
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The recodified condominium law is the result of
2 Act 164, Session Laws of Hawaii 2004, Act 93, Session Laws of
3 Hawaii 2005, and Act 273, Session Laws of Hawaii 2006. The
4 administration of the recodified condominium law has brought up
5 a number of issues that require some housekeeping amendments.
6 The purpose of this Act is to make necessary technical and
7 conforming amendments to relevant statutory provisions.

8 SECTION 2. Chapter 514A, Hawaii Revised Statutes, is
9 amended by adding three new parts, to be appropriately inserted
10 and to read as follows:

11 **"PART I. GENERAL PROVISIONS AND DEFINITIONS**

12 **§514A-1 Title.** This chapter shall be known as the
13 Condominium Property Act.

14 **§514A-1.5 Applicability of chapter.** (a) This chapter:

15 (1) Shall not apply to condominiums created on or after July
16 1, 2006, or that are registered with the commission
17 pursuant to part IV of chapter 514B; and

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



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

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

11 (b) This chapter shall not apply to any condominium project
12 or association of apartment owners created prior to May 29, 1963,
13 pursuant to Act 180, Session Laws of Hawaii 1961, unless all of
14 the owners and holders of liens affecting any of the apartments in
15 the project have expressly declared that this chapter shall apply
16 to the property, and shall govern the rights, interests, and
17 remedies of all persons owning interests in or liens upon the
18 property; provided that any condominium project or association of
19 apartment owners created prior to May 29, 1963, pursuant to Act
20 180, Session Laws of Hawaii 1961, having seven or more apartments
21 shall register with the commission and comply with the
22 requirements pursuant to sections 514A-95.1 and 514A-132, except



1 for the fidelity bond requirement. The express declaration shall
2 be made through the execution and recordation of a declaration in
3 form and content required to establish a condominium property
4 regime pursuant to this chapter.

5 **§514A-1.6 Conformance with county land use ordinances.** Any
6 condominium property regime established under this chapter shall
7 conform to the existing underlying county zoning for the property
8 and all applicable county permitting requirements adopted by the
9 county in which the property is located, including any
10 supplemental rules adopted by the county, pursuant to section
11 514A-45, to ensure the conformance of condominium property regimes
12 to the purposes and provisions of county zoning and development
13 ordinances and chapter 205. In the case of a property which
14 includes one or more existing structures being converted to
15 condominium status, the condominium property regime shall comply
16 with section 514A-11(13) or section 514A-40(b).

17 **§514A-2 Chapter not exclusive.** This chapter is in addition
18 and supplemental to all other provisions of the Hawaii Revised
19 Statutes; provided that this chapter shall not change the
20 substantive law relating to land court property; and provided
21 further that if this chapter conflicts with chapters 501 and 502,
22 chapters 501 and 502 shall prevail.



1 **§514A-3 Definitions.** Unless it is plainly evident from the
2 context that a different meaning is intended, as used herein:

3 "Apartment" means a part of the property intended for any
4 type of use or uses, and with an exit to a public street or
5 highway or to a common element or elements leading to a public
6 street or highway, and may include such appurtenances as garage
7 and other parking space, storage room, balcony, terrace, and
8 patio.

9 "Apartment owner" means the person owning, or the persons
10 owning jointly or in common, an apartment and the common interest
11 appertaining thereto; provided that to such extent and for such
12 purposes, including the exercise of voting rights, as shall be
13 provided by lease registered under chapter 501 or recorded under
14 chapter 502, a lessee of an apartment shall be deemed to be the
15 owner thereof.

16 "Association of apartment owners" means all of the apartment
17 owners acting as a group in accordance with the bylaws and
18 declaration.

19 "Commission" means the real estate commission of the state
20 department of commerce and consumer affairs.

21 "Common elements", unless otherwise provided in the
22 declaration, means and includes:



- 1 (1) The land included in the condominium property regime,
2 whether leased or in fee simple;
- 3 (2) The foundations, columns, girders, beams, supports, main
4 walls, roofs, halls, corridors, lobbies, stairs,
5 stairways, fire escapes, and entrances and exits of the
6 building or buildings;
- 7 (3) The basements, flat roofs, yards, gardens, recreational
8 facilities, parking areas, and storage spaces;
- 9 (4) The premises for the lodging or use of janitors and
10 other persons employed for the operation of the
11 property;
- 12 (5) Central and appurtenant installations for services such
13 as power, light, gas, hot and cold water, heating,
14 refrigeration, air conditioning, and incinerators;
- 15 (6) The elevators, escalators, tanks, pumps, motors, fans,
16 compressors, ducts, and in general all apparatus and
17 installations existing for common use;
- 18 (7) Such facilities as may be designated as common elements
19 in the declaration; and
- 20 (8) All other parts of the property necessary or convenient
21 to its existence, maintenance, and safety, or normally
22 in common use.



1 "Common expense" means and includes:
2 (1) Expenses of operation of the property; and
3 (2) All sums designated common expenses by or pursuant to
4 this chapter, the declaration or the bylaws.
5 "Common interest" means the percentage of undivided interest
6 in the common elements appertaining to each apartment, as
7 expressed in the declaration, and any specified percentage of the
8 common interests means such percentage of the undivided interests
9 in the aggregate.
10 "Common profits" means the balance of all income, rents,
11 profits, and revenues from the common elements remaining after the
12 deduction of the common expenses.
13 "Completion of construction" means the issuance by the
14 appropriate county official of a certificate of completion.
15 "Condominium" means the ownership of single units, with
16 common elements, located on property within the condominium
17 property regime.
18 "Declaration" means the instrument by which the property is
19 submitted to this chapter, as hereinafter provided, and such
20 declaration as from time to time amended.
21 "Developer" means a person who undertakes to develop a real
22 estate condominium project.



1 "Limited common elements" means and includes those common
2 elements designated in the declaration as reserved for the use of
3 a certain apartment or certain apartments to the exclusion of the
4 other apartments; provided that no amendment of the declaration
5 affecting any of the limited common elements shall be effective
6 without the consent of the owner or owners of the apartment or
7 apartments for the use of which such limited common elements are
8 reserved.

9 "Majority" or "majority of apartment owners" means the owners
10 of apartments to which are appurtenant more than fifty per cent of
11 the common interests, and any specified percentage of the
12 apartment owners means the owners of apartments to which are
13 appurtenant such percentage of the common interests.

14 "Managing agent" means any person employed or retained for
15 the purposes of managing the operation of the property.

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

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



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

4 "Project" means:

- 5 (1) A real estate condominium project; and
- 6 (2) A plan or project whereby a condominium of two or more
7 apartments located within the condominium property
8 regime are offered or proposed to be offered for sale.

9 "Property" means and includes the land, whether or not
10 contiguous and including more than one parcel of land, but located
11 within the same vicinity, whether leasehold or in fee simple, to
12 the extent of the interest held therein by the owner or lessee
13 submitting such interest to the condominium property regime, the
14 building or buildings, all improvements and all structures
15 thereon, and all easements, rights, and appurtenances belonging
16 thereto, and all articles of personal property intended for use in
17 connection therewith, which have been or are intended to be
18 submitted to the regime established by this chapter.

19 "To record" means to record in accordance with chapter 502,
20 or to register in accordance with chapter 501.



1 All pronouns used herein include the male, female, and neuter
2 genders and include the singular or plural numbers, as the case
3 may be.

4 **§514A-4 Status of apartments.** Each apartment, together with
5 the common interest appertaining thereto, shall for all purposes
6 constitute real property and may be individually conveyed, leased,
7 or encumbered and be the subject of ownership, possession, or sale
8 and for all other purposes be treated as if it were sole and
9 entirely independent of the other apartment or apartments in the
10 property of which it forms a part, and the corresponding
11 individual titles and interests shall be recordable.

12 **§514A-5 Ownership of apartments.** The apartment owner is
13 entitled to the exclusive ownership and possession of the
14 apartment. Any apartment may be jointly or commonly owned by more
15 than one person.

16 **§514A-6 Separate taxation.** The laws relating to home
17 exemptions from state property taxes are applicable to the
18 individual apartments, which shall have the benefit of home
19 exemption in those cases where the owner of single-family dwelling
20 would qualify. Property taxes assessed by the State or county
21 shall be assessed on and collected on the individual apartments
22 and not on the property as a whole. Without limitation of the



1 foregoing, each apartment and the common interest appertaining
2 thereto shall be deemed to be a parcel and shall be subject to
3 separate assessment and taxation for all types of taxes authorized
4 by law, including, but not limited to, special assessments.

5 **§514A-7 Condominium specialist; appointment; duties.** There
6 are established two permanent condominium specialist positions
7 within the department of commerce and consumer affairs to assist
8 consumers with information, advice, and referral on any matter
9 relating to this chapter or otherwise concerning condominium
10 property regimes. There is also established a permanent
11 secretarial position to provide assistance in carrying out these
12 duties. The condominium specialists and secretary shall be
13 appointed by the director of commerce and consumer affairs without
14 regard to chapter 76. The condominium specialists and secretary
15 shall be members of the employees retirement system of the State
16 and shall be eligible to receive the benefits of any state or
17 federal employee benefit program generally applicable to officers
18 and employees of the State.

19 **PART V. CONDOMINIUM MANAGEMENT**

20 **§514A-81 Bylaws.** The operation of the property shall be
21 governed by bylaws, a true copy of which shall be recorded in the



1 same manner as the declaration. No amendment to the bylaws is
2 valid unless the amendment is duly recorded.

3 **§514A-82 Contents of bylaws.** (a) The bylaws shall provide
4 for at least the following:

5 (1) Board of directors:

6 (A) The election of a board of directors;

7 (B) The number of persons constituting the board;

8 provided that condominiums with more than one

9 hundred individual apartment units shall have an

10 elected board of not less than nine members unless

11 not less than sixty-five per cent of all apartment

12 owners vote by mail ballot, or at a special or

13 annual meeting, to reduce the minimum number of

14 directors;

15 (C) That for the initial term of office, directors

16 shall serve for a term of three years or the term

17 as specified by the bylaws or until their

18 successors have been elected or appointed;

19 (D) The powers and duties of the board;

20 (E) The compensation, if any, of the directors; and

21 (F) Whether or not the board may engage the services of

22 a manager or managing agent, or both, and



- 1 specifying which of the powers and duties granted
2 to the board by this chapter or otherwise may be
3 delegated by the board to either or both of them;
- 4 (2) Method of calling meetings of the apartment owners;
5 what percentage, if other than a majority of apartment
6 owners, constitutes a quorum; what percentage,
7 consistent with this chapter, is necessary to adopt
8 decisions binding on all apartment owners and that
9 votes allocated to any area that constitutes a common
10 element under section 514A-13(h) shall not be cast at
11 any association meeting, regardless of whether it is
12 so designated in the declaration;
- 13 (3) Election of a president from among the board of
14 directors who shall preside over the meetings of the
15 board of directors and of the association of apartment
16 owners;
- 17 (4) Election of a secretary who shall keep the minute book
18 wherein resolutions shall be recorded;
- 19 (5) Election of a treasurer who shall keep the financial
20 records and books of account;



- 1 (6) Operation of the property, payment of the common
2 expenses, and determination and collection of the
3 common charges;
- 4 (7) Manner of collecting common expenses, expenses, costs,
5 and fees recoverable by the association under section
6 514A-94, and any penalties and late charges;
- 7 (8) Designation and removal of personnel necessary for the
8 maintenance, repair, and replacement of the common
9 elements;
- 10 (9) Method of adopting and of amending administrative
11 rules governing the details of the operation and use
12 of the common elements;
- 13 (10) The restrictions on and requirements respecting the
14 use and maintenance of the apartments and the use of
15 the common elements, not set forth in the declaration,
16 as are designed to prevent unreasonable interference
17 with the use of their respective apartments and of the
18 common elements by the several apartment owners;
- 19 (11) The first meeting of the association of apartment
20 owners shall be held not later than one hundred eighty
21 days after recordation of the first apartment
22 conveyance; provided forty per cent or more of the



- 1 project has been sold and recorded. If forty per cent
2 of the project is not sold and recorded at the end of
3 one year, an annual meeting shall be called; provided
4 ten per cent of the apartment owners so request;
- 5 (12) All members of the board of directors shall be owners,
6 co-owners, vendees under an agreement of sale, or an
7 officer of any corporate owner of an apartment. The
8 partners in a general partnership and the general
9 partners of a limited partnership shall be deemed to
10 be the owners of an apartment for this purpose. There
11 shall not be more than one representative on the board
12 of directors from any one apartment;
- 13 (13) A director shall not cast any proxy vote at any board
14 meeting, nor shall a director vote at any board
15 meeting on any issue in which the director has a
16 conflict of interest;
- 17 (14) No resident manager of a condominium shall serve on
18 its board of directors;
- 19 (15) The board of directors shall meet at least once a
20 year;



1 (16) All association and board of directors meetings shall
2 be conducted in accordance with the most current
3 edition of Robert's Rules of Order;

4 (17) All meetings of the association of apartment owners
5 shall be held at the address of the condominium
6 project or elsewhere within the state as determined by
7 the board of directors; and

8 (18) Penalties chargeable against persons for violation of
9 the covenants, conditions, or restrictions set forth
10 in the declaration, or of the bylaws and
11 administrative rules adopted pursuant thereto, method
12 of determination of violations, and manner of
13 enforcing penalties, if any.

14 (b) In addition to the requirements of subsection (a), the
15 bylaws shall be consistent with the following provisions:

16 (1) At any regular or special meeting of the apartment
17 owners, any one or more members of the board of
18 directors may be removed by the apartment owners and
19 successors shall then and there be elected for the
20 remainder of the term to fill the vacancies thus
21 created. The removal and replacement shall be by a vote
22 of a majority of the apartment owners and, otherwise, in



1 accordance with all applicable requirements and
2 procedures in the bylaws for the removal and replacement
3 of directors. If removal and replacement is to occur at
4 a special association meeting, the call for the meeting
5 shall be by the president or by a petition to the
6 secretary or managing agent signed by not less than
7 twenty-five per cent of the apartment owners as shown in
8 the association's record of ownership; provided that if
9 the secretary or managing agent shall fail to send out
10 the notices for the special meeting within fourteen days
11 of receipt of the petition, then the petitioners shall
12 have the authority to set the time, date, and place for
13 the special meeting and to send out the notices for the
14 special meeting in accordance with the requirements of
15 the bylaws. Except as otherwise provided in this
16 section, the meeting for the removal and replacement
17 from office of directors shall be scheduled, noticed,
18 and conducted in accordance with the bylaws of the
19 association;

20 (2) The bylaws may be amended at any time by the vote or
21 written consent of sixty-five per cent of all apartment
22 owners; provided that:



1 (A) Each one of the particulars set forth in this
2 subsection shall be embodied in the bylaws always;
3 and
4 (B) Any proposed bylaws with the rationale for the
5 proposal may be submitted by the board of directors
6 or by a volunteer apartment owners' committee. If
7 submitted by that committee, the proposal shall be
8 accompanied by a petition signed by not less than
9 twenty-five per cent of the apartment owners as
10 shown in the association's record of ownership.
11 The proposed bylaws, rationale, and ballots for
12 voting on any proposed bylaw shall be mailed by the
13 board of directors to the owners at the expense of
14 the association for vote or written consent without
15 change within thirty days of the receipt of the
16 petition by the board of directors. The vote or
17 written consent required to adopt the proposed
18 bylaw shall not be less than sixty-five per cent of
19 all apartment owners; provided that the vote or
20 written consent shall be obtained within three
21 hundred sixty-five days after mailing for a
22 proposed bylaw submitted by either the board of



1 directors or a volunteer apartment owners'
2 committee. If the bylaw is duly adopted, then the
3 board shall cause the bylaw amendment to be
4 recorded in the bureau of conveyances or filed in
5 the land court, as the case may be. The volunteer
6 apartment owners' committee shall be precluded from
7 submitting a petition for a proposed bylaw that is
8 substantially similar to that which has been
9 previously mailed to the owners within one year
10 after the original petition was submitted to the
11 board.

12 This paragraph shall not preclude any apartment owner
13 or voluntary apartment owners' committee from
14 proposing any bylaw amendment at any annual
15 association meeting;

16 (3) Notices of association meetings, whether annual or
17 special, shall be sent to each member of the association
18 of apartment owners at least fourteen days prior to the
19 meeting and shall contain at least:

20 (A) The date, time, and place of the meeting;

21 (B) The items on the agenda for the meeting; and



1 (C) A standard proxy form authorized by the
2 association, if any;

3 (4) No resident manager or managing agent shall solicit, for
4 use by the manager or managing agent, any proxies from
5 any apartment owner of the association of owners that
6 employs the resident manager or managing agent, nor
7 shall the resident manager or managing agent cast any
8 proxy vote at any association meeting except for the
9 purpose of establishing a quorum. Any board of
10 directors that intends to use association funds to
11 distribute proxies, including the standard proxy form
12 referred to in paragraph (3), shall first post notice of
13 its intent to distribute proxies in prominent locations
14 within the project at least thirty days prior to its
15 distribution of proxies; provided that if the board
16 receives within seven days of the posted notice a
17 request by any owner for use of association funds to
18 solicit proxies accompanied by a statement, the board
19 shall mail to all owners either:

20 (A) A proxy form containing the names of all owners who
21 have requested the use of association funds for



1 soliciting proxies accompanied by their statements;

2 or

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

7 The statement shall not exceed one hundred words,
8 indicating the owner's qualifications to serve on the
9 board and reasons for wanting to receive proxies;

10 (5) A director who has a conflict of interest on any issue
11 before the board shall disclose the nature of the
12 conflict of interest prior to a vote on that issue at
13 the board meeting, and the minutes of the meeting shall
14 record the fact that a disclosure was made;

15 (6) The apartment owners shall have the irrevocable right,
16 to be exercised by the board of directors, to have
17 access to each apartment from time to time during
18 reasonable hours as may be necessary for the operation
19 of the property or for making emergency repairs therein
20 necessary to prevent damage to the common elements or to
21 another apartment or apartments;



- 1 (7) An owner shall not act as an officer of an association
2 and an employee of the managing agent employed by the
3 association;
- 4 (8) An association's employees shall not engage in selling
5 or renting apartments in the condominium in which they
6 are employed except association-owned units, unless such
7 activity is approved by an affirmative vote of
8 sixty-five per cent of the membership;
- 9 (9) The board of directors shall meet at least once a year.
10 Whenever practicable, notice of all board meetings shall
11 be posted by the resident manager or a member of the
12 board in prominent locations within the project
13 seventy-two hours prior to the meeting or simultaneously
14 with notice to the board of directors;
- 15 (10) Directors shall not expend association funds for their
16 travel, directors' fees, and per diem, unless owners are
17 informed and a majority approve of these expenses;
- 18 (11) Associations at their own expense shall provide all
19 board members with a current copy of the association's
20 declaration, bylaws, house rules, and, annually, a copy
21 of this chapter with amendments;



- 1 (12) The directors may expend association funds, which shall
2 not be deemed to be compensation to the directors, to
3 educate and train themselves in subject areas directly
4 related to their duties and responsibilities as
5 directors; provided that the approved annual operating
6 budget shall include these expenses as separate line
7 items. These expenses may include registration fees,
8 books, videos, tapes, other educational materials, and
9 economy travel expenses. Except for economy travel
10 expenses within the state, all other travel expenses
11 incurred under this subsection shall be subject to the
12 requirements of paragraph (10);
- 13 (13) A lien created pursuant to section 514A-90 may be
14 enforced by the association in any manner permitted by
15 law, including nonjudicial or power of sale foreclosure
16 procedures authorized by chapter 667; and
- 17 (14) If the bylaws provide for cumulative voting by the
18 owners, the owners may so vote if an owner gives notice
19 of the owner's intent to cumulatively vote before voting
20 commences.



1 The provisions of this subsection shall be deemed incorporated
2 into the bylaws of all condominium projects existing as of January
3 1, 1988, and all condominium projects created after that date.

4 **§514A-82.1 Employees of condominiums; background check.** The
5 board of directors of an association of apartment owners or the
6 manager of a condominium project, upon the written authorization
7 of an applicant for employment as security guard or manager or for
8 a position which would allow the employee access to the keys of or
9 entry into the units in the condominium project or access to
10 association funds, may conduct a background check on the applicant
11 or direct another responsible party to conduct the check. Before
12 initiating or requesting a check, the board of directors or the
13 manager shall first certify that the signature on the
14 authorization is authentic and that the person is an applicant for
15 such employment. The background check, at a minimum, shall
16 require the applicant to disclose whether the applicant has been
17 convicted in any jurisdiction of a crime which would tend to
18 indicate that the applicant may be unsuited for employment as a
19 condominium employee with access to association funds or the keys
20 of or entry into the units in the condominium project, and the
21 judgment of conviction has not been vacated. For the purpose of
22 this section, the criminal history disclosure made by the



1 applicant may be verified by the board of directors, manager, or
2 other responsible party, if so directed by the board or the
3 manager, by means of information obtained through the Hawaii
4 criminal justice data center. The applicant shall provide the
5 Hawaii criminal justice data center with personal identifying
6 information which shall include but not be limited to the
7 applicant's name, social security number, date of birth, and
8 gender. This information shall be used only for the purpose of
9 conducting the criminal history record check authorized by this
10 section. Failure of an association of apartment owners or the
11 manager to conduct or verify or cause to have conducted or
12 verified a background check shall not alone give rise to any
13 private cause of action against an association or manager for acts
14 and omissions of the employee hired.

15 **§514A-82.15 Mixed use property; representation on the board**
16 **of directors.** (a) The bylaws of an association of apartment
17 owners may be amended to provide that the composition of the board
18 reflect the proportionate number of apartments for a particular
19 use, as set forth in the declaration. For example, an association
20 of apartment owners may provide that for a nine-member board where
21 two-thirds of the apartments are for residential use and one-third
22 is for commercial use, sixty-six and two-thirds per cent of the



1 nine-member board, or six members, shall be owners of residential
2 use apartments and thirty-three and one-third per cent, or three
3 members, shall be owners of commercial use apartments.

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

7 (1) A majority vote of the board of directors; or

8 (2) A submission of the proposed bylaw amendment to the
9 board of directors from a volunteer apartment owner's
10 committee accompanied by a petition from twenty-five per
11 cent of the apartment owners of record.

12 (c) Within thirty days of a decision by the board or receipt
13 of a petition to initiate a bylaws amendment, the board of
14 directors shall mail a ballot with the proposed bylaws amendment
15 to all of the apartment owners of record. For purposes of this
16 section only and notwithstanding section 514A-82(b)(2), the bylaws
17 may be initially amended by a vote or written consent of the
18 majority (at least fifty-one per cent) of the apartment owners;
19 and thereafter by sixty-five per cent of all apartment owners;
20 provided that each of the requirements set forth in this section
21 shall be embodied in the bylaws.



1 (d) The bylaws, as amended pursuant to this section, shall
2 be recorded in the bureau of conveyances or filed in land court,
3 as the case may be.

4 (e) Election of the new board of directors in accordance
5 with an amendment adopted pursuant to this section shall be held
6 within sixty days from the date the amended bylaws are recorded
7 pursuant to subsection (d).

8 (f) As permitted in the bylaws or declaration, the vote of a
9 commercial apartment owner shall be cast and counted only for the
10 commercial seats available on the board of directors and the vote
11 of a residential apartment owner shall be cast and counted only
12 for the residential seats available on the board of directors.

13 (g) No petition for a bylaw amendment pursuant to subsection
14 (b)(2) to modify the composition of the board shall be distributed
15 to the apartment owners within one year of the distribution of a
16 prior petition to modify the composition of the board pursuant to
17 that subsection.

18 (h) This section shall not preclude the removal and
19 replacement of any one or more members of the board pursuant to
20 section 514A-82(b)(1). Any removal and replacement shall not
21 affect the proportionate composition of the board as prescribed in
22 the bylaws as amended pursuant to this section.



1 (i) This section shall be deemed incorporated into the
2 bylaws of all properties subject to this chapter existing as of
3 July 1, 1998, and thereafter.

4 **§514A-82.2 Restatement of declaration and bylaws.** (a)
5 Notwithstanding any other provision of this chapter or of any
6 other statute or instrument, an association of apartment owners
7 may at any time restate the declaration of condominium property
8 regime of the project or the bylaws of the association to set
9 forth all amendments thereof by a resolution adopted by the board
10 of directors.

11 (b) An association of apartment owners may at any time
12 restate the declaration of condominium property regime of the
13 project or the bylaws of the association to amend the declaration
14 or bylaws as may be required to conform with the provisions of
15 this chapter or of any other statute, ordinance, rule or
16 regulation enacted by any governmental authority, by a resolution
17 adopted by the board of directors, and the restated declaration or
18 bylaws shall be as fully effective for all purposes as if adopted
19 by the vote or written consent of the apartment owners; provided
20 that any declaration of condominium property regime or bylaws
21 restated pursuant to this subsection shall identify each portion
22 so restated and shall contain a statement that those portions have



1 been restated solely for purposes of information and convenience,
2 identifying the statute, ordinance, rule, or regulation
3 implemented by the amendment, and that in the event of any
4 conflict, the restated declaration or bylaws shall be subordinate
5 to the cited statute, ordinance, rule, or regulation.

6 (c) Upon the adoption of a resolution pursuant to subsection
7 (a) or (b), the restated declaration of condominium property
8 regime or bylaws shall set forth all of the operative provisions
9 of the declaration of condominium property regime or bylaws, as
10 amended, together with a statement that the restated declaration
11 of condominium property regime or bylaws correctly sets forth
12 without change the corresponding provisions of the declaration of
13 condominium property regime or bylaws, as amended, and that the
14 restated declaration of condominium property regime or bylaws
15 supersede the original declaration of condominium property regime
16 or bylaws and all prior amendments thereto.

17 (d) The restated declaration of condominium property regime
18 or bylaws shall be recorded in the manner provided in section
19 514A-11, 514A-82, or both, and upon recordation shall supersede
20 the original declaration of condominium property regime or bylaws
21 and all prior amendments thereto; provided that in the event of
22 any conflict, the restated declaration of condominium property



1 regime or bylaws shall be subordinate to the original declaration
2 of condominium property regime or bylaws and all prior amendments
3 thereto.

4 **514A-82.3 Borrowing of money.** Subject to any approval
5 requirements and spending limits contained in the declaration or
6 bylaws of the association of apartment owners, the board of
7 directors may authorize the borrowing of money to be used by the
8 association for the repair, replacement, maintenance, operation,
9 or administration of the common elements of the project, or the
10 making of any additions, alterations, and improvements thereto.
11 The cost of such borrowing, including without limitation all
12 principal, interest, commitment fees, and other expenses payable
13 with respect to such borrowing, shall be a common expense of the
14 project; provided that owners representing fifty per cent of the
15 common interest and apartments give written consent to such
16 borrowing, having been first notified of the purpose and use of
17 the funds.

18 **§514A-82.4 Duty of directors.** Each director shall owe the
19 association of apartment owners a fiduciary duty in the
20 performance of the director's responsibilities.

21 **§514A-82.5 Pets in apartments.** (a) Whenever the bylaws do
22 not forbid apartment owners from keeping animals as pets in their



1 apartments, the bylaws shall not forbid the tenants of the
2 apartment owners from keeping pets in the apartments rented or
3 leased from the owners; provided that:

4 (1) The apartment owner agrees in writing to allow the
5 apartment owner's tenant to keep a pet in the apartment;

6 (2) The tenants may keep only those types of pets which may
7 be kept by apartment owners;

8 (3) The bylaws may allow each owner or tenant to keep only
9 one pet in the apartment;

10 (4) The animals shall not include those described as pests
11 under section 150A-2, or animals prohibited from
12 importation under section 141-2, 150A-5, or 150A-6;

13 (5) The bylaws may include reasonable restrictions or
14 prohibitions against excessive noise or other problems
15 caused by pets on the property; and

16 (6) The bylaws may reasonably restrict or prohibit the
17 running of pets at large in the common areas of the
18 property.

19 (b) Any amendments to the bylaws pertaining to pet
20 restrictions or prohibitions which exempt circumstances existing
21 prior to the adoption of the amendments shall apply equally to
22 apartment owners and tenants.



1 **§514A-82.6 Pets, replacement of subsequent to prohibition.**

2 (a) Any apartment owner who keeps a pet in the owner's apartment
3 pursuant to a provision in the bylaws which allows owners to keep
4 pets or in the absence of any provision in the bylaws to the
5 contrary may, upon the death of the animal, replace the animal
6 with another and continue to do so for as long as the owner
7 continues to reside in the owner's apartment or another apartment
8 subject to the same bylaws.

9 (b) Any apartment owner who is keeping a pet pursuant to
10 subsection (a) as of the effective date of an amendment to the
11 bylaws which prohibits owners from keeping pets in their
12 apartments shall not be subject to the prohibition but shall be
13 entitled to keep the pet and acquire new pets as provided in
14 subsection (a).

15 **§514A-83 Purchaser's right to vote.** The purchaser of an
16 apartment pursuant to an agreement of sale recorded in the bureau
17 of conveyances or land court shall have all the rights of an
18 apartment owner, including the right to vote; provided that the
19 seller may retain the right to vote on matters substantially
20 affecting the seller's security interest in the apartment,
21 including but not limited to the right to vote on:

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



- 1 (2) The nature and amount of any insurance covering the
- 2 project and the disposition of any proceeds thereof;
- 3 (3) The manner in which any condemnation of the project
- 4 shall be defended or settled and the disposition of any
- 5 award or settlement in connection therewith;
- 6 (4) The payment of any amount in excess of insurance or
- 7 condemnation proceeds;
- 8 (5) The construction of any additions or improvements, and
- 9 any substantial repair or rebuilding of any portion of
- 10 the project;
- 11 (6) The special assessment of any expenses;
- 12 (7) The acquisition of any apartment in the project;
- 13 (8) Any amendment to the declaration of condominium property
- 14 regime or bylaws;
- 15 (9) Any removal of the project from the provisions of this
- 16 chapter; and
- 17 (10) Any other matter which would substantially affect the
- 18 security interest of the seller.

19 **§514A-83.1 Board meetings.** (a) All meetings of the board
20 of directors, other than executive sessions, shall be open to all
21 members of the association, and association members who are not on
22 the board of directors may participate in any deliberation or



1 discussion, other than executive sessions, unless a majority of a
2 quorum of the board of directors votes otherwise.

3 (b) The board of directors, with the approval of a majority
4 of a quorum of its members, may adjourn a meeting and reconvene in
5 executive session to discuss and vote upon personnel matters or
6 litigation in which the association is or may become involved.
7 The nature of any and all business to be considered in executive
8 session shall first be announced in open session.

9 **§514A-83.2 Proxies.** (a) A proxy, to be valid, shall:

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

14 (2) Contain at least the name of the association of
15 apartment owners, the date of the meeting of the
16 association of apartment owners, the printed names and
17 signatures of the persons giving the proxy, the
18 apartments for which the proxy is given, and the date
19 that the proxy is given; and

20 (3) Contain boxes wherein the owner has indicated that the
21 proxy is given:

22 (A) For quorum purposes only;



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

3 (C) To the board of directors as a whole and that the
4 vote be made on the basis of the preference of the
5 majority of the board; or

6 (D) To those directors present at the meeting and the
7 vote to be shared with each board member receiving
8 an equal percentage.

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

14 (c) No board of directors or member of the board shall use
15 association funds to solicit proxies except for the distribution
16 of proxies as set forth in section 514A-82(b)(4); provided that
17 this shall not prevent an individual member of the board from
18 soliciting proxies as an apartment owner under section
19 514-82(b)(4).

20 (d) A copy, facsimile telecommunication, or other reliable
21 reproduction of a proxy may be used in lieu of the original proxy
22 for any and all purposes for which the original proxy could be



1 used; provided that any copy, facsimile telecommunication, or
2 other reproduction shall be a complete reproduction of the entire
3 original proxy.

4 (e) Nothing in this section shall affect the holder of any
5 proxy under a first mortgage of record encumbering an apartment or
6 under an agreement of sale affecting an apartment.

7 **§514A-83.3 Membership list.** The resident manager or
8 managing agent or board of directors shall keep an accurate and
9 current list of members of the association of apartment owners and
10 their current addresses and the names and addresses of the vendees
11 under an agreement of sale, if any. The list shall be maintained
12 at a place designated by the board of directors and a copy shall
13 be available, at cost, to any member of the association as
14 provided in the declaration or bylaws or rules and regulations or,
15 in any case, to any member who furnishes to the resident manager
16 or managing agent or board of directors a duly executed and
17 acknowledged affidavit stating that the list:

- 18 (1) Shall be used by such owner personally and only for
19 the purpose of soliciting votes or proxies or
20 providing information to other owners with respect to
21 association matters, and



1 (2) Shall not be used by such owner or furnished to anyone
2 else for any other purpose.

3 No board of directors shall adopt any rule prohibiting the
4 solicitation of proxies or distribution of materials relating to
5 association matters on the common elements by apartment owners;
6 provided that a board of directors may adopt rules regulating
7 reasonable time, place, and manner of such solicitations or
8 distributions, or both. A board of directors may prohibit
9 commercial solicitations.

10 **§514A-83.4 Meeting minutes.** (a) Minutes of meetings of the
11 board of directors and association of apartment owners shall
12 include the recorded vote of each board member on all motions
13 except motions voted on in executive session.

14 (b) Minutes of meetings of the board of directors and
15 association of apartment owners shall be approved at the next
16 succeeding meeting; provided that for board of directors meetings,
17 no later than the second succeeding meeting.

18 (c) Minutes of all meetings shall be available within seven
19 calendar days after approval and unapproved final drafts of the
20 minutes of a meeting shall be available within sixty days after
21 the meeting; provided that the minutes of any executive session



1 may be withheld if their publication would defeat the lawful
2 purpose of the executive session.

3 **§514A-83.5 Documents of the association of apartment owners.**

4 (a) The association's most current financial statement shall be
5 available to any owner at no cost or on twenty-four-hour loan, at
6 a convenient location designated by the board of directors. The
7 meeting minutes of the board of directors, once approved, for the
8 current and prior year shall either:

- 9 (1) Be available for examination by apartment owners at no
10 cost or on twenty-four-hour loan at a convenient
11 location at the project, to be determined by the board
12 of directors; or
- 13 (2) Be transmitted to any apartment owner making a request
14 for the minutes, by the board of directors, the
15 managing agent, or the association's representative,
16 within fifteen days of receipt of the request; provided
17 that the minutes shall be transmitted by mail,
18 electronic mail transmission, or facsimile, by the
19 means indicated by the owner, if the owner indicated a
20 preference at the time of the request; and provided
21 further that the owner shall pay a reasonable fee for



1 administrative costs associated with handling the
2 request.

3 Costs incurred by apartment owners pursuant to this
4 subsection shall be subject to section 514A-92.5.

5 (b) Minutes of board meetings shall include the recorded
6 vote of each board member on all motions except motions voted on
7 in executive session.

8 (c) Financial statements, general ledgers, the accounts
9 receivable ledger, accounts payable ledgers, check ledgers,
10 insurance policies, contracts, and invoices of the association of
11 apartment owners for the duration those records are kept by the
12 association and delinquencies of ninety days or more shall be
13 available for examination by apartment owners at convenient hours
14 at a place designated by the board; provided that:

15 (1) The board may require owners to furnish to the
16 association a duly executed and acknowledged affidavit
17 stating that the information is requested in good faith
18 for the protection of the interests of the association,
19 or its members, or both; and

20 (2) Owners pay for administrative costs in excess of eight
21 hours per year.



1 Copies of these items shall be provided to any owner upon the
2 owner's request; provided that the owner pays a reasonable fee for
3 duplication, postage, stationery, and other administrative costs
4 associated with handling the request.

5 (d) Owners shall also be permitted to view proxies, tally
6 sheets, ballots, owners' check-in lists, and the certificate of
7 election for a period of thirty days following any association
8 meeting; provided:

9 (1) That the board may require owners to furnish to the
10 association a duly executed and acknowledged affidavit
11 stating that the information is requested in good faith
12 for the protection of the interest of the association or
13 its members or both; and

14 (2) That owners pay for administrative costs in excess of
15 eight hours per year.

16 Proxies and ballots may be destroyed following the thirty-day
17 period. Copies of tally sheets, owners' check-in lists, and the
18 certificates of election from the most recent association meeting
19 shall be provided to any owner upon the owner's request; provided
20 that the owner pay a reasonable fee for duplicating, postage,
21 stationery, and other administrative costs associated with
22 handling the request.



1 (e) Owners may file a written request with the board to
2 examine other documents. The board shall give written
3 authorization or written refusal with an explanation of the
4 refusal within thirty calendar days of receipt of the request.

5 **§514A-83.6 Associations of apartment owners; budgets and**
6 **reserves.** (a) The board of directors of each association of
7 apartment owners shall prepare and adopt an annual operating
8 budget and distribute it to the apartment owners. At a minimum,
9 the budget shall include the following:

- 10 (1) The estimated revenues and operating expenses of the
11 association;
- 12 (2) Information as to whether the budget has been prepared
13 on a cash or accrual basis;
- 14 (3) The total replacement reserves of the association as of
15 the date of the budget;
- 16 (4) The estimated replacement reserves the association will
17 require to maintain the property based on a reserve
18 study performed by the association;
- 19 (5) A general explanation of how the estimated replacement
20 reserves are computed;
- 21 (6) The amount the association must collect for the fiscal
22 year to fund the estimated replacement reserves; and



1 (7) Information as to whether the amount the association
2 must collect for the fiscal year to fund the estimated
3 replacement reserves was calculated using a per cent
4 funded or cash flow plan. The method or plan shall not
5 circumvent the estimated replacement reserves amount
6 determined by the reserve study pursuant to paragraph
7 (4).

8 (b) The association shall assess the apartment owners to
9 either fund a minimum of fifty per cent of the estimated
10 replacement reserves or fund one hundred per cent of the estimated
11 replacement reserves when using a cash flow plan; provided that a
12 new association created after January 1, 1993, need not collect
13 estimated replacement reserves until the fiscal year which begins
14 after the association's first annual meeting. For each fiscal
15 year, the association shall collect the amount assessed to fund
16 the estimated replacement for that fiscal year reserves, as
17 determined by the association's plan, except:

18 (1) The commission shall adopt rules to permit an existing
19 association to fund its estimated replacement reserves
20 in increments after January 1, 1993, and prior to
21 January 1, 2000; and



1 (2) The commission shall adopt rules to permit an
2 association to fund in increments, over three years,
3 estimated replacement reserves that have been
4 substantially depleted by an emergency.

5 (c) The association shall compute the estimated replacement
6 reserves by a formula which is based on the estimated life and the
7 estimated capital expenditure or major maintenance required for
8 each part of the property. The estimated replacement reserves
9 shall include:

10 (1) Adjustments for revenues which will be received and
11 expenditures which will be made before the beginning of
12 the fiscal year to which the budget relates; and

13 (2) Separate, designated reserves for each part of the
14 property for which capital expenditures or major
15 maintenance will exceed \$10,000. Parts of the property
16 for which capital expenditures or major maintenance will
17 not exceed \$10,000 may be aggregated in a single
18 designated reserve.

19 (d) No association or apartment owner, director, officer,
20 managing agent, or employee of an association who makes a good
21 faith effort to calculate the estimated replacement reserves for



1 an association shall be liable if the estimate subsequently proves
2 incorrect.

3 (e) The commission may request a copy of the annual
4 operating budget of the association of apartment owners as part of
5 the association's registration with the commission under section
6 514A-95.1.

7 (f) A board may not exceed its total adopted annual
8 operating budget by more than twenty per cent during the fiscal
9 year to which the budget relates, except in emergency situations.
10 Prior to the imposition or collection of an assessment under this
11 paragraph, the board shall pass a resolution containing written
12 findings as to the necessity of the extraordinary expense involved
13 and why the expense was not or could not have been reasonably
14 foreseen in the budgeting process, and the resolution shall be
15 distributed to the members with the notice of assessment.

16 (g) The requirements of this section shall override any
17 requirements in an association's declaration, bylaws, or any other
18 association documents relating to preparation of budgets,
19 calculation of reserve requirements, assessment and funding of
20 reserves, with the exception of:

21 (1) Any provisions relating to the repair and maintenance of
22 property;



1 (2) Any requirements in an association's declaration,
2 bylaws, or any other association documents which require
3 the association to collect more than fifty per cent of
4 reserve requirements; or

5 (3) Any provisions relating to upgrading the common
6 elements, such as additions, improvements, and
7 alterations to the common elements.

8 (h) Subject to the procedures of section 514A-94 and any
9 rules adopted by the commission, any apartment owner whose
10 association board fails to comply with this section may enforce
11 compliance by the board. In any proceeding to enforce compliance,
12 a board which has not prepared an annual operating budget and
13 reserve study shall have the burden of proving it has complied
14 with this section.

15 (i) The commission may adopt rules to implement this
16 section.

17 (j) As used in this section:

18 "Capital expenditure" means an expense that results from the
19 purchase or replacement of an asset whose life is greater than one
20 year, or the addition of an asset that extends the life of an
21 existing asset for a period greater than one year.



1 "Cash flow plan" means a minimum twenty-year projection of an
2 association's future income and expense requirements to fund fully
3 its replacement reserves requirements each year during that
4 twenty-year period, except in an emergency; provided that it shall
5 not include a projection of special assessments or loans during
6 that twenty-year period, except in an emergency.

7 "Emergency situation" means any extraordinary expenses:

- 8 (1) Required by an order of a court;
- 9 (2) Necessary to repair or maintain any part of the property
10 for which the association is responsible where a threat
11 to personal safety on the property is discovered;
- 12 (3) Necessary to repair any part of the property for which
13 the association is responsible that could not have been
14 reasonably foreseen by the board in preparing and
15 distributing the annual operating budget;
- 16 (4) Necessary to respond to any legal or administrative
17 proceeding brought against the association that could
18 not have been reasonably foreseen by the board in
19 preparing and distributing the annual operating budget;
- 20 or

1 (5) Necessary for the association to obtain adequate
2 insurance for the property which the association must
3 insure.

4 "Major maintenance" means an expenditure for maintenance or
5 repair that will result in extending the life of an asset for a
6 period greater than one year.

7 "Replacement reserves" means funds for the upkeep, repair, or
8 replacement of those parts of the property, including but not
9 limited to roofs, walls, decks, paving, and equipment, that the
10 association is obligated to maintain.

11 **§514A-84 Management and contracts; developer, managing**
12 **agent, and association of apartment owners.** (a) If the developer
13 or any affiliate of the developer acts as the first managing agent
14 for the association of apartment owners following its
15 organization, the contract shall not have a term exceeding one
16 year and shall contain a provision that the contract may be
17 terminated by either party thereto on not more than sixty days'
18 written notice. The identity of the managing agent as the
19 developer or the developer's affiliate shall be disclosed to the
20 association of apartment owners no later than the first meeting of
21 the association of apartment owners, which is when the association
22 of apartment owners is organized. An affiliate of, or person

1 affiliated with, a developer is a person that directly or
2 indirectly controls, is controlled by, or is under common control
3 with, the developer.

4 (b) Any developer or affiliate of the developer or a
5 managing agent, who manages the operation of the property from the
6 date of recordation of the first apartment conveyance until the
7 organization of the association of apartment owners, shall comply
8 with the requirements of sections 514A-95.1, 514A-97, and 514A-
9 132, with the exception of the fidelity bond requirement for the
10 association of apartment owners.

11 (c) The developer, affiliate of the developer, managing
12 agent, and the association of apartment owners shall ensure that
13 there is a written contract for managing the operation of the
14 property, expressing the agreements of all parties, including but
15 not limited to financial and accounting obligations, services
16 provided, and any compensation arrangements, including any
17 subsequent amendments. Copies of the executed contract and any
18 amendments shall be provided to all parties to the contract.
19 Prior to the organization of the association of apartment owners,
20 any apartment owner may request to inspect as well as receive a
21 copy of the management contract from the entity that manages the
22 operation of the property.



1 **§514A-84.5 Availability of project documents.** An accurate
2 copy of the declaration of condominium property regime, the bylaws
3 of the association of apartment owners, the house rules, if any,
4 the master lease, if any, a sample original conveyance document,
5 all public reports and any amendments thereto, shall be kept at
6 the managing agent's office. The managing agent shall provide
7 copies of those documents to owners, prospective purchasers and
8 their prospective agents during normal business hours, upon
9 payment to the managing agent of a reasonable charge to defray any
10 administrative or duplicating costs. In the event that the
11 project is not managed by a managing agent, the foregoing
12 requirements shall be undertaken by a person or entity, if any,
13 employed by the association of apartment owners, to whom this
14 function is delegated.

15 **§514A-85 Records; examination; disposal.** (a) The managing
16 agent or board of directors shall keep detailed, accurate records
17 in chronological order, of the receipts and expenditures affecting
18 the common elements, specifying and itemizing the maintenance and
19 repair expenses of the common elements and any other expenses
20 incurred. The managing agent or board of directors shall also
21 keep monthly statements indicating the total current delinquent
22 dollar amount of any unpaid assessments for common expenses.



1 (b) All records and the vouchers authorizing the payments
2 and statements shall be kept and maintained at the address of the
3 project, or elsewhere within the State as determined by the board
4 of directors.

5 (c) A managing agent employed or retained by one or more
6 condominium associations may dispose of the records of any
7 condominium association which are more than five years old
8 without liability if the managing agent first provides the board
9 of directors of the condominium association affected with written
10 notice of the managing agent's intent to dispose of the records if
11 not retrieved by the board of directors within sixty days, which
12 notice shall include an itemized list of the records which the
13 managing agent intends to dispose of.

14 (d) No person shall knowingly make any false certificate,
15 entry, or memorandum upon any of the books or records of any
16 managing agent or association. No person shall knowingly alter,
17 destroy, mutilate, or conceal any books or records of a managing
18 agent or association.

19 **§514A-86 Insurance.** (a) The association of apartment
20 owners shall purchase and at all times maintain insurance which
21 covers the common elements and, whether or not part of the common
22 elements, all exterior and interior walls, floors, and ceilings,



1 in accordance with the as-built condominium plans and
2 specifications, against loss or damage by fire sufficient to
3 provide for the repair or replacement thereof in the event of such
4 loss or damages. Flood insurance shall also be maintained if the
5 property is located in a special flood hazard area as delineated
6 on flood maps issued by the Federal Emergency Management Agency.
7 The flood insurance policy shall comply with the requirements of
8 the National Flood Insurance Program and the Federal Insurance
9 Administration. Exterior glass may be insured at the option of
10 the association of apartment owners. The insurance coverage shall
11 be written on the property in the name of the association of
12 apartment owners. Premiums shall be common expenses. Provision
13 for the insurance shall be without prejudice to the right of each
14 apartment owner to insure the owner's own apartment for the
15 owner's benefit.

16 (b) The association of apartment owners may purchase and
17 maintain directors' and officers' liability insurance with minimum
18 coverage in such amount as shall be determined by the board of
19 directors. Premiums shall be common expenses.

20 (c) Any insurance policy providing the coverage required by
21 subsections (a) and (b) shall contain a provision requiring the
22 insurance carrier, at the inception of the policy and on each



1 anniversary date thereof, to provide the board of directors with a
2 written summary, in layperson's terms, of the policy. The summary
3 shall include the type of policy, a description of the coverage
4 and the limits thereof, amount of annual premium, and renewal
5 dates. The board of directors shall provide this information to
6 each apartment owner.

7 **§514A-87 Personal application.** (a) All apartment owners,
8 tenants of such owners, employees of owners and tenants, or any
9 other persons that may in any manner use property or any part
10 thereof submitted to this chapter are subject to this chapter and
11 to the declaration and bylaws of the association of apartment
12 owners adopted pursuant to this chapter.

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

17 **§514A-88 Compliance with covenants, bylaws, and**
18 **administrative provisions.** Each apartment owner, tenants and
19 employees of an owner, and other persons using the property shall
20 comply strictly with the bylaws and with the administrative rules
21 and regulations adopted pursuant thereto, as either of the same
22 may be lawfully amended from time to time, and with the covenants,



1 conditions, and restrictions set forth in the declaration.
2 Failure to comply with any of the same shall be ground for an
3 action to recover sums due, for damages or injunctive relief, or
4 both, maintainable by the manager or board of directors on behalf
5 of the association of apartment owners or, in a proper case, by an
6 aggrieved apartment owner.

7 **§514A-89 Certain work prohibited.** (a) No apartment owner
8 shall do any work that could jeopardize the soundness or safety of
9 the property, reduce the value thereof, or impair any easement or
10 hereditament.

11 (b) No apartment owner shall add any material structure or
12 excavate any additional basement or cellar, without first
13 obtaining in every such case the consent of seventy-five per cent
14 of the apartment owners, together with the consent of all
15 apartment owners whose apartments or limited common elements
16 appurtenant thereto are directly affected.

17 (c) Nonmaterial structural additions to the common elements,
18 including without limitation additions to or alterations of an
19 apartment made within the apartment or within a limited common
20 element appurtenant to and for the exclusive use of the apartment
21 shall require approval only by the board of directors of the
22 association of apartment owners and such percentage, number, or



1 group of apartment owners as may be required by the declaration or
2 bylaws; provided that the installation of solar energy devices
3 shall be allowed on single-family residential dwellings or
4 townhouses pursuant to the provisions in section 196-7.

5 As used in this section:

6 "Nonmaterial structural additions to the common elements",
7 means a structural addition to the common elements that does not
8 jeopardize the soundness or safety of the property, reduce the
9 value thereof, impair any easement or hereditament, detract from
10 the appearance of the project, interfere with or deprive any
11 nonconsenting owner of the use or enjoyment of any part of
12 property, or directly affect any nonconsenting owner.

13 "Solar energy device" means any new identifiable facility,
14 equipment, apparatus, or the like which makes use of solar energy
15 for heating, cooling, or reducing the use of other types of energy
16 dependent upon fossil fuel for its generation; provided that if
17 the equipment sold cannot be used as a solar device without its
18 incorporation with other equipment, it shall be installed in place
19 and ready to be made operational to qualify as a "solar energy
20 device; and provided further that "solar energy device" shall not
21 include skylights or windows.



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

4 **§514A-90 Priority of lien.** (a) All sums assessed by the
5 association of apartment owners but unpaid for the share of the
6 common expenses chargeable to any apartment constitute a lien on
7 the apartment prior to all other liens, except:

8 (1) Liens for taxes and assessments lawfully imposed by
9 governmental authority against the apartment; and

10 (2) All sums unpaid on any mortgage of record that was
11 recorded prior to the recordation of notice of a lien by
12 the association of apartment owners, and costs and
13 expenses including attorneys' fees provided in such
14 mortgages.

15 The lien of the association of apartment owners may be foreclosed
16 by action or by non-judicial or power of sale foreclosure
17 procedures set forth in chapter 667, by the managing agent or
18 board of directors, acting on behalf of the association of
19 apartment owners, in like manner as a mortgage of real property.
20 In any such foreclosure the apartment owner shall be required to
21 pay a reasonable rental for the apartment, if so provided in the
22 bylaws, and the plaintiff in the foreclosure shall be entitled to



1 the appointment of a receiver to collect the rental owed. The
2 managing agent or board of directors, acting on behalf of the
3 association of apartment owners, unless prohibited by the
4 declaration, may bid on the apartment at foreclosure sale, and
5 acquire and hold, lease, mortgage, and convey the apartment.
6 Action to recover a money judgment for unpaid common expenses
7 shall be maintainable without foreclosing or waiving the lien
8 securing the unpaid common expenses owed.

9 (b) Except as provided in subsection (g), when the mortgagee
10 of a mortgage of record or other purchaser of an apartment obtains
11 title to the apartment as a result of foreclosure of the mortgage,
12 the acquirer of title and the acquirer's successors and assigns
13 shall not be liable for the share of the common expenses or
14 assessments by the association of apartment owners chargeable to
15 the apartment which became due prior to the acquisition of title
16 to the apartment by the acquirer. The unpaid share of common
17 expenses or assessments shall be deemed to be common expenses
18 collectible from all of the apartment owners, including the
19 acquirer and the acquirer's successors and assigns. The mortgagee
20 of record or other purchaser of the apartment shall be deemed to
21 acquire title and shall be required to pay the apartment's share
22 of common expenses and assessments beginning:



1 (1) Thirty-six days after the order confirming the sale to
2 the purchaser has been filed with the court;
3 (2) Sixty days after the hearing at which the court grants
4 the motion to confirm the sale to the purchaser;
5 (3) Thirty days after the public sale in a nonjudicial power
6 of sale foreclosure pursuant to section 667-5; or
7 (4) Upon the recording of the instrument of conveyance,
8 whichever occurs first; provided that the mortgagee of record or
9 other purchaser of the apartment shall not be deemed to acquire
10 title under paragraph (1), (2), or (3), if transfer of title is
11 delayed past the thirty-six days specified in paragraph (1), the
12 sixty days specified in paragraph (2), or the thirty days
13 specified in paragraph (3), when a person who appears at the
14 hearing on the motion or a party to the foreclosure action
15 requests reconsideration of the motion or order to confirm sale,
16 objects to the form of the proposed order to confirm sale, appeals
17 the decision of the court to grant the motion to confirm sale, or
18 the debtor or mortgagor declares bankruptcy or is involuntarily
19 placed into bankruptcy. In any such case, the mortgagee of record
20 or other purchaser of the apartment shall be deemed to acquire
21 title upon recordation of the instrument of conveyance.



- 1 (c) No apartment owner shall withhold any assessment claimed
2 by the association. An apartment owner who disputes the amount of
3 an assessment may request a written statement clearly indicating:
- 4 (1) The amount of common expenses included in the
5 assessment, including the due date of each amount
6 claimed;
 - 7 (2) The amount of any penalty, late fee, lien filing fee,
8 and any other charge included in the assessment;
 - 9 (3) The amount of attorneys' fees and costs, if any,
10 included in the assessment;
 - 11 (4) That under Hawaii law, an apartment owner has no right
12 to withhold assessments for any reason;
 - 13 (5) That an apartment owner has a right to demand mediation
14 or arbitration to resolve disputes about the amount or
15 validity of an association's assessment; provided the
16 apartment owner immediately pays the assessment in full
17 and keeps assessments current; and
 - 18 (6) That payment in full of the assessment shall not prevent
19 the owner from contesting the assessment or receiving a
20 refund of amounts not owed.



1 Nothing in this section shall limit the rights of an owner to the
2 protection of all fair debt collection procedures mandated under
3 federal and state law.

4 (d) An apartment owner who pays an association the full
5 amount claimed by the association may file in small claims court
6 or require the association to mediate to resolve any disputes
7 concerning the amount or validity of the association's claim. If
8 the apartment owner and the association are unable to resolve the
9 dispute through mediation, either party may file for arbitration
10 under part VII; provided that an apartment owner may only file for
11 arbitration if all amounts claimed by the association are paid in
12 full on or before the date of filing. If the apartment owner
13 fails to keep all association assessments current during the
14 arbitration, the association may ask the arbitrator to temporarily
15 suspend the arbitration proceedings. If the apartment owner pays
16 all association assessments within thirty days of the date of
17 suspension, the apartment owner may ask the arbitrator to
18 recommence the arbitration proceedings. If the owner fails to pay
19 all association assessments by the end of the thirty-day period,
20 the association may ask the arbitrator to dismiss the arbitration
21 proceedings. The apartment owner shall be entitled to a refund of
22 any amounts paid to the association which are not owed.



1 (e) As an alternative to foreclosure proceedings under
2 subsection (a), where an apartment is owner-occupied, the
3 association of apartment owners may authorize its managing agent
4 or board of directors to, after sixty days' written notice to the
5 apartment owner and to the apartment's first mortgagee of the
6 nonpayment of the apartment's share of the common expenses,
7 terminate the delinquent apartment's access to the common elements
8 and cease supplying a delinquent apartment with any and all
9 services normally supplied or paid for by the association of
10 apartment owners. Any terminated services and privileges shall be
11 restored upon payment of all delinquent assessments.

12 (f) Before the board of directors or managing agent may take
13 the actions permitted under subsection (e), the board shall adopt
14 a written policy providing for such actions and have the policy
15 approved by a majority vote of the apartment owners at an annual
16 or special meeting of the association or by the written consent of
17 a majority of the apartment owners.

18 (g) Subject to this subsection, and subsections (h) and (i),
19 the board of an association of apartment owners may specially
20 assess the amount of the unpaid regular monthly common assessments
21 for common area expenses against a person who, in a judicial or



1 nonjudicial power of sale foreclosure, purchases a delinquent
2 apartment; provided that:

3 (1) A purchaser who holds a mortgage on a delinquent
4 apartment that was recorded prior to the filing of a
5 notice of lien by the association of apartment owners
6 and who acquires the delinquent apartment through a
7 judicial or nonjudicial foreclosure proceeding,
8 including purchasing the delinquent apartment at a
9 foreclosure auction, shall not be obligated to make, nor
10 be liable for, payment of the special assessment as
11 provided for under this subsection; and

12 (2) A person who subsequently purchases the delinquent
13 apartment from the mortgagee referred to in paragraph
14 (1) shall be obligated to make, and shall be liable for,
15 payment of the special assessment provided for under
16 this subsection; provided that the mortgagee or
17 subsequent purchaser may require the association of
18 apartment owners to provide at no charge a notice of the
19 association's intent to claim a lien against the
20 delinquent apartment for the amount of the special
21 assessment, prior to the subsequent purchaser's
22 acquisition of title to the delinquent apartment. The



1 notice shall state the amount of the special assessment,
2 how that amount was calculated, and the legal
3 description of the apartment.

4 (h) The amount of the special assessment assessed under
5 subsection (g) shall not exceed the total amount of unpaid regular
6 monthly common assessments that were assessed during the six
7 months immediately preceding the completion of the judicial or
8 nonjudicial power of sale foreclosure. In no event shall the
9 amount of the special assessment exceed the sum of \$1,800.

10 (i) For purposes of subsections (g) and (h), the following
11 definitions shall apply:

12 "Completion" means:

13 (1) In a nonjudicial power of sale foreclosure, when
14 the affidavit required under section 667-5 is
15 filed; and

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

18 "Regular monthly common assessments" shall not include:

19 (1) Any other special assessment, except for a special
20 assessment imposed on all apartments as part of a
21 budget adopted pursuant to section 514A-83.6;

22 (2) Late charges, fines, or penalties;



1 (3) Interest assessed by the association of apartment
2 owners;

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

4 (5) Any fees or costs related to the collection or
5 enforcement of the assessment, including attorneys'
6 fees and court costs.

7 **514A-90.5 Unpaid common expenses; collection from tenants.**

8 (a) If the owner of an apartment rents or leases the apartment
9 and is in default for thirty days or more in the payment of the
10 apartment's share of the common expenses, the board of directors,
11 for as long as the default continues, may demand in writing and
12 receive each month from any tenant occupying the apartment, an
13 amount sufficient to pay all sums due from the apartment owner to
14 the association, including interest, if any, but the amount shall
15 not exceed the tenant's rent due each month. The tenant's payment
16 under this section shall discharge that amount of payment from the
17 tenant's rent obligation, and any contractual provision to the
18 contrary shall be void as a matter of law.

19 (b) Prior to taking any action under this section, the board
20 of directors shall give to the delinquent apartment owner written
21 notice of its intent to collect the rent owed. The notice shall:

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



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

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

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

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

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

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

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

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

21 (f) In the event of any conflict between this section and
22 any provision of chapter 521, the conflict shall be resolved in



1 favor of this section; provided that if the tenant is entitled to
2 an offset of rent under chapter 521, the tenant may deduct the
3 offset from the amount due to the association, up to the limits
4 stated in chapter 521. Nothing herein precludes the apartment
5 owner or tenant from seeking equitable relief from a court of
6 competent jurisdiction or seeking a judicial determination of the
7 amount owed.

8 (g) Before the board of directors may take the actions
9 permitted under subsection (a), the board shall adopt a written
10 policy providing for the actions and have the policy approved by a
11 majority vote of the apartment owners at an annual or special
12 meeting of the association or by the written consent of a majority
13 of the apartment owners.

14 **§514A-90.6 Lease rent renegotiation.** (a) Notwithstanding
15 any provision in the declaration or bylaws of any property subject
16 to this chapter, any lease or sublease of the property or of an
17 apartment, or an undivided interest in the land to an apartment
18 owner, whenever any lease or sublease of the property, an
19 apartment, or an undivided interest in the land to an apartment
20 owner provides for the periodic renegotiation of lease rent
21 thereunder, the association of apartment owners shall represent
22 the apartment owners in all negotiations and proceedings,



1 including but not limited to appraisal or arbitration, for the
2 determination of lease rent as a common expense of the
3 association.

4 (b) If some, but not all of the apartment owners have
5 purchased the leased fee interest appurtenant to their apartments,
6 all costs and expenses of the renegotiation shall be assessed to
7 the remaining lessees in the same proportion that the common
8 interest appurtenant to each lessee's apartment bears to the
9 common interest appurtenant to all lessees' apartments. The
10 unpaid amount of this assessment shall constitute a lien upon the
11 lessee's apartment, which may be collected in accordance with
12 sections 514A-90 and 514A-94 in the same manner as an unpaid
13 common expense.

14 **§514A-91 Joint and several liability of grantor and grantee**
15 **for unpaid common expenses.** In a voluntary conveyance the grantee
16 of an apartment is jointly and severally liable with the grantor
17 for all unpaid assessments against the latter for the grantor's
18 share of the common expenses up to the time of the grant or
19 conveyance, without prejudice to the grantee's right to recover
20 from the grantor the amounts paid by the grantee therefor.
21 However, any such grantor or grantee is entitled to a statement
22 from the manager or board of directors setting forth the amount of



1 the unpaid assessments against the grantor, and except as to the
2 amount of subsequently dishonored checks mentioned in such
3 statement as having been received within the thirty-day period
4 immediately preceding the date of such statement, the grantee is
5 not liable for, nor is the apartment conveyed subject to a lien
6 for, any unpaid assessments against the grantor in excess of the
7 amount therein set forth.

8 **§514A-92 Waiver of use of common elements; abandonment of**
9 **apartment; conveyance to board of directors.** No apartment owner
10 may exempt himself from liability for his contribution towards the
11 common expenses by waiver of the use or enjoyment of any of the
12 common elements or by abandonment of his apartment. Subject to
13 such terms and conditions as may be specified in the bylaws, any
14 apartment owner may, by conveying his apartment and his common
15 interest to the board of directors on behalf of all other
16 apartment owners, exempt himself from common expenses thereafter
17 accruing.

18 **§514A-92.1 Designation of additional areas.** Designation of
19 additional areas to be common elements or subject to common
20 expenses after the initial filing of the bylaws or declaration
21 shall require the approval of ninety per cent of the apartment
22 owners; provided that if the developer discloses to the initial



1 buyer in writing that additional areas will be designated as
2 common elements pursuant to an incremental or phased project, this
3 requirement shall not apply as to those additional areas.

4 **§514A-92.2 Notification of maintenance fee increases.** The
5 manager or board of directors shall notify the apartment owners in
6 writing of maintenance fee increases at least thirty days prior to
7 such an increase.

8 **§514A-92.5 Association of apartment owners; prior written**
9 **notice of assessment of the cost of providing information.** No
10 apartment owner who requests legal or other information from the
11 association of apartment owners, the board of directors, the
12 managing agent, or their employees or agents, shall be charged for
13 the cost of providing the information unless the association
14 notifies the apartment owner that it intends to charge the
15 apartment owner for the cost. The association shall notify the
16 apartment owner in writing at least ten days prior to incurring
17 the cost of providing the information, except that no prior notice
18 shall be required to assess the cost of providing information on
19 delinquent assessments or in connection with proceedings to
20 enforce the law or the association's governing documents.

21 After being notified of the cost of providing the
22 information, the apartment owner may withdraw the request, in



1 writing. An apartment owner who withdraws a request for
2 information shall not be charged for the cost of providing the
3 information.

4 **§514A-93 Actions.** Without limiting the rights of any
5 apartment owner, actions may be brought by the manager or board of
6 directors, in either case in the discretion of the board of
7 directors on behalf of two or more of the apartment owners, as
8 their respective interests may appear, with respect to any cause
9 of action relating to the common elements or more than one
10 apartment. Service of process on two or more apartment owners in
11 any action relating to the common elements or more than one
12 apartment may be made on the person designated in the declaration
13 to receive service of process.

14 **§514A-93.5 Disposition of unclaimed possessions.** (a) When
15 personalty in or on the common elements of a project has been
16 abandoned, the board of directors may sell the personalty in a
17 commercially reasonable manner, store such personalty at the
18 expense of its owner, donate such personalty to a charitable
19 organization, or otherwise dispose of such personalty in its sole
20 discretion; provided that no such sale, storage, or donation shall
21 occur until sixty days after the board complies with the
22 following:



- 1 (1) The board notifies the owner in writing of:
2 (A) The identity and location of the personalty; and
3 (B) The board of directors' intent to so sell, store,
4 donate, or dispose of the personalty.

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

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

16 (b) The proceeds of any sale or disposition of personalty
17 under subsection (a) shall, after deduction of any accrued costs
18 of mailing, advertising, storage, and sale, be held for the owner
19 for thirty days. Any proceeds not claimed within this period
20 shall become the property of the association of apartment owners.

21 **§514A-94 Attorneys' fees, delinquent assessments, and**
22 **expenses of enforcement.** (a) All costs and expenses, including



1 reasonable attorneys' fees, incurred by or on behalf of the
2 association for:

3 (1) Collecting any delinquent assessments against any
4 owner's apartment;

5 (2) Foreclosing any lien thereon; or

6 (3) Enforcing any provision of the declaration, bylaws,
7 house rules, and the Condominium Property Act; or the
8 rules of the real estate commission;

9 against an owner, occupant, tenant, employee of an owner, or any
10 other person who may in any manner use the property shall be
11 promptly paid on demand to the association by such person or
12 persons; provided that if the claims upon which the association
13 takes any action are not substantiated, all costs and expenses,
14 including reasonable attorneys' fees, incurred by any such person
15 or persons as a result of the action of the association, shall be
16 promptly paid on demand to such person or persons by the
17 association.

18 (b) If any claim by an owner is substantiated in any action
19 against an association, any of its officers or directors, or its
20 board of directors to enforce any provision of the declaration,
21 bylaws, house rules, or this chapter, then all reasonable and
22 necessary expenses, costs, and attorneys' fees incurred by an



1 owner shall be awarded to such owner; provided that no such award
2 shall be made in any derivative action unless:

3 (1) The owner first shall have demanded and allowed
4 reasonable time for the board of directors to pursue
5 such enforcement; or

6 (2) The owner demonstrates to the satisfaction of the court
7 that a demand for enforcement made to the board of
8 directors would have been fruitless.

9 If any claim by an owner is not substantiated in any court
10 action against an association, any of its officers or directors,
11 or its board of directors to enforce any provision of the
12 declaration, bylaws, house rules, or this chapter, then all
13 reasonable and necessary expenses, costs, and attorneys' fees
14 incurred by an association shall be awarded to the association,
15 unless the action was filed in small claims court or prior to
16 filing the action in a higher court the owner has first submitted
17 the claim to mediation, or to arbitration under part VII of this
18 chapter, and made a good faith effort to resolve the dispute under
19 any of those procedures.

20 (c) Anyone contracted by the association of apartment owners
21 to collect delinquent assessments against any owner's apartment



1 shall not share in any portion of any penalties or late charges
2 collected.

3 **§514A-95 Managing agents.** (a) Every managing agent shall:

4 (1) Be licensed as a real estate broker in compliance with
5 chapter 467 and the rules of the commission or be a
6 corporation authorized to do business under article 8 of
7 chapter 412;

8 (2) Register with the commission prior to conducting
9 managing agent activity through approval of a completed
10 registration application, payment of fees, and
11 submission of any other additional information set forth
12 by the commission. The registration shall be for a
13 biennial period with termination on December 31 of an
14 even-numbered year. The commission shall prescribe a
15 deadline date prior to the termination date for the
16 submission of a completed reregistration application,
17 payment of fees, and any other additional information
18 set forth by the commission. Any managing agent who has
19 not met the submission requirements by the deadline date
20 shall be considered a new applicant for registration and
21 subject to initial registration requirements. The
22 information required to be submitted with any



1 application shall include the name, business address,
2 phone number, and names of association of apartment
3 owners managed;

4 (3) Obtain and keep current a fidelity bond in an amount
5 equal to \$500 multiplied by the aggregate number of
6 apartments of the association of apartment owners
7 managed by the managing agent; provided that the amount
8 of the fidelity bond shall not be less than \$20,000 nor
9 greater than \$100,000. Upon request by the commission,
10 the managing agent shall provide evidence of a current
11 fidelity bond or a certification statement from an
12 insurance company authorized by the insurance division
13 of the department of commerce and consumer affairs
14 certifying that the fidelity bond is in effect and meets
15 the requirement of this section and the rules adopted by
16 the commission. The managing agent shall permit only
17 employees covered by the fidelity bond to handle or have
18 custody or control of any association of apartment
19 owners funds, except any principals of the managing
20 agent that cannot be covered by the fidelity bond. The
21 fidelity bond shall protect the managing agent against
22 the loss of any association of apartment owners' moneys,



1 securities, or other properties caused by the fraudulent
2 or dishonest acts of employees of the managing agent.
3 Failure to obtain or maintain a fidelity bond in
4 compliance with this chapter and the rules adopted
5 pursuant thereto, including failure to provide evidence
6 of the fidelity bond coverage in a timely manner to the
7 commission, shall result in non-registration or the
8 automatic termination of the registration, unless an
9 approved exemption or a bond alternative is presently
10 maintained. A managing agent who is unable to obtain a
11 fidelity bond may seek an exemption from the fidelity
12 bond requirement from the commission. The commission
13 shall adopt rules establishing the conditions and terms
14 by which it may grant an exemption or a bond
15 alternative, or permit deductibles;

16 (4) Act promptly and diligently to recover from the fidelity
17 bond, if the fraud or dishonesty of the managing agent's
18 employees causes a loss to an association of apartment
19 owners, and apply the fidelity bond proceeds, if any, to
20 reduce the association of apartment owners' loss. If
21 more than one association of apartment owners suffers a
22 loss, the managing agent shall divide the proceeds among



1 the associations of apartment owners in proportion to
2 each association of apartment owners' loss. An
3 association of apartment owners may request a court
4 order requiring the managing agent to act promptly and
5 diligently to recover from the fidelity bond. If an
6 association of apartment owners cannot recover its loss
7 from the fidelity bond proceeds of the managing agent,
8 the association of apartment owners may recover by court
9 order from the real estate recovery fund established
10 under section 467-16; provided that:

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

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

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

18 (5) Pay a nonrefundable application fee and, upon approval,
19 an initial registration fee, and subsequently pay a
20 reregistration fee, as prescribed by rules adopted by
21 the director of commerce and consumer affairs pursuant
22 to chapter 91. A compliance resolution fee shall also



1 be paid pursuant to section 26-9(o) and the rules
2 adopted pursuant thereto; and

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

9 (b) The commission may deny any registration or
10 reregistration application or terminate a registration without
11 hearing if the fidelity bond and its evidence fail to meet the
12 requirements of this chapter and the rules adopted pursuant
13 thereto.

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

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

19 **§514A-95.1 Association of apartment owners registration;**
20 **fidelity bond.** (a) Each condominium project or association of
21 apartment owners having six or more apartments shall:



1 (1) Secure a fidelity bond in an amount equal to \$500
2 multiplied by the number of apartments, to cover all
3 officers, directors, employees, and managing agents of
4 the association of apartment owners who handle, control,
5 or have custody of the funds of the association of
6 apartment owners; provided that the amount of the
7 fidelity bond required by this paragraph shall not be
8 less than \$20,000 nor greater than \$100,000. The
9 fidelity bond shall protect the association of apartment
10 owners against fraudulent or dishonest acts by persons,
11 including any managing agent, handling the funds of the
12 association of apartment owners. An association of
13 apartment owners shall act promptly and diligently to
14 recover from the fidelity bond required by this section.
15 An association of apartment owners that is unable to
16 obtain a fidelity bond may seek approval for an
17 exemption or a bond alternative from the commission.
18 The commission shall adopt rules establishing the
19 conditions and terms for which it may grant an exemption
20 or a bond alternative, or permit deductibles. Failure
21 to obtain or maintain a fidelity bond in compliance with
22 this chapter and the rules adopted pursuant thereto,



1 including failure to provide current evidence of the
2 fidelity bond coverage in a timely manner to the
3 commission, shall result in non-registration or the
4 automatic termination of the registration, unless an
5 approved exemption or a bond alternative is presently
6 maintained. Current evidence of a fidelity bond includes
7 a certification statement from an insurance company
8 registered with the department of commerce and consumer
9 affairs certifying that the bond is in effect and meets
10 the requirement of this section and the rules adopted by
11 the commission;

12 (2) Register with the commission through approval of a
13 completed registration application, payment of fees, and
14 submission of any other additional information set forth
15 by the commission. Beginning June 30, 1997, the
16 registration shall be for a biennial period with
17 termination on June 30 of an odd-numbered year. The
18 commission shall prescribe a deadline date prior to the
19 termination date for the submission of a completed
20 reregistration application, payment of fees, and any
21 other additional information set forth by the
22 commission. Any condominium project or association of



1 apartment owners that has not met the submission
2 requirements by the deadline date shall be considered a
3 new applicant for registration and subject to initial
4 registration requirements. Any new condominium project
5 or association of apartment owners shall register within
6 thirty days of the association of apartment owners'
7 first meeting. If the association of apartment owners
8 has not held its first meeting and it is at least one
9 year after the recordation of the purchase of the first
10 apartment in the condominium project, the developer or
11 developer's affiliate or the managing agent shall
12 register on behalf of the unorganized association of
13 apartment owners and shall comply with this section,
14 except the fidelity bond requirement for association of
15 apartment owners. The public information required to be
16 submitted on any completed application form shall
17 include but not be limited to evidence of and
18 information on fidelity bond coverage, names and
19 positions of the officers of the association, the name
20 of the association of apartment owners' managing agent,
21 if any, the street and the postal address of the
22 condominium, and the name and current mailing address of



1 a designated officer of the association of apartment
2 owners where the officer can be contacted directly;

3 (3) Pay a nonrefundable application fee and, upon approval,
4 an initial registration fee and subsequently pay a
5 reregistration fee, and the condominium management
6 education fund fee, as provided in rules adopted by the
7 director of commerce and consumer affairs pursuant to
8 chapter 91;

9 (4) Register or reregister and pay the required fees by the
10 due date. Failure to register or reregister or pay the
11 required fees by the due date shall result in the
12 assessment of a penalty equal to the amount of the
13 registration or reregistration fee; and

14 (5) Report immediately in writing to the commission any
15 changes to the information contained on the registration
16 or reregistration application, the evidence of the
17 fidelity bond, or any other documents set forth by the
18 commission. Failure to do so may result in termination
19 of registration and subject the condominium project or
20 the association of apartment owners to initial
21 registration requirements.



1 (b) The commission may reject or terminate any registration
2 submitted by a condominium project or an association of apartment
3 owners that fails to comply with this section. Any association of
4 apartment owners that fails to register as required by this
5 section or whose registration is rejected or terminated shall not
6 have standing to maintain any action or proceeding in the courts
7 of this State until it registers. The failure of an association
8 of apartment owners to register, or rejection or termination of
9 its registration, shall not impair the validity of any contract or
10 act of the association of apartment owners nor prevent the
11 association of apartment owners from defending any action or
12 proceeding in any court in this State.

13 **§514A-96 Board of directors, audits, audited financial**
14 **statement, transmittal.** (a) The association of apartment owners
15 shall require an annual audit of the association financial
16 accounts and no less than one annual unannounced verification of
17 the association's cash balance by a public accountant; provided
18 that if the association is comprised of less than twenty owners,
19 the annual audit and the annual unannounced cash balance
20 verification may be waived by a majority vote of all apartment
21 owners taken at an association meeting.



1 (b) The board of directors of the association shall make
2 available a copy of the annual audit to each apartment owner at
3 least thirty days prior to the annual meeting which follows the
4 end of the fiscal year. The board shall provide upon all official
5 proxy forms a box wherein the owner may indicate that the owner
6 wishes to obtain a copy of the annual audit report. The board
7 shall not be required to submit a copy of the annual audit report
8 to the owner if the proxy form is not marked. If the annual audit
9 has not been completed by that date, the board shall make
10 available:

11 (1) An unaudited year end financial statement for the fiscal
12 year to each apartment owner at least thirty days prior
13 to the annual meeting; and

14 (2) The annual audit to all owners at the annual meeting, or
15 as soon as the audit is completed, whichever occurs
16 later.

17 If the association's fiscal year ends less than two months
18 prior to the convening of the annual meeting, the year-to-date
19 unaudited financial statement may cover the period from the
20 beginning of the association's fiscal year to the end of the month
21 preceding the date on which notice of the annual meeting is
22 mailed.



1 **§514A-97 Association of apartment owners funds; handling and**
2 **disbursement.** (a) The funds in the general operating account of
3 the association of apartment owners shall not be commingled with
4 funds of other activities such as lease rent collections and
5 rental operations, nor shall a managing agent commingle any
6 association funds with the managing agent's own funds.

7 (b) For purposes of subsection (a), lease rent collections
8 and rental operations shall not include the rental or leasing of
9 common elements that is conducted on behalf of the association or
10 the collection of ground lease rents from individual apartment
11 owners of a project and the payment of such ground lease rents to
12 the ground lessor; provided that:

13 (1) The collection is allowed by the provisions of the
14 declaration, bylaws, master deed, master lease, or
15 individual apartment leases of the project;

16 (2) If a management contract exists, it requires the
17 managing agent to collect ground lease rents from the
18 individual apartment owners and pay the ground lease
19 rents to the ground lessor;

20 (3) The system of lease rent collection is approved by a
21 majority vote of all apartment owners at a meeting of
22 the association; and

1 (4) No managing agent or association shall pay ground lease
2 rent to the ground lessor in excess of actual ground
3 lease rent collected from individual apartment owners.

4 (c) All funds collected by an association, or by a managing
5 agent for any association, shall be:

6 (1) Deposited in a financial institution, including a
7 federal or community credit union, located in the state
8 and whose deposits are insured by an agency of the
9 United States government;

10 (2) Held by a corporation authorized to do business under
11 article 8 of chapter 412;

12 (3) Held by the United States Treasury; or

13 (4) Purchased in the name of and held for the benefit of the
14 association through a securities broker that is
15 registered with the Securities and Exchange Commission,
16 has an office in the state, and the accounts of which
17 are held by member firms of the New York Stock Exchange
18 or National Association of Securities Dealers and
19 insured by the Securities Insurance Protection
20 Corporation.

21 All funds collected by an association, or by a managing agent
22 for any association, shall be invested only in:



- 1 (1) Demand deposits, investment certificates, and
2 certificates of deposit;
- 3 (2) Obligations of the United States government, the State
4 of Hawaii, or their respective agencies; provided that
5 those obligations shall have stated maturity dates no
6 more than ten years after the purchase date unless
7 approved otherwise by a majority vote of the apartment
8 owners at an annual or special meeting of the
9 association or by written consent of a majority of the
10 apartment owners; or
- 11 (3) Mutual funds comprised solely of investments in the
12 obligations of the United States government, the State
13 of Hawaii, or their respective agencies; provided that
14 those obligations shall have stated maturity dates no
15 more than ten years after the purchase date unless
16 approved otherwise by a majority vote of the apartment
17 owners at an annual or special meeting of the
18 association or by written consent of a majority of the
19 apartment owners;
- 20 provided that before any investment longer than one year is made
21 by an association, the board shall approve the action; and
22 provided further that the board shall clearly disclose to owners



1 all investments longer than one year at each year's association
2 annual meeting.

3 Records of the deposits and disbursements shall be disclosed
4 to the commission upon request. All funds collected by an
5 association shall only be disbursed by employees of the
6 association under the supervision of the association's board of
7 directors. All funds collected by a managing agent from an
8 association shall be held in a client trust fund account and shall
9 be disbursed only by the managing agent or the managing agent's
10 employees under the supervision of the association's board of
11 directors. The commission may draft rules governing the handling
12 and disbursement of condominium association funds.

13 (d) A managing agent or board of directors shall not
14 transfer association funds by telephone between accounts,
15 including but not limited to the general operating account and
16 reserve fund account.

17 (e) A managing agent shall keep and disburse funds collected
18 on behalf of the condominium owners in strict compliance with any
19 agreement made with the condominium owners, chapter 467, the rules
20 of the commission, and all other applicable laws.



1 (f) Any person who embezzles or knowingly misapplies
2 association funds received by a managing agent or association of
3 apartment owners shall be guilty of a class C felony.

4 **§514A-98 False statement.** It shall be unlawful for any
5 person or person's agents to testify before or file with the
6 commission any notice, statement, application, or other document
7 required under this chapter that is false or untrue or contains
8 any material misstatement of fact, or contains forgery. In
9 addition to any sanctions or remedies as provided in this chapter,
10 any violation of this section shall constitute a misdemeanor.

11 **§514A-99 Rules.** The commission shall adopt, amend, or
12 repeal such rules as it may deem proper to fully effectuate this
13 chapter.

14 **PART VII. ARBITRATION; MEDIATION**

15 **§514A-121 Arbitration of disputes.** (a) At the request of
16 any party, any dispute concerning or involving one or more
17 apartment owners and an association of apartment owners, its board
18 of directors, managing agent, or one or more other apartment
19 owners relating to the interpretation, application or enforcement
20 of chapter 514A or the association's declaration, bylaws, or house
21 rules adopted in accordance with its bylaws shall be submitted to
22 arbitration. The arbitration shall be conducted, unless otherwise



1 agreed by the parties, in accordance with the rules adopted by the
2 commission and the provisions of chapter 658A; provided that the
3 Condominium Property Regime Rules on Arbitration of Disputes of
4 the American Arbitration Association shall be used until the
5 commission adopts its rules; provided further that where any
6 arbitration rule conflicts with chapter 658A, chapter 658A shall
7 prevail; provided further that notwithstanding any rule to the
8 contrary, the arbitrator shall conduct the proceedings in a manner
9 which affords substantial justice to all parties. The arbitrator
10 shall be bound by rules of substantive law and shall not be bound
11 by rules of evidence, whether or not set out by statute, except
12 for provisions relating to privileged communications. The
13 arbitrator shall permit discovery as provided for in the Hawaii
14 rules of civil procedure; provided that the arbitrator may
15 restrict the scope of such discovery for good cause to avoid
16 excessive delay and costs to the parties or the arbitrator may
17 refer any matter involving discovery to the circuit court for
18 disposition in accordance with the Hawaii rules of civil procedure
19 then in effect.

20 (b) Nothing in subsection (a) shall be interpreted to
21 mandate the arbitration of any dispute involving:

22 (1) The real estate commission;



- 1 (2) The mortgagee of a mortgage of record;
- 2 (3) The developer, general contractor, subcontractors, or
- 3 design professionals for the project; provided that when
- 4 any person exempted by this paragraph is also an
- 5 apartment owner, a director, or managing agent, such
- 6 person shall, in those capacities, be subject to the
- 7 provisions of subsection (a);
- 8 (4) Actions seeking equitable relief involving threatened
- 9 property damage or the health or safety of apartment
- 10 owners or any other person;
- 11 (5) Actions to collect assessments that are liens or subject
- 12 to foreclosure; provided that an apartment owner who
- 13 pays the full amount of an assessment and fulfills the
- 14 requirements of section 514A-90(d) shall have the right
- 15 to demand arbitration of the owner's dispute, including
- 16 a dispute about the amount and validity of the
- 17 assessment;
- 18 (6) Personal injury claims;
- 19 (7) Actions for amounts in excess of \$2,500 against an
- 20 association of apartment owners, a board of directors,
- 21 or one or more directors, officers, agents, employees,
- 22 or other persons, if insurance coverage under a policy



1 or policies procured by the association of apartment
2 owners or its board of directors would be unavailable
3 because action by arbitration was pursued; or

4 (8) Any other cases which are determined, as provided in
5 section 514A-122, to be unsuitable for disposition by
6 arbitration.

7 **§514A-121.5 Mediation; condominium management dispute**

8 **resolution; request for hearing; hearing.** (a) If an apartment
9 owner or the board of directors requests mediation of a dispute
10 involving the interpretation or enforcement of the association of
11 apartment owners' declaration, bylaws, or house rules, or
12 involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15,
13 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2,
14 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, or 514A-92.5,
15 the other party in the dispute shall be required to participate in
16 mediation. Each party shall be wholly responsible for its own
17 costs of participating in mediation; unless at the end of the
18 mediation process, both parties agree that one party shall pay all
19 or a specified portion of the mediation costs. If an apartment
20 owner or the board of directors refuses to participate in the
21 mediation of a particular dispute, a court may take this refusal



1 into consideration when awarding expenses, costs, and attorney's
2 fees in accordance with section 514A-94.

3 (b) If a dispute is not resolved by mediation as provided in
4 subsection (a), in addition to any other legal remedies that may
5 be available, any party that participated in the mediation may
6 file a request for a hearing with the office of administrative
7 hearings, department of commerce and consumer affairs, as follows:

- 8 (1) The party requesting the hearing shall be a board of
9 directors of a duly registered association of apartment
10 owners, or an apartment owner that is a member of a duly
11 registered association pursuant to section 514A-95.1;
- 12 (2) The request for hearing shall be filed within thirty
13 days from the final day of mediation;
- 14 (3) The request for hearing shall name one or more parties
15 that participated in the mediation as an adverse party
16 and identify the statutory provisions in dispute; and
- 17 (4) The subject matter of the hearing before the hearing
18 officer may include any matter that was the subject of
19 the mediation pursuant to subsection (a).

20 (c) For purposes of the pilot program, the office of
21 administrative hearing for the department of commerce and consumer



1 affairs shall accept no more than thirty requests for hearing per
2 fiscal year under this section.

3 (d) The party requesting the hearing shall pay a filing fee
4 of \$25 to the department of commerce and consumer affairs, and the
5 failure to do so shall result in the request for hearing being
6 rejected for filing. All other parties shall file a response,
7 accompanied by a filing fee of \$25 to the department of commerce
8 and consumer affairs, within twenty days of being served with the
9 request for hearing.

10 (e) The hearings officers appointed by the director of
11 commerce and consumer affairs pursuant to section 26-9(f) shall
12 have jurisdiction to review any request for hearing filed under
13 subsection (b). The hearings officers shall have the power to
14 issue subpoenas, administer oaths, hear testimony, find facts,
15 make conclusions of law, and issue written decisions that shall be
16 final and conclusive, unless a party adversely affected by the
17 decision files an appeal in the circuit court under section 91-14.

18 (f) Chapter 16-201, Hawaii Administrative Rules, shall
19 govern all proceedings brought under this section. The burden of
20 proof, including the burden of producing the evidence and the
21 burden of persuasion, shall be upon the party initiating the



1 proceeding. Proof of a matter shall be by a preponderance of the
2 evidence.

3 (g) Hearings to review and make determinations upon any
4 requests for hearings filed under subsection (b) shall commence
5 within sixty days following the receipt of the request for
6 hearing. The hearing officer shall issue written findings of
7 fact, conclusions of law, and an order as expeditiously as
8 practicable after the hearing has been concluded.

9 (h) Each party to the hearing shall bear the party's own
10 costs, including attorney's fees, unless otherwise ordered by the
11 hearing officer.

12 (i) Any party to a proceedings under this section who is
13 aggrieved by a final decision of a hearings officer may apply for
14 judicial review of that decision pursuant to section 91-14;
15 provided that any party seeking judicial review pursuant to
16 section 91-14 shall be responsible for the costs of preparing the
17 record on appeal, including the cost of preparing the transcript
18 of the hearing.

19 (j) The department of commerce and consumer affairs may
20 adopt rules and forms, pursuant to chapter 91, to effectuate the
21 purpose of this section and to implement its provisions.



1 **§514A-122 Determination of unsuitability.** At any time
2 within twenty days of being served with a written demand for
3 arbitration, any party so served may apply to the circuit court in
4 the judicial circuit in which the condominium is located for a
5 determination that the subject matter of the dispute is unsuitable
6 for disposition by arbitration.

7 In determining whether the subject matter of a dispute is
8 unsuitable for disposition by arbitration, a court may consider:

- 9 (1) The magnitude of the potential award, or any issue of
10 broad public concern raised by the subject matter
11 underlying the dispute;
- 12 (2) Problems referred to the court where court regulated
13 discovery is necessary;
- 14 (3) The fact that the matter in dispute is a reasonable or
15 necessary issue to be resolved in pending litigation and
16 involves other matters not covered by or related to
17 chapter 514A;
- 18 (4) The fact that the matter to be arbitrated is only part
19 of a dispute involving other parties or issues which are
20 not subject to arbitration under section 514A-121; or
- 21 (5) Any matters of dispute where disposition by arbitration,
22 in the absence of complete judicial review, would not



1 afford substantial justice to one or more of the
2 parties.

3 Any such application to the circuit court shall be made and
4 heard in a summary manner and in accordance with procedures for
5 the making and hearing of motions. The prevailing party shall be
6 awarded its attorneys' fees and costs in an amount not to exceed
7 \$200.

8 **§514A-123 Determination of insurance coverage.** In the event
9 of a dispute as to whether a claim shall be excluded from
10 mandatory arbitration under section 514A-121(b)(7), any party to
11 an arbitration may file a complaint for declaratory relief against
12 the involved insurer or insurers for a determination of whether
13 insurance coverage is unavailable due to the pursuit of action by
14 arbitration. The complaint shall be filed with the circuit court
15 in the judicial circuit in which the condominium is located. The
16 insurer or insurers shall file an answer to the complaint within
17 twenty days of the date of service of the complaint and the issue
18 shall be disposed of by the circuit court at a hearing to be held
19 at the earliest available date; provided that the hearing shall
20 not be held within twenty days from the date of service of the
21 complaint upon the insurer or insurers.



1 **§514A-124 Costs, expenses and legal fees.** Notwithstanding
2 any provision in this chapter to the contrary, the declaration or
3 the bylaws, the award of any costs, expenses, and legal fees by
4 the arbitrator shall be in the sole discretion of the arbitrator
5 and the determination of costs, expenses, and legal fees shall be
6 binding upon all parties.

7 **§514A-125 Award; confirming award.** The award of the
8 arbitrator shall be in writing and acknowledged or proved in like
9 manner as a deed for the conveyance of real estate, and shall be
10 served by the arbitrator on each of the parties to the
11 arbitration, personally or by registered or certified mail. At
12 any time within one year after the award is made and served, any
13 party to the arbitration may apply to the circuit court of the
14 judicial circuit in which the condominium is located for an order
15 confirming the award. The court shall grant the order confirming
16 the award, unless the award is vacated, modified, or corrected, as
17 provided in sections 658A-9 and 658A-10, or a trial de novo is
18 demanded under section 514A-127, or the award is successfully
19 appealed under section 514A-127. The record shall be filed with
20 the motion to confirm award as provided for in section 658A-13,
21 and notice of the motion shall be served upon each other party or



1 their respective attorneys in the manner required for service of
2 notice of a motion.

3 **§514A-126 Findings of fact and conclusions of law.** Findings
4 of fact and conclusions of law, as requested by any party prior to
5 the arbitration hearing, shall be promptly provided to the
6 requesting party upon payment of the reasonable cost thereof.

7 **§514A-127 Trial de novo and appeal.** (a) The submission of
8 any dispute to an arbitration under section 514A-121 shall in no
9 way limit or abridge the right of any party to a trial de novo.

10 (b) Written demand for a trial de novo by any party desiring
11 a trial de novo shall be made upon the other parties within ten
12 days after service of the arbitration award upon all parties.

13 (c) The award of arbitration shall not be made known to the
14 trier of fact at a trial de novo.

15 (d) In any trial de novo demanded under subsection (b), if
16 the party demanding a trial de novo does not prevail at trial, the
17 party demanding the trial de novo shall be charged with all
18 reasonable costs, expenses, and attorneys' fees of the trial.

19 When there is more than one party on one or both sides of an
20 action, or more than one issue in dispute, the court shall
21 allocate its award of costs, expenses, and attorneys' fees among
22 the prevailing parties and tax such fees against those



1 nonprevailing parties who demanded a trial de novo in accordance
2 with the principles of equity.

3 (e) Any party to an arbitration under section 514A-121 may
4 apply to vacate, modify, or correct the arbitration award for the
5 grounds set out in chapter 658A. All reasonable costs, expenses,
6 and attorneys' fees on appeal shall be charged to the
7 nonprevailing party."

8 SECTION 3. Section 467-14, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§467-14 Revocation, suspension, and fine.** In addition to
11 any other actions authorized by law, the commission may revoke
12 any license issued under this chapter, suspend the right of the
13 licensee to use the license, fine any person holding a license,
14 registration, or certificate issued under this chapter, or
15 terminate any registration or certificate issued under this
16 chapter, for any cause authorized by law, including but not
17 limited to the following:

- 18 (1) Making any misrepresentation concerning any real
19 estate transaction;
- 20 (2) Making any false promises concerning any real estate
21 transaction of a character likely to mislead another;

- 1 (3) Pursuing a continued and flagrant course of
2 misrepresentation, or making of false promises through
3 advertising or otherwise;
- 4 (4) Without first having obtained the written consent to
5 do so of both parties involved in any real estate
6 transaction, acting for both the parties in connection
7 with the transaction, or collecting or attempting to
8 collect commissions or other compensation for the
9 licensee's services from both of the parties;
- 10 (5) When the licensee, being a real estate salesperson,
11 accepts any commission or other compensation for the
12 performance of any of the acts enumerated in the
13 definition set forth in section 467-1 of real estate
14 salesperson from any person other than the real estate
15 salesperson's employer or the real estate broker with
16 whom the real estate salesperson associates or, being
17 a real estate broker or salesperson, compensates one
18 not licensed under this chapter to perform any such
19 act;
- 20 (6) When the licensee, being a real estate salesperson,
21 acts or attempts to act as a real estate broker or
22 represents, or attempts to represent, any real estate



- 1 broker other than the real estate salesperson's
2 employer or the real estate broker with whom the real
3 estate salesperson is associated;
- 4 (7) Failing, within a reasonable time, to account for any
5 moneys belonging to others which may be in the
6 possession or under the control of the licensee;
- 7 (8) Any other conduct constituting fraudulent or dishonest
8 dealings;
- 9 (9) When the licensee, being a partnership, permits any
10 member of the partnership who does not hold a real
11 estate broker's license to actively participate in the
12 real estate brokerage business thereof or permits any
13 employee thereof who does not hold a real estate
14 salesperson's license to act as a real estate
15 salesperson therefore;
- 16 (10) When the licensee, being a corporation, permits any
17 officer or employee of the corporation who does not
18 hold a real estate broker's license to have the direct
19 management of the real estate brokerage business
20 thereof or permits any officer or employee thereof who
21 does not hold a real estate salesperson's license to
22 act as a real estate salesperson therefore;



- 1 (11) When the licensee, being a real estate salesperson,
2 fails to file with the commission a written statement
3 setting forth the name of the real estate broker by
4 whom the licensee is employed or with whom the
5 licensee is associated;
- 6 (12) When the licensee fails to obtain on the contract
7 between the parties to the real estate transaction
8 confirmation of who the real estate broker represents;
- 9 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,
10 or 515; section 516-71; or the rules adopted pursuant
11 thereto;
- 12 (14) Splitting fees with or otherwise compensating others
13 not licensed hereunder for referring business;
14 provided that notwithstanding paragraph (5), a real
15 estate broker may pay a commission to:
- 16 (A) A licensed real estate broker of another state,
17 territory, or possession of the United States if
18 that real estate broker does not conduct in this
19 [~~State~~] state any of the negotiations for which a
20 commission is paid;
- 21 (B) A real estate broker lawfully engaged in real
22 estate brokerage activity under the laws of a



1 foreign country if that real estate broker does
2 not conduct in this [~~State~~] state any of the
3 negotiations for which a commission is paid; or
4 (C) A travel agency that in the course of business as
5 a travel agency or sales representative, arranges
6 for compensation the rental of transient vacation
7 rental; provided that for purposes of this
8 paragraph "travel agency" means any person, which
9 for compensation or other consideration, acts or
10 attempts to act as an intermediary between a
11 person seeking to purchase travel services and
12 any person seeking to sell travel services,
13 including an air or ocean carrier;
14 (15) Commingling the money or other property of the
15 licensee's principal with the licensee's own;
16 (16) Converting other people's moneys to the licensee's own
17 use;
18 (17) The licensee is adjudicated insane or incompetent;
19 (18) Failing to ascertain and disclose all material facts
20 concerning every property for which the licensee
21 accepts the agency, so that the licensee may fulfill
22 the licensee's obligation to avoid error,



1 misrepresentation, or concealment of material facts;
 2 provided that for the purposes of this paragraph, the
 3 fact that an occupant has AIDS or AIDS Related Complex
 4 (ARC) or has been tested for HIV (human
 5 immunodeficiency virus) infection shall not be
 6 considered a material fact;

7 (19) When the licensee obtains or causes to be obtained,
 8 directly or indirectly, any licensing examination or
 9 licensing examination question for the purpose of
 10 disseminating the information to future takers of the
 11 examination for the benefit or gain of the licensee;
 12 or

13 (20) Failure to maintain a reputation for or record of
 14 competency, honesty, truthfulness, financial
 15 integrity, and fair dealing.

16 Disciplinary action may be taken by the commission whether the
 17 licensee is acting as a real estate broker, or real estate
 18 salesperson, or on the licensee's own behalf."

19 SECTION 4. Section 514B-86, Hawaii Revised Statutes, is
 20 amended by amending subsection (a) to read as follows:



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

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

6 (A) A true copy of the developer's public report,
7 including all amendments with an effective date
8 issued by the commission. The developer's public
9 report shall include the report itself, the
10 condominium project's recorded declaration and
11 bylaws, house rules if any, a letter-sized
12 condominium project map, and all amendments[~~—~~
13 ~~where it is impractical to include a letter-sized~~
14 ~~condominium project map, the prospective~~
15 ~~purchaser or purchaser shall be provided a~~
16 ~~written notice of an opportunity to examine the~~
17 ~~map. The copy of the recorded declaration and~~
18 ~~bylaws creating the project shall indicate the~~
19 ~~document number or land court document number, or~~
20 ~~both, as applicable,]:~~

21 (i) Attached to the developer's public report
22 itself as exhibits or shall be concurrently



1 and separately provided to the prospective
2 purchaser or purchaser with the developer's
3 public report;
4 (ii) Printed copies unless the commission,
5 prospective purchaser, or purchaser indicate
6 in a separate writing their election to
7 receive the required condominium's
8 declaration, bylaws, house rules, if any,
9 letter-sized condominium map, and all
10 amendments through means of a computer disc,
11 email, download from an Internet site, or by
12 any other means contemplated by chapter
13 489E. Where it is impractical to include a
14 letter-sized condominium project map, the
15 prospective purchaser or purchaser shall be
16 provided a written notice of an opportunity
17 to examine the map. The copy of the
18 recorded declaration and bylaws creating the
19 project shall indicate the document number,
20 land court document number, or both, as
21 applicable; and



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

9 and

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

13 SECTION 5. Section 514B-103, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Each project or association having more than five
16 units shall:

17 (1) Secure and maintain a fidelity bond in an amount for
18 the coverage and terms as required by section 514B-
19 143(a)(3). An association shall act promptly and
20 diligently to recover from the fidelity bond required
21 by this section. An association that is unable to
22 obtain a fidelity bond may seek approval for an



1 exemption, a deductible, or a bond alternative from
2 the commission. Current evidence of a fidelity bond
3 includes a certification statement from an insurance
4 company registered with the department of commerce and
5 consumer affairs certifying that the bond is in effect
6 and meets the requirement of this section and the
7 rules adopted by the commission;

8 [~~1~~] (2) Register with the commission through approval of
9 a completed registration application, payment of fees,
10 and submission of any other additional information set
11 forth by the commission. The registration shall be
12 for a biennial period with termination on June 30 of
13 each odd-numbered year. The commission shall
14 prescribe a deadline date prior to the termination
15 date for the submission of a completed reregistration
16 application, payment of fees, and any other additional
17 information set forth by the commission. Any project
18 or association that has not met the submission
19 requirements by the deadline date shall be considered
20 a new applicant for registration and be subject to
21 initial registration requirements. Any new project or
22 association shall register within thirty days of the



1 association's first meeting. If the association has
2 not held its first meeting and it is at least one year
3 after the recordation of the purchase of the first
4 unit in the project, the developer or developer's
5 affiliate or the managing agent shall register on
6 behalf of the association and shall comply with this
7 section, except for the fidelity bond requirement for
8 associations required by section 514B-43(a)(3). The
9 public information required to be submitted on any
10 completed application form shall include but not be
11 limited to evidence of and information on fidelity
12 bond coverage, names and positions of the officers of
13 the association, the name of the association's
14 managing agent, if any, the street and the postal
15 address of the condominium, and the name and current
16 mailing address of a designated officer of the
17 association where the officer can be contacted
18 directly;

19 ~~(2)~~ (3) Pay a nonrefundable application fee and, upon
20 approval, an initial registration fee, a
21 reregistration fee upon reregistration and the
22 condominium education trust fund fee, as provided in



1 rules adopted by the director of commerce and consumer
2 affairs pursuant to chapter 91;

3 [~~3~~] (4) Register or reregister and pay the required fees
4 by the due date. Failure to register or reregister or
5 pay the required fees by the due date shall result in
6 the assessment of a penalty equal to the amount of the
7 registration or reregistration fee; and

8 [~~4~~] (5) Report promptly in writing to the commission any
9 changes to the information contained on the
10 registration or reregistration application or any
11 other documents required by the commission. Failure
12 to do so may result in termination of registration and
13 subject the project or the association to initial
14 registration requirements."

15 SECTION 6. Act 93, Session Laws of Hawaii 2005, is amended
16 by amending section 9(b) to read as follows:

17 "(b) The developer of a project [~~registered~~] created or
18 registered pursuant to chapter 514A, Hawaii Revised Statutes,
19 may elect to register the project under the new chapter
20 established by section 2 of Act 164, Session Laws of Hawaii
21 2004; as amended by this Act, by submitting the application,
22 documentation, and fees required under sections [~~52~~] 514B-52

1 and [~~54,~~] 514B-54, Hawaii Revised Statutes, in section 3 of
2 this Act[~~;~~]; provided the property is removed from chapter 514A
3 in accordance with section 514A-21. Upon the issuance of an
4 effective date for the project's public report pursuant to the
5 new chapter, the project's registration under chapter 514A,
6 Hawaii Revised Statutes, shall terminate, the developer shall
7 provide copies of the new public report to all existing
8 purchasers, and the rights and obligations of the developer and
9 all purchasers shall thereafter be governed by the new chapter;
10 provided that unless the new public report reflects a material
11 change to the project:

- 12 (1) The issuance of the new public report shall not affect
13 the enforceability of any purchase contract that
14 previously became binding upon the purchaser;
- 15 (2) A purchaser shall have the right to rescind the
16 purchase contract; and
- 17 (3) A developer shall not be required to deliver a notice
18 of thirty-day right of cancellation as specified in
19 section [~~86,~~] 514B-86, Hawaii Revised Statutes, in
20 section 4 of this Act."

21 SECTION 7. Where an association is unable to obtain the
22 required fidelity bond of section 514B-103, the real estate



1 commission's current fidelity bond exemption policies shall be
2 used until such time as the real estate commission adopts rules.

3 SECTION 8. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 9. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 10. This Act shall take effect upon its approval;
9 provided that section 2 shall take effect retroactive to July 1,
10 2006.



Report Title:

Condominiums

Description:

Adds three new parts to chapter 514A, Hawaii Revised Statutes, in order to reenact parts I, V, and VII, of chapter 514A, Hawaii Revised Statutes, that were repealed by section 26 of Act 164, Session Laws of Hawaii 2004. Makes clarifying amendments to various provisions of condominium law. (SB1704 HD1)

