which lease rent is to be renegotiated. The board's allocation of expenses under this section shall be final and binding in the absence of a determination that the board abused its discretion. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §28]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-90.6, modified, is the source of subsections (a) and (b). Subsection (c) is new.

Arakaki's Comment

1. Subsections (b) and (d) are presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature.

Philip L. Lahne, Esq., notes that, as adopted in Act 164 (SLH 2004), this section greatly clarified and improved upon the lease rent renegotiation provision of Chapter 514A, but further refinement is needed in order to avoid disputes as to who constitutes a "lessee" for purposes of assessing the costs of lease rent renegotiation. The 2006 amendments provide such refinement and clarification by establishing a date certain for determination of the "remaining lessee" class and requiring those who are identified as class members at that time to remain liable for their share of the costs even if they subsequently acquire their leased fee interests.

[§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-154.5 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. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2014, c 188, §8]

Real Estate Commission's Comment (2003 Final Report)

1. UCA/UCIOA §3-118, modified, is the source of this section.

2. Access to association documents and records is a key to self-governance by the condominium community. This section incorporates the suggestion of a member of the Condominium Council of Maui that association records be stored on the island on which the association's project is located. Since some original records, such as invoices (which are typically required for payments to be made), might have to be sent off-island, maintaining copies of such records on-island is sufficient.

Arakaki's Comment

1. This section is presented above in Ramseyer format to reflect amendments adopted by the 2014 Legislature.

[~~:~~]**§514B-153**[~~:~~] **Association records; records to be maintained.** (a) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office.

(b) The managing agent or board shall keep 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. The managing agent or board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(c) Subject to section 514B-152, all records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board.

(d) The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract.

(e) The managing agent [~~or~~], resident manager, or board shall keep an accurate and current list of members of the association and their current addresses, and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board, and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the managing agent or resident manager or the board a duly executed and acknowledged affidavit stating that the list:

(1) Will be used by [~~such~~] the owner personally and only for the purpose of soliciting votes or proxies[~~,~~] or [~~for~~] providing information to other owners with respect to association matters; and

(2) Shall not be used by the owner or furnished to anyone else for any other purpose.

A board may prohibit commercial solicitations.

Where the condominium project or any units within the project are subject to a time share plan under chapter 514E, the association shall only be required to maintain in its records the name and address of the time share association as the representative agent for the individual time share owners unless the association receives a request by a time share owner to maintain in its records the name and address of the time share owner.

(f) The managing agent or resident manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the board.

(g) All membership lists are the property of the association and any membership lists contained in the managing agent's or resident manager's records are subject to subsections (e) and (f), and this subsection. A managing agent, resident manager, or board may not use the information contained in the lists to create any separate list for the purpose of evading this section.

(h) Subsections (f) and (g) shall not apply to any time share plan regulated under chapter 514E. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2007, c 243, §2; am L 2011, c 98, §1]

Real Estate Commission's Comment (2003 Final Report)

1. Subsections (a), (d), and (e) are, in pertinent part, identical to HRS §§514A-84.5, 514A-84(c), and 514A-83.3, respectively. Subsection (b) is identical to HRS §514A-85(a). 514A-85(b), modified, is the source of subsection (c).

Arakaki's Comment

1. Subsection (e) is presented above in Ramseyer format to reflect the amendment adopted by the 2011 Legislature. The Legislature explained its understanding and intent as follows:

> The intent of listing a condominium association as a representative agent rather than the names and addresses of individual fractional owners in time share properties codifies the current practice by most condominium associations. Further, allowing the listing of a time share association in place of the individual fractional owners is sufficient to ensure that individual time share owners receive important communications from the condominium association, since time share associations regularly pass on communications received from the condominium association to time share owners.

(Conference Committee Rep. No. 3-2011, at pages 1-2.) Technical non-substantive amendments were also adopted by the 2007 and 2011 Legislatures and are also reflected above in Ramseyer format.

2. Subsections (f), (g), and (h) are presented above in Ramseyer format to reflect amendments adopted by the 2007 Legislature. Subsections (f), (g), and (h) were added to limit the use of condominium association membership lists by the managing agent, resident manager, and board to specific, enumerated purposes only. The Legislature specifically found that "condominium managing agents [had] used condominium association membership lists without the consent or approval of the association's board for purposes not intended and not specified in the laws of Hawaii and the association's declarations and bylaws."

[~~[~~]§514B-154[~~]~~] **Association records; availability; disposal; prohibitions.** (a) The association's most current financial statement shall be provided to any interested unit owner at no cost or on twenty-four-hour loan, at a convenient location designated by the board. The meeting minutes of the board of directors, once approved, for the current and prior year shall either:

(1) Be available for examination by apartment owners at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board of directors; or

(2) Be transmitted to any apartment owner making a request for the minutes, by the board of directors, the managing agent, or the association's representative, within fifteen days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request.

Costs incurred by apartment owners pursuant to this subsection shall be subject to section 514B-105(d).

(b) 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 delinquencies of ninety days or more shall be available for examination by unit owners at convenient hours at a place designated by the board; provided that:

(1) The board may require owners 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 [~~or~~], its members or both; and

(2) Owners shall pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request; provided that the owner pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(c) After any association meeting, and not earlier, unit owners shall be permitted to examine proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election; provided that:

(1) Owners shall make a request to examine the documents within thirty days after the association meeting;

(2) The board may require owners 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 interest of the association or its members or both; and

(3) Owners shall pay for administrative costs in excess of eight hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty days after the association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty days, after which they may be destroyed. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request[~~,~~]; provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(d) The managing agent shall provide copies of association records maintained pursuant to this section and sections 514B-152 and 514B-153 to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the

managing agent of a reasonable charge to defray any administrative or duplicating costs. If the project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the association, to whom this function is delegated.

(e) Prior to the organization of the association, any unit owner shall be entitled to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.

(f) Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.

(g) An association may comply with this part by making information available to unit owners, at the option of each unit owner[~~,~~] and at no cost[~~,~~] to the unit owner for downloading the information, through an [~~Internet~~] internet site.

(h) A managing agent retained by one or more associations may dispose of the records of any association which are more than five years old, except for tax records, which shall be kept for seven years, without liability if the managing agent first provides the board of the association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board within sixty days, which notice shall include an itemized list of the records proposed to be disposed.

(i) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or association.

(j) Any fee charged to a member to obtain copies of association records under this section 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 the fee for pages exceeding eight and one-half inches by fourteen inches may exceed $1 per page. [L 2004, c 164, pt of §2, am L 2005, c 89, §2, c 90, §2 and c 93, §7; am L 2006, c 273, §29; am L 2007, c 241, §2]

Real Estate Commission's Comment (2003 Final Report)[16]

1. Subsections (a) and (b) of HRS §514A-83.5, modified, are the source of subsection (a). The 2004 Legislature modified the provision to require that the association's most current financial statement and board minutes be *provided*, not just be *available*.

2. HRS §514A-83.5(c), modified, is the source of subsection (b). The 2004 Legislature modified the provision to require that "*a copy*" – not "*copies*" – of meeting minutes be provided to any owner for a reasonable fee. The 2004 Legislature also deleted "stationery" and "other administrative costs associated with handling the request" from the list of reasonable fees. Note that, pursuant to subsection (g), the information can be provided through an Internet site, at the option of the unit owner.

3. HRS §514A-83.5(d), modified, is the source of subsection (c). HRS §514A-83.5(d) was modified to make it clear that no one (except the secretary and managing agent pursuant to §514B-125(d)) is permitted to view proxies and tally sheets before the meeting at which they are to be used.

4. A portion of HRS §514A-84.5, modified, is the source of subsection (d).

5. Subsection (e) is, in essence, identical to the last sentence of HRS §514A-84(c).

6. Subsection (f) is identical to HRS §514A-83.5(e).

7. Subsection (g) is new. Subsection (g) permits association documents and records to be made available on-line, at the option of the unit owner. (All Hawaii public libraries have computers with Internet access.) This should help end most "access to association documents and records" disputes and should be encouraged. The 2004 Legislature modified the provision to allow for compliance with *Part VI (Management of Condominiums)* – not just this *section* – through provision of information on-line, and to clarify that "no cost" means "no cost for downloading the information" and does not relate to costs associated with setting up and maintaining the website.

[16] Source citations and HRS §514B-154 subsection references have been edited in the Real Estate Commission's Comment to reflect renumbering caused by Act 90 (SLH 2005), which merged and modified the 2004 version of subsection (b) into subsection (a) and renumbered accordingly.

8. HRS §514A-85(c), modified to require that tax records be kept for seven years, is the source of subsection (h).

9. Subsection (i) is identical to HRS §514A-85(d).

Arakaki's Comment

1. Subsection (g) is presented above in Ramseyer format to reflect amendments adopted by the 2006 Legislature. The amendments clarify the intent of the subsection.

2. Subsection (j) is presented above in Ramseyer format to reflect amendments adopted by the 2007 Legislature. Subsection (j) was added to "establish that only reasonable costs can be charged if a member wants to obtain association records." The Legislature specifically found that "the high costs to obtain copies of condominium association records pursuant to section 514B-154, Hawaii Revised Statutes, can be excessive and can prevent some members from obtaining the information."

[§514B-154.5] 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 elsewhere 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[~~.~~]; and

(15) A copy of any contract, written job description, and compensation between the association and any person or entity retained by the association to manage the operation of the property on-site, including but not limited to the general manager, operations manager, resident manager, or site manager; provided that personal information may be redacted from the contract copy, including but not limited to the manager's date of birth, age, signature, social security number, residence address, telephone number, non-business electronic mail address, driver's license number, Hawaii identification card number, bank account number, credit or debit card number, access code or password that would permit access to the manager's financial accounts, or any other information that may be withheld under state or federal law.

(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 all condominiums organized under this chapter [~~514A or 514B.~~] or any predecessor thereto.

(h) Nothing in this section shall be construed to create any new requirements for the release of documents, records, or information. [L 2014, c 188, §2; am L 2017, c 71, §1 and c 181, §30]

Arakaki's Comment

1. This section was added by the 2014 Legislature to consolidate, in one new section, existing statutory requirements relating to the maintenance and disclosure of records, documents, and information to which a unit owner is entitled, all of which helps unit owners participate in the condominium self-governance process. As found by the Legislature in Section 1 of Act 188 (SLH 2014):

> … [U]nder 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, … references to releasing these required documents, records, and information appear throughout chapter 514B, Hawaii Revised Statutes, which may lead to confusion among unit owners. … [N]othing in this Act creates new requirements for the release of documents, records, or information.

2. Subsection (a) is presented above in Ramseyer format to reflect amendments adopted by the 2017 Legislature.

3. Effective January 1, 2019, HRS Chapter 514A was repealed and conforming amendments to HRS §514B-154.5(g) went into effect. [L 2017, c 181, §30]

[§514B-155] Association as trustee. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person shall not be bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, shall be fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person shall not be bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. This section is identical to UCA/UCIOA §3-119, and, as noted in the official comments to UCA (1980), is based on Section 7 of the Uniform Trustees' Powers Act. The section is intended to protect an innocent third party in its dealings with the association only when the association is acting as a trustee for the unit owners, either under provisions regarding insurance proceeds, or following termination of the condominium.

[§514B-156] Pets. (a) Any unit owner who keeps a pet in the owner's unit pursuant to a provision in the bylaws which allows owners to keep pets or in the absence of any provision in the bylaws to the contrary, upon the death of the animal, may replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's unit or another unit subject to the same bylaws.

(b) Any unit owner who is keeping a pet pursuant to subsection (a), as of the effective date of an amendment to the bylaws which prohibits owners from keeping pets in their units, shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a).

(c) The bylaws may include reasonable restrictions or prohibitions against excessive noise or other problems caused by pets on the property and the running of pets at large in the common areas of the property. No animals described as pests under section 150A-2, or animals prohibited from importation under section 141-2, 150A-5, or 150A-6 shall be permitted.

(d) Whenever the bylaws do not prohibit unit owners from keeping animals as pets in their units, the bylaws shall not prohibit the tenants of the unit owners from keeping pets in the units rented or leased from the owners; provided that:

(1) A unit owner consents in writing to allow the unit owner's tenant to keep a pet in the unit;

(2) A tenant keeps only those types of pets that may be kept by unit owners.

The bylaws may allow each owner or tenant to keep only one pet in the unit.

(e) Any amendments to the bylaws that provide for exceptions to pet restrictions or prohibitions for preexisting circumstances shall apply equally to unit owners and tenants.

(f) Nothing in this section shall prevent an association from immediately acting to remove vicious animals to protect persons or property. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. Subsections (a) through (e) are identical to the provisions of HRS §§514A-82.5 and 514A-82.6. Subsection (f) is new.

2. HRS Chapter 515 (Discrimination in Real Property Transactions), which allows a resident to keep a guide, signal, or service dog in a "no pets" apartment as long as the resident provides, to the apartment management or board of directors of the owners association, medical evidence or a physician's certification that:

- The resident has a physical or mental impairment that substantially limits one or more of the resident's major life activities;
- Has a record of having such impairment; or
- Is regarded as having such impairment and that allowing the resident to have a pet would be a reasonable and necessary accommodation for the resident's equal opportunity to use and enjoy the apartment.

The federal Fair Housing Act has similar provisions. Finally, in 2000, the State House passed HR 98, HD 1, "Urging Landlords, Associations of Apartment Owners, and Tenants With and Without Pets, to Respect Each Others' Rights and to Work Together to Provide for the Needs of All Owners and Tenants."

[§514B-157] Attorneys' fees, delinquent assessments, and expenses of enforcement. (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

(1) Collecting any delinquent assessments against any owner's unit;

(2) Foreclosing any lien thereon; or

(3) Enforcing any provision of the declaration, bylaws, house rules, and this chapter, or the rules of the real estate commission;

against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association takes

any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to such person or persons by the association.

(b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

(1) The owner first shall have demanded and allowed reasonable time for the board to pursue such enforcement; or

(2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the board would have been fruitless.

If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless before filing the action in court the owner has first submitted the claim to mediation, or to arbitration under subpart D, and made a good faith effort to resolve the dispute under any of those procedures. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-94, modified, is the source of this section.

2. Some members may feel that because they are members of the association, and because the attorney represents the association, the attorney represents them too. The association attorney is, however, actually general corporate counsel whose client is the corporation/association, not the board of directors or any of the association's membership.

3. A stakeholder was concerned about deleting the reference to Small Claims Court in subsection (c). Note, however, that Small Claims Court does not award attorneys' fees. Furthermore, Small Claims Court does not have jurisdiction over equity claims; it only awards money damages (e.g., it does not order injunctions).

4. HRS §514A-94(c) has been deleted since the federal Fair Debt Collection Practices Act and HRS §§443B (Collection Agencies) and 480D (Collection Practices) regulate this area.

Arakaki's Comment

1. It is important to remember that court rules *require* parties to attempt to settle cases through the exchange of written bona fide and reasonable settlement offers before a settlement conference with the court. [*See*, Cir. Ct. R. 12.1(a)(4).]

D. ALTERNATIVE DISPUTE RESOLUTION

Arakaki's Comment

1. As noted by the Real Estate Commission in its official 2003 comment following HRS §514B-163, "[f]inding an alternative dispute resolution mechanism that works for condominium communities is an important and potentially enormous task that the Commission was unable to resolve." The Legislature at that time did not, however, see fit to implement the Commission's recommendations for doing the necessary research, laying the proper foundation, and devising an appropriate alternative dispute resolution mechanism for condominium communities. [*See*, Real Estate Commission's Comment (2003 Final Report) following HRS §514B-163, at comment #3.]

[~~†~~]**§514B-161**[~~†~~] **Mediation.** *[Section effective until January 1, 2019. For section effective January 2, 2019, see below.]* (a) [~~At the request of any party to a dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules, the parties to the dispute shall be required to participate in mediation.~~] If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a

specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

(1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;

(2) Actions to collect assessments;

(3) Personal injury claims; or

(4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of $2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2007, c 244, §7; am L 2008, c 205, §§2, 5; am L 2009, c 9, §2; am L 2012, c 34, §14]

§514B-161 Mediation. *[Section effective January 2, 2019. For section effective until January 1, 2019, see above. Repeal and reenactment on June 30, 2023. L 2018, c 196, §9.]* [~~(a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.~~

~~(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:~~

~~(1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;~~

~~(2) Actions to collect assessments;~~

~~(3) Personal injury claims; or~~

~~(4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of $2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.~~

~~(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties.~~]

(a) The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall be mandatory upon written request to the other party when:

(1) The dispute involves the interpretation or enforcement of the association's declaration, bylaws, or house rules;

(2) The dispute falls outside the scope of subsection (b);

(3) The parties have not already mediated the same or a substantially similar dispute; and

(4) An action or an arbitration concerning the dispute has not been commenced.

(b) The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall not be mandatory when the dispute involves:

(1) Threatened property damage or the health or safety of unit owners or any other person;

(2) Assessments;

(3) Personal injury claims; or

(4) Matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of an association.

(c) If evaluative mediation is requested in writing by one of the parties pursuant to subsection (a), the other party cannot choose to do facilitative mediation instead, and any attempt to do so shall be treated as a rejection to mediate.

(d) A unit owner or an association may apply to the circuit court in the judicial circuit where the condominium is located for an order compelling mediation only when:

(1) Mediation of the dispute is mandatory pursuant to subsection (a);

(2) A written request for mediation has been delivered to and received by the other party; and

(3) The parties have not agreed to a mediator and a mediation date within forty-five days after a party receives a written request for mediation.

(e) Any application made to the circuit court pursuant to subsection (d) shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed $1,500.

(f) Each party to a mediation shall bear the attorneys' fees, costs, and other expenses of preparing for and participating in mediation incurred by the party, unless otherwise specified in:

(1) A written agreement providing otherwise that is signed by the parties;

(2) An order of a court in connection with the final disposition of a claim that was submitted to mediation;

(3) An award of an arbitrator in connection with the final disposition of a claim that was submitted to mediation; or

(4) An order of the circuit court in connection with compelled mediation in accordance with subsection (e).

(g) Any individual mediation supported with funds from the condominium education trust fund pursuant to section 514B-71:

(1) Shall include a fee of $375 to be paid by each party to the mediator;

(2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than $3,000 total;

(3) May include issues and parties in addition to those identified in subsection (a); provided that a unit owner or a developer and board are parties to the mediation at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties; and

(4) May include an evaluation by the mediator of any claims presented during the mediation.

(h) A court or an arbitrator with jurisdiction may consider a timely request to stay any action or proceeding concerning a dispute that would be subject to mediation pursuant to subsection (a) in the absence of the action or proceeding, and refer the matter to mediation; provided that:

(1) The court or arbitrator determines that the request is made in good faith and a stay would not be prejudicial to any party; and

(2) No stay shall exceed a period of ninety days. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2007, c 244, §7; am L 2008, c 205, §§2, 5; am L 2009, c 9, §2; am L 2012, c 34, §14; am L 2018, c 196, §5]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-121.5, modified, is the source of subsection (a). HRS §421J-13 (Planned Community Associations, Mediation of disputes) is the source of subsections (b) and (c). These provisions have been modified to allow any party to request mediation under this section.

2. It should be noted that, pursuant to HRS §514A-131(a)(3) (Condominium Education Trust Fund), the Commission has established a special condominium mediation program with the Mediation Center of the Pacific for the mediation of condominium disputes. Parties must pay a nominal fee to use the program.

Arakaki's Comment

1. This section has been amended many times by the Legislature. Subsection (a), "*effective until January 1, 2019*," is presented above in Ramseyer format to reflect the amendment adopted by the 2007 Legislature in Act 244 (SLH 2007). The entire section, "*effective January 2, 2019*," is presented immediately above in Ramseyer format to reflect amendments adopted by the 2018 Legislature in Act 196 (SLH 2018).

2. The amendments made to the mediation and "administrative hearing dispute resolution" (popularly referred to as "condo court") procedures by Act 277 (SLH 2006) were at one time incorporated, though not verbatim, in subsections (e) through (m) of Act 205 (2008).

3. Act 277 (SLH 2006) was amended by Act 242 (SLH 2007) to read as follows:

"SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:"

SECTION 3. Cases that were pending before the office of administrative hearings of the department of commerce and consumer affairs as part of the condominium dispute resolution pilot project established by section 28 of Act 164, Session Laws of Hawaii 2004, on June 30, 2006, that may have been dismissed due to the repeal of section 28 of Act 164, Session Laws of Hawaii 2004, shall be reinstated, and regardless of whether they are based on events and circumstances occurring before July 1, 2006, may be resolved under Act 277, Session Laws of Hawaii 2006.

4. The full text of Act 277 (SLH 2006), as amended by Act 242 (SLH 2007), does not appear in the codified HRS. The amendments were, however, cited in a Revisor of Statutes Note to HRS §514B-161, which read: "Disputes not resolved by mediation—pending cases; hearing process; reports to legislature (repealed June 30, 2009). L 2006, c 277; L 2007, c 242. See also L 2007, c 244, §12." As of 2018, this Revisor's Note is no longer part of the codified HRS.

5. Act 205 (SLH 2008) was allowed to sunset on June 30, 2011. It was initially supposed to sunset on June 30, 2009. Act 9 (SLH 2009), however, amended Act 205 (SLH 2008) to extend the condominium dispute resolution pilot project until June 30, 2011 and allow for the development of alternatives (e.g., evaluative mediation). Because Act 205 (SLH 2008) was allowed to sunset, the language of HRS §514B-161 reverted to the form it was in before the enactment of Act 205 (SLH 2008). Therefore, the technical corrections to subsection (a) and the condominium dispute resolution ("condo court") pilot project provisions that were added to HRS §514B-161 in subsections (e) through (m) were repealed effective June 30, 2011. The reenacted statutory language was ratified by Act 34 (SLH 2012) (the annual housekeeping bill "relating to statutory revision: amending various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the purpose of correcting errors and references and clarifying language.").

Regarding the ratified language in subsection (a), please note that the term "unit" should have been used instead of "apartment" to be consistent with the terminology of HRS Chapter 514B.

For *reference purposes only*, the language of HRS §514B-161 as it was before expiring on June 30, 2011 is reproduced *below* these comments. The section title and subsection (a) are presented *below* in Ramseyer format to reflect amendments adopted by the 2007 and 2008 Legislatures in Act 244 (SLH 2007) and Act 205 (SLH 2008).

6. Pursuant to Act 187 (SLH 2013), HRS §§514B-71 and -72 were amended to provide that the Condominium Education Trust Fund shall be used, in part, to support mediation of condominium disputes under HRS §514B-161 utilizing professionally trained mediators. Section 4 of Act 187 (SLH 2013) explains as follows:

> SECTION 4. Between the effective date of this Act and July 1, 2015, the real estate commission, pursuant to section 514B-71(a)(4), Hawaii Revised Statutes, shall continue to budget an amount and expend moneys from the condominium education trust fund specifically to support mediation of condominium related disputes utilizing professionally trained mediators for those parties and disputes specified in section 514B-161, Hawaii Revised Statutes. If a fiscal year budgeted amount for mediation is fully expended and the commission receives additional requests for condominium education trust fund subsidies for the mediation of condominium related disputes, the commission may expend the budgeted amount allocated to other educational purposes for mediation of condominium related disputes. The commission and professional vocational licensing division of the department of commerce and consumer affairs shall make adjustments, as needed, to their budgets to meet the requirements of this section.
>
> As used in this section, "professionally trained mediators" includes retired judges and individuals who have professional mediation training which shall include appropriate knowledge of mediation procedures, ethics, standards, and responsibilities.

For a discussion of mediation under Act 187 (SLH 2013), *see*, Nerney, Philip S., "Professional Mediation of Condominium-Related Disputes," *Hawaii Bar Journal*, (July 2015), at page 19.

7. Section 1 of Act 196 (SLH 2018) explains the 2018 amendments as follows:

> SECTION 1. The legislature finds that mediation is an existing and appropriate method of alternative dispute resolution to address condominium related disputes. While the courts are available to resolve conflicts, condominium law should provide incentives for the meaningful use of alternative dispute resolution mechanisms. Thus, the legislature further finds that clarifying the conditions that mandate mediation and exceptions to mandatory mediation is appropriate. The legislature notes that the mandatory mediation proposed by this Act is intended to require parties to resolve condominium related disputes through the use of alternative dispute resolution.
>
> The legislature also finds that authorizing the condominium education trust fund, which is currently dedicated to supporting mediation, to also be used for voluntary binding arbitration will further encourage the use of alternative dispute resolution for condominium related disputes.
>
> Accordingly, the purpose of this Act is to:
>
> (1) Expand the scope of the condominium education trust fund to cover voluntary binding arbitration between interested parties; and
>
> (2) Amend the conditions that mandate mediation and exceptions to mandatory mediation.

[~~[~~]§514B-161[~~]~~] **Mediation[~~.~~]; condominium management dispute resolution; request for hearing; hearing.** *[The 2008 amendment is repealed on June 30, 2011. L 2009, c 9, §2.]* (a) [~~At the request of any party to a dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules, the parties to the dispute shall be required to participate in mediation.~~] If [~~an apartment~~] a unit owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the [~~association of apartment owners'~~] association's declaration, bylaws, or house rules, or a matter involving part VI, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If a [~~party~~] unit owner or the board of directors

refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

(1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;

(2) Actions to collect assessments;

(3) Personal injury claims; or

(4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of $2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties.

(d) If a dispute is not resolved by mediation as provided in this section, including for the reason that a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, any party to that proposed or terminated mediation may file for arbitration no sooner than thirty days from the termination date of the mediation; provided that the termination date shall be deemed to be the earlier of:

(1) The last date the parties all met in person with the mediator;

(2) The date that a unit owner or a board of directors refuses in writing to mediate a particular dispute; or

(3) Thirty days after a unit owner or a board of directors receives a written or oral request to engage in mediation and mediation does not occur within fifty-one days after the date of the request.

(e) If a dispute is not resolved by mediation as provided in subsection (a), including for the reason that a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, any party to that proposed or terminated mediation may file a request for a hearing with the office of administrative hearings of the department of commerce and consumer affairs, as follows:

(1) The party requesting the hearing shall be a board of directors of a duly registered association or a unit owner that is a member of a duly registered association pursuant to section 514B-103;

(2) The request for hearing shall be filed within thirty days from the termination date as specified in writing by the mediator; provided that the termination date shall be deemed to be the earlier of:

(A) The last date the parties all met in person with the mediator;

(B) The date that a unit owner or a board of directors refuses in writing to mediate a particular dispute; or

(C) Thirty days after a unit owner or a board of directors receives a written or oral request to engage in mediation and mediation does not occur within fifty-one days after the date of the request;

(3) The request for hearing shall name one or more parties in the proposed or terminated mediation as an adverse party and identify the statutory provisions in dispute; and

(4) The subject matter of the hearing before the hearings officer may include any matter that was the subject of the mediation pursuant to subsection (a); provided that if mediation does not first occur, the subject matter hearings officer shall include any matter that was identified in the request for mediation.

(f) For purposes of this section, the office of administrative hearings of the department of commerce and consumer affairs shall accept no more than thirty requests for hearing per fiscal year under this section.

(g) The party requesting the hearing shall pay a filing fee of $25 to the department of commerce and consumer affairs, and the failure to do so shall result in the request for hearing being rejected for filing. All other parties shall file a response, accompanied by a filing fee of $25, with the department of commerce and consumer affairs within twenty days of being served with the request for hearing.

(h) The hearings officers appointed by the director of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review any request for hearing filed under subsection (e). The hearings officers shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that shall be final and conclusive, unless a party adversely affected by the decision files an appeal in the circuit court under section 91-14.

(i) The department of commerce and consumer affairs' rules of practice and procedure shall govern all proceedings brought under subsection (e). The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.

(j) Hearings to review and make determinations upon any requests for hearings filed under subsection (e) shall commence within sixty days following the receipt of the request for hearing. The hearings officer shall issue written findings of fact, conclusions of law, and an order as expeditiously as practicable after the hearing has been concluded.

(k) Each party to the hearing shall bear the party's own costs, including attorney's fees, unless otherwise ordered by the hearings officer.

(l) Any party to a proceeding brought under subsection (e) who is aggrieved by a final decision of a hearings officer may apply for judicial review of that decision pursuant to section 91-14; provided that any party seeking judicial review pursuant to section 91-14 shall be responsible for the costs of preparing the record on appeal, including the cost of preparing the transcript of the hearing.

(m) The department of commerce and consumer affairs may adopt rules and forms, pursuant to chapter 91, to effectuate the purpose of this section and to implement its provisions. [L 2004, c 164, pt of §2; am L 2007, c 244, §7; am L 2008, c 205, §§2, 5]

[§514B-162] Arbitration. (a) At the request of any party, any dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and of chapter 658A; provided that the rules of the arbitration service conducting the arbitration shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658A, chapter 658A shall prevail; and provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

(b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:

(1) The real estate commission;

(2) The mortgagee of a mortgage of record;

(3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a unit owner, a director, or managing agent, such person in those capacities, shall be subject to the provisions of subsection (a);

(4) Actions seeking equitable relief involving threatened property damage or the health or safety of unit owners or any other person;

(5) Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section 514B-146 shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment;

(6) Personal injury claims;

(7) Actions for amounts in excess of $2,500 against an association, a board, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association or its board would be unavailable because action by arbitration was pursued; or

(8) Any other cases which are determined, as provided in subsection (c), to be unsuitable for disposition by arbitration.

(c) At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to the circuit court in the judicial circuit in which the condominium is located for a determination that the subject matter of the dispute is unsuitable for disposition by arbitration.

In determining whether the subject matter of a dispute is unsuitable for disposition by arbitration, a court may consider:

(1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;

(2) Problems referred to the court where court regulated discovery is necessary;

(3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter;

(4) The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration under this section; and

(5) Any matters of dispute where disposition by arbitration, in the absence of complete judicial review, would not afford substantial justice to one or more of the parties.

Any such application to the circuit court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed $200.

(d) In the event of a dispute as to whether a claim shall be excluded from mandatory arbitration under subsection (b)(7), any party to an arbitration may file a complaint for declaratory relief against the involved insurer or insurers for a determination of whether insurance coverage is unavailable due to the pursuit of action by arbitration. The complaint shall be filed with the circuit court in the judicial circuit in which the condominium is located. The insurer or insurers shall file an answer to the complaint within twenty days of the date of service of the complaint and the issue shall be disposed of by the circuit court at a hearing to be held at the earliest available date; provided that the hearing shall not be held within twenty days from the date of service of the complaint upon the insurer or insurers.

(e) Notwithstanding any provision in this chapter to the contrary, the declaration, or the bylaws, the award of any costs, expenses, and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses, and legal fees shall be binding upon all parties.

(f) The award of the arbitrator shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and shall be served by the arbitrator on each of the parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court of the judicial circuit in which the condominium is located for an order confirming the award. The court shall grant the order confirming the award pursuant to section 658A-22, unless the award is vacated, modified, or corrected, as provided in sections 658A-20, 658A-23, and 658A-24, or a trial de novo is demanded under subsection (h), or the award is successfully appealed under subsection (h). The record shall be filed with the motion to confirm award, and notice of the motion shall be served upon each other party or their respective attorneys in the manner required for service of notice of a motion.

(g) Findings of fact and conclusions of law, as requested by any party prior to the arbitration hearing, shall be promptly provided to the requesting party upon payment of the reasonable cost thereof.

(h) Any party to an arbitration under this section may apply to vacate, modify, or correct the arbitration award for the grounds set out in chapter 658A. All reasonable costs, expenses, and attorneys' fees on appeal shall be charged to the nonprevailing party. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §§514A-121 (Arbitration of disputes), 514A-122 (Determination of unsuitability), 514A-123 (Determination of insurance coverage), 514A-124 (Costs, expenses and legal fees), 514A-125 (Award; confirming award), 514A-126 (Findings of fact and conclusions of law), and 514A-127(e) (Trial de novo and appeal) are the sources, modified slightly, of this section.

[§514B-162.5] Voluntary binding arbitration. *[Section effective January 2, 2019, and repealed June 30, 2023. L 2018, c 196, §9.]* (a) Any parties permitted to mediate condominium related disputes pursuant to section 514B-161 may agree to enter into voluntary binding arbitration, which may be supported with funds from the condominium education trust fund pursuant to section 514B-71; provided that voluntary binding arbitration under this section may be supported with funds from the condominium education trust fund only after the parties have first attempted evaluative mediation.

(b) Any voluntary binding arbitration entered into pursuant to this section and supported with funds from the condominium education trust fund:

(1) Shall include a fee of $175 to be paid by each party to the arbitrator;

(2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than $6,000 total; and

(3) May include issues and parties in addition to those identified in subsection (a); provided that a unit owner or a developer and board are parties to the arbitration at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties. [L 2018, c 196, §2]

Arakaki's Comment

1. This section was added by the 2018 Legislature. As noted by the Legislature in Section 1 of Act 196 (SLH 2018): "[T]he mandatory mediation proposed by this Act is intended to require parties to resolve condominium related disputes through the use of alternative dispute resolution" and that "*authorizing the condominium education trust fund*, which is currently dedicated to supporting mediation, *to also be used for voluntary binding arbitration* will further encourage the use of alternative dispute resolution for condominium related disputes." (Emphasis added.)

[§514B-163] Trial de novo and appeal. (a) The submission of any dispute to an arbitration under section 514B-162 shall in no way limit or abridge the right of any party to a trial de novo.

(b) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ten days after service of the arbitration award upon all parties and the trial de novo shall be filed in circuit court within thirty days of the written demand. Failure to meet these deadlines shall preclude a party from demanding a trial de novo.

(c) The award of arbitration shall not be made known to the trier of fact at a trial de novo.

(d) In any trial de novo demanded under this section, if the party demanding a trial de novo does not prevail at trial, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial. When there is more than one party on one or both sides of an action, or more than one issue in dispute, the court shall allocate its award of costs, expenses, and attorneys' fees among the prevailing parties and tax such fees against those nonprevailing parties who demanded a trial de novo in accordance with the principles of equity. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

Arakaki's Comment

1. HRS §514A-127 (Trial de novo and appeal) is the source, modified slightly, of this section. The section was separated from §514B-162 by the 2004 Legislature, and HRS §514A-127(e) was moved to §514B-162(h).

Real Estate Commission's Comment (2003 Final Report)

1. Real Estate Branch Senior Condominium Specialist Cynthia Yee believes that, before commencement of proceedings, the arbitrator should provide the parties with an explanation of nonbinding arbitration and the resulting impact on trial de novo.

2. Since the adoption of the Revised Uniform Arbitration Act (RUAA), there has been growing concern and discomfort with the potential impact and uncertainty of some of its provisions.[17] Any revisions to the arbitration provisions of the condominium law should consider concerns raised by the Ad Hoc RUAA Group.

3. Finding an alternative dispute resolution mechanism that works for condominium communities is an important and potentially enormous task that the Commission was unable to resolve, particularly in light of its guiding principle that the recodification should not grow the cost of government.[18] Stakeholders have commented that HRS Chapter 514A's system of dispute resolution is not working.[19] They note that the "mandatory" mediation provisions are essentially voluntary (with boards refusing to mediate or going through the motions to avoid the appearance of non-cooperation) and arbitration provisions are impractical and expensive in most cases – particularly with the trial de novo provision of HRS §514A-127.

Some members of the condominium community strongly suggested that a "Condominium Court" be established to help resolve condominium disputes (either as small claims court is organized, as a part of district court, or as an administrative hearings office, like the existing DCCA hearings office).[20] Proponents believe that a condominium court would provide a means by which condominium disputes can be resolved quickly and at reasonable cost.[21] There is, however, a split of opinion on this issue in the community.[22]

The Commission recommends the following:

i.) The Legislature should direct the Legislative Reference Bureau ("LRB") to study ways to improve dispute resolution in condominium communities, including, but not limited to, considering the establishment of a condominium court;[23]

ii.) LRB's review, findings, and recommendations should include ways to improve the current mediation and arbitration provisions of HRS Chapter 514A, if any; and

iii.) In considering the establishment of a condominium court, LRB's review, findings, and recommendations should include, but not be limited to:

- Jurisdiction of the condominium court (i.e., the kinds of cases that should be handled by the condominium court);

[17] *See*, fax received on October 17, 2003 by Mitchell A. Imanaka from the Ad Hoc RUAA Group (Jim Paul, Ted Tsukiyama, Keith Hunter, Jerry Clay, and Louis Chang).

[18] The Commission's guiding principle that the recodified condominium law should not result in an increase in the cost of government is meant to limit the addition of new programs administered by government under the proposed recodification. It should be noted that, in the first three years of its review of California's common-interest-ownership law, the California Law Revision Commission ("CLRC") has spent most of its time considering nonjudicial dispute resolution issues. For an excellent discussion of various condominium dispute resolution possibilities, *see*, Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991). In addition to the substantial amount of work done by the CLRC, the Legislature can build on the work of Mr. Tanaka.

[19] *See, e.g.*, October 7, 2003 testimony of Richard J. Port.

[20] *See, e.g.*, October 7, 2003 testimony of Helen Inasaki, Richard Port, a petition containing signatures of some owners at Imperial Plaza, Tom Berg, Alice Clay, Raelene Tenno, Edlynn Taira, Mary Jane McMurdo, Amy Amuro, Daniel & Geraldine O'Leary, Rani Vargas, Martha Black, and Manny Dias.

[21] *Id.*

[22] The Real Estate Commission's Blue Ribbon Recodification Advisory Committee was split on the issue of support for the establishment of a condominium court. *See also*, "Condo Court – Nay," by Philip Nerney, Esq., and "Condo Court – Yea," by Senator Willie Espero, Hawaii Community Associations (October 2003).

[23] The Commission recommended that LRB review the work of Mr. Tanaka and the CLRC (*supra*, at note 17).

- Whether attorneys should be allowed to represent parties in condominium court;
- What rules of evidence should be followed by the condominium court;
- Whether decisions of the condominium court may be appealed, and the grounds for appeal;
- How decisions and orders of the condominium court will be enforced;
- Whether the condominium court should be part of the DCCA's Office of Administrative Hearings (and, if so, the extent of the involvement of the Real Estate Commission and the Real Estate Branch Staff, if any), the Judiciary's court system, or a private (or 'Olelo) "People's Court;"
- A needs assessment, including a projected case load;
- Cost, including overhead and staffing;
- Funding source; and
- An implementation plan for a pilot program, if any.

Finally, it is the understanding of the Commission that a separate bill regarding "condo court" will be introduced in the 2004 legislative session.[24]

Arakaki's Comment

1. A separate bill regarding "condo court" (SB 2105) was introduced in the 2004 legislative session. The bill died in the House Committee on Finance, but the concept was incorporated in Act 164 (SLH 2004) as a two-year pilot program and study. Although the "Condominium Dispute Resolution Pilot Program" was rarely used (only two cases over its first two years,[25] with only one going to hearing), the pilot program was extended for another two years by the 2006 Legislature, and was further extended by subsequent Legislatures to 2011, when it finally expired. [*See also*, comments above, following HRS §514B-161 (Mediation; condominium management dispute resolution; request for hearing; hearing) regarding incorporation of "condo court" into HRS §514B-161.]

Real Estate Commission's Comment (2003 Final Report)

1. HRS §514A-99 (Rules) is deleted from Part V since it is covered by §514B-61(a)(1), under "General Powers and Duties of Commission."

[24] "Condo Court – Yea," by Senator Willie Espero, Hawaii Community Associations (October 2003).

[25] *See*, "The Condominium Dispute Resolution Pilot Program – Report to the 2006 Legislature," Department of Commerce and Consumer Affairs, State of Hawai'i (December 2005), at page 2.

HRS Chapter 514B, Part VII. Miscellaneous Provisions

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Part VII. MISCELLANEOUS PROVISIONS

[PART VII. MISCELLANEOUS PROVISIONS]

[§514B-191] Retaliation prohibited. (a) An association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner shall not retaliate against a unit owner, board member, managing agent, resident manager, or association employee who, through a lawful action done in an effort to address, prevent, or stop a violation of this chapter or governing documents of the association:

(1) Complains or otherwise reports an alleged violation;

(2) Causes a complaint or report of an alleged violation to be filed with the association, the commission, or other appropriate entity;

(3) Participates in or cooperates with an investigation of a complaint or report filed with the association, the commission, or other appropriate entity;

(4) Otherwise acts in furtherance of a complaint, report, or investigation concerning an alleged violation; or

(5) Exercises or attempts to exercise any right under this chapter or the governing documents of the association.

(b) A unit owner, board member, managing agent, resident manager, or association employee may bring a civil action in district court alleging a violation of this section. The court may issue an injunction or award damages, court costs, attorneys' fees, or any other relief the court deems appropriate.

(c) As used in this section:

"Governing documents" means an association's declaration, bylaws, or house rules; or any other document that sets forth the rights and responsibilities of the association, its board, its managing agent, or the unit owners.

"Retaliate" means to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents. [L 2017, c 190, §1]

Arakaki's Comment

1. This section was added by the 2017 Legislature. While it would have made sense to place this new section in Part VI (Management of Condominiums) and codify it as HRS §514B-158 or a new subpart E in Part VI, the Revisor of Statutes ultimately created a new part and numbered the new section accordingly.

Transition and Safe Harbor Provisions for Adoption of HRS Chapter 514B and Repeal of HRS Chapter 514A

Act 93, §9 (SLH 2005) [am L 2007, c 244, §8]

SECTION 9. (a) Nothing contained in the new chapter of the Hawaii Revised Statutes established by section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act, shall affect the rights and obligations established under any sales contract between a developer and a purchaser of an apartment in a condominium project that was registered by the developer pursuant to part III of chapter 514A, Hawaii Revised Statutes, prior to the effective date of the new chapter. The rights and obligations of these developers and purchasers shall continue to be governed by chapter 514A, Hawaii Revised Statutes.

(b) The developer of a project [~~registered~~] created or registered pursuant to chapter 514A, Hawaii Revised Statutes, may elect to register the project under the new chapter established by section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act, by submitting the application, documentation, and fees required under sections [~~52~~] 514B-52 and [~~54,~~] 514B-54, Hawaii Revised Statutes, in section 3 of this Act[~~.~~]; provided the property is removed from chapter 514A in accordance with section 514A-21. Upon the issuance of an effective date for the project's public report pursuant to the new chapter, the project's registration under chapter 514A, Hawaii Revised Statutes, shall terminate, the developer shall provide copies of the new public report to all existing purchasers, and the rights and obligations of the developer and all purchasers shall thereafter be governed by the new chapter; provided that unless the new public report reflects a material change to the project:

(1) The issuance of the new public report shall not affect the enforceability of any purchase contract that previously became binding upon the purchaser;

(2) A purchaser shall have the right to rescind the purchase contract; and

(3) A developer shall not be required to deliver a notice of thirty-day right of cancellation as specified in section [~~86,~~] 514B-86, Hawaii Revised Statutes, in section 4 of this Act.

Arakaki's Comment

1. This provision is presented above in Ramseyer format to reflect amendments adopted by the 2007 Legislature. The proviso added in subsection 9(b) that requires a developer seeking to take advantage of the transition provisions of Act 93 (SLH 2007) to first remove the property from HRS Chapter 514A in accordance with HRS §514A-21 appeared to make sense only if the developer still owned at least 80% of the project. This is because HRS §514A-21 required at least 80% of the apartment owners (both in terms of apartments and common interest) to agree to the removal and it is often difficult to get 80% agreement on anything when multiple owners are involved.

Act 181, §45 (SLH 2017)

SECTION 45. Condominium property regimes created prior to July 1, 2006, that were issued an effective date pursuant to section 514A-40 and 514A-41, Hawaii Revised Statutes, may be sold on or after January 1, 2019, without revising any of the governing documents; provided that the developer's public report was active on January 1, 2019, and is accurate and not misleading. On January 1, 2019, all active, non-expired chapter 514A, Hawaii Revised Statutes, developer's public reports pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, along with their most recent disclosure abstract, if any, will be treated as non-expiring developer's public reports under part IV of chapter 514B, Hawaii Revised Statutes. Should any pertinent or material changes, or both, occur to the condominium project, the developer shall file an amended developer's public report superseding all prior reports pursuant to chapter 514B, Hawaii Revised Statutes; provided that such projects and their subsequent reports filed under chapter 514B, Hawaii Revised Statutes, shall be exempt from the conversion requirements under section 514B-84(a)(1) and (2), Hawaii Revised Statutes. Condominium property regimes created prior to July 1, 2006, that were not issued an effective date pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, and did not file a notice of intent pursuant to section 514A-1.5(2)(B), Hawaii Revised Statutes, shall revise their governing documents and register under chapter 514B, Hawaii Revised Statutes, for a developer to offer for sale or to sell condominiums.

Nothing contained in this Act or in the condominium property act shall be deemed to invalidate any condominium property regime that was validly created under chapter 514A, Hawaii Revised Statutes, prior to July 1, 2006.

Arakaki's Comment

1. Some projects were created under HRS Chapter 514A (i.e., the condominium's master deed, declaration, bylaws, and condominium map were recorded in the Bureau of Conveyances or Land Court before July 1, 2006), but had not yet been brought

	Transition and Safe Harbor Provisions for Adoption of HRS Chapter 514B and Repeal of HRS Chapter 514A
	to market for sale at the time Act 181 (SLH 2017) was enacted. There were also active HRS Chapter 514A projects registered with the Real Estate Commission at that time. Section 45 of Act 181 (SLH 2017) served as a "safe harbor" provision for such projects. For various reasons, as of January 2019, there are still HRS Chapter 514A projects that would like to take advantage of the "safe harbor" provision for such projects. It is likely that the 2019 State Legislature will pass a law making this possible. [*See, e.g.*, SB 552 (2019 session)]

HRS Chapter 514A Recodification Workplan

I. Purpose of Recodification

Pursuant to Act 213, Session Laws of Hawaii (SLH) 2000, the purpose of recodifying Hawaii Revised Statutes (HRS) Chapter 514A is to "update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law."

II. Act 213, SLH 2000 – Basic Requirements

A. Review laws and uniform acts for guidance in the recodification process.

1. Examine condominium and common interest community laws of other jurisdictions.

2. Examine the Uniform Common Interest Ownership Act, the Uniform Condominium Act, the Uniform Planned Community Act, and other uniform laws that may be helpful in pursuing recodification.
[Note: Members of state and national organizations were consulted about their practical experience with the uniform common interest community laws.]

3. Examine other related laws and issues, such as those related to mandatory seller disclosures, zoning, use of agricultural lands for condominiums, and subdivision of land.

B. Solicit input from organizations and individuals affected by Hawaii's condominium property regimes (CPR) law.

1. Consult with public and private organizations and individuals whose duties and interests are affected by the CPR law (i.e., stakeholders), including the Department of Commerce and Consumer Affairs, and other state, county, and private agencies and individuals.

2. Conduct a public hearing for the purpose of receiving comments and input on the CPR law and related laws and issues.
[Note: As part of its original workplan (codified in Act 131, SLH 2003), the Real Estate Commission conducted a series of public hearings to better solicit input from stakeholders – particularly those on the Neighbor Islands.]

III. Additional Guidelines

A. Balance the desire to modernize Hawaii's CPR law with the need to protect the public and to allow the condominium community to govern itself.

B. Understand the historical perspective regarding the development of Hawaii's CPR law, and use that perspective to help fashion the new law.

C. Engage the participation of stakeholders early in the recodification process.

IV. Practical/Operational Considerations

A. Staffing

1. Act 213, SLH 2000, authorized the establishment of one full-time temporary condominium specialist position to conduct the CPR law recodification. The position was not filled until December 19, 2000.

2. The position and funding authorized by Act 213, SLH 2000, was extended by Act 131, SLH 2003, to complete the recodification project.

B. Timeframe

1. Act 131, SLH 2003, requires the Real Estate Commission to submit a final report on the CPR law review and draft legislation to the Legislature at least 20 days before the convening of the 2004 regular session.

2. A first draft of the recodified condominium law based on the Uniform Condominium and Uniform Common Interest Ownership Acts was completed in January 2002. Based on feedback the Commission received from its Blue Ribbon Recodification Advisory Committee, realtors, property managers, and others, HRS Chapter 514A (rather than the uniform laws) was used as the basis for most of draft #2 of the recodification (i.e., general provisions; creation, alteration, and termination of condominiums; protection of purchasers; administration and registration of condominiums; and condominium management education fund). The Uniform Condominium Act and Uniform Common Interest Ownership Act – along with appropriate provisions of HRS Chapter 514A, other jurisdictions' laws, and the Restatement of the Law, Third, Property (Servitudes) – remained as the basis for condominium governance matters. Following the 2003 legislative session, the Commission: (i) continued to work with affected members of the community and the Blue Ribbon Recodification Advisory Committee to refine Recodification Draft #2; (ii) took the resulting draft ("Public Hearing Discussion Draft") to public hearing in each of Hawaii's counties; and (iii) worked with the Blue Ribbon Recodification Advisory Committee and others to incorporate appropriate changes and submit a final draft of the proposed condominium law recodification to the 2004 Legislature.

Goals/Actions to be Taken	Target Dates	Comments
Goal I: Research Laws of Other Jurisdictions, Uniform Acts, and Commentary to gain an Understanding of Relevant Issues and Approaches to CPR Regulation		
A. Examine condominium and common interest community laws of other jurisdictions; compare with HRS Chapter 514A.	1/2/01 – 3/1/01; ongoing	See Attachment #1, "Selected Relevant Laws"

Goals/Actions to be Taken	Target Dates	Comments
B. Examine the Uniform Common Interest Ownership Act (UCIOA), Uniform Condominium Act (UCA), Uniform Planned Community Act (UCPCA); compare with HRS Chapter 514A.	1/2/01 – 3/1/01	Websites: http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ucioa94.htm http://www.law.upenn.edu/bll/ulc/fnact99/1980s/uca80.htm http://www.law.upenn.edu/bll/ulc/fnact99/1980s/upca80.htm *Section by section comparison of UCIOA, UCA, and HRS Chpt. 514A completed. (✓3/8/01; Word document)*
1. Examine other jurisdictions' practical experience with the uniform common interest community laws.	ongoing	Consult with representatives from state and national organizations having practical experience with the uniform common interest community laws. *Attended Community Associations Institute National Conferences and Forums 5/3-5/5/01, 10/18-10/20/01, and 5/2-5/4/02. Met with experts and practitioners from many other jurisdictions.*
C. Examine other related laws (including case law) and issues, such as those related to mandatory seller disclosures, zoning, use of agricultural lands for condominiums, and subdivision of land.	1/2/01 – 3/1/01; ongoing	See Attachment #1, "Selected Relevant Laws"
D. Research the policy basis for HRS 514A and its amendments.	1/2/01 – 3/1/01; ongoing	See Attachment #1, "Selected Relevant Laws"
E. Examine Attorney General's opinions relating to various sections of HRS Chapter 514A.	1/2/01 – 3/1/01	*Hard copy of AG opinions (8/8/77-present) in REC files reviewed. (✓2/20-2/21/01)* *Eventually, the Commission should scan and post AG opinions as part of its virtual bookshelf. Currently, only formal AG opinions are posted on the AG's website (1992-2000, http://www.state.hi.us/ag/optable/table.htm) and the Hawaii State Bar Association's website (1987-1992, http://hsba.org/Hawaii/Admin/Ag/agindex.htm). None of these formal opinions specifically relate to HRS Chapter 514A.* *✓2/7/02 – Hard copy of AG opinions (8/8/77-3/5/98) in REC files summarized and photocopied for distribution to Blue Ribbon Recodification Advisory Committee. Both the summary and actual AG opinions should be posted on the REC website.*
F. Research treatises, articles, commentary, and other such materials to gain insight into alternative approaches to CPR regulation.	1/2/01 – 3/1/01; ongoing	See Attachment #2, "Selected Resource List"

Goals/Actions to be Taken	Target Dates	Comments
Goal II: Determine and Prioritize Areas of Focus		Answer the question: What do we want to see in the recodified Hawaii CPR law?
A. Review relevant literature.	12/19/00 – 6/1/01; ongoing	See Attachment #2, "Selected Resource List"
B. Determine initial areas of focus; prioritize.	12/19/00 – 3/1/01	The 1995 Real Estate Commission's report to the Legislature on "A Plan to Recodify Chapter 514A, Hawaii Revised Statutes, Condominium Property Regime" identified (as a "partial listing") the following areas for research/statutory amendments:
		1. Registration Issues: Definition of "apartment;" definition of "developer;" contents of Declaration; circumstances requiring registration of a condominium project; exemptions from registration; circumstances requiring the issuance of public reports; disclosures on resales of apartments; agricultural condominiums and the respective county codes; performance bond.
		2. Management Issues: Association mailouts and notices of meetings (i.e., in removal of directors, board elections, proxy solicitations); retroactivity of certain statute provisions (i.e., bylaw requirements); bylaw amendments; managing agents competencies real estate brokers license requirement; directors' duties; directors' liability; voting in conflict of interests situations; budgeting and reserves (board's power to assess); election and removal of directors; renting common elements; proxy forms and solicitation; Robert's Rules of Order – Uniform Application; officers' requirements; owner's access to association records not specifically enumerated in the statute; financial controls and handling of association funds.
C. Work with DCCA management and staff, Real Estate Commission members, and other stakeholders to refine areas of focus and priorities. • Meet regularly with DCCA Real Estate Branch Supervising Executive Officer and/or Senior Condominium Specialist.	12/19/00 – 6/1/01 12/19/00 – 6/30/04	Make initial determinations, then adjust as necessary throughout the recodification process. Daily meetings for first six months. Meet as appropriate after that.

Goals/Actions to be Taken	Target Dates	Comments
• Meet regularly with Real Estate Commission Condominium Review Committee (CRC) Chair.	12/19/00 – 6/30/04	Bi-weekly meetings with CRC Chair for first six months. Meet as appropriate after that. Discussed possible additional goals: Examine interplay of Hawaii's CPR law with new technologies (e.g., Internet sales of timeshares); improve on-line capabilities in the condominium arena.
• Meet with deputy attorney generals (past and present) regarding their experience with HRS Chapter 514A.	12/19/00 – 6/1/01; ongoing	Spoke informally with past and present deputy attorney generals.
Goal III: Get input from organizations and individuals affected by the CPR law (i.e., stakeholders)		
A. Compile list of organizations and individuals to be contacted regarding recodification of HRS Chapter 514A.	1/2/01; ongoing updates	The 1995 Real Estate Commission's report to the Legislature on "A Plan to Recodify Chapter 514A, Hawaii Revised Statutes, Condominium Property Regime" identified (as a "partial listing") the following "interested stakeholders who should be consulted on the recodification": 1. Regulators directly involved with Chapter 514A (Real Estate Commission members, Real Estate Commission staff involved with condominium governance and project registration, DCCA Director, Professional and Vocational Licensing Division Administrator and staff who may be impacted by the recodification, Regulated Industries Complaints Office). 2. Other State and county agencies' regulators directly or indirectly involved with Chapter 514A (State and county departments including Planning and Land Utilization – now combined under Planning and Permitting, State Bureau of Conveyances, Hawaii Housing Authority – now combined under Housing and Development Corporation of Hawaii, other 49 state regulators (where applicable) involved with condominium governance and project registration. 3. Legislators (chairs of Senate and House Consumer Protection Committees, Housing Committees, Judiciary Committees, and Finance/Ways and Means Committees).

Goals/Actions to be Taken	Target Dates	Comments
		4. Representatives from various groups and organizations involved with condominium project registration and governance matters (Real Estate Commission's Condominium Project Review Consultants, Hawaii State Bar Association Real Property and Financial Services Section, Hawaii Chapter of the Community Association Institute, Hawaii Council of Association of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners Association, Hawaii Real Estate Research and Education Center, Hawaii member of the National Conference of Commissioners on Uniform State Laws, Hawaii member of the Restatement of the Law of Property 3rd, Hawaii Association of Realtors® including its island boards, State lending institutions, mortgage companies, escrow companies, insurance companies). To the stakeholders listed by the Real Estate Commission in its 1995 recodification plan, we should add other representatives of state professional, industry, and trade organizations, such as the Building Industry Association, Land Use Research Foundation, Mortgage Bankers Association, Hawaii Bankers Association, Hawaii Developers Council, Condominium Council of Maui, and more.
B. Request comments of those organizations and individuals listed above regarding existing condominium law and practices and suggestions for change.	3/31/01; ongoing	This "request for comments" will be in addition to the input regularly solicited by the Real Estate Commission Condominium Review Committee as part of its monthly public meetings. ✓*4/16/01, request for comments mailed out to condominium law recodification stakeholders.* *[See also, under Goal IV.E. below, various speaking engagements.]* Recodification of HRS Chapter 514A is (and has been for some time) a permanent agenda item for the Condominium Review Committee's meetings. The Committee continues to accept comments on the recodification from any organizations or individuals wishing to address the Committee at its regular meetings. In addition, comments are routinely requested in the *Hawaii Condominium Bulletin* and the *Hawaii Real Estate Commission Bulletin*.
C. Conduct public hearings to receive comments and input on the CPR law and related laws and issue.	Between 9/1/03 and 10/15/03	In addition to the single public hearing required by Act 213, SLH 2000, the Real Estate Commission conducted public hearings on each of the Neighbor Islands. (This was part of the Commission's original workplan. It was codified in Act 131, SLH 2003, which extended the

Goals/Actions to be Taken	Target Dates	Comments
		condominium law recodification project for one year.) Hearings were held as follows: Kauai – September 16, 2003 (1:00 - 4:30 p.m.), State Office Building; Maui – September 23, 2003 (3:00 - 6:30 p.m.), Kihei Community Center; Kona – September 29, 2003 (3:00 - 6:30 p.m.), Kona Civic Center; Hilo – September 30, 2003 (1:00 - 4:30 p.m.), State Building; Oahu – October 7, 2003 (6:00 - 9:30 p.m.), State Capitol.
Goal IV: Keep stakeholders informed of progress on the recodification of Hawaii's CPR law		
A. Use the Real Estate Commission's website as the primary means of keeping stakeholders informed of progress on recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	Website: http://www.hawaii.gov/hirec/
B. Develop printed material for those who do not have access to the Internet.	1/2/01 – 6/30/04	Address the "digital divide" issue.
C. Use the *Hawaii Condominium Bulletin* as another vehicle for keeping stakeholders informed of progress on the recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	*February 2001 issue at page 5* *June 2001 issue at page 5* *September 2001 issue at pages 1 and 7* *December 2001 issue at page 1* *March 2002 issue at page 1* *July 2002 issue at pages 1 and 6* *October 2002 issue at pages 1 and 7* *February 2003 issue at page 5* *June 2003 issue at page 7* *October 2003 issue at page 6*
C.1 Use the *Hawaii Real Estate Commission Bulletin* as another vehicle for keeping stakeholders informed of progress on the recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	*February 2001 issue at page 11* *March 2002 issue at page 8* *October 2002 issue at page 3 ("The Chair's Message")* *February 2003 issue at page 3 ("The Chair's Message")* *May 2003 issue at page 11* *August 2003 issue at page 3 ("The Chair's Message")* *November 2003 issue at page 3 ("The Chair's Message")*

Goals/Actions to be Taken	Target Dates	Comments
D. Develop articles and opinion/editorial pieces for local newspapers when appropriate.	1/2/01 – 6/30/04	*"Rewriting Hawaii's Condominium Property Act," Ka Nu Hou – The Newsletter of the Real Property & Financial Services Section of the Hawaii State Bar Association, March 2001 at pages 1-2* *"Industry makes move to redefine 1960s condo law," Pacific Business News, June 8, 2001 at page 40* *"Commissioner's Corner – Condominium Recodification and New Condo Laws," Hawaii REALTOR® Journal, September 2002, at page 2* *"Public hearing on draft of condo law changes set Tuesday," The Maui News, September 22, 2003, at page A3*
E. Use the Real Estate Commission Condominium Review Committee's monthly public meetings, Condominium Speakership Program, Condominium Specialists Office for the Day (on Neighbor Islands) Program, and Interactive Participation with Organizations Program as means to keep stakeholders informed of progress on the recodification of HRS Chapter 514A.	Ongoing programs	*2/16/01 – Speak with Hawaii State Bar Association Real Property & Financial Services Section Board of Directors (approximately 20 regular attendees) [Note: Continue to sit in on monthly HSBA-RPFS Board meetings]* *3/28/01 – Speak at Condominium Council of Maui's Annual Meeting (approximately 120 attendees)* *7/2/01 – Speak at Land Use Research Foundation Board Meeting (approximately 35 attendees)* *7/13/01 – Speak at West Oahu Realty, Inc. Meeting (approximately 15 attendees)* *7/19/01 – Speak at Community Associations Institute – Hawaii Chapter Seminar (approximately 100 attendees)* *7/24/01 – Speak at Chun, Kerr, Dodd, Beaman & Wong in-house meeting (approximately 8 attendees)* *9/7/01 – Speak at Lambda Alpha International – Aloha Chapter (an honorary land economics society) Meeting (approximately 35 attendees)* *9/11/01 – Speak at Waianae Realtor/Lender Educational Presentation sponsored by Title Guaranty, Waipahu Branch (approximately 40 attendees)* *9/26/01 – Speak at Mortgage Bankers Association of Hawaii Meeting (approximately 10 attendees)* *9/28/01 – Speak at Herbert K. Horita Realty, Inc. Meeting (approximately 25 attendees)* *11/27/01 – Speak at Mortgage Bankers Association of Hawaii Meeting*

Goals/Actions to be Taken	Target Dates	Comments
		(approximately 50 attendees)
		1/4/02 – Speak at Real Estate Commission Community Outreach Meeting (and earlier committee meetings) on Maui (approximately 15 attendees) *3/22/02 – Speak at Condominium Council of Maui's Annual Meeting (approximately 100 attendees) [Note: Wrote article for Condominium Council of Maui's Summer 2002 Newsletter]* *5/23/02 – Speak at Business Development Meeting sponsored by City Bank (approximately 35 attendees)* *6/14/02 – Speak at Real Estate Commission Community Outreach Meeting on Kauai (approximately 10 attendees)* *6/24/02 – Speak at meeting with Land Use Commission, Dept. of Business, Economic Development, & Tourism – Office of Planning, and County Planning Directors (approximately 10 attendees)* *7/18/02 – Speak at Community Associations Institute – Hawaii Chapter Seminar (approximately 80 attendees)* *8/5/02 – Speak at Hawaii Developers Council Meeting (approximately 30 attendees) [Note: Primarily small developers]* *11/12/02 – Speak at Appraisal Institute-Hawaii Chapter Meeting (approximately 30 attendees)*
		1/10/03 – Speak at Real Estate Commission Community Outreach Meeting (and earlier committee meetings) on Maui (approximately 15 attendees) *3/18/03 – Speak at Condominium Council of Maui's Annual Meeting (approximately 100 attendees)* *(Also met with, and will continue to meet and talk with, various interested individuals.)*
Goal V: Draft Recodification Legislation for 2004 Regular Session		
A. Begin actual drafting – recodification of HRS Chapter 514A	7/1/01	The Commission is targeting production of a series of HRS Chapter 514A recodification drafts. Each draft will be posted/circulated for comment among stakeholders until a final draft is submitted to the

Goals/Actions to be Taken	Target Dates	Comments
		Legislature. *[Note: The Commission is submitting proposed legislation to the 2004 Legislature.]*
B. Post first draft of recodified HRS Chapter 514A.	1/1/02	Note: As initial drafts of individual sections are completed, they should be circulated among the DCCA Real Estate Branch Supervising Executive Officer, Senior Condominium Specialist, and CRC Chair for comment/revision. The draft should then be reviewed by the CRC and Real Estate Commission for approval to circulate/post as an initial "working draft." *✓1/31/02 – First draft of recodification posted on Real Estate Commission website.*
C. Convene Blue Ribbon Recodification Advisory Committee to review and revise drafts of HRS Chapter 514A recodification.	1/15/02 – 12/31/02; ongoing	The Commission plans to tap into our community's collective expertise by asking various individuals to carefully and critically review our drafts of the HRS Chapter 514A recodification. The first step in this process is the convening of a Blue Ribbon Recodification Advisory Committee (comprised of attorneys whose practices, collectively, cover the full spectrum of condominium law) to review and revise drafts of the recodification. The Blue Ribbon Recodification Advisory Committee will meet monthly from January through at least December 2002. The Commission plans to widen the breadth of our community reviewing the recodification with each successive draft. *✓1/31/02-12/26/02 – The Blue Ribbon Recodification Advisory Committee and separate subject matter subcommittees met at least once-a-month. In the month of October 2002, members met twice-a-week for half-day sessions to work on the second draft of the recodification.*
C.1 Post second draft of recodified HRS Chapter 514A.	1/15/03	*✓1/15/03 – Second preliminary draft of recodification posted on Real Estate Commission website as part of progress report to Legislature.*
D. Request that Legislature extend recodification project for one year (Commission's recommended legislation to be submitted to 2004 Legislature.)	1/2/03 – 5/1/03	*✓Act 131, SLH 2003.*
E. Public Hearings on second draft of HRS Chapter 514A recodification.	9/1/03 – 10/15/03	*In addition to the single public hearing required by Act 213, SLH 2000, the Real Estate Commission conducted public hearings on each of the Neighbor Islands. (This was part of the Commission's original workplan. It was codified in Act 131, SLH 2003, which extended the*

Goals/Actions to be Taken	Target Dates	Comments
		condominium law recodification project for one year.) Hearings were held as follows: Kauai – September 16, 2003 (1:00 - 4:30 p.m.), State Office Building; Maui – September 23, 2003 (3:00 - 6:30 p.m.), Kihei Community Center; Kona – September 29, 2003 (3:00 - 6:30 p.m.), Kona Civic Center; Hilo – September 30, 2003 (1:00 - 4:30 p.m.), State Building; Oahu – October 7, 2003 (6:00 - 9:30 p.m.), State Capitol. Recodification Project Attorney was slowed by surgery in May 2003.
E.1 Pre-Public Hearings meeting(s) and/or post-Public Hearings meeting(s) will be held with Blue Ribbon Recodification Advisory Committee.	3/1/03 – 7/31/03	The membership of the Blue Ribbon Recodification Advisory Committee will be expanded. Suggested additions to the advisory committee include representatives of the Hawaii Council of Associations of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners Association, Community Association Institute – Hawaii Chapter, Hawaii Association of Realtors®, and the Condominium Council of Maui. ✓*Done per Act 131, SLH 2003. Recodification Project Attorney had been meeting with representatives of those groups before Act 131 was enacted. Numerous pre- and post-hearing meetings were held.*
F. Post third draft of recodified HRS Chapter 514A.	7/31/03	✓*9/09/03 – Public Hearing Discussion Draft of recodification posted on Real Estate Commission website. Recodification Project Attorney was slowed by surgery in May 2003.*
G. Seek Attorney General's Office review of draft #3, HRS Chapter 514A recodification.	8/1/03	If the Commission's condominium law recodification is to be submitted to the Governor for inclusion in the Administration's legislative package, this review by the Attorney General's Office would be to flag any problems the Administration may have with the recodification. *[Note: The Commission is submitting the proposed legislation independently – directly to the Legislature.]*
H. Submit draft legislation to Governor for inclusion in Administration's 2004 legislative package.	10/1/03	The Attorney General's Office, the Department of Budget and Finance, and the Governor's executive staff will review the proposed legislation. They may suggest revisions. *[Note: The Commission is submitting the proposed legislation independently – directly to the Legislature.]*
I. Post final draft of recodified HRS Chapter 514A (i.e., draft that will be submitted to 2004 Legislature as part of Commission's final report).	12/31/03	
J. Final Report to Legislature, with proposed legislation, to be submitted to 2004 Legislature.	1/1/04	The 2004 State Legislature convenes on Wednesday, January 21, 2004. The final report to the Legislature is due twenty days before the Legislature convenes.

Selected Relevant Laws

("Point and click" hyperlinks to websites are available on electronic versions of this document.)

Hawaii Laws – State (http://www.capitol.hawaii.gov/hrscurrent/?press1=docs)

Chapter 514A, Hawaii Revised Statutes – Condominium Property Regimes

Chapter 414D, Hawaii Revised Statutes – Hawaii Nonprofit Corporations Act (effective 7/1/02)

Chapter 415B, Hawaii Revised Statutes – Nonprofit Corporation Act (effective until 6/30/02)

Chapter 421I, Hawaii Revised Statutes – Cooperative Housing Corporations

Chapter 421J, Hawaii Revised Statutes – Planned Community Associations

Chapter 484, Hawaii Revised Statutes – Uniform Land Sales Practices Act

Chapter 508D, Hawaii Revised Statutes – Mandatory Seller Disclosures in Real Estate Transactions

Chapter 514E, Hawaii Revised Statutes – Time Sharing Plans

Chapter 515, Hawaii Revised Statutes – Discrimination in Real Property Transactions

Act 180 (Session Laws of Hawaii, 1961) – (condominium enabling law, Chapter 170A, Revised Laws of Hawaii)

Act 101 (Session Laws of Hawaii, 1963) – (incorporated into Hawaii's Horizontal Property Act provisions recommended by the Federal Housing Administration condominium model state statute and recommendations from New York legislation)

Act 16 (Session Laws of Hawaii, 1968) – (condominium law renumbered to Chapter 514)

Act 98 (Session Laws of Hawaii, 1977) – (condominium law restatement without substantive change to Chapter 514; renumbered to Chapter 514A)

Act 116 (Session Laws of Hawaii, 1979) – (amended definition of "apartment owner")

Act 213 (Session Laws of Hawaii, 1984) – (added section regarding "managing agents")

Act 65 (Session Laws of Hawaii, 1988) – (condominium law renamed "Condominium Property Act")

Act 185 (Session Laws of Hawaii, 1995) – (Legislature directs Hawaii Real Estate Commission to establish a plan for recodifying condominium law to make it easier to understand and follow)

Act 303 (Session Laws of Hawaii, 1996) – (prohibiting restrictions on the use of residential property as family child care homes; exempts condominiums, coops, certain townhouses, etc.; directs Attorney General to submit report to 1997 Legislature discussing tort liability, Americans with Disabilities Act, and any constitutional concerns regarding exemptions)

Act 132 (Session Laws of Hawaii, 1997) – (establishing Hawaii's planned community associations law)

Act 135 (Session Laws of Hawaii, 1997) – (allowing for contingent final public reports)

Act 213 (Session Laws of Hawaii, 2000) – (directing Real Estate Commission to study Hawaii's HRS Chapter 514A and develop recommendations for recodification)

Act 251 (Session Laws of Hawaii, 2000) – (requiring condominiums to conform to county land use laws)

Act 105 (Session Laws of Hawaii, 2001) – (adopting new Hawaii Nonprofit Corporations Act, effective 7/1/2002)

Act 232 (Session Laws of Hawaii, 2001) – (requiring mediation of certain condominium disputes)

Act 265 (Session Laws of Hawaii, 2001) – (adopting Uniform Arbitration Act)

Act 131 (Session Laws of Hawaii, 2003) – (extending recodification project for one year)

Hawaii Laws – Counties

City & County of Honolulu

Revised Ordinances of the City & County of Honolulu 1990 (ROH) (Note that 1990 does not represent the frequency of update; it refers to the last time the ordinances were reorganized and reformatted.) – (http://www.co.honolulu.hi.us/refs/roh/index.htm)

ROH Chapter 21 – Land Use Ordinance (http://www.co.honolulu.hi.us/refs/roh/21_990.htm)

ROH Chapter 22 – Subdivision of Land (http://www.co.honolulu.hi.us/refs/roh/22.htm)

ROH Chapter 38 – Residential Condominium, Cooperative Housing and Residential Planned Development Leasehold (http://www.co.honolulu.hi.us/refs/roh/38.htm)

Hawaii County

1983 Hawaii County Code – Revised and Republished 1995 – (http://www.co.hawaii.hi.us/countycode/haw-toc.html) (website current through October 1999)

Kauai County

Kauai County Code 1987, as amended

Maui County

Maui County Code – (http://ordlink.com/codes/maui/index.htm) (website current through August 2000)

Uniform Laws

Uniform Common Interest Ownership Act – (http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ucioa94.htm)

Uniform Condominium Act – (http://www.law.upenn.edu/bll/ulc/fnact99/1980s/uca80.htm)

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Other Jurisdictions' Laws

Arizona

Generally, *see* Title 33, Arizona Revised Statutes – Property
(http://www.azleg.state.az.us/ars/33/title33.htm)

Title 33, Chapter 9, Arizona Revised Statutes – Condominiums

Title 33, Chapter 16, Arizona Revised Statutes – Planned Communities

California

Generally, *search* California Codes – (http://www.leginfo.ca.gov/calaw.html)

(Note: The full text of all 29 California codes is available at this site. The primary statutes governing common interest developments in California are the Davis-Stirling Act (Civil Code §§1350-1376), the Nonprofit Corporation Law, and the Subdivided Lands Act. Do keyword searches to find other laws related to condominiums. In order to download the entire code, you would retrieve groupings of code sections based on the table of contents code structure.)

Florida

Generally, *see* Title XL, The 2000 Florida Statutes – Real and Personal Property (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Index&Title_Request=XL#TitleXL)

Chapter 718, The 2000 Florida Statutes – Condominium Act (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0718/titl0718.htm)

Chapter 719, The 2000 Florida Statutes – Cooperatives (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0719/titl0719.htm&StatuteYear=2000&Title=%2D%3E2000%2D%3EChapter%20719)

Chapter 720, The 2000 Florida Statutes – Homeowners' Associations (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0720/titl0720.htm&StatuteYear=2000&Title=%2D%3E2000%2D%3EChapter%20720)

Illinois

Generally, *see* Chapter 765, Illinois Compiled Statutes – Property (http://www.legis.state.il.us/ilcs/ch765/ch765actstoc.htm)

Chapter 765, ILCS 605, Illinois Compiled Statutes – Condominium Property Act (http://www.legis.state.il.us/ilcs/ch765/ch765act605.htm)

Maryland

Generally, Generally, *search* Maryland Code – (http://mlis.state.md.us/cgi-win/web_statutes.exe)

(Note: The full text of the Maryland Code is available at this site. Do keyword searches to find laws related to condominiums.)

Nevada

Generally, *see* Title 10, Nevada Revised Statutes – Property Rights and Transactions

Chapter 116, Nevada Revised Statutes – Common-Interest Ownership (Uniform Act) (http://www.leg.state.nv.us/NRS/NRS-116.html)

Chapter 117, Nevada Revised Statutes – Condominiums (http://www.leg.state.nv.us/NRS/NRS-117.html)

New York

Generally, *see* Chapter 50, New York State Consolidated Laws – Real Property Law (http://assembly.state.ny.us/cgi-bin/claws?law=99&art=1)

Article 9-B, New York State Consolidated Laws – Condominium Act (http://assembly.state.ny.us/cgi-bin/claws?law=99&art=12)

Virginia

Generally, *see* Title 55, Code of Virginia – Property and Conveyances (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5500000)

Also, *search* Code of Virginia – (http://leg1.state.va.us/000/src.htm) (Results of "condominium" word search: http://leg1.state.va.us/000/lst/LS102369.HTM)

(Note: Virginia's condominium law served as a model law for UCIOA)

Title 55, Chapter 4.1, Code of Virginia – Horizontal Property Act (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000040000010000000)

Title 55, Chapter 4.2, Code of Virginia – Condominium Act (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000040000020000000)

Title 55, Chapter 26, Code of Virginia – Property Owners' Association Act (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000260000000000000)

Title 55, Chapter 27, Code of Virginia – Virginia Residential Property Disclosure Act (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000270000000000000)

Title 55, Chapter 29, Code of Virginia – Common Interest Community Management Information Fund (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000290000000000000)

Washington

(Note: You will probably need to copy and paste the links to Title 64, Chapters 64.32, 64.34, and 64.38 into the address line of your web browser. The website address' use of certain characters caused problems establishing a hyperlink in this document. It may be easier simply to click on the link to the entire Revised Code of Washington at: http://www.leg.wa.gov/pub/rcw/ and navigate your way to Title 64, Chapters 64.32 et seq.)

Generally, *see* Title 64, Revised Code of Washington – Real Property and Conveyances (http://www.leg.wa.gov/pub/rcw/rcw%20%2064%20%20TITLE/rcw%20%2064%20%20%20TITLE/rcw%20%2064%20%20%20TITLE.htm)

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