

**Report Title:**

Condominiums

**Description:**

Specifies applicability of chapter 514A, HRS, the condominium law, after effective date of chapter 514B, HRS, the recodified condominium law. Makes substantive and technical amendments to chapter 514B, HRS. Amends section 484-3 and chapter 514C, HRS, for consistency with chapter 514B. (HB3225 HD1)



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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 484-3, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Unless the method of disposition is adopted for the  
4 purpose of evasion of this chapter, or unless the subdivider  
5 files in writing with the director that this chapter shall apply  
6 to the subdivider's subdivision, this chapter shall not apply to  
7 offers or dispositions of an interest in land:

8 (1) By a purchaser of subdivided lands for the purchaser's  
9 own account in a single or isolated transaction;

10 (2) If fewer than twenty separate lots, parcels, units, or  
11 interests in subdivided lands are offered by a person  
12 in a period of twelve months;

13 (3) On which there is a residential, commercial, or  
14 industrial building, or as to which there is a legal  
15 obligation on the part of the seller to construct a  
16 building on the land within two years from the date of  
17 disposition; provided that the obligation to construct



1 shall not be, directly or indirectly, transferred to  
2 or otherwise imposed upon the purchaser;

3 (4) To persons who are engaged in, and are duly licensed  
4 to engage in, the business of construction of  
5 buildings for resale, or to persons who acquire an  
6 interest in subdivided lands for the purpose of  
7 engaging, and do engage in, and are duly licensed to  
8 engage in, the business of construction of buildings  
9 for resale;

10 (5) Pursuant to court order;

11 (6) By any government or government agency;

12 (7) As cemetery lots or interests; or

13 (8) Registered as a condominium property regime pursuant  
14 to chapter 514A[-] or 514B."

15 SECTION 2. Section 514A-1.5, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 [†]§514A-1.5[†] **Applicability of chapter.** This chapter:

18 (1) Shall not apply to condominiums created on or after  
19 July 1, 2006, or that are registered with the  
20 commission pursuant to part III of chapter 514B; and

21 (2) From and after July 1, 2006, this chapter shall apply  
22 only:



1           (A) To condominiums created prior to July 1, 2006,  
2           except as provided in subsection (b) and sections  
3           514B-22 and 514B-23; and

4           (B) To a developer's sale of condominiums in a  
5           project for which a notice of intention was filed  
6           with the commission prior to July 1, 2006,  
7           pursuant to section 514A-31, except where the  
8           developer elects to register an existing project  
9           with the commission under part III of chapter  
10           514B, pursuant to section 9(b) of Act 93, Session  
11           Laws of Hawaii 2005.

12           (b) This chapter shall not apply to any condominium  
13 project or association of apartment owners created prior to May  
14 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961,  
15 unless all of the owners and holders of liens affecting any of  
16 the apartments in the project have expressly declared that this  
17 chapter shall apply to the property, and shall govern the  
18 rights, interests, and remedies of all persons owning interests  
19 in or liens upon the property; provided that any condominium  
20 project or association of apartment owners created prior to May  
21 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961,  
22 having seven or more apartments shall register with the



1 commission and comply with the requirements pursuant to sections  
2 514A-95.1 and 514A-132, except for the fidelity bond  
3 requirement. The express declaration shall be made through the  
4 execution and recordation of a declaration in form and content  
5 required to establish a condominium property regime pursuant to  
6 this chapter."

7 SECTION 3. Section 514B-3, Hawaii Revised Statutes, is  
8 amended by amending the definitions of "association,"  
9 "condominium map," "material change," and "structures" as  
10 follows:

11 "Association" means the unit owners' association organized  
12 under section 514B-102[~~-~~] or prior condominium property regimes  
13 statute.

14 "Condominium map" means, however denominated, a map or plan  
15 of the [~~building or buildings~~] condominium property regime  
16 containing the information required by section 514B-33.

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

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



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

3 "Structures" includes but is not limited to buildings."

4 SECTION 4. Section 514B-10, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) The remedies provided by this chapter shall be  
7 liberally administered to the end that the aggrieved party is  
8 put in as good a position as if the other party had fully  
9 performed. [~~Consequential, special, or punitive~~] Punitive  
10 damages may not be awarded, however, except as specifically  
11 provided in this chapter or by other rule of law."

12 SECTION 5. Section 514B-22, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[~~§~~514B-22[~~]~~] **Applicability to preexisting condominiums.**

15 Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72,  
16 and part VI, and section 514B-3 to the extent definitions are  
17 necessary in construing any of those provisions, and all  
18 amendments thereto, apply to all condominiums created in this  
19 State before July 1, 2006; but those sections apply only with  
20 respect to events and circumstances occurring on or after  
21 July 1, 2006 and do not invalidate existing provisions of the



1 declaration, bylaws, condominium map, or other constituent  
2 documents of those condominiums.

3 For purposes of interpreting this chapter, the terms  
4 "condominium property regime" and "horizontal property regime"  
5 shall be deemed to correspond to the term "condominium"; the  
6 term "apartment" shall be deemed to correspond to the term  
7 "unit"; the term "apartment owner" shall be deemed to correspond  
8 to the term "unit owner"; and the term "association of apartment  
9 owners" shall be deemed to correspond to the term "association".

10 SECTION 6. Section 514B-32, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12 "(a) A declaration shall describe or include the  
13 following:

- 14 (1) The land submitted to the condominium property regime;
- 15 (2) The number of the condominium [~~property regime~~] map  
16 filed concurrently with the declaration;
- 17 (3) The number of units in the condominium property  
18 regime;
- 19 (4) The unit number of each unit and common interest  
20 appurtenant to each unit;



- 1 (5) The number of buildings and projects in the  
2 condominium property regime, and the number of stories  
3 and units in each building;
- 4 (6) The permitted and prohibited uses of each unit;
- 5 (7) To the extent not shown on the condominium [~~property~~  
6 ~~regime~~] map, a description of the location and  
7 dimensions of the horizontal and vertical boundaries  
8 of any unit. Unit boundaries may be defined by  
9 physical structures or, if a unit boundary is not  
10 defined by a physical structure, by spatial  
11 coordinates;
- 12 (8) The condominium property regime's common elements;
- 13 (9) The condominium property regime's limited common  
14 elements, if any, and the unit or units to which each  
15 limited common element is appurtenant;
- 16 (10) The total percentage of the common interest that is  
17 required to approve rebuilding, repairing, or  
18 restoring the condominium property regime if it is  
19 damaged or destroyed;
- 20 (11) The total percentage of the common interest, and any  
21 other approvals or consents, that are required to  
22 amend the declaration. Except as otherwise





1 specifically provided in this chapter, and except for  
2 any amendments made pursuant to reservations set forth  
3 in paragraph (12), the approval of the owners of at  
4 least sixty-seven per cent of the common interest  
5 shall be required for all amendments to the  
6 declaration;

7 (12) Any rights that the developer or others reserve  
8 regarding the condominium property regime, including,  
9 without limitation, any development rights, and any  
10 reservations to modify the declaration or condominium  
11 [~~property regime~~] map. An amendment to the  
12 declaration made pursuant to the exercise of those  
13 reserved rights shall require only the consent or  
14 approval, if any, specified in the reservation; and

15 (13) A declaration, subject to the penalties set forth in  
16 section 514B-69(b), that the condominium property  
17 regime is in compliance with all zoning and building  
18 ordinances and codes, and all other permitting  
19 requirements pursuant to section 514B-5, and  
20 specifying in the case of a property that includes one  
21 or more existing structures being converted to  
22 condominium property regime status:



1 (A) Any variances that have been granted to achieve  
2 the compliance; and

3 (B) Whether, as the result of the adoption or  
4 amendment of any ordinances or codes, the project  
5 presently contains any legal nonconforming  
6 conditions, uses, or structures; except that a  
7 property that is registered pursuant to section  
8 514B-51 shall instead provide this declaration  
9 pursuant to section 514B-54. If a developer is  
10 converting a structure to condominium property  
11 regime status and the structure is not in  
12 compliance with all zoning and building  
13 ordinances and codes, and all other permitting  
14 requirements pursuant to section 514B-5, and the  
15 developer intends to use purchaser's funds  
16 pursuant to the requirements of section 514B-92  
17 or 514B-93 to cure the violation or violations,  
18 then the declaration required by this paragraph  
19 may be qualified to identify with specificity  
20 each violation and the requirement to cure the  
21 violation by a date certain."



1 SECTION 7. Section 514B-33, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~+~~§514B-33~~+~~] Condominium [~~property regime~~] map. (a) A  
4 condominium [~~property regime~~] map shall be recorded with the  
5 declaration. The condominium [~~property regime~~] map shall  
6 contain the following:

- 7 (1) A site plan for the condominium property regime,  
8 depicting the location, layout, and access to a public  
9 road of all buildings and projects included or  
10 anticipated to be included in the condominium property  
11 regime, and depicting access for the units to a public  
12 road or to a common element leading to a public road;
- 13 (2) Elevations and floor plans of all buildings in the  
14 condominium property regime;
- 15 (3) The layout, location, boundaries, unit numbers, and  
16 dimensions of the units;
- 17 (4) To the extent that there is parking in the condominium  
18 property regime, a parking plan for [~~a project,~~] the  
19 regime, showing the location, layout, and stall  
20 numbers of all parking stalls included in [~~the project~~  
21 ~~and~~] the condominium property regime;



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

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

8 (b) The condominium [~~property regime~~] map may contain any  
9 additional information that is not inconsistent with this  
10 chapter."

11 SECTION 8. Section 514B-34, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "[~~§~~514B-34[~~]~~] **Condominium [~~property regime~~] map;**  
14 **certification of architect, engineer, or surveyor.** (a) The  
15 condominium [~~property regime~~] map shall bear the statement of a  
16 licensed architect, engineer, or surveyor certifying that the  
17 condominium [~~property regime~~] map is consistent with the plans  
18 of the condominium's building or buildings filed or to be filed  
19 with the government official having jurisdiction over the  
20 issuance of permits for the construction of buildings in the  
21 county in which the condominium property regime is located. If  
22 the building or buildings have been built at the time the



1 condominium [~~property regime~~] map is recorded, the certification  
2 shall state that, to the best of the architect's, engineer's, or  
3 surveyor's knowledge, the condominium [~~property regime~~] map  
4 depicts the layout, location, dimensions, and numbers of the  
5 units substantially as built. If the building or buildings, or  
6 portions thereof, have not been built at the time the  
7 condominium [~~property regime~~] map is recorded, within thirty  
8 days from the completion of construction, the developer shall  
9 execute and record an amendment to the declaration accompanied  
10 by a certification of a licensed architect, engineer, or  
11 surveyor certifying that the condominium [~~property regime~~] map  
12 previously recorded, as amended by the revised pages filed with  
13 the amendment, if any, fully and accurately depicts the layout,  
14 location, boundaries, dimensions, and numbers of the units  
15 substantially as built.

16 (b) If the condominium property regime is a conversion and  
17 the government official having jurisdiction over the issuance of  
18 permits for the construction of buildings in the county in which  
19 the condominium property regime is located is unable to locate  
20 the original permitted construction plans, the certification  
21 need only state that the condominium [~~property regime~~] map  
22 depicts the layout, location, boundaries, dimensions, and



1 numbers of the units substantially as built. If there are no  
2 buildings, no certification shall be required."

3 SECTION 9. Section 514B-38, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[~~§~~§514B-38~~§~~] **Common elements.** Each unit owner may use  
6 the common elements in accordance with the purposes permitted  
7 under the declaration, subject to:

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

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

12 (3) The right of the owners to amend the declaration to  
13 change the permitted uses of the common elements [~~or~~  
14 ~~to designate any portion of the common elements as a~~  
15 ~~limited common element~~]; provided that:

16 (A) Except as specifically provided in the  
17 declaration, changing common element open spaces  
18 or landscaped spaces to other uses shall not  
19 require an amendment to the declaration; and

20 (B) Subject to subsection 514B-140(c), minor  
21 additions to or alterations of the common  
22 elements for the benefit of individual units are



1           permitted if the additions or alterations can be  
2           accomplished without substantial impact on the  
3           interests of other owners in the common elements,  
4           as reasonably determined by the board;

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

8           (5) The right of the board, on behalf of the association,  
9           to lease or otherwise use for the benefit of the  
10          association those common elements that the board  
11          determines are not actually used by any of the unit  
12          owners for a purpose permitted in the declaration.  
13          Unless the lease is approved by the owners of at least  
14          sixty-seven per cent of the common interest, the lease  
15          shall have a term of no more than five years and may  
16          be terminated by the board or the lessee on no more  
17          than sixty days prior written notice; provided that  
18          the requirements of this paragraph shall not apply to  
19          any leases, licenses, or other agreements entered into  
20          for the purposes authorized by section 514B-140(d);  
21          and



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

14          SECTION 10. Section 514B-47, Hawaii Revised Statutes, is  
15          amended by amending subsection (c) to read as follows:

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

21          (1) The estate and interest of the unit owner shall cease  
22          and determine upon the acquisition, by an authority





1 with power of eminent domain of title and right to  
2 possession of any part of the condominium property  
3 regime;

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

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

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

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

18 the lessor and the developer, if the developer retains any  
19 interests or reserved rights in the project, shall file and  
20 record an amendment to the declaration to reflect any  
21 acquisition or right to possession. The consent or joinder of  
22 the unit owners or their respective mortgagees shall not be



1 required, if the land acquired or possessed constitutes no more  
2 than five per cent of the total land of the condominium property  
3 regime. Upon the recordation of the amendment, the land  
4 acquired or possessed shall cease to be the subject of a  
5 condominium property regime or subject to this chapter. The  
6 lessor shall notify each unit owner in writing of the filing of  
7 the amendment and the rent abatement, if any, to which the unit  
8 owner is entitled. The lessor shall provide the association,  
9 through its board, with a copy of the recorded amendment."

10 SECTION 11. Section 514B-54, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

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

15 (1) Nonrefundable fees as provided in rules adopted by the  
16 director of commerce and consumer affairs pursuant to  
17 chapter 91;

18 (2) The developer's public report prepared by the  
19 developer disclosing the information specified in  
20 section 514B-83 and, if applicable, section 514B-84;

21 (3) A copy of the deed, master lease, agreement of sale,  
22 or sales contract evidencing either that the developer



1 holds the fee or leasehold interest in the property or  
2 has a right to acquire the same;

3 (4) Copies of the executed declaration, bylaws, and  
4 condominium map that meet the requirements of sections  
5 514B-32, 514B-33, and 514B-108;

6 (5) A specimen copy of the proposed contract of sale for  
7 units;

8 (6) An executed copy of an escrow agreement with a third  
9 party depository for retention and disposition of  
10 purchasers' funds that meets the requirements of  
11 section 514B-91;

12 (7) As applicable, the documents and information required  
13 in section 514B-92 or 514B-93; provided that the  
14 documents and information may be submitted after the  
15 issuance of an effective date for a developer's public  
16 report if upon submission the developer secures an  
17 effective date for an amendment to the developer's  
18 public report;

19 (8) A declaration, subject to the penalties set forth in  
20 section 514B-69(b), that the project is in compliance  
21 with all county zoning and building ordinances and  
22 codes, and all other county permitting requirements



1 applicable to the project, pursuant to sections 514B-5  
2 and 514B-32(a)(13); and

3 (9) Other documents and information that the commission  
4 may require."

5 SECTION 12. Section 514B-58, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) The developer, its successor, or assign shall be  
8 relieved from filing annual reports pursuant to this section  
9 when the initial sales of all units have been completed [~~and the~~  
10 ~~developer, its successor, or assign has no ownership interest in~~  
11 ~~any unit in the project~~]."

12 SECTION 13. Section 514B-86, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "(a) No sales contract for the purchase of a unit from a  
15 developer shall be binding on the developer, prospective  
16 purchaser, or purchaser until:

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

19 (A) A true copy of the developer's public report,  
20 including all amendments with an effective date  
21 issued by the commission[~~-~~] as of the date the  
22 public report is delivered. The developer's



1 public report shall include the report itself,  
2 the condominium project's recorded declaration  
3 and bylaws, house rules if any, a letter-sized  
4 condominium project map, and all amendments.  
5 Where it is impractical to include a letter-sized  
6 condominium project map, the prospective  
7 purchaser or purchaser shall be provided a  
8 written notice of an opportunity to examine the  
9 map. The copy of the recorded declaration and  
10 bylaws creating the project shall indicate the  
11 document number or land court document number, or  
12 both, as applicable; and

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



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

4           SECTION 14. Section 514B-91, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "~~§~~**514B-91**~~§~~ **Escrow of deposits.** All moneys paid by  
7 purchasers shall be deposited in trust under a written escrow  
8 agreement with an escrow depository licensed pursuant to chapter  
9 449. An escrow depository shall not disburse purchaser deposits  
10 to or on behalf of the developer prior to closing except:

11           (1) As provided in sections 514B-92 and 514B-93; provided  
12           the developer has submitted all of the documents and  
13           information required in section 514B-92 or 514B-93, as  
14           applicable, and thereafter the commission has issued  
15           an effective date for the developer's public report or  
16           any amendments thereto; or

17           (2) As provided in the purchaser's sales contract in the  
18           event the sales contract is canceled. An escrow  
19           depository shall not disburse a purchaser's deposits  
20           at closing unless the escrow depository has received  
21           satisfactory assurances that all blanket mortgages and  
22           liens have been released from the purchaser's unit in



1           accordance with section 514B-45. Satisfactory  
2           assurances shall include a commitment by a title  
3           insurer licensed under chapter 431 to issue the  
4           purchaser a title insurance policy ensuring the  
5           purchaser that the unit has been conveyed free and  
6           clear of the liens."

7           SECTION 15. Section 514B-92, Hawaii Revised Statutes, is  
8           amended as follows:

9           1. By amending subsections (a) and (b) to read:

10          "(a) Subject to the conditions set forth in subsection  
11          (b), purchaser deposits that are held in escrow pursuant to a  
12          binding sales contract may be disbursed before closing to pay  
13          for project construction costs, including, in the case of a  
14          conversion, for repairs necessary to cure violations of county  
15          zoning and building ordinances and codes, and other renovations,  
16          for architectural, engineering, finance, and legal fees, and for  
17          other incidental expenses of the project.

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

20          (1) [The] After the requirements of subsections (b)(2) and  
21          (3) are satisfied, the commission has issued an



1           effective date for the developer's public report for  
2           the project[+] or an amendment thereto;

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

5           (3) The developer has submitted to the commission:

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

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

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

19           (i) A copy of the executed construction  
20           contract;

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





1           (iii) Satisfactory evidence of security for the  
2           completion of construction, which evidence  
3           may include the following, in forms and  
4           content approved by the commission: a  
5           completion or performance bond issued by a  
6           surety licensed in the [~~State~~] state in an  
7           amount equal to one hundred per cent of the  
8           cost of construction; a completion or  
9           performance bond issued by a material house  
10          in an amount equal to one hundred per cent  
11          of the cost of construction; an irrevocable  
12          letter of credit issued by a federally-  
13          insured financial institution in an amount  
14          equal to one hundred per cent of the cost of  
15          construction; or other substantially similar  
16          instrument or security approved by the  
17          commission. A completion or performance  
18          bond issued by a surety or by a material  
19          house, an irrevocable letter of credit, and  
20          any alternatives shall contain a provision  
21          that the commission shall be notified in  
22          writing before any payment is made to



1 beneficiaries of the bond. Adequate  
2 disclosures shall be made in the developer's  
3 public report concerning the developer's use  
4 of a completion or performance bond issued  
5 by a material house instead of a surety, and  
6 the impact of any restrictions on the  
7 developer's use of purchaser's funds."

8 2. By amending subsection (d) to read:

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

12 **"Important Notice Regarding Your Deposits:** Deposits that  
13 you make under your sales contract for the purchase of the unit  
14 may be disbursed before closing of your purchase to pay for  
15 project costs, construction costs, project architectural,  
16 engineering, finance, and legal fees, and other incidental  
17 expenses of the project. While the developer [~~has submitted~~] is  
18 required to first submit satisfactory evidence that the project  
19 should be completed, it is possible that the project may not be  
20 completed. If your deposits are disbursed to pay project costs  
21 and the project is not completed, there is a risk that your  
22 deposits will not be refunded to you. You should carefully



1 consider this risk in deciding whether to proceed with your  
2 purchase."

3 SECTION 16. Section 514B-93, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 1. By amending subsections (a) and (b) to read:

6 "(a) Subject to the conditions set forth in subsection (b),  
7 if units are conveyed or leased before the completion of  
8 construction of the building or buildings for the purpose of  
9 financing the construction, all moneys from the sale of the  
10 units, including any payments made on loan commitments from  
11 lending institutions, shall be deposited by the developer under  
12 an escrow arrangement into a federally-insured, interest-bearing  
13 account designated solely for that purpose, at a financial  
14 institution authorized to do business in the State.

15 Disbursements from the escrow account may be made to pay for  
16 project construction costs, including, in the case of a  
17 conversion, for repairs necessary to cure violations of county  
18 zoning and building ordinances and codes, and other renovations,  
19 for architectural, engineering, finance, and legal fees, and for  
20 other incidental expenses of the project.

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



- 1           (1) ~~[The]~~ After the requirements of subsections (b)(2) and  
2           (3) are satisfied, the commission has issued an  
3           effective date for the developer's public report for  
4           the project~~[+]~~ or an amendment thereto, containing the  
5           notice required under subsection (d);
- 6           (2) The developer has recorded the project's declaration  
7           and bylaws; and
- 8           (3) The developer has submitted to the commission:
- 9           (A) A project budget showing all costs required to be  
10           paid ~~[in order]~~ to complete the project,  
11           including real property taxes, construction  
12           costs, architectural, engineering and legal fees,  
13           and financing costs;
- 14           (B) Evidence satisfactory to the commission of the  
15           availability of sufficient funds to pay all costs  
16           required to be paid ~~[in order]~~ to complete the  
17           project, that may include purchaser funds, equity  
18           funds, interim or permanent loan commitments, and  
19           other sources of funds;
- 20           (C) A copy of the executed construction contract;
- 21           (D) A copy of the building permit for the project;
- 22           and



1 (E) Satisfactory evidence of security for the  
2 completion of construction, that may include the  
3 following, in forms and content approved by the  
4 commission: a completion or performance bond  
5 issued by a surety licensed in the State in an  
6 amount equal to one hundred per cent of the cost  
7 of construction; a completion or performance bond  
8 issued by a material house in an amount equal to  
9 one hundred per cent of the cost of construction;  
10 an irrevocable letter of credit issued by a  
11 federally-insured financial institution in an  
12 amount equal to one hundred per cent of the cost  
13 of construction; or other substantially similar  
14 instrument or security approved by the  
15 commission. A completion or performance bond  
16 issued by a surety or by a material house, an  
17 irrevocable letter of credit, and any  
18 alternatives shall contain a provision that the  
19 commission shall be notified in writing before  
20 any payment is made to beneficiaries of the bond.  
21 Adequate disclosures shall be made in the  
22 developer's public report concerning the



1 developer's use of a completion or performance  
2 bond issued by a material house instead of a  
3 surety, and the impact of any restrictions on the  
4 developer's use of purchaser's funds."

5 2. By amending subsection (d) to read:

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

10 **"Important Notice Regarding Your Funds:** Payments that you  
11 make under your sales contract for the purchase of the unit may  
12 be disbursed upon closing of your purchase to pay for project  
13 costs, including construction costs, project architectural,  
14 engineering, finance, and legal fees, and other incidental  
15 expenses of the project. While the developer [~~has submitted~~] is  
16 required to first submit satisfactory evidence that the project  
17 should be completed, it is possible that the project may not be  
18 completed. If your payments are disbursed to pay project costs  
19 and the project is not completed, there is a risk that your  
20 payments will not be refunded to you. You should carefully  
21 consider this risk in deciding whether to proceed with your  
22 purchase."



1 SECTION 17. Section 514B-98, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The developer may go to sale using either a  
4 chronological system or a lottery system at any time after  
5 issuance of an effective date for a developer's public report  
6 [~~for which the effective date has not expired~~]."

7 SECTION 18. Section 514B-104, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) Except as provided in section 514B-105, and subject  
10 to the provisions of the declaration and bylaws, the  
11 association, even if unincorporated, may:

- 12 (1) Adopt and amend the declaration, bylaws, and rules and  
13 regulations;
- 14 (2) Adopt and amend budgets for revenues, expenditures,  
15 and reserves and collect assessments for common  
16 expenses from unit owners, subject to section  
17 514B-148;
- 18 (3) Hire and discharge managing agents and other  
19 independent contractors, agents, and employees;
- 20 (4) Institute, defend, or intervene in litigation or  
21 administrative proceedings in its own name on behalf  
22 of itself or two or more unit owners on matters



- 1           affecting the condominium. For the purposes of  
2           actions under chapter 480, associations shall be  
3           deemed to be "consumers";
- 4           (5) Make contracts and incur liabilities;
- 5           (6) Regulate the use, maintenance, repair, replacement,  
6           and modification of common elements;
- 7           (7) Cause additional improvements to be made as a part of  
8           the common elements;
- 9           (8) Acquire, hold, encumber, and convey in its own name  
10          any right, title, or interest to real or personal  
11          property; provided that:
- 12          (A) Designation of additional areas to be common  
13          elements or subject to common expenses after the  
14          initial filing of the declaration or bylaws shall  
15          require the approval of at least sixty-seven per  
16          cent of the unit owners; [~~provided further that~~  
17          ~~if~~]
- 18          (B) If the developer discloses to the initial buyer  
19          in writing that additional areas will be  
20          designated as common elements whether pursuant to  
21          an incremental or phased project or otherwise,  
22          [~~this requirement~~] the requirements of this





1           paragraph shall not apply as to those additional  
2           areas; and [~~provided further that~~]

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

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

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

16          (11) Impose charges and penalties, including late fees and  
17          interest, for late payment of assessments and[~~, after~~  
18          ~~notice and an opportunity to be heard,~~] levy  
19          reasonable fines for violations of the declaration,  
20          bylaws, rules, and regulations of the association,  
21          either in accordance with the bylaws or, [~~for~~  
22          ~~condominiums created after May 17, 1983,~~] if the



1 bylaws are silent, pursuant to a resolution adopted by  
2 the board [~~and approved by sixty-seven per cent of all~~  
3 ~~unit owners at an annual meeting of the association or~~  
4 ~~by the written consent of sixty-seven per cent of all~~  
5 ~~unit owners;~~] that states the basis for the fine and  
6 establishes a procedure that allows an appeal of the  
7 fine to the board with notice and an opportunity to be  
8 heard, and gives a unit owner the right if the fine is  
9 paid to initiate a dispute resolution process as  
10 provided by sections 514B-161 and 514B-162 or an  
11 administrative hearing under a pilot program  
12 administered by the department of commerce and  
13 consumer affairs;

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

18 (13) Provide for cumulative voting through a provision in  
19 the bylaws; [~~provided that an owner shall provide~~  
20 ~~notice of the owner's intent to cumulatively vote~~  
21 ~~before voting commences;~~]



- 1 (14) Provide for the indemnification of its officers,  
2 board, committee members, and agents, and maintain  
3 directors' and officers' liability insurance;
- 4 (15) Assign its right to future income, including the right  
5 to receive common expense assessments, but only to the  
6 extent section 514B-105(e) expressly so provides;
- 7 (16) Exercise any other powers conferred by the declaration  
8 or bylaws;
- 9 (17) Exercise all other powers that may be exercised in  
10 this [~~State~~] state by legal entities of the same type  
11 as the association, except to the extent inconsistent  
12 with this chapter;
- 13 (18) Exercise any other powers necessary and proper for the  
14 governance and operation of the association; and
- 15 (19) By regulation, subject to sections 514B-146, 514B-161,  
16 and 514B-162, require that disputes between the board  
17 and unit owners or between two or more unit owners  
18 regarding the condominium be submitted to nonbinding  
19 alternative dispute resolution in the manner described  
20 in the regulation as a prerequisite to commencement of  
21 a judicial proceeding."



1 SECTION 19. Section 514B-105, Hawaii Revised Statutes, is  
2 amended by amending subsection (e) to read as follows:

3 "(e) Subject to any approval requirements and spending  
4 limits contained in the declaration or bylaws, the association  
5 may authorize the board to borrow money for the repair,  
6 replacement, maintenance, operation, or administration of the  
7 common elements and personal property of the project, or the  
8 making of any additions, alterations, and improvements thereto;  
9 provided that written notice of the purpose and use of the funds  
10 is first sent to all unit owners and owners representing fifty  
11 per cent of the common interest vote or give written consent to  
12 the borrowing. In connection with the borrowing, the board may  
13 grant to the lender the right to assess and collect monthly or  
14 special assessments from the unit owners and to enforce the  
15 payment of the assessments or other sums by statutory lien and  
16 foreclosure proceedings. The cost of the borrowing, including,  
17 without limitation, all principal, interest, commitment fees,  
18 and other expenses payable with respect to the borrowing or the  
19 enforcement of the obligations under the borrowing, shall be a  
20 common expense of the project. For purposes of this section,  
21 the financing of insurance premiums by the association within  
22 the policy period shall not be deemed a loan and no lease shall



1 be deemed a loan if it provides that at the end of the lease the  
2 association may purchase the leased equipment for its fair  
3 market value."

4 SECTION 20. Section 514B-106, Hawaii Revised Statutes, is  
5 amended by amending subsection (e) to read as follows:

6 "(e) Not later than the termination of any period of  
7 developer control, the unit owners shall elect a board of at  
8 least three members; provided that [~~condominiums~~] projects  
9 created after May [~~17,~~] 18, 1984, with one hundred or more  
10 individual units, shall have an elected board of at least nine  
11 members unless [~~at least sixty seven per cent of all unit owners~~  
12 ~~vote by mail ballot, or at a special or annual meeting,~~] the  
13 membership has amended the bylaws to reduce the number of  
14 directors; and provided further that [~~condominiums~~] projects  
15 with more than one hundred individual units where at least  
16 [~~seventy-five~~] seventy per cent of the unit owners do not reside  
17 [~~outside of the State~~] at the project may [~~have an elected board~~  
18 ~~of at least three members. The board shall elect the officers.~~  
19 ~~Board members and officers shall take office upon election.~~]  
20 amend the bylaws to reduce the board to as few as five members  
21 by the written consent of a majority of unit owners or the vote  
22 of a majority of a quorum at any annual meeting or special



1 meeting called for that purpose. The association may rely on  
2 its membership records in determining whether a unit is owner-  
3 occupied. A decrease in the number of directors shall not  
4 deprive an incumbent director of any remaining term of office."

5 SECTION 21. Section 514B-107, Hawaii Revised Statutes, is  
6 amended as follows:

7 1. By amending subsection (a) to read:

8 "(a) Members of the board shall be unit owners or co-  
9 owners, vendees under an agreement of sale, a trustee [~~or~~  
10 ~~beneficiary~~] of a trust which owns a unit, [~~an officer of any~~  
11 ~~corporate owner including a limited liability corporation of a~~  
12 ~~unit, or a representative~~] or an officer, partner, member, or  
13 other person authorized to act on behalf of any other legal  
14 entity which owns a unit. [~~The partners in a general~~  
15 ~~partnership and the general partners of a limited partnership or~~  
16 ~~limited liability partnership shall be deemed to be the owners~~  
17 ~~of a unit for the purpose of serving on the board.] There shall  
18 not be more than one representative on the board from any one  
19 unit."~~

20 2. By amending subsection (c) to read:

21 "(c) An owner shall not act as [~~a director~~] an officer of  
22 an association and an employee of the managing agent retained by



1 the association. Any owner who is a board member of an  
2 association and an employee of the managing agent retained by  
3 the association shall not participate in any discussion  
4 regarding a management contract at a board meeting and shall be  
5 excluded from any executive session of the board where the  
6 management contract or the property manager will be discussed."

7 SECTION 22. Section 514B-108, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

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

- 10 (1) The number of members of the board and the titles of  
11 the officers of the association;
- 12 (2) Election by the board of a president, treasurer,  
13 secretary, and any other officers of the association  
14 the bylaws specify;
- 15 (3) The qualifications, powers and duties, terms of  
16 office, and manner of electing and removing directors  
17 and officers and the filling of vacancies;
- 18 (4) Designation of the powers the board or officers may  
19 delegate to other persons or to a managing agent;
- 20 (5) Designation of the officers who may prepare, execute,  
21 certify, and record amendments to the declaration on  
22 behalf of the association;



- 1           (6) The compensation, if any, of the directors;
- 2           (7) Subject to subsection [~~(d)~~] (e), a method for amending
- 3           the bylaws; and
- 4           (8) The percentage, consistent with this chapter, that is
- 5           required to adopt decisions binding on all unit
- 6           owners; provided that votes allocated to lobby areas,
- 7           swimming pools, recreation areas, saunas, storage
- 8           areas, hallways, trash chutes, laundry chutes, and
- 9           other similar common areas not located inside units
- 10          shall not be cast at any association meeting,
- 11          regardless of their designation in the declaration."

12          SECTION 23. Section 514B-109, Hawaii Revised Statutes, is

13          amended by amending subsections (b) and (c) to read as follows:

14          "(b) Subject to section 514B-23, an association at any

15          time may restate the declaration or bylaws of the association to

16          amend the declaration or bylaws as may be required [~~in order~~] to

17          conform with the provisions of this chapter or of any other

18          statute, ordinance, or rule enacted by any governmental

19          authority, or to correct the percentage of common interest for

20          the project so it totals one hundred per cent, by a resolution

21          adopted by the board. If the restated declaration is to correct

22          the percentage of common interest for the project so that it





1 totals one hundred per cent, the proportion of each unit owner's  
2 percentage of common interest shall remain the same in relation  
3 to the other unit owners. The restated declaration or bylaws  
4 shall be as fully effective for all purposes as if adopted by a  
5 vote or written consent of the unit owners.

6 Any declaration or bylaws restated pursuant to this  
7 subsection shall:

8 (1) Identify each portion so restated;

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

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

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

17 (c) Upon the adoption of a resolution pursuant to  
18 subsection (a) or (b), the restated declaration or bylaws shall  
19 set forth all of the operative provisions of the declaration or  
20 bylaws, as amended, together with a statement that the restated  
21 declaration or bylaws correctly sets forth without change the  
22 corresponding provisions of the declaration or bylaws, as



1 amended, and that the restated declaration or bylaws supersede  
2 the original declaration or bylaws and all prior amendments  
3 thereto. If the restated declaration corrects the percentage of  
4 common interest as provided in subsection (b), the restated  
5 declaration shall also amend the recorded conveyance instruments  
6 that govern the unit owner's interest in the unit."

7 SECTION 24. Section 514B-123, Hawaii Revised Statutes, is  
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) If only one of several owners of a unit is present at  
10 a meeting of the association, that owner is entitled to cast all  
11 the votes allocated to that unit. If more than one of the  
12 owners is present, the votes allocated to that unit may be cast  
13 only in accordance with the agreement of a majority in interest  
14 of the owners, unless the declaration or bylaws expressly  
15 [~~provides~~] provide otherwise. There is majority agreement if  
16 any one of the owners casts the votes allocated to that unit  
17 without protest being made by any of the other owners of the  
18 unit to the person presiding over the meeting before the polls  
19 are closed.

20 (b) Votes allocated to a unit may be cast pursuant to a  
21 proxy duly executed by a unit owner. A unit owner may vote by  
22 mail or electronic transmission through a duly executed



1 [~~directed~~] proxy. If a unit is owned by more than one person,  
2 each owner of the unit may vote or register protest to the  
3 casting of votes by the other owners of the unit through a duly  
4 executed proxy. In the absence of protest, any owner may cast  
5 the votes allocated to the unit by proxy. A unit owner may  
6 revoke a proxy given pursuant to this section only by actual  
7 notice of revocation to the secretary of the association or the  
8 managing agent. A proxy is void if it purports to be revocable  
9 without notice."

10 SECTION 25. Section 514B-132, Hawaii Revised Statutes, is  
11 amended by amending subsection (e) to read as follows:

12 "(e) If a managing agent receives a request from the  
13 commission to distribute any commission-generated information,  
14 printed material, or documents to the association, its board, or  
15 unit owners, the managing agent shall make the distribution at  
16 the cost of the association within a reasonable period of time  
17 after receiving the request. The requirements of this  
18 subsection apply to all managing agents, including unregistered  
19 managing agents."

20 SECTION 26. Section 514B-137, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) Except to the extent provided by the declaration or  
2 bylaws, the association is responsible for the operation of the  
3 property, and each unit owner is responsible for maintenance,  
4 repair, and replacement of the owner's unit. Each unit owner  
5 shall afford to the association and the other unit owners, and  
6 to [~~their agents or employees~~] employees, independent  
7 contractors, or agents of the association or other unit owners,  
8 during reasonable hours, access through the owner's unit  
9 reasonably necessary for those purposes. [~~if~~] Unless entry is  
10 made pursuant to subsection (b), if damage is inflicted on the  
11 common elements or on any unit through which access is taken,  
12 the unit owner responsible for the damage, or the association,  
13 if it is responsible, is liable for the prompt repair thereof;  
14 provided that the association shall not be responsible to pay  
15 the costs of removing or replacing any finished surfaces or  
16 other barriers that impede its ability to maintain and repair  
17 the common elements."

18           SECTION 27. Section 514B-138, Hawaii Revised Statutes, is  
19 amended by amending subsection (d) to read as follows:

20           "(d) If a unit owner fails to follow requirements imposed  
21 by the board pursuant to this section, the association, after  
22 reasonable notice, [~~shall~~] may enter the unit to perform the



1 requirements with regard to such high-risk components at the  
2 sole cost and expense of the unit owner, which costs and  
3 expenses shall be a lien on the unit as provided in section  
4 514B-146. Nothing in this section shall be deemed to limit the  
5 remedies of the association for damages, or injunctive relief,  
6 or both."

7 SECTION 28. Section 514B-141, Hawaii Revised Statutes, is  
8 amended by amending subsection (c) to read as follows:

9 "(c) Any statute of limitation affecting the association's  
10 right of action against a developer [~~under this chapter~~] is  
11 tolled until the period of developer control terminates. A unit  
12 owner is not precluded from maintaining an action contemplated  
13 by this section because the unit owner is a unit owner or a  
14 member or officer of the association. Liens resulting from  
15 judgments against the association are governed by section  
16 514B-147."

17 SECTION 29. Section 514B-143, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[~~f~~]**§514B-143**[~~]~~ **Insurance.** (a) Unless otherwise  
20 provided in the declaration or bylaws, [~~and to the extent~~  
21 ~~reasonably available,~~] the association shall purchase and at all  
22 times maintain the following:



- 1           (1) Property insurance:
- 2               (A) On the common elements;
- 3               (B) Providing coverage for special form causes of
- 4                     loss; and
- 5               (C) In a total amount of not less than the full
- 6                     insurable replacement cost of the insured
- 7                     property, less deductibles, but including
- 8                     coverage for the increased costs of construction
- 9                     due to building code requirements, at the time
- 10                  the insurance is purchased and at each renewal
- 11                  date;
- 12           (2) Commercial general liability insurance against claims
- 13                  and liabilities arising in connection with the
- 14                  ownership, existence, use, or management of the
- 15                  property in a minimum amount of \$1,000,000, or a
- 16                  greater amount deemed sufficient in the judgment of
- 17                  the board[, insuring the board, the association, the
- 18                  management agent, and their respective employees and
- 19                  agents and all persons acting as agents. The
- 20                  developer shall be included as an additional insured
- 21                  in its capacity as a unit owner, managing agent or
- 22                  resident manager, board member, or officer. The unit



1 ~~owners shall be included as additional insured parties~~  
2 ~~but only for claims and liabilities arising in~~  
3 ~~connection with the ownership, existence, use, or~~  
4 ~~management of the common elements. The insurance~~  
5 ~~shall cover claims of one or more insured parties~~  
6 ~~against other insured parties.]~~i

7 (3) A fidelity bond, as follows:

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

17 (B) All management companies that are responsible for  
18 the funds held or administered by the association  
19 shall be covered by a fidelity bond as provided  
20 in section 514B-132(a)(3). The association shall  
21 have standing to make a loss claim against the



1                   bond of the managing agent as a party covered  
2                   under the bond[~~;-and~~];  
3                   and  
4                   [~~(C)~~] (4) The board shall obtain directors and  
5                   officers liability coverage at a level deemed  
6                   reasonable by the board, if not otherwise  
7                   [~~established~~] limited by the declaration or bylaws.  
8                   [~~Directors and officers liability coverage shall~~  
9                   ~~extend to all contracts and other actions taken by the~~  
10                  ~~board in their official capacity as directors and~~  
11                  ~~officers, but shall exclude actions for which the~~  
12                  ~~directors are not entitled to indemnification under~~  
13                  ~~chapter 414D or the declaration and bylaws.]~~

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





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

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

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

- 20 (1) Pay the deductible amount as a common expense;
- 21 (2) After notice and an opportunity for a hearing, assess  
22 the deductible amount against the owners who caused



1 the damage or from whose units the damage or cause of  
2 loss originated; or

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

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

16 [~~(f) Insurance policies carried pursuant to subsections~~  
17 ~~(a) and (b) shall include each of the following provisions:~~

18 ~~(1) Each unit owner and secured party is an insured person~~  
19 ~~under the policy with respect to liability arising out~~  
20 ~~of the unit owner's interest in the common elements or~~  
21 ~~membership in the association;~~



1       ~~(2) The insurer waives its right to subrogation under the~~  
2           ~~policy against any unit owner of the condominium or~~  
3           ~~members of the unit owner's household and against the~~  
4           ~~association and members of the board; and~~

5       ~~(3) The unit owner waives the unit owner's right to~~  
6           ~~subrogation under the association policy against the~~  
7           ~~association and the board.~~

8       ~~(g) If at the time of a loss under the policy there is~~  
9       ~~other insurance in the name of a unit owner covering the same~~  
10       ~~property covered by the policy, the association's policy shall~~  
11       ~~be the primary insurance.]~~

12       ~~[(h)]~~ (f) Any loss covered by the property policy under  
13       subsection (a)(1) shall be adjusted by and with the association.  
14       The insurance proceeds for that loss shall be payable to the  
15       association, or to an insurance trustee designated by the  
16       association for that purpose. The insurance trustee or the  
17       association shall hold any insurance proceeds in trust for unit  
18       owners and secured parties as their interests may appear. ~~[The~~  
19       ~~proceeds shall be disbursed first for the repair or restoration~~  
20       ~~of the damaged common elements, the bare walls, ceilings, and~~  
21       ~~floors of the units, and then to any improvements and~~  
22       ~~betterments the association may insure. Unit owners shall not~~



1 ~~be entitled to receive any portion of the proceeds unless there~~  
2 ~~is a surplus of proceeds after the common elements and units~~  
3 ~~have been completely repaired or restored or the association has~~  
4 ~~been terminated as trustee.]~~

5        [(+) ] (g) The board, [~~under the declaration or bylaws,~~]  
6 with a majority vote of the unit owners at a meeting or with the  
7 written consent of a majority of unit owners, may require unit  
8 owners to obtain reasonable types and levels of insurance  
9 [~~covering their personal liability and compensatory but not~~  
10 ~~consequential damages to another unit caused by the negligence~~  
11 ~~of the owner or the owner's guests, tenants, or invitees, or~~  
12 ~~regardless of any negligence originating from the unit)]. The  
13 [~~personal~~] liability of a unit owner shall include but not be  
14 limited to the deductible of the owner whose unit was damaged,  
15 any damage not covered by insurance required by this subsection,  
16 as well as the decorating, painting, wall and floor coverings,  
17 trim, appliances, equipment, and other furnishings.~~

18        If the unit owner does not purchase or produce evidence of  
19 insurance requested by the board, the directors may, in good  
20 faith, purchase the insurance coverage and charge the reasonable  
21 premium cost back to the unit owner. In no event is the  
22 association or board liable to any person either with regard to



1 ~~[its]~~ the failure of a unit owner to purchase insurance or a  
2 decision by the board not to purchase the insurance~~[7]~~ for the  
3 owner, or with regard to the timing of its purchase of the  
4 insurance or the amounts or types of coverages obtained.

5 ~~[(j) Contractors and vendors, except public utilities~~  
6 ~~doing business with an association, shall provide certificates~~  
7 ~~of insurance naming the association, its board, and its managing~~  
8 ~~agent as additional insured parties.]~~

9 ~~[(k)]~~ (h) The provisions of this section may be varied or  
10 waived in the case of a ~~[condominium community]~~ project in which  
11 all units are restricted to nonresidential use.

12 ~~[(l) Any insurer defending a liability claim against an~~  
13 ~~association shall notify the association of the terms of the~~  
14 ~~settlement no less than ten days before settling the claim. The~~  
15 ~~association may not veto the settlement unless otherwise~~  
16 ~~provided by contract or statute.]"~~

17 SECTION 30. Section 514B-144, Hawaii Revised Statutes, is  
18 amended as follows:

19 1. By amending subsection (a) to read:

20 "(a) ~~[Except as provided in section 514B-41, until the~~  
21 ~~association makes a common expense assessment, the developer~~  
22 ~~shall pay all common expenses. After an assessment has been~~



1 ~~made by the association, assessments]~~ Assessments shall be made  
2 ~~[at least annually,~~] based on a budget adopted and distributed  
3 or made available to unit owners at least annually by the  
4 board."

5 2. By amending subsection (g) to read as follows:

6 "(g) No unit owner may exempt the unit owner from  
7 liability for the unit owner's contribution towards the common  
8 expenses by waiver of the use or enjoyment of any of the common  
9 elements or by abandonment of the unit owner's unit. Subject to  
10 such terms and conditions as may be specified in the declaration  
11 or bylaws, any unit owner, by conveying the unit owner's unit  
12 and common interest to the ~~[board]~~ association on behalf of all  
13 other unit owners, may exempt the unit owner's self from common  
14 expenses thereafter accruing."

15 SECTION 31. Section 514B-145, Hawaii Revised Statutes, is  
16 amended by amending its title and subsection (a) to read as  
17 follows:

18 "[~~§~~514B-145~~]~~ **Association fiscal matters; collection of**  
19 **unpaid assessments from tenants~~[-]~~ or rental agents.** (a) If  
20 the owner of a unit rents or leases the unit and is in default  
21 for thirty days or more in the payment of the unit's share of  
22 the common expenses, the board, for as long as the default



1 continues, may demand in writing and receive each month from any  
2 tenant occupying the unit[7] or rental agent renting the unit,  
3 an amount sufficient to pay all sums due from the unit owner to  
4 the association, including interest, if any, but the amount  
5 shall not exceed the tenant's rent due each month. The tenant's  
6 payment under this section shall discharge that amount of  
7 payment from the tenant's rent obligation, and any contractual  
8 provision to the contrary shall be void as a matter of law."

9 SECTION 32. Section 514B-151, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[7]§514B-151[7] **Association fiscal matters; lease rent**  
12 **renegotiation.** (a) Notwithstanding any provision in the  
13 declaration or bylaws, any lease or sublease of the real estate  
14 or of a unit, or of an undivided interest in the real estate to  
15 a unit owner, whenever any lease or sublease of the real estate,  
16 a unit, or an undivided interest in the real estate to a unit  
17 owner provides for the periodic renegotiation of lease rent  
18 thereunder, the association shall represent the unit owners in  
19 all negotiations and proceedings, including but not limited to  
20 appraisal or arbitration, for the determination of lease rent;  
21 provided that the association's representation in the  
22 renegotiation of lease rent shall be on behalf of at least two



1 lessees. All costs and expenses incurred in such representation  
2 shall be a common expense of the association.

3 (b) Notwithstanding subsection (a), if some, but not all  
4 of the unit owners have already purchased the leased fee  
5 interest appurtenant to their units [~~at the time of~~  
6 ~~renegotiation,~~] as of the earlier of any date specified in the  
7 lease or sublease for the commencement of lease rent negotiation  
8 or nine months prior to the commencement of the term for which  
9 lease rent is to be renegotiated, all costs and expenses of the  
10 renegotiation shall be assessed to the remaining lessees whose  
11 lease rent is to be renegotiated in the same proportion that the  
12 common interest appurtenant to each lessee's unit bears to the  
13 common interest appurtenant to all remaining lessees' units[~~-~~]  
14 whose lease rent is to be renegotiated. The unpaid amount of  
15 this assessment shall constitute a lien upon the lessee's unit,  
16 which may be collected in accordance with section 514B-146 in  
17 the same manner as an unpaid common expense.

18 (c) In any project where the association is a lessor or  
19 sublessor, the association shall fulfill its obligations under  
20 this section by appointing independent counsel to represent the  
21 lessees in the negotiations and proceedings related to the rent  
22 renegotiation. The lessees' counsel shall act on behalf of the





1 lessees in accordance with the vote or written consent of a  
2 majority of the lessees casting ballots or submitting written  
3 consents as determined by the ratio that the common interest  
4 appurtenant to each lessee's unit bears to the total common  
5 interest appurtenant to the units of participating lessees.  
6 Nothing in this subsection shall be interpreted to preclude the  
7 lessees from making a decision (by the vote or written consent  
8 of a majority of the lessees as described above) to retain other  
9 counsel or additional professional advisors as may be reasonably  
10 necessary or appropriate to complete the negotiations and  
11 proceedings. In the event of a deadlock among the lessees or  
12 other inability to proceed with the rent renegotiation on behalf  
13 of the lessees, the lessees' counsel may apply to the circuit  
14 court of the judicial circuit in which the condominium is  
15 located for instructions. The association shall not instruct or  
16 direct the lessees' counsel or other professional advisors. All  
17 costs and expenses incurred under this subsection shall be  
18 assessed by the association to the lessees as provided in  
19 subsection (a) or (b), as may be applicable.

20 (d) As used in this section, "lessees" or "remaining  
21 lessees" means all unit owners who have not purchased the leased  
22 fee interest appurtenant to their units as of the earlier of any



1 date specified in the lease or sublease for the commencement of  
2 lease rent negotiation or nine months prior to the commencement  
3 of the term for which lease rent is to be renegotiated. The  
4 board's allocation of expenses under this section shall be final  
5 and binding in the absence of a determination that the board  
6 abused its discretion."

7 SECTION 33. Section 514B-154, Hawaii Revised Statutes, is  
8 amended by amending subsection (g) to read as follows:

9 "(g) An association may comply with this part by making  
10 information available to unit owners, at the option of each unit  
11 owner[7] and at no cost[7] to the unit owner for downloading the  
12 information, through an Internet site."

13 SECTION 34. Section 514C-6, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) The association of apartment owners or cooperative  
16 housing corporation may purchase the leased fee interest in the  
17 land; provided that at least [~~seventy-five~~] sixty-seven per cent  
18 of the condominium unit lessees or cooperative unit lessees  
19 approve of the purchase. If the seller is also a condominium  
20 unit lessee or cooperative unit lessee, the seller's interest  
21 shall be disregarded in the computation to achieve the [~~seventy-~~



1 ~~five]~~ sixty-seven per cent requirement. As used herein,  
2 [~~seventy-five~~]:

3 (1) Sixty-seven per cent of the condominium unit lessees  
4 means the lessees of units to which [~~seventy-five~~]  
5 sixty-seven per cent of the common interests are  
6 appurtenant; and [~~seventy-five~~]

7 (2) Sixty-seven per cent of the cooperative unit lessees  
8 means shareholders having at least [~~seventy-five~~]  
9 sixty-seven per cent of the shares in the cooperative  
10 housing corporation.

11 If the association of apartment owners or cooperative  
12 housing corporation accepts the seller's offer to purchase the  
13 leased fee interest in the land, the following powers, in  
14 addition to any other powers, shall be conferred upon the  
15 association of owners or cooperative housing corporation:

16 (1) To purchase or otherwise acquire, own, improve, use,  
17 and otherwise deal in and with the leased fee interest  
18 to the land or any or all undivided interests therein;

19  
20 (2) To incur liabilities, borrow money, and secure any of  
21 its obligations by mortgage or pledge of all or any  
22 portion of its property, assessments, and funds;



1           (3) To assess, in a fair and equitable manner, the  
2           condominium unit lessees or cooperative unit lessees  
3           for the expenses incurred in acquiring the leased fee  
4           interest to the land, or to service any debt  
5           associated therewith; and

6           (4) To sell the leased fee interest appurtenant to a  
7           condominium unit to any condominium unit lessee or  
8           subsequent purchaser of such unit."

9           SECTION 35. Section 514C-22, Hawaii Revised Statutes, is  
10          amended by amending subsection (d) to read as follows:

11          "(d) If some, but not all, lessees have purchased the  
12          leased fee interest in their condominium units directly from the  
13          lessor, (other than purchases by the lessor or the association  
14          of apartment owners), the association of apartment owners may  
15          undertake the purchase of all or any part of the leased fee  
16          interest in the remaining leasehold condominium units in the  
17          project in accordance with subsection (b); provided that:

18               (1) [~~Seventy-five~~] Sixty-seven per cent of the remaining  
19               lessees approve an amendment to the declaration  
20               authorizing the purchase of the leased fee interest by  
21               the association consistent with the requirements of  
22               this section;



- 1           (2) All costs and expenses and all proceeds and benefits  
2           of acquiring and holding the leased fee interest and  
3           to service any debt associated therewith shall be  
4           separately assessed or credited to the condominium  
5           units of the remaining lessees in the same ratio that  
6           the common interest appurtenant to each remaining  
7           lessees' apartment bears to the total common interest  
8           appurtenant to all of the remaining lessees'  
9           condominium units;
- 10          (3) The association of apartment owners shall sell the  
11          leased fee interest in a condominium unit only to the  
12          lessee of the condominium unit or to the permitted  
13          assigns or successors of the lessee; provided that if  
14          the lessee or the lessee's permitted assigns or  
15          successors decline to purchase the leased fee  
16          interest, the leased fee interest may be sold to other  
17          persons so long as reasonable disclosure is made of  
18          the association of apartment owners' intent to sell  
19          the leased fee interest to the other persons and the  
20          disclosure includes a statement that the lessees may  
21          have no legal remedy if they subsequently wish to  
22          purchase the leased fee interest and the other persons



1           refuse to sell or will sell only at a price  
2           unacceptable to the lessees; and  
3       (4) The association of apartment owners, through its board  
4           of directors in the exercise of its authority, may  
5           decide not to accept an offer from the lessor to sell  
6           all of the remaining portion of the lessor's interest  
7           to the association of apartment owners on the basis  
8           that the purchase is not financially feasible or is  
9           otherwise not in the best interests of the  
10          association. In that event, the board shall adopt a  
11          resolution containing written findings as to its  
12          reasons for not accepting the offer and shall  
13          distribute the resolution to the remaining lessees."

14       SECTION 36. Act 164, Session Laws of Hawaii 2004, as  
15       amended by Act 93, Session Laws of Hawaii 2005, is amended by  
16       amending section 35 to read as follows:

17       "SECTION 35. This Act shall take effect on July 1, 2006;  
18       provided that:

19       (1) The text of section -146 in part I of this Act  
20           shall be repealed on December 31, 2007, and reenacted  
21           in the form in which it read, as section 514A-90,  
22           Hawaii Revised Statutes, on the day before the



1 approval of Act 39, Session Laws of Hawaii 2000, but  
2 with the amendments to section 514A-90, Hawaii Revised  
3 Statutes, made by Act 53, Session Laws of Hawaii 2003;

4 (2) Section 28 of this Act shall take effect on July 1,  
5 2004, and shall be repealed on June 30, 2006; and

6 (3) Sections 30 to 33 of this Act shall take effect on  
7 July 1, 2004[; ~~and~~

8 ~~(4) If provisions regarding the creation, alteration,~~  
9 ~~termination, registration, and administration of~~  
10 ~~condominiums, and the protection of condominium~~  
11 ~~purchasers, are not adopted effective July 1, 2006,~~  
12 ~~parts I and II of this Act shall be repealed on June~~  
13 ~~30, 2006]."~~

14 SECTION 37. Act 93, Session Laws of Hawaii 2005, is  
15 amended by repealing section 6.

16 "~~SECTION 6. Chapter 514A, Hawaii Revised Statutes, is~~  
17 ~~repealed.]"~~

18 SECTION 38. Chapter 16-107, subchapter 6, Hawaii  
19 Administrative Rules, shall remain in effect until the real  
20 estate commission adopts rules pursuant to section 514B-61 to  
21 implement section 514B-148, Hawaii Revised Statutes.



1 SECTION 39. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 40. This Act shall take effect on July 1, 2050.

