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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. (a) This  
18 chapter:

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

22 (2) On and after July 1, 2006, shall apply only to:

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

12           (b) This chapter shall not apply to any condominium  
13 project or association of apartment owners created prior to  
14 May 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  
21 May 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 under prior condominium property  
13 regime statutes.

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~~] provided that those sections  
20 [~~apply~~]:



1 ~~amendment procedures of this chapter]~~ may be adopted by the vote  
 2 or written consent of a majority of the owners; provided that  
 3 any amendment adopted pursuant to this section shall not  
 4 invalidate the reserved rights of a developer. If an amendment  
 5 grants to any person any rights, powers, or privileges permitted  
 6 by this chapter, all correlative obligations, liabilities, and  
 7 restrictions in this chapter also apply to that person."

8 SECTION 7. Section 514B-32, Hawaii Revised Statutes, is  
 9 amended by amending subsection (a) to read as follows:

10 "(a) A declaration shall describe or include the  
 11 following:

- 12 (1) The land submitted to the condominium property regime;
- 13 (2) The number of the condominium [~~property regime~~] map  
 14 filed concurrently with the declaration;
- 15 (3) The number of units in the condominium property  
 16 regime;
- 17 (4) The unit number of each unit and common interest  
 18 appurtenant to each unit;
- 19 (5) The number of buildings and projects in the  
 20 condominium property regime, and the number of stories  
 21 and units in each building;
- 22 (6) The permitted and prohibited uses of each unit;

- 1           (7) To the extent not shown on the condominium [~~property~~  
2           regime] map, a description of the location and  
3           dimensions of the horizontal and vertical boundaries  
4           of any unit. Unit boundaries may be defined by  
5           physical structures or, if a unit boundary is not  
6           defined by a physical structure, by spatial  
7           coordinates;
- 8           (8) The condominium property regime's common elements;
- 9           (9) The condominium property regime's limited common  
10          elements, if any, and the unit or units to which each  
11          limited common element is appurtenant;
- 12          (10) The total percentage of the common interest that is  
13          required to approve rebuilding, repairing, or  
14          restoring the condominium property regime if it is  
15          damaged or destroyed;
- 16          (11) The total percentage of the common interest, and any  
17          other approvals or consents, that are required to  
18          amend the declaration. Except as otherwise  
19          specifically provided in this chapter, and except for  
20          any amendments made pursuant to reservations set forth  
21          in paragraph (12), the approval of the owners of at  
22          least sixty-seven per cent of the common interest





1 shall be required for all amendments to the  
2 declaration;

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

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

19 (A) Any variances that have been granted to achieve  
20 the compliance; and

21 (B) Whether, as the result of the adoption or  
22 amendment of any ordinances or codes, the project



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

18                  SECTION 8. Section 514B-33, Hawaii Revised Statutes, is  
19                  amended to read as follows:

20                  " [†] §514B-33 [†] Condominium [~~property regime~~] map. (a) A  
21                  condominium [~~property regime~~] map shall be recorded with the

1 declaration. The condominium [~~property regime~~] map shall  
2 contain the following:

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



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

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

7 SECTION 9. Section 514B-34, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "[+] §514B-34 [+] Condominium [~~property regime~~] map;  
10 certification of architect, engineer, or surveyor. (a) The  
11 condominium [~~property regime~~] map shall bear the statement of a  
12 licensed architect, engineer, or surveyor certifying that the  
13 condominium [~~property regime~~] map is consistent with the plans  
14 of the condominium's building or buildings filed or to be filed  
15 with the government official having jurisdiction over the  
16 issuance of permits for the construction of buildings in the  
17 county in which the condominium property regime is located. If  
18 the building or buildings have been built at the time the  
19 condominium [~~property regime~~] map is recorded, the certification  
20 shall state that, to the best of the architect's, engineer's, or  
21 surveyor's knowledge, the condominium [~~property regime~~] map  
22 depicts the layout, location, dimensions, and numbers of the



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

12 (b) If the condominium property regime is a conversion and  
 13 the government official having jurisdiction over the issuance of  
 14 permits for the construction of buildings in the county in which  
 15 the condominium property regime is located is unable to locate  
 16 the original permitted construction plans, the certification  
 17 need only state that the condominium [~~property regime~~] map  
 18 depicts the layout, location, boundaries, dimensions, and  
 19 numbers of the units substantially as built. If there are no  
 20 buildings, no certification shall be required."

21 SECTION 10. Section 514B-38, Hawaii Revised Statutes, is  
 22 amended to read as follows:



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

4 (5) The right of the board, on behalf of the association,  
5 to lease or otherwise use for the benefit of the  
6 association those common elements that the board  
7 determines are not actually used by any of the unit  
8 owners for a purpose permitted in the declaration.

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

18 (6) The right of the board, on behalf of the association,  
19 to lease or otherwise use for the benefit of the  
20 association those common elements that the board  
21 determines are actually used by one or more unit  
22 owners for a purpose permitted in the declaration.

1           The lease or use shall be approved by the owners of at  
2           least sixty-seven per cent of the common interest,  
3           including all directly affected unit owners that the  
4           board reasonably determines actually use the common  
5           elements, and the owners' mortgagees [-]; provided that  
6           the requirements of this paragraph shall not apply to  
7           any leases, licenses, or other agreements entered into  
8           for the purposes authorized by section 514B-140(d)."

9           SECTION 11. Section 514B-47, Hawaii Revised Statutes, is  
10          amended by amending subsection (c) to read as follows:

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

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

21           (2) The unit owner shall not by reason of the acquisition  
22           or right to possession be entitled to any claim





1           against the lessor or others for compensation or  
2           indemnity for the unit owner's leasehold interest;  
3       (3) All compensation and damages for or on account of any  
4           land shall be payable to and become the sole property  
5           of the lessor;  
6       (4) All compensation and damages for or on account of any  
7           buildings or improvements on the demised land shall be  
8           payable to and become the sole property of the unit  
9           owners of the buildings and improvements in accordance  
10          with their interests; and  
11       (5) The unit lease rents are reduced in proportion to the  
12          land so acquired or possessed;  
13   the lessor and the developer, if the developer retains any  
14   interests or reserved rights in the project, shall file and  
15   record an amendment to the declaration to reflect any  
16   acquisition or right to possession. The consent or joinder of  
17   the unit owners or their respective mortgagees shall not be  
18   required, if the land acquired or possessed constitutes no more  
19   than five per cent of the total land of the condominium property  
20   regime. Upon the recordation of the amendment, the land  
21   acquired or possessed shall cease to be the subject of a  
22   condominium property regime or subject to this chapter. The

1 lessor shall notify each unit owner in writing of the filing of  
2 the amendment and the rent abatement, if any, to which the unit  
3 owner is entitled. The lessor shall provide the association,  
4 through its board, with a copy of the recorded amendment."

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-98, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

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

18 SECTION 14. Section 514B-104, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

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



- 1       (1) Adopt and amend the declaration, bylaws, and rules and  
2            regulations;
- 3       (2) Adopt and amend budgets for revenues, expenditures,  
4            and reserves and collect assessments for common  
5            expenses from unit owners, subject to section  
6            514B-148;
- 7       (3) Hire and discharge managing agents and other  
8            independent contractors, agents, and employees;
- 9       (4) Institute, defend, or intervene in litigation or  
10           administrative proceedings in its own name on behalf  
11           of itself or two or more unit owners on matters  
12           affecting the condominium. For the purposes of  
13           actions under chapter 480, associations shall be  
14           deemed to be "consumers";
- 15       (5) Make contracts and incur liabilities;
- 16       (6) Regulate the use, maintenance, repair, replacement,  
17           and modification of common elements;
- 18       (7) Cause additional improvements to be made as a part of  
19           the common elements;
- 20       (8) Acquire, hold, encumber, and convey in its own name  
21           any right, title, or interest to real or personal  
22           property; provided that [designation]:





1           514B-161, 514B-162, or by filing a request for an  
2           administrative hearing under a pilot program  
3           administered by the department of commerce and  
4           consumer affairs;

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

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

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

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

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

21           (17) Exercise all other powers that may be exercised in  
22           this State by legal entities of the same type as the



1 association, except to the extent inconsistent with  
2 this chapter;

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

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

12 SECTION 15. Section 514B-105, Hawaii Revised Statutes, is  
13 amended by amending subsection (e) to read as follows:

14 "(e) Subject to any approval requirements and spending  
15 limits contained in the declaration or bylaws, the association  
16 may authorize the board to borrow money for the repair,  
17 replacement, maintenance, operation, or administration of the  
18 common elements and personal property of the project, or the  
19 making of any additions, alterations, and improvements thereto;  
20 provided that written notice of the purpose and use of the funds  
21 is first sent to all unit owners and owners representing fifty  
22 per cent of the common interest vote or give written consent to





1 ~~vote by mail ballot, or at a special or annual meeting,]~~ the  
 2 membership has amended the bylaws to reduce the number of  
 3 directors; and provided further that [condominiums] projects  
 4 with more than one hundred individual units where at least  
 5 [seventy five] seventy per cent of the unit owners do not reside  
 6 [outside of the State] at the project may [have an elected board  
 7 of at least three members. The board shall elect the officers.  
 8 Board members and officers shall take office upon election.]  
 9 amend the bylaws to reduce the board to as few as five members  
 10 by the written consent of a majority of owners or the vote of a  
 11 majority of a quorum at any annual meeting or special meeting  
 12 called for that purpose. The association may rely on its  
 13 membership records in determining whether a unit is owner-  
 14 occupied. A decrease in the number of directors shall not  
 15 deprive an incumbent director of any remaining term of office."

16 SECTION 17. Section 514B-107, Hawaii Revised Statutes, is  
 17 amended as follows:

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

19 "(a) Members of the board shall be unit owners or co-  
 20 owners, vendees under an agreement of sale, a trustee [~~ex~~  
 21 ~~beneficiary]~~ of a trust which owns a unit, [~~an officer of any~~  
 22 ~~corporate owner including a limited liability corporation of a~~

1 ~~unit, or a representative]~~ or an officer, partner, member, or  
2 other person authorized to act on behalf of any other legal  
3 entity which owns a unit. [~~The partners in a general~~  
4 ~~partnership and the general partners of a limited partnership or~~  
5 ~~limited liability partnership shall be deemed to be the owners~~  
6 ~~of a unit for the purpose of serving on the board.]~~ There shall  
7 not be more than one representative on the board from any one  
8 unit."

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

10 "(c) An owner shall not act as [~~a director]~~ an officer of  
11 an association and an employee of the managing agent retained by  
12 the association. Any owner who is a board member of an  
13 association and an employee of the managing agent retained by  
14 the association shall not participate in any discussion  
15 regarding a management contract at a board meeting and shall be  
16 excluded from any executive session of the board where the  
17 management contract or the property manager will be discussed."

18 SECTION 18. Section 514B-108, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

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

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

- 1           (2) Election by the board of a president, treasurer,  
2           secretary, and any other officers of the association  
3           the bylaws specify;
- 4           (3) The qualifications, powers and duties, terms of  
5           office, and manner of electing and removing directors  
6           and officers and the filling of vacancies;
- 7           (4) Designation of the powers the board or officers may  
8           delegate to other persons or to a managing agent;
- 9           (5) Designation of the officers who may prepare, execute,  
10          certify, and record amendments to the declaration on  
11          behalf of the association;
- 12          (6) The compensation, if any, of the directors;
- 13          (7) Subject to subsection [~~d~~] (e), a method for amending  
14          the bylaws; and
- 15          (8) The percentage, consistent with this chapter, that is  
16          required to adopt decisions binding on all unit  
17          owners; provided that votes allocated to lobby areas,  
18          swimming pools, recreation areas, saunas, storage  
19          areas, hallways, trash chutes, laundry chutes, and  
20          other similar common areas not located inside units  
21          shall not be cast at any association meeting,  
22          regardless of their designation in the declaration."

1 SECTION 19. Section 514B-109, Hawaii Revised Statutes, is  
2 amended by amending subsections (b) and (c) to read as follows:

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

17 Any declaration or bylaws restated pursuant to this  
18 subsection shall:

- 19 (1) Identify each portion so restated;
- 20 (2) Contain a statement that those portions have been  
21 restated solely for purposes of information and  
22 convenience;



1 owners is present, the votes allocated to that unit may be cast  
2 only in accordance with the agreement of a majority in interest  
3 of the owners, unless the declaration or bylaws expressly  
4 [~~provides~~] provide otherwise. There is majority agreement if  
5 any one of the owners casts the votes allocated to that unit  
6 without protest being made by any of the other owners of the  
7 unit to the person presiding over the meeting before the polls  
8 are closed.

9 (b) Votes allocated to a unit may be cast pursuant to a  
10 proxy duly executed by a unit owner. A unit owner may vote by  
11 mail or electronic transmission through a duly executed  
12 [~~directed~~] proxy. If a unit is owned by more than one person,  
13 each owner of the unit may vote or register protest to the  
14 casting of votes by the other owners of the unit through a duly  
15 executed proxy. In the absence of protest, any owner may cast  
16 the votes allocated to the unit by proxy. A unit owner may  
17 revoke a proxy given pursuant to this section only by actual  
18 notice of revocation to the secretary of the association or the  
19 managing agent. A proxy is void if it purports to be revocable  
20 without notice."

21 SECTION 21. Section 514B-132, Hawaii Revised Statutes, is  
22 amended by amending subsection (e) to read as follows:



1           "(e) If a managing agent receives a request from the  
2 commission to distribute any commission-generated information,  
3 printed material, or documents to the association, its board, or  
4 unit owners, the managing agent shall make the distribution at  
5 the cost of the association within a reasonable period of time  
6 after receiving the request. The requirements of this  
7 subsection apply to all managing agents, including unregistered  
8 managing agents."

9           SECTION 22. Section 514B-137, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11           "(a) Except to the extent provided by the declaration or  
12 bylaws, the association is responsible for the operation of the  
13 property, and each unit owner is responsible for maintenance,  
14 repair, and replacement of the owner's unit. Each unit owner  
15 shall afford to the association and the other unit owners, and  
16 to [~~their agents or employees~~] employees, independent  
17 contractors, or agents of the association or other unit owners,  
18 during reasonable hours, access through the owner's unit  
19 reasonably necessary for those purposes. [~~If~~] Unless entry is  
20 made pursuant to subsection (b), if damage is inflicted on the  
21 common elements or on any unit through which access is taken,  
22 the unit owner responsible for the damage, or the association,



1 if it is responsible, is liable for the prompt repair thereof;  
2 provided that the association shall not be responsible to pay  
3 the costs of removing or replacing any finished surfaces or  
4 other barriers that impede its ability to maintain and repair  
5 the common elements."

6 SECTION 23. Section 514B-138, Hawaii Revised Statutes, is  
7 amended by amending subsection (d) to read as follows:

8 "(d) If a unit owner fails to follow requirements imposed  
9 by the board pursuant to this section, the association, after  
10 reasonable notice, [~~shall~~] may enter the unit to perform the  
11 requirements with regard to such high-risk components at the  
12 sole cost and expense of the unit owner, which costs and  
13 expenses shall be a lien on the unit as provided in section  
14 514B-146. Nothing in this section shall be deemed to limit the  
15 remedies of the association for damages, or injunctive relief,  
16 or both."

17 SECTION 24. Section 514B-141, Hawaii Revised Statutes, is  
18 amended by amending subsection (c) to read as follows:

19 "(c) Any statute of limitation affecting the association's  
20 right of action against a developer [~~under this chapter~~] is  
21 tolled until the period of developer control terminates. A unit  
22 owner is not precluded from maintaining an action contemplated





1 by this section because the unit owner is a unit owner or a  
2 member or officer of the association. Liens resulting from  
3 judgments against the association are governed by section  
4 514B-147."

5 SECTION 25. Section 514B-143, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[~~§~~] §514B-143 [~~§~~] Insurance. (a) Unless otherwise  
8 provided in the declaration or bylaws, [~~and to the extent~~  
9 ~~reasonably available,~~] the association shall purchase and at all  
10 times maintain the following:

- 11 (1) Property insurance:
  - 12 (A) On the common elements;
  - 13 (B) Providing coverage for special form causes of
  - 14 loss; and
  - 15 (C) In a total amount of not less than the full
  - 16 insurable replacement cost of the insured
  - 17 property, less deductibles, but including
  - 18 coverage for the increased costs of construction
  - 19 due to building code requirements, at the time
  - 20 the insurance is purchased and at each renewal
  - 21 date;

1           (2) Commercial general liability insurance against claims  
2           and liabilities arising in connection with the  
3           ownership, existence, use, or management of the  
4           property in a minimum amount of \$1,000,000, or a  
5           greater amount deemed sufficient in the judgment of  
6           the board[, ~~insuring the board, the association, the~~  
7           ~~management agent, and their respective employees and~~  
8           ~~agents and all persons acting as agents. The~~  
9           ~~developer shall be included as an additional insured~~  
10           ~~in its capacity as a unit owner, managing agent or~~  
11           ~~resident manager, board member, or officer. The unit~~  
12           ~~owners shall be included as additional insured parties~~  
13           ~~but only for claims and liabilities arising in~~  
14           ~~connection with the ownership, existence, use, or~~  
15           ~~management of the common elements. The insurance~~  
16           ~~shall cover claims of one or more insured parties~~  
17           ~~against other insured parties.];~~

18           (3) A fidelity bond, as follows:  
19           (A) An association with more than five dwelling units  
20           shall obtain and maintain a fidelity bond  
21           covering persons, including the managing agent  
22           and its employees who control or disburse funds

1 of the association, in an amount equal to \$500  
2 multiplied by the number of units; provided that  
3 the amount of the fidelity bond required by this  
4 paragraph shall not be less than \$20,000 nor  
5 greater than \$200,000; and

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

13 and

14 [~~(C)~~] (4) The board shall obtain directors and  
15 officers liability coverage at a level deemed  
16 reasonable by the board, if not otherwise  
17 [~~established~~] limited by the declaration or bylaws.  
18 [~~Directors and officers liability coverage shall~~  
19 ~~extend to all contracts and other actions taken by the~~  
20 ~~board in their official capacity as directors and~~  
21 ~~officers, but shall exclude actions for which the~~

1 ~~directors are not entitled to indemnification under~~  
2 ~~chapter 414D or the declaration and bylaws.]~~

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

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

17 (c) If a project contains detached units, then  
18 notwithstanding the requirement in this section that  
19 ~~[associations]~~ the association obtain the requisite coverage, if  
20 the board determines that it is in the best interest of the  
21 association to do so, the insurance to be maintained under  
22 subsection (a) (1) may be obtained separately for each unit by



1 the unit owners; provided that the requirements of subsection  
2 (a) (1) shall be met; and provided further that evidence of such  
3 insurance coverage shall be delivered annually to the  
4 association. In such event, the association shall be named as  
5 an additional insured.

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

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

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

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

15 (e) The declaration [~~or~~], bylaws, or the board may require  
16 the association to carry any other insurance, including workers'  
17 compensation, employment practices, environmental hazards, and  
18 equipment breakdown, that the board considers appropriate to  
19 protect the association, the unit owners, or officers,  
20 directors, or agents of the association. Flood insurance shall  
21 also be maintained if the property is located in a special flood  
22 hazard area as delineated on flood maps issued by the Federal



1 Emergency Management Agency. The flood insurance policy shall  
2 comply with the requirements of the National Flood Insurance  
3 Program and the Federal Insurance Administration.

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

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

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

14 ~~(3) The unit owner waives the unit owner's right to~~  
15 ~~subrogation under the association policy against the~~  
16 ~~association and the board.~~

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

21 ~~[(h)]~~ (f) Any loss covered by the property policy under  
22 subsection (a) (1) shall be adjusted by and with the association.



1 The insurance proceeds for that loss shall be payable to the  
2 association, or to an insurance trustee designated by the  
3 association for that purpose. The insurance trustee or the  
4 association shall hold any insurance proceeds in trust for unit  
5 owners and secured parties as their interests may appear. [~~The~~  
6 ~~proceeds shall be disbursed first for the repair or restoration~~  
7 ~~of the damaged common elements, the bare walls, ceilings, and~~  
8 ~~floors of the units, and then to any improvements and~~  
9 ~~betterments the association may insure. Unit owners shall not~~  
10 ~~be entitled to receive any portion of the proceeds unless there~~  
11 ~~is a surplus of proceeds after the common elements and units~~  
12 ~~have been completely repaired or restored or the association has~~  
13 ~~been terminated as trustee.]~~

14 [~~(i)~~] (g) The board, [~~under the declaration or bylaws,~~]  
15 with the vote or written consent of a majority of the owners,  
16 may require unit owners to obtain reasonable types and levels of  
17 insurance [~~covering their personal liability and compensatory~~  
18 ~~but not consequential damages to another unit caused by the~~  
19 ~~negligence of the owner or the owner's guests, tenants, or~~  
20 ~~invitees, or regardless of any negligence originating from the~~  
21 ~~unit)]. The [~~personal~~] liability of a unit owner shall include  
22 but not be limited to the deductible of the owner whose unit was~~



1 damaged, any damage not covered by insurance required by this  
2 subsection, as well as the decorating, painting, wall and floor  
3 coverings, trim, appliances, equipment, and other furnishings.

4 If the unit owner does not purchase or produce evidence of  
5 insurance requested by the board, the directors may, in good  
6 faith, purchase the insurance coverage and charge the reasonable  
7 premium cost back to the unit owner. In no event is the  
8 association or board liable to any person either with regard to  
9 [its] the failure of a unit owner to purchase insurance or a  
10 decision by the board not to purchase the insurance[7] for the  
11 owner, or with regard to the timing of its purchase of the  
12 insurance or the amounts or types of coverages obtained.

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

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

20 ~~[(l) Any insurer defending a liability claim against an~~  
21 ~~association shall notify the association of the terms of the~~  
22 ~~settlement no less than ten days before settling the claim. The~~





1 ~~association may not veto the settlement unless otherwise~~  
2 ~~provided by contract or statute.] "~~

3 SECTION 26. Section 514B-144, Hawaii Revised Statutes, is  
4 amended as follows:

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

6 "(a) [~~Except as provided in section 514B-41, until the~~  
7 ~~association makes a common expense assessment, the developer~~  
8 ~~shall pay all common expenses. After an assessment has been~~  
9 ~~made by the association, assessments]~~ Assessments shall be made  
10 [~~at least annually,~~] based on a budget adopted and distributed  
11 or made available to unit owners at least annually by the  
12 board."

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

14 "(g) No unit owner may exempt the unit owner from  
15 liability for the unit owner's contribution towards the common  
16 expenses by waiver of the use or enjoyment of any of the common  
17 elements or by abandonment of the unit owner's unit. Subject to  
18 such terms and conditions as may be specified in the declaration  
19 or bylaws, any unit owner, by conveying [~~the unit owner's~~] his  
20 or her unit and common interest to the [~~board~~] association on  
21 behalf of all other unit owners, may exempt [~~the unit owner's~~



1 self] himself or herself from common expenses thereafter  
2 accruing."

3 SECTION 27. Section 514B-145, Hawaii Revised Statutes, is  
4 amended by amending its title and subsection (a) to read as  
5 follows:

6 "[+]§514B-145[+] Association fiscal matters; collection of  
7 unpaid assessments from tenants[-] or rental agents. (a) If  
8 the owner of a unit rents or leases the unit and is in default  
9 for thirty days or more in the payment of the unit's share of  
10 the common expenses, the board, for as long as the default  
11 continues, may demand in writing and receive each month from any  
12 tenant occupying the unit[-] or rental agent renting the unit,  
13 an amount sufficient to pay all sums due from the unit owner to  
14 the association, including interest, if any, but the amount  
15 shall not exceed the tenant's rent due each month. The tenant's  
16 payment under this section shall discharge that amount of  
17 payment from the tenant's rent obligation, and any contractual  
18 provision to the contrary shall be void as a matter of law."

19 SECTION 28. Section 514B-151, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[+]§514B-151[+] Association fiscal matters; lease rent  
22 renegotiation. (a) Notwithstanding any provision in the

1 declaration or bylaws, any lease or sublease of the real estate  
2 or of a unit, or of an undivided interest in the real estate to  
3 a unit owner, whenever any lease or sublease of the real estate,  
4 a unit, or an undivided interest in the real estate to a unit  
5 owner provides for the periodic renegotiation of lease rent  
6 thereunder, the association shall represent the unit owners in  
7 all negotiations and proceedings, including but not limited to  
8 appraisal or arbitration, for the determination of lease rent;  
9 provided that the association's representation in the  
10 renegotiation of lease rent shall be on behalf of at least two  
11 lessees. All costs and expenses incurred in such representation  
12 shall be a common expense of the association.

13 (b) Notwithstanding subsection (a), if some, but not all  
14 of the unit owners have already purchased the leased fee  
15 interest appurtenant to their units [~~at the time of~~  
16 ~~renegotiation,~~] as of the earlier of any date specified in the  
17 lease or sublease for the commencement of lease rent  
18 renegotiation or nine months prior to the commencement of the  
19 term for which lease rent is to be renegotiated, all costs and  
20 expenses of the renegotiation shall be assessed to the remaining  
21 lessees whose lease rent is to be renegotiated in the same  
22 proportion that the common interest appurtenant to each lessee's



1 unit bears to the common interest appurtenant to all remaining  
2 lessees' units[-] whose lease rent is to be renegotiated. The  
3 unpaid amount of this assessment shall constitute a lien upon  
4 the lessee's unit, which may be collected in accordance with  
5 section 514B-146 in the same manner as an unpaid common expense.

6 (c) In any project where the association is a lessor or  
7 sublessor, the association shall fulfill its obligations under  
8 this section by appointing independent counsel to represent the  
9 lessees in the negotiations and proceedings related to the rent  
10 renegotiation. The lessees' counsel shall act on behalf of the  
11 lessees in accordance with the vote or written consent of a  
12 majority of the lessees casting ballots or submitting written  
13 consents as determined by the ratio that the common interest  
14 appurtenant to each lessee's unit bears to the total common  
15 interest appurtenant to the units of participating lessees.  
16 Nothing in this subsection shall be interpreted to preclude the  
17 lessees from making a decision (by the vote or written consent  
18 of a majority of the lessees as described above) to retain other  
19 counsel or additional professional advisors as may be reasonably  
20 necessary or appropriate to complete the negotiations and  
21 proceedings. In the event of a deadlock among the lessees or  
22 other inability to proceed with the rent renegotiation on behalf



1 of the lessees, the lessees' counsel may apply to the circuit  
 2 court of the judicial circuit in which the condominium is  
 3 located for instructions. The association shall not instruct or  
 4 direct the lessees' counsel or other professional advisors. All  
 5 costs and expenses incurred under this subsection shall be  
 6 assessed by the association to the lessees as provided in  
 7 subsection (a) or (b), as may be applicable.

8 (d) As used in this section, "lessees" or "remaining  
 9 lessees" means all unit owners who have not purchased the leased  
 10 fee interest appurtenant to their units as of the earlier of any  
 11 date specified in the lease or sublease for the commencement of  
 12 lease rent negotiation or nine months prior to the commencement  
 13 of the term for which lease rent is to be renegotiated. The  
 14 board's allocation of expenses under this section shall be final  
 15 and binding in the absence of a determination that the board  
 16 abused its discretion."

17 SECTION 29. Section 514B-154, Hawaii Revised Statutes, is  
 18 amended by amending subsection (g) to read as follows:

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



1 SECTION 30. Section 514C-6, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The association of apartment owners or cooperative  
4 housing corporation may purchase the leased fee interest in the  
5 land; provided that at least [~~seventy-five~~] sixty-seven per cent  
6 of the condominium unit lessees or cooperative unit lessees  
7 approve of the purchase. If the seller is also a condominium  
8 unit lessee or cooperative unit lessee, the seller's interest  
9 shall be disregarded in the computation to achieve the [~~seventy-~~  
10 ~~five~~] sixty-seven per cent requirement. As used herein,  
11 [~~seventy-five~~]:

12 (1) Sixty-seven per cent of the condominium unit lessees  
13 means the lessees of units to which [~~seventy-five~~]  
14 sixty-seven per cent of the common interests are  
15 appurtenant; and [~~seventy-five~~]

16 (2) Sixty-seven per cent of the cooperative unit lessees  
17 means shareholders having at least [~~seventy-five~~]  
18 sixty-seven per cent of the shares in the cooperative  
19 housing corporation.

20 If the association of apartment owners or cooperative  
21 housing corporation accepts the seller's offer to purchase the  
22 leased fee interest in the land, the following powers, in

1 addition to any other powers, shall be conferred upon the  
2 association of owners or cooperative housing corporation:

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

6 (2) To incur liabilities, borrow money, and secure any of  
7 its obligations by mortgage or pledge of all or any  
8 portion of its property, assessments, and funds;

9 (3) To assess, in a fair and equitable manner, the  
10 condominium unit lessees or cooperative unit lessees  
11 for the expenses incurred in acquiring the leased fee  
12 interest to the land, or to service any debt  
13 associated therewith; and

14 (4) To sell the leased fee interest appurtenant to a  
15 condominium unit to any condominium unit lessee or  
16 subsequent purchaser of such unit."

17 SECTION 31. Section 514C-22, Hawaii Revised Statutes, is  
18 amended by amending subsection (d) to read as follows:

19 "(d) If some, but not all, lessees have purchased the  
20 leased fee interest in their condominium units directly from the  
21 lessor, (other than purchases by the lessor or the association  
22 of apartment owners), the association of apartment owners may



1 undertake the purchase of all or any part of the leased fee  
2 interest in the remaining leasehold condominium units in the  
3 project in accordance with subsection (b); provided that:

4 (1) [~~Seventy-five~~] Sixty-seven per cent of the remaining  
5 lessees approve an amendment to the declaration  
6 authorizing the purchase of the leased fee interest by  
7 the association consistent with the requirements of  
8 this section;

9 (2) All costs and expenses and all proceeds and benefits  
10 of acquiring and holding the leased fee interest and  
11 to service any debt associated therewith shall be  
12 separately assessed or credited to the condominium  
13 units of the remaining lessees in the same ratio that  
14 the common interest appurtenant to each remaining  
15 lessees' apartment bears to the total common interest  
16 appurtenant to all of the remaining lessees'  
17 condominium units;

18 (3) The association of apartment owners shall sell the  
19 leased fee interest in a condominium unit only to the  
20 lessee of the condominium unit or to the permitted  
21 assigns or successors of the lessee; provided that if  
22 the lessee or the lessee's permitted assigns or





1 successors decline to purchase the leased fee  
2 interest, the leased fee interest may be sold to other  
3 persons so long as reasonable disclosure is made of  
4 the association of apartment owners' intent to sell  
5 the leased fee interest to the other persons and the  
6 disclosure includes a statement that the lessees may  
7 have no legal remedy if they subsequently wish to  
8 purchase the leased fee interest and the other persons  
9 refuse to sell or will sell only at a price  
10 unacceptable to the lessees; and

- 11 (4) The association of apartment owners, through its board  
12 of directors in the exercise of its authority, may  
13 decide not to accept an offer from the lessor to sell  
14 all of the remaining portion of the lessor's interest  
15 to the association of apartment owners on the basis  
16 that the purchase is not financially feasible or is  
17 otherwise not in the best interests of the  
18 association. In that event, the board shall adopt a  
19 resolution containing written findings as to its  
20 reasons for not accepting the offer and shall  
21 distribute the resolution to the remaining lessees."



1 SECTION 32. Act 164, Session Laws of Hawaii 2004, as  
2 amended by Act 93, Session Laws of Hawaii 2005, is amended by  
3 amending section 35 to read as follows:

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

6 (1) The text of section -146 in part I of this Act  
7 shall be repealed on December 31, 2007, and reenacted  
8 in the form in which it read, as section 514A-90,  
9 Hawaii Revised Statutes, on the day before the  
10 approval of Act 39, Session Laws of Hawaii 2000, but  
11 with the amendments to section 514A-90, Hawaii Revised  
12 Statutes, made by Act 53, Session Laws of Hawaii 2003;

13 (2) Section 28 of this Act shall take effect on July 1,  
14 2004, and shall be repealed on June 30, 2006; and

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

17 ~~(4) If provisions regarding the creation, alteration,~~  
18 ~~termination, registration, and administration of~~  
19 ~~condominiums, and the protection of condominium~~  
20 ~~purchasers, are not adopted effective July 1, 2006,~~  
21 ~~parts I and II of this Act shall be repealed on~~  
22 ~~June 30, 2006]."~~

1 SECTION 33. Act 93, Session Laws of Hawaii 2005, is  
2 amended by repealing section 6.

3 "~~SECTION 6. Chapter 514A, Hawaii Revised Statutes, is~~  
4 ~~repealed.~~"

5 SECTION 34. Chapter 16-107, subchapter 6, Hawaii  
6 Administrative Rules, shall remain in effect until the real  
7 estate commission adopts rules pursuant to section 514B-61 to  
8 implement section 514B-148, Hawaii Revised Statutes.

9 SECTION 35. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 36. This Act shall take effect on July 1, 2006;  
12 provided that section 33 shall take effect on June 30, 2006.

H.B. NO. 3225

**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 CD1)

