
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS: MAKING VARIOUS TECHNICAL AMENDMENTS
TO THE HAWAII REVISED STATUTES FOR THE PURPOSE OF
CORRECTING ERRORS AND REFERENCES, AND CLARIFYING LANGUAGE.

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

PART I

1 SECTION 1. In 1961, Hawaii became the first state in the
2 nation to enact a comprehensive framework recognizing and
3 incorporating the creation of condominium property regimes (Act
4 180, Session Laws of Hawaii 1961). Codified as chapter 170A,
5 Revised Laws of Hawaii, this landmark legislation now stands as
6 chapter 514A, Hawaii Revised Statutes.

7 The four decades that passed since the establishment of the
8 Hawaii Horizontal Property Regimes Act have seen enormous
9 economic growth and population disbursal on a very limited land
10 base, resulting in a concomitant explosion in the creation of
11 condominiums throughout the islands that has fostered debate
12 over the fundamental issues of housing needs, land tenure, and
13 property rights in the State. The legislature has, through the
14 years, responded to ever increasing demands to clarify these
15 issues as they relate to condominiums through piecemeal



1 amendments to chapter 514A, Hawaii Revised Statutes, resulting
2 in a cumbersome and overwhelming document.

3 Recognizing the need to clarify and update the condominium
4 laws in the State, in 2000 the legislature mandated the real
5 estate commission of the department of commerce and consumer
6 affairs to conduct a comprehensive review and recodification of
7 chapter 514A (Act 213, Session Laws of Hawaii 2000, and Act 131,
8 Session Laws of Hawaii 2003).

9 The results of the commission's study were reported to the
10 legislature in December, 2003, and included proposed legislation
11 (S.B. 2210 (2004)) that repealed the existing chapter 514A,
12 replaced it with a new comprehensive condominiums law, and made
13 amendments to existing statutes to conform to this change. The
14 final version of that measure that passed the legislature and
15 was signed into law, however, veered significantly from the
16 original vision of the real estate commission's study. Act 164,
17 Session Laws of Hawaii 2004, not only removed parts of the new
18 condominium law, but also retained parts of the existing chapter
19 514A. The legislature again revisited the issue of condominium
20 regulation in the 2005, 2006, and 2007 sessions, fine-tuning the
21 "new" condominium law (codified as chapter 514B) and reinstating
22 the "old" condominium law (chapter 514A) resulting in two



1 separate chapters on condominiums in the Hawaii Revised
2 Statutes.

3 The purpose of this Act is to amend various sections of the
4 Hawaii Revised Statutes to reflect the existence of the two
5 chapters on condominiums.

6 The substantive portions of this Act are divided into three
7 parts:

- 8 • Part II amends sections of the Hawaii Revised Statutes
9 amended by Act 164, Session Laws of Hawaii 2004, to
10 reinstate references to chapter 514A and its various
11 sections deleted by that Act;
- 12 • Part III amends statutes that have been enacted or
13 amended since 2004 and that refer only to chapter 514B
14 and its sections, to include references to chapter 514A
15 and its sections; and
- 16 • Part IV amends statutes to conforming terminology
17 differences found between chapters 514A and 514B, Hawaii
18 Revised Statutes.

19 **PART II**

20 SECTION 2. The real estate commission's final report to
21 the legislature on the recodification of chapter 514A, Hawaii
22 Revised Statutes, recommended that the existing condominium law



1 be repealed and replaced with a new chapter setting forth
2 updated statutory provisions. Senate Bill 2210 (2004)
3 incorporated the commission's recommendations. That bill not
4 only proposed the repeal of chapter 514A and the enactment of
5 its replacement chapter, but also made numerous amendments to
6 existing sections of the Hawaii Revised Statutes to change
7 references to chapter 514A and its sections to reflect the new
8 chapter (codified as chapter 514B, Hawaii Revised Statutes) and
9 its sections. The final version of S.B. 2210 that was enacted
10 (Act 164, Session Laws of Hawaii 2004) retained both the "old"
11 chapter 514A and the "new" chapter 514B; however, the amendments
12 to other sections of the Hawaii Revised Statutes in the original
13 proposed language to change references to chapter 514A and its
14 sections to chapter 514B and its sections, were not corrected to
15 reflect this two-chapter scheme. Thus, the various statutes
16 amended by Act 164 apply only to condominiums under chapter
17 514B, and not to condominiums under chapter 514A.

18 The purpose of this part is to amend sections of the Hawaii
19 Revised Statutes amended by Act 164, Session Laws of Hawaii
20 2004, to reinstate references to chapter 514A and its various
21 sections, deleted by that Act.



1 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (c) to read:

4 "(c) The board of acupuncture, board of public
5 accountancy, board of barbering and cosmetology, boxing
6 commission, board of chiropractic examiners, contractors license
7 board, board of dental examiners, board of electricians and
8 plumbers, elevator mechanics licensing board, board of
9 professional engineers, architects, surveyors, and landscape
10 architects, board of massage therapy, board of medical
11 examiners, motor vehicle industry licensing board, motor vehicle
12 repair industry board, board of examiners in naturopathy, board
13 of nursing, board of examiners in optometry, pest control board,
14 board of pharmacy, board of physical therapy, board of
15 psychology, board of private detectives and guards, real estate
16 commission, board of veterinary examiners, board of speech
17 pathology and audiology, and any board, commission, program, or
18 entity created pursuant to or specified by statute in
19 furtherance of the purpose of this section including but not
20 limited to section 26H-4, or chapters 484, 514A, 514B, and 514E
21 shall be placed within the department of commerce and consumer
22 affairs for administrative purposes."



1 2. By amending subsection (o) to read:
2 "(o) Every person licensed under any chapter within the
3 jurisdiction of the department of commerce and consumer affairs
4 and every person licensed subject to chapter 485A or registered
5 under chapter 467B shall pay upon issuance of a license, permit,
6 certificate, or registration a fee and a subsequent annual fee
7 to be determined by the director and adjusted from time to time
8 to ensure that the proceeds, together with all other fines,
9 income, and penalties collected under this section, do not
10 surpass the annual operating costs of conducting compliance
11 resolution activities required under this section. The fees may
12 be collected biennially or pursuant to rules adopted under
13 chapter 91, and shall be deposited into the special fund
14 established under this subsection. Every filing pursuant to
15 chapter 514E or section [†]485A-202(a)(26)[†] shall be assessed,
16 upon initial filing and at each renewal period in which a
17 renewal is required, a fee that shall be prescribed by rules
18 adopted under chapter 91, and that shall be deposited into the
19 special fund established under this subsection. Any unpaid fee
20 shall be paid by the licensed person, upon application for
21 renewal, restoration, reactivation, or reinstatement of a
22 license, and by the person responsible for the renewal,



1 restoration, reactivation, or reinstatement of a license, upon
2 the application for renewal, restoration, reactivation, or
3 reinstatement of the license. If the fees are not paid, the
4 director may deny renewal, restoration, reactivation, or
5 reinstatement of the license. The director may establish,
6 increase, decrease, or repeal the fees when necessary pursuant
7 to rules adopted under chapter 91. The director may also
8 increase or decrease the fees pursuant to section 92-28.

9 There is created in the state treasury a special fund to be
10 known as the compliance resolution fund to be expended by the
11 director's designated representatives as provided by this
12 subsection. Notwithstanding any law to the contrary, all
13 revenues, fees, and fines collected by the department shall be
14 deposited into the compliance resolution fund. Unencumbered
15 balances existing on June 30, 1999, in the cable television fund
16 under chapter 440G, the division of consumer advocacy fund under
17 chapter 269, the financial institution examiners' revolving
18 fund, section 412:2-109, the special handling fund, section
19 414-13, and unencumbered balances existing on June 30, 2002, in
20 the insurance regulation fund, section 431:2-215, shall be
21 deposited into the compliance resolution fund. This provision
22 shall not apply to the drivers education fund underwriters fee,



1 section 431:10C-115, insurance premium taxes and revenues,
2 revenues of the workers' compensation special compensation fund,
3 section 386-151, the captive insurance administrative fund,
4 section 431:19-101.8, the insurance commissioner's education and
5 training fund, section 431:2-214, the medical malpractice
6 patients' compensation fund as administered under section 5 of
7 Act 232, Session Laws of Hawaii 1984, and fees collected for
8 deposit in the office of consumer protection restitution fund,
9 section 487-14, the real estate appraisers fund, section 466K-1,
10 the real estate recovery fund, section 467-16, the real estate
11 education fund, section 467-19, the contractors recovery fund,
12 section 444-26, the contractors education fund, section 444-29,
13 the condominium management education fund, section 514A-131, and
14 the condominium education trust fund, section 514B-71. Any law
15 to the contrary notwithstanding, the director may use the moneys
16 in the fund to employ, without regard to chapter 76, hearings
17 officers and attorneys. All other employees may be employed in
18 accordance with chapter 76. Any law to the contrary
19 notwithstanding, the moneys in the fund shall be used to fund
20 the operations of the department. The moneys in the fund may be
21 used to train personnel as the director deems necessary and for
22 any other activity related to compliance resolution.



1 As used in this subsection, unless otherwise required by
2 the context, "compliance resolution" means a determination of
3 whether:

4 (1) Any licensee or applicant under any chapter subject to
5 the jurisdiction of the department of commerce and
6 consumer affairs has complied with that chapter;

7 (2) Any person subject to chapter 485A has complied with
8 that chapter;

9 (3) Any person submitting any filing required by chapter
10 514E or section [†]485A-202(a)(26)[†] has complied
11 with chapter 514E or section [†]485A-202(a)(26)[†];

12 (4) Any person has complied with the prohibitions against
13 unfair and deceptive acts or practices in trade or
14 commerce; or

15 (5) Any person subject to chapter 467B has complied with
16 that chapter;

17 and includes work involved in or supporting the above functions,
18 licensing, or registration of individuals or companies regulated
19 by the department, consumer protection, and other activities of
20 the department.

21 The director shall prepare and submit an annual report to
22 the governor and the legislature on the use of the compliance



1 resolution fund. The report shall describe expenditures made
2 from the fund including non-payroll operating expenses."

3 SECTION 4. Section 237-16.5, Hawaii Revised Statutes, is
4 amended by amending subsection (e) to read as follows:

5 "(e) As used in this section:

6 "Lease" means the rental of real property under an
7 instrument in writing by which one conveys real property for a
8 specified term and for a specified consideration, and includes
9 the written extension or renegotiation of a lease, and any
10 holdover tenancy.

11 "Lessee" means one who holds real property under lease, and
12 includes a sublessee.

13 "Lessor" means one who conveys real property by lease, and
14 includes a sublessor.

15 "Real property or space" means the area actually rented and
16 used by the lessee, and includes common elements as defined in
17 section 514A-3 or 514B-3.

18 "Sublease" includes the rental of real property which is
19 held under a lease and is made in a written document by which
20 one conveys real property for a specified term and for a
21 specified consideration. Sublease includes the written



1 extension or renegotiation of a sublease and any holdover
2 tenancy under the written sublease.

3 "Sublessee" means one who holds real property under a
4 sublease.

5 "Sublessor" means one who conveys real property by
6 sublease."

7 SECTION 5. Section 237D-1, Hawaii Revised Statutes, is
8 amended by amending the definitions of "lease", "let", or
9 "rental" and "transient accommodations" to read as follows:

10 "'Lease", "let", or "rental" means the leasing or renting
11 of living quarters or sleeping or housekeeping accommodations in
12 hotels, apartment hotels, motels, condominium property regimes
13 or apartments defined in chapter 514A or units defined in
14 chapter 514B, cooperative apartments, rooming houses, or other
15 places in which lodgings are regularly furnished to transients
16 for a consideration, without transfer of the title of such
17 property.

18 "Transient accommodations" [~~mean~~] means the furnishing of a
19 room, apartment, suite, or the like which is customarily
20 occupied by a transient for less than one hundred eighty
21 consecutive days for each letting by a hotel, apartment hotel,
22 motel, condominium property regime or apartment as defined in



1 chapter 514A or unit defined in chapter 514B, cooperative
2 apartment, or rooming house that provides living quarters,
3 sleeping, or housekeeping accommodations, or other place in
4 which lodgings are regularly furnished to transients for
5 consideration."

6 SECTION 6. Section 302A-1312, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) The department of education shall prepare a six-year
9 program and financial plan for school repair and maintenance
10 that shall be:

11 (1) Based on:

12 (A) Estimated preventive and scheduled maintenance
13 costs;

14 (B) Budgeted recurring maintenance;

15 (C) Health and safety requirements; and

16 (D) Legal mandates;

17 (2) Insofar as is practical, prepared in accordance with
18 the principles and procedures contained in section
19 514A-83.6 or 514B-148; and

20 (3) Submitted initially to the legislature not less than
21 thirty days prior to the convening of the 2002 regular
22 session, with annual funding requirements for the



1 physical plant operations and maintenance account
2 submitted not less than thirty days prior to the
3 convening of the 2002 regular session and each regular
4 session thereafter;

5 provided that the governor may incorporate the six-year program
6 and financial plan required by this subsection into the six-year
7 program and financial plan required by section 37-69, if the
8 plan required by this subsection is incorporated without
9 reductions or restrictions."

10 SECTION 7. Section 378-2.5, Hawaii Revised Statutes, is
11 amended by amending subsection (d) to read as follows:

12 "(d) Notwithstanding subsections (b) and (c), the
13 requirement that inquiry into and consideration of a prospective
14 employee's conviction record may take place only after the
15 individual has received a conditional job offer, and the
16 limitation to the most recent ten-year period, excluding the
17 period of incarceration, shall not apply to employers who are
18 expressly permitted to inquire into an individual's criminal
19 history for employment purposes pursuant to any federal or state
20 law other than subsection (a), including:



- 1 (1) The State or any of its branches, political
- 2 subdivisions, or agencies pursuant to [~~section~~]
- 3 sections 78-2.7 and 831-3.1 [~~and section 78-2.7~~];
- 4 (2) The department of education pursuant to section
- 5 302A-601.5;
- 6 (3) The department of health with respect to employees,
- 7 providers, or subcontractors in positions that place
- 8 them in direct contact with clients when providing
- 9 non-witnessed direct mental health services pursuant
- 10 to section 321-171.5;
- 11 (4) The judiciary pursuant to section 571-34;
- 12 (5) The counties pursuant to section 846-2.7;
- 13 (6) Armed security services pursuant to section 261-17(b);
- 14 (7) Providers of a developmental disabilities domiciliary
- 15 home pursuant to section 333F-22;
- 16 (8) Private schools pursuant to [~~section~~] sections 302C-1
- 17 and 378-3(8) [~~and section 302C-1~~];
- 18 (9) Financial institutions in which deposits are insured
- 19 by a federal agency having jurisdiction over the
- 20 financial institution pursuant to section 378-3(9);
- 21 (10) Detective agencies and security guard agencies
- 22 pursuant to sections 463-6(b) and 463-8(b);



- 1 (11) Employers in the business of insurance pursuant to
2 section 431:2-201.3;
- 3 (12) Employers of individuals or supervisors of individuals
4 responsible for screening passengers or property under
5 49 U.S.C. §44901 or individuals with unescorted access
6 to an aircraft of an air carrier or foreign carrier or
7 in a secured area of an airport in the United States
8 pursuant to 49 U.S.C. §44936(a);
- 9 (13) The department of human services pursuant to sections
10 346-97 and 352-5.5;
- 11 (14) The public library system pursuant to section
12 302A-601.5;
- 13 (15) The department of public safety pursuant to section
14 353C-5;
- 15 (16) The board of directors of a cooperative housing
16 corporation or the manager of a cooperative housing
17 project pursuant to section 421I-12;
- 18 (17) The board of directors of an association of apartment
19 owners~~[7]~~ or unit owners' association, or the manager
20 of a condominium project pursuant to section 514A-82.1
21 or 514B-133; and



1 (18) The department of health pursuant to section 321-
2 15.2."

3 SECTION 8. Section 414D-311, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§414D-311 Superseding chapters.** In the event of any
6 conflict between the provisions of this chapter and the
7 provisions of chapter 421J, 514A, 514B, or 514E, the provisions
8 of chapter 421J, 514A, 514B, or 514E shall supersede and control
9 the provisions of this chapter."

10 SECTION 9. Section 421I-9, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§421I-9 Mediation and arbitration of disputes.** At the
13 request of any party, any dispute concerning or involving one or
14 more shareholders and a corporation, its board of directors,
15 managing agent, resident manager, or one or more other
16 shareholders relating to the interpretation, application, or
17 enforcement of this chapter or the corporation's articles of
18 incorporation, bylaws, or rules adopted in accordance with its
19 bylaws shall be submitted first to mediation. When all
20 reasonable efforts for mediation have been made and the dispute
21 is not settled either in conference between the parties or
22 through mediation, the dispute shall be submitted to arbitration



1 in the same manner and subject to the same requirements, to the
2 extent practicable, which now apply to condominium property
3 regimes under part VII of chapter 514A or section 514B-162."

4 SECTION 10. Section 467-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "hotel" to read as
6 follows:

7 "Hotel" includes a structure or structures used primarily
8 for the business of providing transient lodging for periods of
9 less than thirty days and which furnishes customary hotel
10 services including[~~r~~] but not limited to[~~r~~] front desk,
11 restaurant, daily maid and linen service, bell service, or
12 telephone switchboard; provided that for the purposes of this
13 chapter, apartments or units in a project as defined by section
14 514A-3 or 514B-3 that provide customary hotel services shall be
15 excluded from the definition of hotel. The definition of hotel
16 as set forth in this section shall be in addition to and
17 supplement the definition of "hotel" as set forth in the various
18 county ordinances."

19 SECTION 11. Section 484-3, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Unless the method of disposition is adopted for the
22 purpose of evasion of this chapter, or unless the subdivider



1 files in writing with the director that this chapter shall apply
2 to the subdivider's subdivision, this chapter shall not apply to
3 offers or dispositions of an interest in land:

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

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

9 (3) Where the division of lands is a leasehold
10 agricultural lot within state agricultural districts
11 on which no dwelling structures are constructed as
12 provided in section 205-4.5(e);

13 (4) 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
18 shall not be, directly [†]or[†] indirectly,
19 transferred to or otherwise imposed upon the
20 purchaser;

21 (5) To persons who are engaged in, and are duly licensed
22 to engage in, the business of construction of



1 buildings for resale, or to persons who acquire an
2 interest in subdivided lands for the purpose of
3 engaging, and do engage in, and are duly licensed to
4 engage in, the business of construction of buildings
5 for resale;

6 (6) Pursuant to court order;

7 (7) By any government or government agency;

8 (8) As cemetery lots or interests; or

9 (9) Registered as a condominium property regime pursuant
10 to chapter 514A or 514B."

11 SECTION 12. Section 501-106, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) No new certificate of title shall be entered, and no
14 memorandum shall be made upon any certificate of title by the
15 registrar or assistant registrar, except:

16 (1) In pursuance of any deed or other voluntary
17 instrument;

18 (2) Upon the recording of a certificate of merger that
19 merges two or more condominium projects as provided by
20 section 514A-19 or 514B-46;

21 (3) Upon the recording of an amendment to a declaration of
22 condominium property regime which alters the



1 percentage interest of the respective apartment or
2 unit owners in the common element;

3 (4) In cases expressly provided for in this chapter; or

4 (5) Upon the order of the court, for cause shown."

5 SECTION 13. Section 502C-1, Hawaii Revised Statutes, is
6 amended by amending the definitions of "common elements" or
7 "common area", "declaration", and "townhouse" to read as
8 follows:

9 ""Common elements" or "common area" means:

10 (1) The same as "common elements" as defined in section
11 514A-3 or 514B-3; and

12 (2) Real property within a planned community that is owned
13 or leased by the association or is otherwise available
14 for the use of its members or designated as common
15 area in or pursuant to the declaration.

16 "Declaration" means:

17 (1) The instrument by which property is submitted to
18 chapter 514A or 514B, as provided in [~~that chapter,~~
19 those chapters, and such declaration as from time to
20 time amended; and

21 (2) Any recorded instrument, however denominated, that
22 imposes on an association maintenance or operational



1 responsibilities for the common area and creates the
2 authority in the association to impose on units, or on
3 the owners or occupants of the units, any mandatory
4 payment of money as a regular annual assessment or
5 otherwise in connection with the provisions,
6 maintenance, or services for the benefit of some or
7 all of the units, the owners, or occupants of the
8 units or the common areas, including any amendment or
9 supplement to the instrument.

10 "Townhouse" means a series of individual apartments or
11 units having architectural unity and common elements, with each
12 apartment or unit extending from ground to roof or from the
13 first or second floor to roof, and where apartments or units may
14 share a common wall or be freestanding structures, including
15 townhouse projects that are created pursuant to chapters 514A,
16 514B, and 421J, as well as projects that are not created
17 pursuant to those chapters but are governed by an association;
18 provided that "townhouse" shall not include any apartments or
19 units located in a building of more than three stories."

20 SECTION 14. Section 514C-22, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§514C-22 Power of association of apartment owners or unit
2 owners' association to negotiate, purchase, and sell lessor's
3 **interest.** (a) The association of apartment owners or unit
4 owners' association may purchase the lessor's interest in the
5 condominium project; provided that the declaration of
6 condominium property regime shall either contain or be amended
7 to include a provision authorizing the board of directors to
8 effectuate such a purchase. If the lessor is also a condominium
9 unit lessee, the lessor's lessee interest shall be disregarded
10 in the computation of the percentage of condominium unit lessees
11 needed to achieve the vote or written consent required to amend
12 the declaration of condominium property regime.

13 (b) If the association of apartment owners or unit owners'
14 association is authorized to purchase the lessor's interest
15 pursuant to this section, the following powers, in addition to
16 any other existing powers, shall be conferred upon the
17 association [~~of apartment owners~~]:

18 (1) To purchase or otherwise acquire, own, improve, use,
19 and deal in and with the lessor's interest in the
20 leased fee interest appurtenant to the various
21 condominium units in the condominium project and in
22 the various apartment, unit, and ground leases



1 including but not limited to the interest of any
2 sublessor or any or all undivided interests therein;
3 (2) To incur liabilities, borrow money, and secure any of
4 its obligations by mortgage or pledge of all or any
5 portion of its property, assessments, and funds to
6 effectuate acquisition of the lessor's interest;
7 (3) To assess, except as provided in subsection (d), as a
8 common expense, the expenses incurred in acquiring and
9 holding the leased fee interest, and to service any
10 debt associated therewith; and
11 (4) To sell the leased fee interest in a condominium unit
12 and acquired from the lessor by the association of
13 apartment owners~~[7]~~ or unit owners' association, to
14 the then condominium unit lessee or subsequent
15 purchaser of such unit; provided that if the lessee or
16 subsequent purchaser declines to purchase the leased
17 fee interest, the leased fee interest may be sold to
18 other persons so long as reasonable disclosure is made
19 of the [~~association of apartment owners~~]
20 association's intent to sell the leased fee interest
21 to such other persons, and the disclosure includes a
22 statement that the lessees may have no legal remedy if



1 they subsequently wish to purchase the leased fee
2 interest and the other persons refuse to sell or will
3 sell only at a price unacceptable to the lessees.

4 (c) No condominium unit lessee shall be compelled to
5 purchase the leased fee interest in such condominium unit and
6 acquired from the lessor by the association of apartment
7 owners~~[r]~~ or unit owners' association, but may instead pay lease
8 rent to the association [~~of apartment owners~~] together with the
9 lessee's share of the common expenses incurred in acquiring the
10 leased fee interest in the condominium units in the project
11 including any debt associated therewith.

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

20 (1) Sixty-seven per cent of the remaining lessees approve
21 an amendment to the declaration authorizing the



- 1 purchase of the leased fee interest by the association
2 consistent with the requirements of this section;
- 3 (2) All costs and expenses and all proceeds and benefits
4 of acquiring and holding the leased fee interest and
5 to service any debt associated therewith shall be
6 separately assessed or credited to the condominium
7 units of the remaining lessees in the same ratio that
8 the common interest appurtenant to each remaining
9 lessees' apartment or unit bears to the total common
10 interest appurtenant to all of the remaining lessees'
11 condominium units;
- 12 (3) The association of apartment owners or unit owners'
13 association shall sell the leased fee interest in a
14 condominium unit only to the lessee of the condominium
15 unit or to the permitted assigns or successors of the
16 lessee; provided that if the lessee or the lessee's
17 permitted assigns or successors decline to purchase
18 the leased fee interest, the leased fee interest may
19 be sold to other persons so long as reasonable
20 disclosure is made of the [~~association of apartment~~
21 ~~owners'~~] association's intent to sell the leased fee
22 interest to the other persons and the disclosure



1 includes a statement that the lessees may have no
2 legal remedy if they subsequently wish to purchase the
3 leased fee interest and the other persons refuse to
4 sell or will sell only at a price unacceptable to the
5 lessees; and

6 (4) The association of apartment owners~~[7]~~ or unit owners'
7 association, through its board of directors in the
8 exercise of its authority, may decide not to accept an
9 offer from the lessor to sell all of the remaining
10 portion of the lessor's interest to the association
11 [~~of apartment owners~~] on the basis that the purchase
12 is not financially feasible or is otherwise not in the
13 best interests of the association. In that event, the
14 board shall adopt a resolution containing written
15 findings as to its reasons for not accepting the offer
16 and shall distribute the resolution to the remaining
17 lessees.

18 (e) If the association of apartment owners or unit owners'
19 association acquires all of the remaining portion of the
20 lessor's interest in accordance with subsection (d), any debt
21 associated therewith shall be secured only by the interests so



1 acquired and by the common expense assessments upon the
2 condominium units of the remaining lessees.

3 (f) For purposes of this section:

4 "Remaining lessees" means the lessees of condominium units
5 in a condominium project who have not purchased the leased fee
6 interest in their condominium units as of the effective date of
7 the amendment referred to in subsection (d)(1).

8 "Condominium unit" has the same meaning as the term
9 "apartment" or "unit" as defined in section 514A-3 or 514B-3."

10 SECTION 15. Section 514E-1, Hawaii Revised Statutes, is
11 amended by amending the definition of "blanket lien" to read as
12 follows:

13 ""Blanket lien" means any mortgage, deed of trust, option
14 to purchase, master lease, vendor's lien or interest under a
15 contract or agreement of sale, or any other lien or encumbrance
16 that (i) affects more than one time share interest either
17 directly or by reason of affecting an entire time share unit or
18 the property upon which the time share unit to be used by the
19 purchasers is located, and (ii) secures or evidences the
20 obligation to pay money or to sell or convey the property and
21 that authorizes, permits, or requires the foreclosure and sale
22 or other defeasance of the property affected; provided that for



1 the purpose of this chapter, the following shall not be
2 considered blanket liens:

- 3 (1) The lien of current real property taxes;
- 4 (2) Taxes and assessments levied by public authority and
5 that are not yet due and payable;
- 6 (3) A lien for common expenses under chapter 514A or 514B
7 or a lien on an individual time share unit for similar
8 expenses in favor of a homeowners or community
9 association;
- 10 (4) An apartment lease or condominium conveyance document
11 conveying or demising a single condominium apartment
12 or unit or a lease of a single cooperative apartment;
13 and
- 14 (5) Any lien for costs or trustee's fees charged by a
15 trustee holding title to time share units pursuant to
16 a trust created under section 514E-19; provided that
17 the costs or trustee's fees are not yet due and
18 payable."

19 SECTION 16. Section 514E-29, Hawaii Revised Statutes, is
20 amended by amending subsection (d) to read as follows:



1 "(d) Notice of any delinquent lien created pursuant to
2 subsection (c) shall be recorded in the bureau of conveyances
3 and upon recordation shall be prior to all other liens, except:

4 (1) Liens for taxes and assessments lawfully imposed by
5 governmental authority against the time share
6 interest;

7 (2) All sums unpaid on any mortgage of record encumbering
8 the time share interest which was recorded prior to
9 the recordation of a notice of a lien by the
10 association; and

11 (3) For a time share interest subject to a condominium
12 property regime, the lien of the association of
13 apartment owners or unit owners' association created
14 pursuant to section 514A-90 or 514B-146."

15 SECTION 17. Section 516D-1, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§516D-1 Applicability.** This chapter applies to all lands
18 on which are situated either residential condominium property
19 regimes created under chapter 514A or 514B, or cooperative
20 housing corporations, which are owned or held privately or by
21 the State or by the counties, except Hawaiian home lands subject



1 to [~~Article~~] article XII of the [~~State Constitution~~] state
2 constitution and lands owned or held by the federal government."

3 SECTION 18. Section 521-38, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§521-38 Tenants subject to rental agreement; notice of**
6 **conversions.** When a period of tenancy is pursuant to any rental
7 agreement and where a landlord contemplates conversion to a
8 condominium property regime under chapter 514A or 514B, the
9 landlord shall provide notice to the tenant at least one hundred
10 twenty days in advance of the termination of the rental
11 agreement."

12 SECTION 19. Section 521-71, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) Before a landlord terminates a month-to-month tenancy
15 where the landlord contemplates voluntary demolition of the
16 dwelling units, conversion to a condominium property regime
17 under chapter 514A or 514B, or changing the use of the building
18 to transient vacation rentals, the landlord shall provide notice
19 to the tenant at least one hundred twenty days in advance of the
20 anticipated demolition or anticipated termination. If notice is
21 revoked or amended and reissued, the notice period shall begin
22 from the date it was reissued or amended. Any notice provided,



1 revoked, or amended and reissued shall be in writing. When the
 2 landlord provides notification of termination pursuant to this
 3 subsection, the tenant may vacate at any time within the one-
 4 hundred-twenty-day period between the notification and the
 5 termination date, but the tenant shall notify the landlord of
 6 the date the tenant will vacate the dwelling unit and shall pay
 7 a prorated rent for that period of occupation."

PART III

8
 9 SECTION 20. Since the 2004 landmark legislation that
 10 enacted the new condominium law (chapter 514B, Hawaii Revised
 11 Statutes), numerous sections of the Hawaii Revised Statutes have
 12 been enacted or amended that contain references only to the new
 13 condominium regulatory scheme in chapter 514B, Hawaii Revised
 14 Statutes. As Hawaii now has two condominium laws, many of these
 15 provisions should be amended to apply to both condominiums under
 16 the "old" chapter 514A as well as under the "new" chapter 514B.

17 The purpose of this part is to amend sections of the Hawaii
 18 Revised Statutes that have been enacted or amended since the
 19 2004 condominium legislation and that refer only to chapter
 20 514B, Hawaii Revised Statutes, to include reference to chapter
 21 514A, Hawaii Revised Statutes.



1 SECTION 21. Section 235-7, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) There shall be excluded from gross income, adjusted
4 gross income, and taxable income:

5 (1) Income not subject to taxation by the State under the
6 Constitution and laws of the United States;

7 (2) Rights, benefits, and other income exempted from
8 taxation by section 88-91, having to do with the state
9 retirement system, and the rights, benefits, and other
10 income, comparable to the rights, benefits, and other
11 income exempted by section 88-91, under any other
12 public retirement system;

13 (3) Any compensation received in the form of a pension for
14 past services;

15 (4) Compensation paid to a patient affected with Hansen's
16 disease employed by the State or the United States in
17 any hospital, settlement, or place for the treatment
18 of Hansen's disease;

19 (5) Except as otherwise expressly provided, payments made
20 by the United States or this State, under an act of
21 Congress or a law of this State, which by express
22 provision or administrative regulation or



1 interpretation are exempt from both the normal and
2 surtaxes of the United States, even though not so
3 exempted by the Internal Revenue Code itself;

4 (6) Any income expressly exempted or excluded from the
5 measure of the tax imposed by this chapter by any
6 other law of the State, it being the intent of this
7 chapter not to repeal or supersede any express
8 exemption or exclusion;

9 (7) Income received by each member of the reserve
10 components of the Army, Navy, Air Force, Marine Corps,
11 or Coast Guard of the United States of America, and
12 the Hawaii national guard as compensation for
13 performance of duty, equivalent to pay received for
14 forty-eight drills (equivalent of twelve weekends) and
15 fifteen days of annual duty, at an:

16 (A) E-1 pay grade after eight years of service;
17 provided that this subparagraph shall apply to
18 taxable years beginning after December 31, 2004;

19 (B) E-2 pay grade after eight years of service;
20 provided that this subparagraph shall apply to
21 taxable years beginning after December 31, 2005;



- 1 (C) E-3 pay grade after eight years of service;
- 2 provided that this subparagraph shall apply to
- 3 taxable years beginning after December 31, 2006;
- 4 (D) E-4 pay grade after eight years of service;
- 5 provided that this subparagraph shall apply to
- 6 taxable years beginning after December 31, 2007;
- 7 and
- 8 (E) E-5 pay grade after eight years of service;
- 9 provided that this subparagraph shall apply to
- 10 taxable years beginning after December 31, 2008;
- 11 (8) Income derived from the operation of ships or aircraft
- 12 if the income is exempt under the Internal Revenue
- 13 Code pursuant to the provisions of an income tax
- 14 treaty or agreement entered into by and between the
- 15 United States and a foreign country; provided that the
- 16 tax laws of the local governments of that country
- 17 reciprocally exempt from the application of all of
- 18 their net income taxes, the income derived from the
- 19 operation of ships or aircraft that are documented or
- 20 registered under the laws of the United States;



- 1 (9) The value of legal services provided by a prepaid
2 legal service plan to a taxpayer, the taxpayer's
3 spouse, and the taxpayer's dependents;
- 4 (10) Amounts paid, directly or indirectly, by a prepaid
5 legal service plan to a taxpayer as payment or
6 reimbursement for the provision of legal services to
7 the taxpayer, the taxpayer's spouse, and the
8 taxpayer's dependents;
- 9 (11) Contributions by an employer to a prepaid legal
10 service plan for compensation (through insurance or
11 otherwise) to the employer's employees for the costs
12 of legal services incurred by the employer's
13 employees, their spouses, and their dependents;
- 14 (12) Amounts received in the form of a monthly surcharge by
15 a utility acting on behalf of an affected utility
16 under section 269-16.3 shall not be gross income,
17 adjusted gross income, or taxable income for the
18 acting utility under this chapter. Any amounts
19 retained by the acting utility for collection or other
20 costs shall not be included in this exemption; and
- 21 (13) One hundred per cent of the gain realized by a fee
22 simple owner from the sale of a leased fee interest in



1 units within a condominium project, cooperative
2 project, or planned unit development to the
3 association of apartment owners, unit owners'
4 association, or the residential cooperative
5 corporation of the leasehold units.

6 For purposes of this paragraph:

7 "Fee simple owner" shall have the same meaning as
8 provided under section 516-1; provided that it shall
9 include legal and equitable owners;

10 "Legal and equitable owner", and "leased fee
11 interest" shall have the same meanings as provided
12 under section 516-1; and

13 "Condominium project" and "cooperative project"
14 shall have the same meanings as provided under section
15 514C-1."

16 SECTION 22. Section 281-1, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending the definition of "condominium hotel" to
19 read:

20 ""Condominium hotel" means an establishment consisting of
21 one or more buildings that includes:



1 (1) Guest rooms that are apartments, as defined in section
2 514A-3, or units, as defined in section 514B-3, which
3 are used to provide transient lodging for periods of
4 less than thirty days under a written contract with
5 the owner of [~~a~~] the apartment or unit in the
6 condominium hotel operation;

7 (2) Guest rooms that are units, owned or managed by the
8 condominium hotel operator providing transient lodging
9 for periods of less than thirty days, which are
10 offered for adequate pay to transient guests; and

11 (3) A suitable and adequate kitchen and dining room, where
12 meals are regularly prepared and served to guests and
13 other customers.

14 A "condominium hotel" does not include a hotel that may be part
15 of a condominium property regime established under chapter 514A
16 or 514B, that does not have guest rooms that are separate
17 apartments, as defined in section 514A-3, or units, as defined
18 in section 514B-3."

19 2. By amending the definition of "premises" or "licensed
20 premises" to read:

21 ""Premises" or "licensed premises" means the building and
22 property that houses the establishment for which a license has



1 been or is proposed to be issued; provided that in the case of
2 class 12 hotel license, "premises" includes the hotel premises;
3 provided further that in the case of a class 15 condominium
4 hotel license, "premises" includes apartments as defined in
5 section 514A-3 or units[7] as defined in section 514B-3, that
6 are used to provide transient lodging for periods of less than
7 thirty days under a written contract with the owner or owners of
8 each unit in, and common elements for access purposes as
9 established by the declaration of condominium property regime
10 of, the condominium hotel; and provided further that if an
11 establishment is in a retail shopping complex the businesses of
12 which have formed a merchants association, "premises" means the
13 establishment. As used in this definition, "establishment"
14 means a single physical location where the selling of liquor
15 takes place."

16 SECTION 23. Section 485A-202, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The following transactions are exempt from the
19 requirements of sections 485A-301 to 485A-305 and 485A-504:

20 (1) An isolated nonissuer transaction, whether or not
21 effected by or through a broker-dealer;



1 (2) A nonissuer transaction by or through a broker-dealer
2 registered[7] or exempt from registration under this
3 chapter, and a resale transaction by a sponsor of a
4 unit investment trust registered under the Investment
5 Company Act of 1940, in a security of a class that has
6 been outstanding in the hands of the public for at
7 least ninety days, if, at the date of the transaction:

8 (A) The issuer of the security is engaged in
9 business, the issuer is not in the organizational
10 stage or in bankruptcy or receivership, and the
11 issuer is not a blank check, blind pool, or shell
12 company that has no specific business plan or
13 purpose or has indicated that its primary
14 business plan is to engage in a merger or
15 combination of the business with, or an
16 acquisition of, an unidentified person;

17 (B) The security is sold at a price reasonably
18 related to its current market price;

19 (C) The security does not constitute the whole or
20 part of an unsold allotment to, or a subscription
21 or participation by, the broker-dealer as an
22 underwriter of the security or a redistribution;



- 1 (D) A nationally recognized securities manual or its
- 2 electronic equivalent designated by rule adopted
- 3 or order issued under this chapter or a record
- 4 filed with the Securities and Exchange Commission
- 5 that is publicly available and contains:
- 6 (i) A description of the business and operations
- 7 of the issuer;
- 8 (ii) The names of the issuer's executive officers
- 9 and the names of the issuer's directors, if
- 10 any;
- 11 (iii) An audited balance sheet of the issuer as of
- 12 a date within eighteen months before the
- 13 date of the transaction or, in the case of a
- 14 reorganization or merger when the parties to
- 15 the reorganization or merger each had an
- 16 audited balance sheet, a pro forma balance
- 17 sheet for the combined organization; and
- 18 (iv) An audited income statement for each of the
- 19 issuer's two immediate previous fiscal years
- 20 or for the period of existence of the
- 21 issuer, whichever is shorter, or, in the
- 22 case of a reorganization or merger when each



1 party to the reorganization or merger had
2 audited income statements, a pro forma
3 income statement; and

4 (E) Any one of the following requirements is met:

5 (i) The issuer of the security has a class of
6 equity securities listed on a national
7 securities exchange registered under Section
8 6 of the Securities Exchange Act of 1934 or
9 designated for trading on the National
10 Association of Securities Dealers' Automated
11 Quotation System;

12 (ii) The issuer of the security is a unit
13 investment trust registered under the
14 Investment Company Act of 1940;

15 (iii) The issuer of the security, including its
16 predecessors, has been engaged in continuous
17 business for at least three years; or

18 (iv) The issuer of the security has total assets
19 of at least \$2,000,000 based on an audited
20 balance sheet as of a date within eighteen
21 months before the date of the transaction
22 or, in the case of a reorganization or



1 merger when the parties to the
2 reorganization or merger each had such an
3 audited balance sheet, a pro forma balance
4 sheet for the combined organization;

5 (3) A nonissuer transaction by or through a broker-dealer
6 registered or exempt from registration under this
7 chapter in a security of a foreign issuer that is a
8 margin security defined in regulations or rules
9 adopted by the Board of Governors of the Federal
10 Reserve System;

11 (4) A nonissuer transaction by or through a broker-dealer
12 registered or exempt from registration under this
13 chapter in an outstanding security if the guarantor of
14 the security files reports with the Securities and
15 Exchange Commission under the reporting requirements
16 of Section 13 or 15(d) of the Securities Exchange Act
17 of 1934 (15 U.S.C. 78m or 78o(d));

18 (5) A nonissuer transaction by or through a broker-dealer
19 registered or exempt from registration under this
20 chapter in a security that:

21 (A) Is rated at the time of the transaction by a
22 nationally recognized statistical rating



1 organization in one of its four highest rating
2 categories; or
3 (B) Has a fixed maturity or a fixed interest or
4 dividend, if:
5 (i) A default has not occurred during the
6 current fiscal year or within the three
7 previous fiscal years or during the
8 existence of the issuer and any predecessor
9 if less than three fiscal years, in the
10 payment of principal, interest, or dividends
11 on the security; and
12 (ii) The issuer is engaged in business, is not in
13 the organizational stage or in bankruptcy or
14 receivership, and is not and has not been
15 within the previous twelve months a blank
16 check, blind pool, or shell company that has
17 no specific business plan or purpose or has
18 indicated that its primary business plan is
19 to engage in a merger or combination of the
20 business with, or an acquisition of, an
21 unidentified person;



- 1 (6) A nonissuer transaction by or through a broker-dealer
- 2 registered or exempt from registration under this
- 3 chapter effecting an unsolicited order or offer to
- 4 purchase;
- 5 (7) A nonissuer transaction executed by a bona fide
- 6 pledgee without the purpose of evading this chapter;
- 7 (8) A nonissuer transaction by a federal covered
- 8 investment adviser with investments under management
- 9 in excess of \$100,000,000, acting in the exercise of
- 10 discretionary authority in a signed record for the
- 11 account of others;
- 12 (9) A transaction between the issuer or other person on
- 13 whose behalf the offering is made and an underwriter,
- 14 or among underwriters;
- 15 (10) A transaction in a note, bond, debenture, or other
- 16 evidence of indebtedness secured by a mortgage or
- 17 other security agreement if:
- 18 (A) The note, bond, debenture, or other evidence of
- 19 indebtedness is offered and sold with the
- 20 mortgage or other security agreement as a unit;
- 21 (B) A general solicitation or general advertisement
- 22 of the transaction is not made; and



1 (C) A commission or other remuneration is not paid or
2 given, directly or indirectly, to a person not
3 registered under this chapter as a broker-dealer
4 or as an agent;

5 (11) A transaction by an executor, administrator of an
6 estate, personal representative, sheriff, marshal,
7 receiver, trustee in bankruptcy, guardian, or
8 conservator;

9 (12) A sale or offer to sell to:

10 (A) An institutional investor;

11 (B) A federal covered investment adviser; or

12 (C) Any other person exempted by rule adopted or
13 order issued under this chapter;

14 (13) Any transaction pursuant to a sale or an offer to sell
15 securities of an issuer, if the transaction is part of
16 an issue in which:

17 (A) There are no more than twenty-five purchasers
18 (other than those designated in paragraph (12)),
19 wherever located, during any twelve consecutive
20 months;

21 (B) The issuer reasonably believes that all
22 purchasers (other than those designated in



1 paragraph (12)), wherever located, are purchasing
2 for investment purposes and not with the view to,
3 or for sales in connection with, a distribution
4 of the security. The purchase shall be presumed
5 to be made with a view to distribute and not to
6 invest if any resale of a security sold in
7 reliance on this exemption is within twelve
8 months of sale, except a resale pursuant to a
9 registration statement effective under section
10 485A-301, or to an accredited investor pursuant
11 to an exemption available under this chapter;

12 (C) No commission, discount, or other remuneration is
13 paid or given, directly or indirectly, to a
14 person, other than a broker-dealer or agent
15 registered under this chapter, for soliciting a
16 prospective purchaser in this State; and

17 (D) The securities of the issuer are not offered or
18 sold by general solicitation or any general
19 advertisement or other advertising medium;

20 (14) A transaction under an offer to existing security
21 holders of the issuer, including persons [~~that~~] who at
22 the date of the transaction are holders of convertible



1 securities, options, or warrants, if a commission or
2 other remuneration, other than a standby commission,
3 is not paid or given, directly or indirectly, for
4 soliciting a security holder in this State;

5 (15) (A) A transaction involving the offer or sale of a
6 security by an issuer to an accredited investor
7 that meets the following requirements:

8 (i) The issuer reasonably believes that the sale
9 is to persons who are accredited investors;

10 (ii) The issuer is not in the development stage,
11 without specific business plan or purpose;

12 (iii) The issuer has not indicated that the
13 issuer's business plan is to engage in a
14 merger or acquisition with an unidentified
15 company or companies, or other entity or
16 person; and

17 (iv) The issuer reasonably believes that all
18 purchasers are purchasing for investment
19 purposes and not with the view to, or for
20 sales in connection with, a distribution of
21 the security. The purchase shall be
22 presumed to be made with a view to



1 distribute and not to invest if any resale
2 of a security sold in reliance on this
3 exemption is within twelve months of sale,
4 except a resale pursuant to a registration
5 statement effective under section 485A-301,
6 or to an accredited investor pursuant to an
7 exemption available under this chapter;

8 (B) The exemption under this paragraph shall not
9 apply to an issuer if the issuer; any affiliated
10 issuer; any beneficial owner of ten per cent or
11 more of any class of the issuer's equity
12 securities; any issuer's predecessor, director,
13 officer, general partner, or promoter presently
14 connected in any capacity with the issuer; and
15 any underwriter or partner, director, or officer
16 of the underwriter of the securities to be
17 offered:

18 (i) Within the last five years has filed a
19 registration statement that is the subject
20 of a currently effective registration stop
21 order entered by any state securities

1 administrator or the Securities and Exchange
2 Commission;

3 (ii) Within the last five years has been
4 convicted of any criminal offense in
5 connection with the offer, purchase, or sale
6 of any security, or involving fraud or
7 deceit;

8 (iii) Is currently subject to any state or federal
9 administrative enforcement order or judgment
10 entered within the last five years, finding
11 fraud or deceit in connection with the
12 purchase or sale of any security; or

13 (iv) Is currently subject to any order, judgment,
14 or decree of any court of competent
15 jurisdiction, entered within the last five
16 years, temporarily, preliminarily, or
17 permanently restraining or enjoining such
18 party from engaging in or continuing to
19 engage in any conduct or practice involving
20 fraud or deceit in connection with the
21 purchase or sale of any security;

22 (C) Subparagraph (B) shall not apply if:



- 1 (i) The party subject to the disqualification is
2 licensed or registered to conduct
3 securities-related business in the state in
4 which the order, judgment, or decree
5 creating the disqualification was entered
6 against such party;
- 7 (ii) Before the first offer under this exemption,
8 the commissioner, or the court or regulatory
9 authority that entered the order, judgment,
10 or decree waives the disqualifications; or
- 11 (iii) The issuer establishes that the issuer did
12 not know and in the exercise of reasonable
13 care, based on a factual inquiry, could not
14 have known that a disqualification existed
15 under this paragraph; and
- 16 (D) An issuer claiming the exemption under this
17 paragraph, within fifteen days after the first
18 sale in this State, shall file with the
19 commissioner a notice of transaction, a consent
20 to service of process, a copy of the offering
21 circular or similar document provided to the
22 accredited investor and a \$200 filing fee.



1 For the purposes of this paragraph, "accredited
2 investor" shall have the same meaning as provided in
3 Rule 501(a) adopted under the Securities Act of 1933
4 (17 C.F.R. 230.501(a));

5 (16) An offer to sell, but not a sale, of a security not
6 exempt from registration under the Securities Act of
7 1933 if:

8 (A) A registration or offering statement or similar
9 record as required under the Securities Act of
10 1933 has been filed, but is not effective, or the
11 offer is made in compliance with Rule 165 adopted
12 under the Securities Act of 1933 (17 C.F.R.
13 230.165); and

14 (B) A stop order of which the offeror is aware has
15 not been issued against the offeror by the
16 commissioner or the Securities and Exchange
17 Commission, and an audit, inspection, or
18 proceeding that is public and that may culminate
19 in a stop order is not known by the offeror to be
20 pending;

21 (17) An offer to sell, but not a sale, of a security exempt
22 from registration under the Securities Act of 1933 if:



- 1 (A) A registration statement has been filed under
- 2 this chapter, but is not effective;
- 3 (B) A solicitation of interest is provided in a
- 4 record to offerees in compliance with a rule
- 5 adopted by the commissioner under this chapter;
- 6 and
- 7 (C) A stop order of which the offeror is aware has
- 8 not been issued by the commissioner under this
- 9 chapter and an audit, inspection, or proceeding
- 10 that may culminate in a stop order is not known
- 11 by the offeror to be pending;
- 12 (18) A transaction involving the distribution of the
- 13 securities of an issuer to the security holders of
- 14 another person in connection with a merger,
- 15 consolidation, exchange of securities, sale of assets,
- 16 or other reorganization to which the issuer, or its
- 17 parent or subsidiary and the other person, or its
- 18 parent or subsidiary, are parties;
- 19 (19) A rescission offer, sale, or purchase under section
- 20 485A-510;
- 21 (20) An offer or sale of a security to a person not a
- 22 resident of this State and not present in this State



1 if the offer or sale does not constitute a violation
2 of the laws of the state or foreign jurisdiction in
3 which the offeree or purchaser is present and is not
4 part of an unlawful plan or scheme to evade this
5 chapter;

6 (21) Employees' stock purchase, savings, option, profit-
7 sharing, pension, or similar employees' benefit plan,
8 including any securities, plan interests, and
9 guarantees issued under a compensatory benefit plan or
10 compensation contract, contained in a record,
11 established by the issuer, its parents, its
12 majority-owned subsidiaries, or the majority-owned
13 subsidiaries of the issuer's parent for the
14 participation of their employees, including offers or
15 sales of such securities to:

16 (A) Directors; general partners; trustees, if the
17 issuer is a business trust; officers;
18 consultants; and advisors;

19 (B) Family members who acquire the securities from
20 those persons through gifts or domestic relations
21 orders;



1 (C) Former employees, directors, general partners,
2 trustees, officers, consultants, and advisors if
3 those individuals were employed by or providing
4 services to the issuer when the securities were
5 offered; and

6 (D) Insurance agents who are exclusive insurance
7 agents of the issuer, or the issuer's
8 subsidiaries or parents, or who derive more than
9 fifty per cent of their annual income from those
10 organizations;

11 (22) A transaction involving:

12 (A) A stock dividend or equivalent equity
13 distribution, whether or not the corporation or
14 other business organization distributing the
15 dividend or equivalent equity distribution is the
16 issuer, if nothing of value is given by
17 stockholders or other equity holders for the
18 dividend or equivalent equity distribution other
19 than the surrender of a right to a cash or
20 property dividend if each stockholder or other
21 equity holder may elect to take the dividend or



1 equivalent equity distribution in cash, property,
2 or stock;

3 (B) An act incident to a judicially approved
4 reorganization in which a security is issued in
5 exchange for one or more outstanding securities,
6 claims, or property interests, or partly in such
7 exchange and partly for cash; or

8 (C) The solicitation of tenders of securities by an
9 offeror in a tender offer in compliance with Rule
10 162 adopted under the Securities Act of 1933 (17
11 C.F.R. 230.162);

12 (23) A nonissuer transaction in an outstanding security by
13 or through a broker-dealer registered or exempt from
14 registration under this chapter, if the issuer is a
15 reporting issuer in a foreign jurisdiction designated
16 by this paragraph or by rule adopted or order issued
17 under this chapter; has been subject to continuous
18 reporting requirements in the foreign jurisdiction for
19 not less than one hundred eighty days before the
20 transaction; and the security is listed on the foreign
21 jurisdiction's securities exchange that has been
22 designated by this paragraph or by rule adopted or



1 order issued under this chapter, or is a security of
2 the same issuer that is of senior or substantially
3 equal rank to the listed security or is a warrant or
4 right to purchase or subscribe to any of the
5 foregoing. For purposes of this paragraph, Canada,
6 together with its provinces and territories, is a
7 designated foreign jurisdiction and the Toronto Stock
8 Exchange, Inc., is a designated securities exchange.
9 After an administrative hearing in accordance with
10 chapter 91, the commissioner, by rule adopted or order
11 issued under this chapter, may revoke the designation
12 of a securities exchange under this paragraph, if the
13 commissioner finds that revocation is necessary or
14 appropriate in the public interest and for the
15 protection of investors;

16 (24) Any offer or sale by or through a real estate broker
17 or real estate salesperson licensed under the laws of
18 this State, of a security issued on or after
19 July 1, 1961, by a corporation organized under the
20 laws of this State, the holder of which is entitled
21 solely by reason of the holder's ownership thereof, to
22 occupy for dwelling purposes a house, or an apartment



1 in a building, owned or leased by such corporation;
2 provided that the issuer of the security shall apply
3 for the exemption to the commissioner on such form and
4 containing such information as the commissioner may
5 prescribe. If the commissioner finds that the
6 business applicant's proposed plan and the proposed
7 issuance of securities are fair, just, and equitable,
8 that the applicant intends to transact its business
9 fairly and honestly, and that the securities that the
10 applicant proposes to issue and the method to be used
11 by the applicant in issuing or disposing of the
12 securities will not, in the opinion of the
13 commissioner, work a fraud upon the purchaser thereof,
14 the commissioner shall issue to the applicant a permit
15 authorizing the applicant to issue and dispose of the
16 securities in this State in the manner provided herein
17 and in such amounts and for such consideration as the
18 commissioner may provide in the permit. Otherwise,
19 the commissioner shall deny the application and refuse
20 the permit and notify the applicant of the decision in
21 writing, subject to appeal as provided in section
22 485A-609. In any permit issued under this paragraph,



1 the commissioner may require the deposit in escrow or
2 impoundment of any or all securities, the proceeds
3 from the sale thereof, approval of advertising
4 material, and any of the conditions as set forth in
5 section 485A-304(f). The commissioner may act as
6 escrow holder for securities required to be deposited
7 in escrow by the commissioner's order or as a
8 necessary signatory on any account in which impounded
9 proceeds from the sale of escrowed securities are
10 deposited;

- 11 (25) Any offer or sale by or through a real estate broker
12 or real estate salesperson licensed under the laws of
13 this State of an apartment or unit in a condominium
14 project, and a rental management contract relating to
15 the apartment[~~r~~] or unit, including an interest in a
16 partnership formed for the purpose of managing the
17 rental of apartments or units if the rental management
18 contract or the interest in the partnership is offered
19 at the same time as the apartment or unit is offered.

20 For the purposes of this paragraph, the terms
21 "apartment", "unit", "condominium", and "project"



1 shall have the meanings prescribed in section 514A-
2 3[+] or 514B-3; and

3 (26) Any transaction not involving a public offering within
4 the meaning of Section 4(2) of the Securities Act of
5 1933 (15 U.S.C. 77d), but not including any
6 transaction specified in the rules and regulations
7 thereunder."

8 SECTION 24. Section 521-3, Hawaii Revised Statutes, is
9 amended by amending subsection (d) to read as follows:

10 "(d) [A] An association of apartment owners under chapter
11 514A or a unit owners' association under chapter 514B shall have
12 standing to initiate and prosecute a summary proceeding for
13 possession against a tenant residing in the condominium project
14 who repeatedly violates the association's governing documents or
15 the rights of other occupants to quiet enjoyment and whose
16 landlord refuses to act; provided that in such cases, the
17 landlord shall be named as an additional party defendant."

18 **PART IV**

19 SECTION 25. There are fundamental differences between
20 chapters 514A and 514B, Hawaii Revised Statutes, including
21 changes in terminology. An "apartment" under chapter 514A is a
22 "unit" in chapter 514B, and an "association of apartment owners"



1 under chapter 514A is a "unit owners' association" under chapter
2 514B. Numerous statutory provisions in the Hawaii Revised
3 Statutes delineate the powers and duties, rights and
4 responsibilities of condominium owners and associations using
5 terminology of common usage rather than referring to specific
6 sections or chapters of the Hawaii Revised Statutes. To clarify
7 that these provisions apply to both condominiums and owners
8 under chapter 514B as well as condominiums and owners under
9 chapter 514A, these sections should be amended to include terms
10 used in both chapters.

11 The purpose of this part is to make amendments to sections
12 of the Hawaii Revised Statutes to conform to the terminology
13 used in chapters 514A and 514B, Hawaii Revised Statutes.

14 SECTION 26. Section 237-24.3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§237-24.3 Additional amounts not taxable.** In addition to
17 the amounts not taxable under section 237-24, this chapter shall
18 not apply to:

- 19 (1) Amounts received from the loading, transportation, and
20 unloading of agricultural commodities shipped for a
21 producer or produce dealer on one island of this State
22 to a person, firm, or organization on another island



1 of this State. The terms "agricultural commodity",
2 "producer", and "produce dealer" shall be defined in
3 the same manner as they are defined in section 147-1;
4 provided that agricultural commodities need not have
5 been produced in the State;

6 (2) Amounts received from sales of:

7 (A) Intoxicating liquor as the term "liquor" is
8 defined in chapter 244D;

9 (B) Cigarettes and tobacco products as defined in
10 chapter 245; and

11 (C) Agricultural, meat, or fish products;

12 to any person or common carrier in interstate or
13 foreign commerce, or both, whether ocean-going or air,
14 for consumption out-of-state on the shipper's vessels
15 or airplanes;

16 (3) Amounts received by the manager, submanager, or board
17 of directors of:

18 (A) An association of apartment owners or unit
19 owners' association of a condominium property
20 regime established in accordance with chapter
21 514A or 514B; or



1 (B) A nonprofit homeowners or community association
2 incorporated in accordance with chapter 414D or
3 any predecessor thereto and existing pursuant to
4 covenants running with the land,

5 in reimbursement of sums paid for common expenses;

6 (4) Amounts received or accrued from:

7 (A) The loading or unloading of cargo from ships,
8 barges, vessels, or aircraft, whether or not the
9 ships, barges, vessels, or aircraft travel
10 between the State and other states or countries
11 or between the islands of the State;

12 (B) Tugboat services including pilotage fees
13 performed within the State, and the towage of
14 ships, barges, or vessels in and out of state
15 harbors, or from one pier to another; and

16 (C) The transportation of pilots or governmental
17 officials to ships, barges, or vessels offshore;
18 rigging gear; checking freight and similar
19 services; standby charges; and use of moorings
20 and running mooring lines;

21 (5) Amounts received by an employee benefit plan by way of
22 contributions, dividends, interest, and other income;



1 and amounts received by a nonprofit organization or
2 office, as payments for costs and expenses incurred
3 for the administration of an employee benefit plan;
4 provided that this exemption shall not apply to any
5 gross rental income or gross rental proceeds received
6 after June 30, 1994, as income from investments in
7 real property in this State; and provided further that
8 gross rental income or gross rental proceeds from
9 investments in real property received by an employee
10 benefit plan after June 30, 1994, under written
11 contracts executed prior to July 1, 1994, shall not be
12 taxed until the contracts are renegotiated, renewed,
13 or extended, or until after December 31, 1998,
14 whichever is earlier. For the purposes of this
15 paragraph, "employee benefit plan" means any plan as
16 defined in section 1002(3) of title 29 of the United
17 States Code, as amended;

- 18 (6) Amounts received for purchases made with United States
19 Department of Agriculture food coupons under the
20 federal food stamp program, and amounts received for
21 purchases made with United States Department of
22 Agriculture food vouchers under the Special



1 Supplemental Foods Program for Women, Infants and
2 Children;

3 (7) Amounts received by a hospital, infirmary, medical
4 clinic, health care facility, pharmacy, or a
5 practitioner licensed to administer the drug to an
6 individual for selling prescription drugs or
7 prosthetic devices to an individual; provided that
8 this paragraph shall not apply to any amounts received
9 for services provided in selling prescription drugs or
10 prosthetic devices. As used in this paragraph:

11 "Prescription drugs" are those drugs defined
12 under section 328-1 and dispensed by filling or
13 refilling a written or oral prescription by a
14 practitioner licensed under law to administer the drug
15 and sold by a licensed pharmacist under section 328-16
16 or practitioners licensed to administer drugs; and

17 "Prosthetic device" means any artificial device
18 or appliance, instrument, apparatus, or contrivance,
19 including their components, parts, accessories, and
20 replacements thereof, used to replace a missing or
21 surgically removed part of the human body, which is
22 prescribed by a licensed practitioner of medicine,



1 osteopathy, or podiatry and which is sold by the
2 practitioner or which is dispensed and sold by a
3 dealer of prosthetic devices; provided that
4 "prosthetic device" shall not mean any auditory,
5 ophthalmic, dental, or ocular device or appliance,
6 instrument, apparatus, or contrivance;

7 (8) Taxes on transient accommodations imposed by chapter
8 237D and passed on and collected by operators holding
9 certificates of registration under that chapter;

10 (9) Amounts received as dues by an unincorporated
11 merchants association from its membership for
12 advertising media, promotional, and advertising costs
13 for the promotion of the association for the benefit
14 of its members as a whole and not for the benefit of
15 an individual member or group of members less than the
16 entire membership;

17 (10) Amounts received by a labor organization for real
18 property leased to:

19 (A) A labor organization; or

20 (B) A trust fund established by a labor organization
21 for the benefit of its members, families, and
22 dependents for medical or hospital care, pensions



1 on retirement or death of employees,
2 apprenticeship and training, and other membership
3 service programs.

4 As used in this paragraph, "labor organization" means
5 a labor organization exempt from federal income tax
6 under section 501(c)(5) of the Internal Revenue Code,
7 as amended;

8 (11) Amounts received from foreign diplomats and consular
9 officials who are holding cards issued or authorized
10 by the United States Department of State granting them
11 an exemption from state taxes; and

12 (12) Amounts received as rent for the rental or leasing of
13 aircraft or aircraft engines used by the lessees or
14 renters for interstate air transportation of
15 passengers and goods. For purposes of this paragraph,
16 payments made pursuant to a lease shall be considered
17 rent regardless of whether the lease is an operating
18 lease or a financing lease. The definition of
19 "interstate air transportation" is the same as in 49
20 U.S.C. 40102."

21 SECTION 27. Section 467-30, Hawaii Revised Statutes, is
22 amended to read as follows:



1 **"§467-30 Registration, bonding, and other requirements for**
2 **condominium hotel operators.** (a) As used in this section,
3 "condominium hotel" includes those apartments or units in a
4 project as defined in section 514A-3 or 514B-3 and subject to
5 chapter 514A or 514B, which are used to provide transient
6 lodging for periods of less than thirty days.

7 (b) All condominium hotel operators shall register with
8 the commission as a sole proprietor, partnership, limited
9 liability company, or corporation and shall:

10 (1) Register by submitting a completed commission
11 application form with the commission requested
12 information, receive commission approval prior to
13 conducting condominium hotel activity, and re-register
14 on or before the commission prescribed deadline prior
15 to the registration expiration date. The registration
16 and re-registration shall expire on December 31 of an
17 even-numbered year. Registration information shall
18 include but not be limited to the number of apartments
19 or units managed for others as well as the number of
20 apartments or units owned by the condominium hotel
21 operator. Any operator failing to register with the
22 commission shall be subject to a fine not exceeding an



1 amount equal to \$25 multiplied by the aggregate number
2 of apartments or units being utilized as a condominium
3 hotel. Each month or fraction of a month of
4 noncompliance shall be deemed a new and separate
5 violation;

- 6 (2) Obtain and keep current a fidelity bond from an
7 insurance company authorized to issue fidelity bonds
8 by the insurance division of the department of
9 commerce and consumer affairs. The fidelity bond
10 shall be in an amount equal to \$500 multiplied by the
11 aggregate number of apartments or units in the
12 condominium hotel operation; provided that the minimum
13 amount of the fidelity bond required by this paragraph
14 shall not be less than \$20,000 nor greater than
15 \$100,000. The aggregate number of apartments or units
16 excludes the number of apartments or units owned by
17 the condominium hotel operator either as a sole
18 proprietor, partnership, limited liability company, or
19 corporation or those apartments or units included in a
20 registered time share plan managed by a registered
21 time share plan manager. The fidelity bond shall
22 cover all of the condominium hotel operator's



1 employees handling or having custody and control of
2 either the condominium hotel operator's or the
3 apartment or unit owner's funds, or both. Upon request
4 by the commission, the condominium hotel operator
5 shall provide evidence of a current fidelity bond or a
6 certification statement from an insurance
7 representative of an insurance company authorized by
8 the insurance division of the department of commerce
9 and consumer affairs certifying that the fidelity bond
10 is in effect and meets the requirements of this
11 section and the rules adopted by the commission. The
12 commission may adopt rules establishing conditions and
13 terms by which it may grant a bond alternative or
14 permit deductibles. No condominium hotel operator
15 shall be exempt from the fidelity bond requirement;
16 and

- 17 (3) Pay an application fee and an initial registration or
18 a re-registration fee as provided in rules adopted by
19 the director of commerce and consumer affairs pursuant
20 to chapter 91, which fees shall be deposited with the
21 director of commerce and consumer affairs to the



1 credit of the compliance resolution fund established
2 pursuant to section 26-9(o);
3 provided that this section shall not apply to persons who are
4 subject to section 467-2.

5 (c) In the course of operating a condominium hotel,
6 neither a real estate broker license nor a real estate
7 salesperson license shall be required of those employees of a
8 condominium hotel operator who only perform or facilitate the
9 delivery of customary hotel services.

10 (d) All employees handling or having custody or control of
11 the funds received by the condominium hotel operator shall be
12 covered by a fidelity bond. The fidelity bond shall protect the
13 condominium hotel operator against fraudulent or dishonest acts by
14 the employees of the condominium hotel operator.

15 (e) As used in this section, "operating a condominium
16 hotel" includes the management of the apartments or units in a
17 condominium project for purposes of providing transient lodging,
18 and includes the renting or leasing of condominium apartments or
19 units directly or indirectly from the apartment or unit owners
20 for purposes of providing transient lodging. The condominium
21 hotel operator shall provide a written contract to the owner or
22 owners of each apartment or unit under the condominium hotel



1 operation, expressing the exact agreements of each party
2 including all financial and accounting obligations, and the
3 notification requirements of subsection (g).

4 (f) A condominium hotel operator shall operate in
5 condominium projects specifically authorized for transient
6 lodgings by county zoning and regulations and specifically
7 permitted by the condominium project's declaration and bylaws.

8 (g) The registered condominium hotel operator:

- 9 (1) Shall not provide or offer lodgings thirty days or
10 longer;
- 11 (2) Shall not be licensed as a real estate broker or a real
12 estate salesperson;
- 13 (3) Shall not conduct any other activities contained in the
14 definition of the term "real estate broker";
- 15 (4) Shall appoint an employee or principal to have direct
16 management and responsibility over condominium hotel
17 operations; and
- 18 (5) Shall provide evidence of written notification to all
19 representing apartment or unit owners of the provisions
20 of this section including the nonapplicability of the
21 real estate recovery fund.



1 (h) Any condominium hotel operator aggrieved by the
2 fraudulent or dishonest acts of an employee shall act promptly
3 and diligently to recover from the fidelity bond required by
4 this section. The condominium hotel operator shall apply all
5 proceeds received from the fidelity bond against all losses
6 incurred by apartment or unit owners due to fraudulent or
7 dishonest acts by employees. If more than one apartment or unit
8 owner suffers a loss, the condominium hotel operator shall
9 divide the proceeds among the [~~apartment~~] owners in proportion
10 to each [~~apartment~~] owner's loss.

11 (i) All persons handling or having custody and control of
12 either the condominium hotel operator's or the apartment or unit
13 owner's funds shall be either employees of the condominium hotel
14 operator or principals of the condominium hotel operator.

15 (j) The registration and fidelity bond requirements of
16 this section shall not apply to active real estate brokers, in
17 compliance with and licensed under this chapter, conducting
18 condominium hotel activity."

19 SECTION 28. Section 501-20, Hawaii Revised Statutes, is
20 amended by amending the definition of "apartment lease" to read
21 as follows:



1 "Apartment lease" means an apartment or unit lease, a
2 condominium conveyance document, an apartment or unit deed and
3 ground lease, or other instrument which has been registered
4 pursuant to section 501-121 and which leases or subleases a
5 condominium apartment or unit or its appurtenant undivided
6 interest in the land of a condominium project established or
7 existing under [~~the condominium property act~~] chapter 514A or
8 514B or at common law."

9 SECTION 29. Section 501-105, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§501-105 Grantee's address, etc., to be stated.** Every
12 deed or other voluntary instrument presented for recording shall
13 contain or have indorsed upon it the full name or names, if more
14 than one, and the address of the grantee or other person
15 acquiring or claiming an interest under the instrument and every
16 document shall also contain or have indorsed upon it a statement
17 that the grantee is married or unmarried, and if married, the
18 statement shall give the name in full of the husband or wife.
19 Whenever the grantee is a corporation or partnership, the
20 document shall contain or have indorsed upon it the state where
21 the entity is registered and the entity's address. All names
22 and addresses shall also be entered on all certificates.



1 Notices and processes issued in relation to registered land in
2 pursuance of this chapter may be served upon any person in
3 interest by mailing the same to the address so given, and shall
4 be binding whether such person resides within or without the
5 State.

6 Any deed conveying one or more but not all lots or all
7 interests in a lot appurtenant to apartments or units in a
8 condominium [~~property regime~~] project in a certificate shall
9 contain full memoranda relating to easements, rights-of-way, and
10 all other liens and encumbrances affecting the particular lot,
11 lots, interest appurtenant to an apartment[~~7~~] or unit, or
12 interests appurtenant to apartments or units conveyed. If the
13 deed affects all of the land or interests appurtenant to
14 apartments or units in a certificate of title, encumbrances may
15 be referred to by reference."

16 SECTION 30. Section 501-241, Hawaii Revised Statutes, is
17 amended as follows:

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

19 "(b) Without limiting the generality of subsection (a),
20 the following instruments need not be registered pursuant to
21 this chapter to be effective and shall be recorded in the bureau
22 of conveyances pursuant to chapter 502:



- 1 (1) An assignment or other instrument transferring a
2 leasehold time share interest;
- 3 (2) A mortgage or other instrument granting a lien on a
4 leasehold time share interest;
- 5 (3) An agreement of sale for the sale of a leasehold time
6 share interest. Any such agreement of sale shall be
7 subject to section 502-85 and shall not be subject to
8 section 501-101.5;
- 9 (4) A lien or notice of lien pertaining to a leasehold
10 time share interest in favor of a time share owners
11 association, an association of apartment owners, a
12 unit owners' association, or a similar homeowner's
13 association;
- 14 (5) A judgment, decree, order of court, attachment, writ,
15 or other process against a leasehold time share
16 interest;
- 17 (6) A mechanic's or materialman's lien or other lien upon
18 a leasehold time share interest;
- 19 (7) A lis pendens or notice of pendency of action, notice,
20 affidavit, demand, certificate, execution, copy of
21 execution, officer's return, or other instrument
22 relating to a leasehold time share interest and



1 otherwise required or permitted to be recorded or
2 registered in connection with the enforcement or
3 foreclosure of any lien, whether by way of power of
4 sale pursuant to [~~a power of sale under~~] section 667-
5 5, or otherwise;

6 (8) A power of attorney given by the owner of a leasehold
7 time share interest or the vendor or vendee under an
8 agreement of sale for the sale of a leasehold time
9 share interest, a mortgagee or other lienor having a
10 mortgage or lien upon a leasehold time share interest,
11 or another party holding a claim or encumbrance
12 against or an interest in a leasehold time share
13 interest; or

14 (9) An instrument assigning, extending, continuing,
15 dissolving, discharging, releasing in whole or in
16 part, reducing, canceling, extinguishing, or otherwise
17 modifying or amending any of the foregoing
18 instruments."

19 2. By amending subsection (e) to read:

20 "(e) Notwithstanding subsections (a), (b), and (c), the
21 following instruments shall be registered by recording the
22 instrument with the assistant registrar and by a brief



1 memorandum thereof made by the assistant registrar upon the
2 certificate of title, and signed by the assistant registrar:

- 3 (1) The apartment or unit lease, and any amendments
4 thereto, and any cancellation or extinguishment
5 thereof;
- 6 (2) Any deed or other instrument conveying the fee
7 interest in registered land and any other instrument
8 encumbering or otherwise dealing with the fee interest
9 in registered land including but not limited to a
10 mortgage of the fee interest, an assignment of the
11 lessor's interest in a lease, or the designation,
12 grant, conveyance, transfer, cancellation, relocation,
13 realignment, or amendment of any easement encumbering
14 the fee interest;
- 15 (3) If the apartment or unit lease is a sublease, any
16 assignment or other conveyance of the sublessor's
17 estate or any other leasehold estate which is superior
18 to the apartment or unit lease, and any other
19 instrument mortgaging, encumbering, or otherwise
20 dealing with the sublessor's estate or any other
21 estate which is prior and superior to the leasehold
22 time share interest;



- 1 (4) Any other instrument assigning, modifying, canceling,
2 or otherwise dealing with an interest in registered
3 land which is:
- 4 (A) Less than an estate in fee simple; and
5 (B) Prior or superior to the lessee's interest in a
6 leasehold time share interest;
- 7 (5) The declaration of condominium property regime or
8 similar declaration by whatever name denominated, the
9 bylaws of the association of apartment owners^[7] or
10 unit owners' association, the condominium map, any
11 declaration of annexation or deannexation, any
12 declaration of merger and any instrument effecting a
13 merger, and any amendments to any of the foregoing and
14 any cancellation or extinguishment thereof;
- 15 (6) Any declaration of covenants, conditions, and
16 restrictions, or similar instrument, by whatever name
17 denominated, encumbering the fee, the bylaws of any
18 homeowners association, any declaration of annexation
19 or deannexation, any amendments and supplements
20 thereto, and any cancellation or extinguishment
21 thereof;



- 1 (7) Any declaration of covenants, conditions,
- 2 restrictions, or similar instrument, by whatever name
- 3 denominated, establishing the time share plan, the
- 4 bylaws of the time share owners association, any
- 5 declaration of annexation or deannexation, any
- 6 amendments and supplements thereto, and any
- 7 cancellation or extinguishment thereof; and
- 8 (8) Any notice of time share plan, any declaration of
- 9 annexation or deannexation, any amendments thereto,
- 10 and any cancellation or extinguishment thereof."

11 SECTION 31. Section 508D-3, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "**§508D-3 Exemptions.** This chapter shall not apply to the
 14 following sales of residential real property:

- 15 (1) Sale to a co-owner;
- 16 (2) Sale to a spouse, parent, or child of the seller;
- 17 (3) Sale by devise, descent, or court order;
- 18 (4) Sale by operation of law, including[7] but not limited
 19 to[7] any transfer by foreclosure, bankruptcy, or
 20 partition, or any transfer to a seller's creditor
 21 incident to a deed (or assignment) in lieu of
 22 foreclosure, workout, or the settlement or partial



1 settlement of any preexisting obligation of a seller
2 owed a creditor and any later sale of residential real
3 property by such creditor;

4 (5) Sale by a lessor to a lessee resulting from conversion
5 of leased land to fee simple;

6 (6) Initial sale of new residential real property pursuant
7 to chapter 484 under a current public offering
8 statement or chapter 484 exemption;

9 (7) Sales of condominium apartments or units accompanied
10 by delivery of an unexpired developer's public report;
11 or

12 (8) Sale of time share interests as defined under chapter
13 514E."

14 SECTION 32. Section 514C-1, Hawaii Revised Statutes, is
15 amended by amending the definition of "condominium unit lessee"
16 to read as follows:

17 ""Condominium unit lessee" means an individual or
18 individuals owning or leasing a condominium apartment or unit
19 situated on leasehold land."

20 SECTION 33. Section 514C-2, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " ~~[+]§514C-2[+]~~ **Right of first refusal.** When the leased
2 fee interest in land under a condominium project or cooperative
3 project or any part thereof is to be sold to any party other
4 than the association of owners or the cooperative housing
5 corporation, the seller shall first provide the board of
6 directors of the association of owners or the cooperative
7 housing corporation with written notice delivered or mailed by
8 registered or certified mail, return receipt requested, postage
9 prepaid, to any two of the president, vice-president, or
10 managing agent (if any), of its intent to sell that interest,
11 together with a complete and correct copy of the purchaser's
12 written offer, which offer shall contain the full and complete
13 terms thereof. The association of ~~[apartment]~~ owners or
14 cooperative housing corporation shall have a right of first
15 refusal to purchase that leased fee interest for the same price
16 as is contained in the written purchase offer."

17 SECTION 34. Section 514C-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§514C-5 Offer to other prospective purchasers; time**
20 **limit.** No lessor shall sell the leased fee interest in any land
21 under a condominium project or cooperative project containing
22 one or more residential units or any part thereof to any party



1 other than the association of apartment owners, unit owners'
2 association, or cooperative housing corporation for that project
3 until a right of first refusal for the purchase of that interest
4 has been offered as required by this part and has been rejected
5 in writing by the board of directors, except in the case of
6 sales to individual condominium unit lessees or cooperative unit
7 lessees, which shall be subject to the requirements of section
8 514C-6.5; provided that an offer made pursuant to sections 514C-
9 2, 514C-3, and 514C-6.5 shall be deemed to be rejected if not
10 accepted in writing by the board of directors of the condominium
11 project or the cooperative housing corporation within one
12 hundred twenty days of its receipt of the written notice from
13 the seller, as evidenced by the return receipts, or if the sale,
14 through no fault of the seller, has not closed upon the purchase
15 of one hundred per cent of the interest being sold within one
16 hundred eighty days of receipt by the board of directors of such
17 written notice, as evidenced by the return receipts. In the
18 event that closing is delayed due to any fault of the seller,
19 the deadline for closing shall be extended for a period of time
20 equal to the delay caused by [†]the[†] seller."

21 SECTION 35. Section 514C-6, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§514C-6 Powers of association of apartment owners or unit
2 owners' association and cooperative housing corporation. (a)

3 The association of apartment owners, unit owners' association,
4 or cooperative housing corporation may purchase the leased fee
5 interest in the land; provided that at least sixty-seven per
6 cent 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 sixty-
10 seven per cent requirement. As used herein:

11 (1) Sixty-seven per cent of the condominium unit lessees
12 means the lessees of units to which sixty-seven per
13 cent of the common interests are appurtenant; and

14 (2) Sixty-seven per cent of the cooperative unit lessees
15 means shareholders having at least sixty-seven per
16 cent of the shares in the cooperative housing
17 corporation.

18 [+] (b) [+] If the association of apartment owners, unit
19 owners' association, or cooperative housing corporation accepts
20 the seller's offer to purchase the leased fee interest in the
21 land, the following powers, in addition to any other powers,



1 shall be conferred upon the association of owners or cooperative
2 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 apartment or unit to any condominium unit
16 lessee or subsequent purchaser of such unit.

17 [+](c)[+] No conveyance of the leased fee interest to or
18 by an association of owners or cooperative housing corporation,
19 and no borrowing, mortgage, or pledge by an association of
20 owners or cooperative housing corporation shall be invalid
21 because it was without capacity or power to do such an act or to
22 make or receive such conveyance, transfer, or loan.



1 [+] (d) [+] No condominium unit lessee shall be compelled to
2 participate in the purchase of the leased fee interest of the
3 property, but may instead pay lease rent to the association of
4 owners."

5 SECTION 36. Section 514C-6.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§514C-6.5 Sales to individual lessees.** Notwithstanding
8 any other provision in this part to the contrary, a lessor may
9 sell the leased fee interest in any land under a condominium
10 project or cooperative project or any part thereof to individual
11 condominium unit lessees or cooperative unit lessees; provided
12 that the following requirements have been complied with:

13 (1) No individual lessee shall be obligated to enter into
14 a contract to purchase without having been afforded a
15 period of at least ninety days within which to
16 consider the offer made by the lessor; provided that
17 the individual lessee may enter into a contract to
18 purchase before the ninety days expires if the
19 individual lessee so desires. The lessee shall
20 further have the right to terminate such contract to
21 purchase without penalty for a period of ninety days
22 from the date the contract was first entered into;



1 (2) At the time any offer to sell the leased fee interest
2 is communicated to the lessee by the lessor, the
3 association of owners or cooperative housing
4 corporation shall be provided with written notice
5 delivered or mailed by registered or certified mail,
6 return receipt requested, postage prepaid, to any two
7 of the president, vice-president, or managing agent
8 (if any), of the lessor's intent to sell the interest,
9 together with a complete and correct copy of the
10 offer, which offer shall contain the full and complete
11 terms thereof. Except as provided in paragraph (3),
12 where the board of directors of the association of
13 apartment owners, unit owners' association, or
14 cooperative housing corporation has written
15 authorization to represent its members, then the
16 association of owners or cooperative housing
17 corporation shall have a right of first refusal to
18 purchase that leased fee interest for the same price
19 as is contained in the written purchase offer;
20 provided that the offer shall be deemed to be rejected
21 if not accepted in writing by the board of directors
22 of the condominium project or the cooperative housing



1 corporation within one hundred twenty days of its
2 receipt of written notice from the seller, as
3 evidenced by the return receipts;

4 (3) Any board of directors of the association of apartment
5 owners, unit owners' association, or cooperative
6 housing corporation may fully or partially waive its
7 right of first refusal at any time with written notice
8 to the lessor; provided that it shall waive its right
9 of first refusal with respect to the leased fee
10 interest appurtenant to a lessee's apartment at the
11 written request of the lessee. The legislature hereby
12 gives the board of directors of the association of
13 apartment owners, unit owners' association, or
14 cooperative housing corporation the authority to
15 exercise the foregoing waiver without having to amend
16 any bylaws, charter, or other governing documents;

17 (4) Notwithstanding any provision contained in any bylaws,
18 [~~e~~] any amendment thereto, or written
19 authorization[~~r~~] authorizing the board of directors of
20 the association of apartment owners, unit owners'
21 association, or cooperative housing corporation to
22 represent the individual lessees in the lease-to-fee



1 conversion, each [~~individual~~] lessee shall have the
 2 right to represent [~~himself or herself~~] oneself in
 3 such lease-to-fee conversion by giving written notice
 4 of such desire to the lessor and the board of
 5 directors; and

6 (5) After the lessor (or its agent or representative) has
 7 been able to hold one meeting with the lessees and has
 8 been able to provide a written summary of the meeting
 9 to the lessees, then for a period of ninety days
 10 thereafter, the lessor, its agents, employees, and
 11 representatives, shall not initiate communication with
 12 the lessees regarding the offer, although such parties
 13 may respond to inquiries made by lessees."

14 SECTION 37. Section 516D-11, Hawaii Revised Statutes, is
 15 amended by amending subsection (a) to read as follows:

16 "(a) Except as otherwise provided [~~for~~] in this section,
 17 for any sale of a condominium or a cooperative residential
 18 leasehold apartment[~~r~~] or unit, no later than ten calendar days
 19 after the acceptance of the deposit, receipt, offer, and
 20 acceptance contract (DROA) or other similar contract, the
 21 seller, either directly or through the seller's agent, shall
 22 provide to the buyer for the buyer's approval and acceptance one



1 of the following lease documents which provide the major
2 provisions of the lease, such as the length of the lease, lease
3 rent terms, lease rent renegotiation dates, how renegotiated
4 lease rents will be calculated, and surrender clause provisions:

- 5 (1) Master lease and any amendments thereto; [~~or~~]
6 (2) Apartment or unit lease and any amendments thereto; or
7 (3) For initial buyers of condominium apartments or units
8 only, an unexpired preliminary, final or supplemental
9 condominium property regime public report.

10 A sale for the purposes of this subsection shall not be deemed
11 to include any transfer to a co-owner, or to a spouse, parent,
12 or child of the seller, or to any transfer by devise, descent,
13 court order, or by operation of law, including[~~or~~] but not
14 limited to[~~or~~] any transfer by foreclosure, bankruptcy, or
15 partition sale. Upon receipt of the applicable lease document,
16 the buyer shall have ten calendar days to review, accept or
17 reject the terms of the lease."

18 SECTION 38. Section 521-52, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) If the dwelling unit is an apartment or unit in a
21 condominium property regime the tenant shall comply with the
22 bylaws of the association of apartment owners or unit owners'



1 association and if the dwelling unit is an apartment in a
2 cooperative housing corporation the tenant shall comply with the
3 bylaws of the corporation."

4 SECTION 39. Section 667-5.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§667-5.5 Foreclosure notice.** Notwithstanding any law or
7 agreement to the contrary, any person who forecloses on a
8 property within a planned community [~~association~~], a condominium
9 apartment[~~7~~] or unit, or an apartment in a cooperative housing
10 project shall notify, by way of registered or certified mail,
11 the board of directors of the planned community association, the
12 association of apartment owners or unit owners' association of
13 the condominium[~~7~~] project, or the cooperative housing project
14 in which the property to be foreclosed is located, of the
15 foreclosure at the time foreclosure proceedings are begun. The
16 notice, at a minimum, shall identify the property, condominium
17 apartment[~~7~~] or unit, or cooperative apartment which is the
18 subject of the foreclosure and identify the name or names of the
19 person or persons bringing foreclosure proceedings. This
20 section shall not apply when the planned community association,
21 condominium association, or cooperative housing corporation is a
22 party in a foreclosure action. This section shall not affect



1 civil proceedings against parties other than the planned
2 community association, association of apartment owners[~~r~~] or
3 unit owners' association, or cooperative housing corporation."

4 SECTION 40. Section 672E-4, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) Within thirty days following any proposal for
7 inspection under subsection (b)(2), the claimant shall provide
8 access to:

- 9 (1) Inspect the premises;
- 10 (2) Document any alleged construction defects; and
- 11 (3) Perform any testing required to evaluate the nature,
12 extent, and cause of the asserted construction defect,
13 and the nature and extent of any repair or replacement
14 that may be necessary to remedy the asserted
15 construction defect;

16 provided that if the claimant is an association of apartment
17 owners[~~r~~] or unit owners' association, the claimant shall have
18 forty-five days to provide such access. If access to an
19 individual condominium apartment or unit is necessary, and the
20 association is unable to obtain such access, then the
21 association shall have a reasonable time to provide access. If
22 destructive testing is required, the contractor shall give



1 advance notice of tests and return the premises to its pre-
2 testing condition. If inspection or testing reveals a condition
3 that requires additional testing to fully and completely
4 evaluate the nature, cause, and extent of the construction
5 defect, the contractor shall provide notice to the claimant of
6 the need for additional testing. [~~Claimant~~] The claimant shall
7 provide additional access to the premises. If a claim is
8 asserted on behalf of owners of multiple dwellings, or multiple
9 owners of units within a multi-family complex, the contractor
10 shall be entitled to inspect each of the dwellings or units."

11 **PART V**

12 SECTION 41. This Act shall be amended to conform to all
13 other acts passed by the legislature during the regular session
14 of 2008, whether enacted before or after the effective date of
15 this Act, unless the other acts specifically provide otherwise.

16 SECTION 42. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 43. Upon its approval, this Act shall take effect
19 retroactive to July 1, 2006; provided that:

- 20 (1) Section 3(2) shall take effect on July 1, 2008;
21 (2) The amendments to section 237-24.3, Hawaii Revised
22 Statutes, by section 26 of this Act shall not be



1 repealed on December 31, 2009, by section 4 of Act
2 239, Session Laws of Hawaii 2007; and
3 (3) Section 25 shall take effect on July 1, 2008.

4

INTRODUCED BY: Calvin K. M. King
BY REQUEST

JAN 18 2008



Report Title:

Condominium Revision Bill

Description:

Amends various provisions of the Hawaii Revised Statutes relating to condominiums for the purpose of correcting errors and references, and clarifying language.

