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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. The recodified condominium law is the result of  
2 Act 164, Session Laws of Hawaii 2004 (Act 164); Act 93, Session  
3 Laws of Hawaii 2005; and Act 273, Session Laws of Hawaii 2006.  
4 The administration of the recodified condominium law has raised  
5 a number of issues that require some amendments.

6           The purpose of this Act is to make technical and conforming  
7 amendments to various provisions of the condominium law and to  
8 add three new parts chapter 514A, Hawaii Revised Statutes, to  
9 reenact parts I, V, and VII, of chapter 514A, Hawaii Revised  
10 Statutes, that were previously repealed by section 26 of Act  
11 164.

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

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

16           **§514A-1 Title.** This chapter shall be known as the  
17 Condominium Property Act.

18           **§514A-1.5 Applicability of chapter.** (a) This chapter:



- 1           (1) Shall not apply to condominiums created on or after  
2           July 1, 2006, or that are registered with the  
3           commission pursuant to part IV of chapter 514B; and
- 4           (2) On and after July 1, 2006, shall apply only to:
- 5           (A) Condominiums created prior to July 1, 2006,  
6           except as provided in subsection (b) and sections  
7           514B-22 and 514B-23; and
- 8           (B) A developer's sale of condominiums in a project  
9           for which a notice of intention was filed with  
10          the commission prior to July 1, 2006, pursuant to  
11          section 514A-31, except where the developer  
12          elects to register an existing project with the  
13          commission under part IV of chapter 514B,  
14          pursuant to section 9(b) of Act 93, Session Laws  
15          of Hawaii 2005.

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



1 in or liens upon the property; provided that any condominium  
2 project or association of apartment owners created prior to  
3 May 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961,  
4 having seven or more apartments shall register with the  
5 commission and comply with the requirements pursuant to sections  
6 514A-95.1 and 514A-132, except for the fidelity bond  
7 requirement. The express declaration shall be made through the  
8 execution and recordation of a declaration in form and content  
9 required to establish a condominium property regime pursuant to  
10 this chapter.

11 **§514A-1.6 Conformance with county land use ordinances.**

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



1           **§514A-2 Chapter not exclusive.** This chapter is in  
2 addition and supplemental to all other provisions of the Revised  
3 Statutes; provided that this chapter shall not change the  
4 substantive law relating to land court property, and provided  
5 further that if this chapter conflicts with chapters 501 and  
6 502, chapters 501 and 502 shall prevail.

7           **§514A-3 Definitions.** Unless it is plainly evident from  
8 the context that a different meaning is intended, as used  
9 herein:

10           "Apartment" means a part of the property intended for any  
11 type of use or uses, and with an exit to a public street or  
12 highway or to a common element or elements leading to a public  
13 street or highway, and may include such appurtenances as garage  
14 and other parking space, storage room, balcony, terrace, and  
15 patio.

16           "Apartment owner" means the person owning, or the persons  
17 owning jointly or in common, an apartment and the common  
18 interest appertaining thereto; provided that to such extent and  
19 for such purposes, including the exercise of voting rights, as  
20 shall be provided by lease registered under chapter 501 or  
21 recorded under chapter 502, a lessee of an apartment shall be  
22 deemed to be the owner thereof.



1 "Association of apartment owners" means all of the  
2 apartment owners acting as a group in accordance with the bylaws  
3 and declaration.

4 "Commission" means the real estate commission of the  
5 department of commerce and consumer affairs.

6 "Common elements", unless otherwise provided in the  
7 declaration, means:

- 8 (1) The land included in the condominium property regime,  
9 whether leased or in fee simple;
- 10 (2) The foundations, columns, girders, beams, supports,  
11 main walls, roofs, halls, corridors, lobbies, stairs,  
12 stairways, fire escapes, and entrances and exits of  
13 the building or buildings;
- 14 (3) The basements, flat roofs, yards, gardens,  
15 recreational facilities, parking areas, and storage  
16 spaces;
- 17 (4) The premises for the lodging or use of janitors and  
18 other persons employed for the operation of the  
19 property;
- 20 (5) Central and appurtenant installations for services  
21 such as power, light, gas, hot and cold water,



- 1 heating, refrigeration, air conditioning, and  
2 incinerators;
- 3 (6) The elevators, escalators, tanks, pumps, motors, fans,  
4 compressors, ducts, and in general all apparatus and  
5 installations existing for common use;
- 6 (7) Such facilities as may be designated as common  
7 elements in the declaration; and
- 8 (8) All other parts of the property necessary or  
9 convenient to its existence, maintenance, and safety,  
10 or normally in common use.

11 "Common expense" means:

- 12 (1) Expenses of operation of the property; and  
13 (2) All sums designated common expenses by or pursuant to  
14 this chapter, the declaration or the bylaws.

15 "Common interest" means the percentage of undivided  
16 interest in the common elements appertaining to each apartment,  
17 as expressed in the declaration, and any specified percentage of  
18 the common interests means such percentage of the undivided  
19 interests in the aggregate.

20 "Common profits" means the balance of all income, rents,  
21 profits, and revenues from the common elements remaining after  
22 the deduction of the common expenses.



1 "Completion of construction" means the issuance by the  
2 appropriate county official of a certificate of completion.

3 "Condominium" means the ownership of single units, with  
4 common elements, located on property within the condominium  
5 property regime.

6 "Declaration" means the instrument by which the property is  
7 submitted to this chapter, as hereinafter provided, and such  
8 declaration as from time to time amended.

9 "Developer" means a person who undertakes to develop a real  
10 estate condominium project.

11 "Limited common elements" means those common elements  
12 designated in the declaration as reserved for the use of a  
13 certain apartment or certain apartments to the exclusion of the  
14 other apartments; provided that no amendment of the declaration  
15 affecting any of the limited common elements shall be effective  
16 without the consent of the owner or owners of the apartment or  
17 apartments for the use of which such limited common elements are  
18 reserved.

19 "Majority" or "majority of apartment owners" means the  
20 owners of apartments to which are appurtenant more than fifty  
21 per cent of the common interests, and any specified percentage



1 of the apartment owners means the owners of apartments to which  
2 are appurtenant such percentage of the common interests.

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

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

8 "Operation of the property" means the administration,  
9 fiscal management, and operation of the property and the  
10 maintenance, repair, and replacement of, and the making of any  
11 additions and improvements to, the common elements.

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

15 "Project" means a real estate condominium project; a plan  
16 or project whereby a condominium of two or more apartments  
17 located within the condominium property regime are offered or  
18 proposed to be offered for sale.

19 "Property" means the land, whether or not contiguous and  
20 including more than one parcel of land, but located within the  
21 same vicinity, whether leasehold or in fee simple, to the extent  
22 of the interest held therein by the owner or lessee submitting





1 such interest to the condominium property regime, the building  
2 or buildings, all improvements and all structures thereon, and  
3 all easements, rights, and appurtenances belonging thereto, and  
4 all articles of personal property intended for use in connection  
5 therewith, which have been or are intended to be submitted to  
6 the regime established by this chapter.

7 "To record" means to record in accordance with chapter 502,  
8 or to register in accordance with chapter 501.

9 All pronouns used herein include the male, female, and  
10 neuter genders and include the singular or plural numbers, as  
11 the case may be.

12 **§514A-4 Status of apartments.** Each apartment, together  
13 with the common interest appertaining thereto, shall for all  
14 purposes constitute real property and may be individually  
15 conveyed, leased, or encumbered and be the subject of ownership,  
16 possession, or sale and for all other purposes be treated as if  
17 it were sole and entirely independent of the other apartment or  
18 apartments in the property of which it forms a part, and the  
19 corresponding individual titles and interests shall be  
20 recordable.

21 **§514A-5 Ownership of apartments.** The apartment owner is  
22 entitled to the exclusive ownership and possession of the



1 apartment. Any apartment may be jointly or commonly owned by  
2 more than one person.

3       **§514A-6 Separate taxation.** The laws relating to home  
4 exemptions from state property taxes are applicable to the  
5 individual apartments, which shall have the benefit of home  
6 exemption in those cases where the owner of single-family  
7 dwelling would qualify. Property taxes assessed by the State  
8 shall be assessed on and collected on the individual apartments  
9 and not on the property as a whole. Without limitation of the  
10 foregoing, each apartment and the common interest appertaining  
11 thereto shall be deemed to be a parcel and shall be subject to  
12 separate assessment and taxation for all types of taxes  
13 authorized by law, including, but not limited to, special  
14 assessments.

15       **§514A-7 Condominium specialist; appointment; duties.**  
16 There are established two permanent condominium specialist  
17 positions within the department of commerce and consumer affairs  
18 to assist consumers with information, advice, and referral on  
19 any matter relating to this chapter or otherwise concerning  
20 condominium property regimes. There is also established a  
21 permanent secretarial position to provide assistance in carrying  
22 out these duties. The condominium specialists and secretary



1 shall be appointed by the director of commerce and consumer  
2 affairs without regard to chapter 76. The condominium  
3 specialists and secretary shall be members of the employees  
4 retirement system of the State and shall be eligible to receive  
5 the benefits of any state or federal employee benefit program  
6 generally applicable to officers and employees of the State.

7 **PART V. CONDOMINIUM MANAGEMENT**

8 **§514A-81 Bylaws.** The operation of the property shall be  
9 governed by bylaws, a true copy of which shall be recorded in  
10 the same manner as the declaration. No amendment to the bylaws  
11 is valid unless the amendment is duly recorded.

12 **§514A-82 Contents of bylaws.** (a) The bylaws shall  
13 provide for at least the following:

14 (1) Board of directors:

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

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

17 provided that condominiums with more than one

18 hundred individual apartment units shall have an

19 elected board of not less than nine members

20 unless not less than sixty-five per cent of all

21 apartment owners vote by mail ballot, or at a



1 special or annual meeting, to reduce the minimum  
2 number of directors;

3 (C) That for the initial term of office, directors  
4 shall serve for a term of three years or the term  
5 as specified by the bylaws or until their  
6 successors have been elected or appointed;

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

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

9 (F) Whether or not the board may engage the services  
10 of a manager or managing agent, or both, and  
11 specifying which of the powers and duties granted  
12 to the board by this chapter or otherwise may be  
13 delegated by the board to either or both of them;

14 (2) Method of calling meetings of the apartment owners;  
15 what percentage, if other than a majority of apartment  
16 owners, constitutes a quorum; what percentage,  
17 consistent with this chapter, is necessary to adopt  
18 decisions binding on all apartment owners and that  
19 votes allocated to any area that constitutes a common  
20 element under section 514A-13(h) shall not be cast at  
21 any association meeting, regardless of whether it is  
22 so designated in the declaration;



- 1           (3) Election of a president from among the board of  
2           directors who shall preside over the meetings of the  
3           board of directors and of the association of apartment  
4           owners;
- 5           (4) Election of a secretary who shall keep the minute book  
6           wherein resolutions shall be recorded;
- 7           (5) Election of a treasurer who shall keep the financial  
8           records and books of account;
- 9           (6) Operation of the property, payment of the common  
10          expenses, and determination and collection of the  
11          common charges;
- 12          (7) Manner of collecting common expenses, expenses, costs,  
13          and fees recoverable by the association under section  
14          514A-94, and any penalties and late charges;
- 15          (8) Designation and removal of personnel necessary for the  
16          maintenance, repair, and replacement of the common  
17          elements;
- 18          (9) Method of adopting and amending administrative rules  
19          governing the details of the operation and use of the  
20          common elements;
- 21          (10) The restrictions on and requirements respecting the  
22          use and maintenance of the apartments and the use of



1 the common elements, not set forth in the declaration,  
2 as are designed to prevent unreasonable interference  
3 with the use of their respective apartments and of the  
4 common elements by the several apartment owners;

5 (11) The first meeting of the association of apartment  
6 owners shall be held not later than one hundred eighty  
7 days after recordation of the first apartment  
8 conveyance; provided forty per cent or more of the  
9 project has been sold and recorded. If forty per cent  
10 of the project is not sold and recorded at the end of  
11 one year, an annual meeting shall be called; provided  
12 ten per cent of the apartment owners so request;

13 (12) All members of the board of directors shall be owners,  
14 co-owners, vendees under an agreement of sale, or an  
15 officer of any corporate owner of an apartment. The  
16 partners in a general partnership and the general  
17 partners of a limited partnership shall be deemed to  
18 be the owners of an apartment for this purpose. There  
19 shall not be more than one representative on the board  
20 of directors from any one apartment;

21 (13) A director shall not cast any proxy vote at any board  
22 meeting, nor shall a director vote at any board



- 1 meeting on any issue in which the director has a  
2 conflict of interest;
- 3 (14) No resident manager of a condominium shall serve on  
4 its board of directors;
- 5 (15) The board of directors shall meet at least once a  
6 year;
- 7 (16) All association and board of directors meetings shall  
8 be conducted in accordance with the most current  
9 edition of Robert's Rules of Order;
- 10 (17) All meetings of the association of apartment owners  
11 shall be held at the address of the condominium  
12 project or elsewhere within the State as determined by  
13 the board of directors; and
- 14 (18) Penalties chargeable against persons for violation of  
15 the covenants, conditions, or restrictions set forth  
16 in the declaration, or of the bylaws and  
17 administrative rules adopted pursuant thereto, method  
18 of determination of violations, and manner of  
19 enforcing penalties, if any.
- 20 (b) In addition to the requirements of subsection (a), the  
21 bylaws shall be consistent with the following provisions:



1           (1) At any regular or special meeting of the apartment  
2           owners, any one or more members of the board of  
3           directors may be removed by the apartment owners and  
4           successors shall then and there be elected for the  
5           remainder of the term to fill the vacancies thus  
6           created. The removal and replacement shall be by a  
7           vote of a majority of the apartment owners and,  
8           otherwise, in accordance with all applicable  
9           requirements and procedures in the bylaws for the  
10          removal and replacement of directors. If removal and  
11          replacement is to occur at a special association  
12          meeting, the call for the meeting shall be by the  
13          president or by a petition to the secretary or  
14          managing agent signed by not less than twenty-five per  
15          cent of the apartment owners as shown in the  
16          association's record of ownership; provided that if  
17          the secretary or managing agent shall fail to send out  
18          the notices for the special meeting within fourteen  
19          days of receipt of the petition, then the petitioners  
20          shall have the authority to set the time, date, and  
21          place for the special meeting and to send out the  
22          notices for the special meeting in accordance with the





1 requirements of the bylaws. Except as otherwise  
2 provided in this section, the meeting for the removal  
3 and replacement from office of directors shall be  
4 scheduled, noticed, and conducted in accordance with  
5 the bylaws of the association;

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

9 (A) Each one of the particulars set forth in this  
10 subsection shall be embodied in the bylaws  
11 always; and

12 (B) Any proposed bylaws with the rationale for the  
13 proposal may be submitted by the board of  
14 directors or by a volunteer apartment owners'  
15 committee. If submitted by that committee, the  
16 proposal shall be accompanied by a petition  
17 signed by not less than twenty-five per cent of  
18 the apartment owners as shown in the  
19 association's record of ownership. The proposed  
20 bylaws, rationale, and ballots for voting on any  
21 proposed bylaw shall be mailed by the board of  
22 directors to the owners at the expense of the



1 association for vote or written consent without  
2 change within thirty days of the receipt of the  
3 petition by the board of directors. The vote or  
4 written consent required to adopt the proposed  
5 bylaw shall not be less than sixty-five per cent  
6 of all apartment owners; provided that the vote  
7 or written consent must be obtained within three  
8 hundred sixty-five days after mailing for a  
9 proposed bylaw submitted by either the board of  
10 directors or a volunteer apartment owners'  
11 committee. If the bylaw is duly adopted, then  
12 the board shall cause the bylaw amendment to be  
13 recorded in the bureau of conveyances or filed in  
14 the land court, as the case may be. The  
15 volunteer apartment owners' committee shall be  
16 precluded from submitting a petition for a  
17 proposed bylaw that is substantially similar to  
18 that which has been previously mailed to the  
19 owners within one year after the original  
20 petition was submitted to the board.

21 This paragraph shall not preclude any apartment owner  
22 or voluntary apartment owners' committee from



1           proposing any bylaw amendment at any annual  
2           association meeting;

3           (3) Notices of association meetings, whether annual or  
4           special, shall be sent to each member of the  
5           association of apartment owners at least fourteen days  
6           prior to the meeting and shall contain at least: the  
7           date, time, and place of the meeting, the items on the  
8           agenda for the meeting, and a standard proxy form  
9           authorized by the association, if any;

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



1 the board receives within seven days of the posted  
2 notice a request by any owner for use of association  
3 funds to solicit proxies accompanied by a statement,  
4 the board shall mail to all owners either:

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

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

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

16 (5) A director who has a conflict of interest on any issue  
17 before the board shall disclose the nature of the  
18 conflict of interest prior to a vote on that issue at  
19 the board meeting, and the minutes of the meeting  
20 shall record the fact that a disclosure was made;

21 (6) The apartment owners shall have the irrevocable right,  
22 to be exercised by the board of directors, to have



1 access to each apartment from time to time during  
2 reasonable hours as may be necessary for the operation  
3 of the property or for making emergency repairs  
4 therein necessary to prevent damage to the common  
5 elements or to another apartment or apartments;

6 (7) An owner shall not act as an officer of an association  
7 and an employee of the managing agent employed by the  
8 association;

9 (8) An association's employees shall not engage in selling  
10 or renting apartments in the condominium in which they  
11 are employed except association-owned units, unless  
12 such activity is approved by an affirmative vote of  
13 sixty-five per cent of the membership;

14 (9) The board of directors shall meet at least once a  
15 year. Whenever practicable, notice of all board  
16 meetings shall be posted by the resident manager or a  
17 member of the board in prominent locations within the  
18 project seventy-two hours prior to the meeting or  
19 simultaneously with notice to the board of directors;

20 (10) Directors shall not expend association funds for their  
21 travel, directors' fees, and per diem, unless owners  
22 are informed and a majority approve of these expenses;



- 1       (11) Associations at their own expense shall provide all  
2           board members with a current copy of the association's  
3           declaration, bylaws, house rules, and, annually, a  
4           copy of this chapter with amendments;
- 5       (12) The directors may expend association funds, which  
6           shall not be deemed to be compensation to the  
7           directors, to educate and train themselves in subject  
8           areas directly related to their duties and  
9           responsibilities as directors; provided that the  
10          approved annual operating budget shall include these  
11          expenses as separate line items. These expenses may  
12          include registration fees, books, videos, tapes, other  
13          educational materials, and economy travel expenses.  
14          Except for economy travel expenses within the State,  
15          all other travel expenses incurred under this  
16          subsection shall be subject to the requirements of  
17          paragraph (10);
- 18       (13) A lien created pursuant to section 514A-90 may be  
19           enforced by the association in any manner permitted by  
20           law, including nonjudicial or power of sale  
21           foreclosure procedures authorized by chapter 667; and



1           (14) If the bylaws provide for cumulative voting by the  
2           owners, the owners may so vote if an owner gives  
3           notice of the owner's intent to cumulatively vote  
4           before voting commences.

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

9           **§514A-82.1 Employees of condominiums; background check.**

10 The board of directors of an association of apartment owners or  
11 the manager of a condominium project, upon the written  
12 authorization of an applicant for employment as security guard  
13 or manager or for a position which would allow the employee  
14 access to the keys of or entry into the units in the condominium  
15 project or access to association funds, may conduct a background  
16 check on the applicant or direct another responsible party to  
17 conduct the check. Before initiating or requesting a check, the  
18 board of directors or the manager shall first certify that the  
19 signature on the authorization is authentic and that the person  
20 is an applicant for such employment. The background check, at a  
21 minimum, shall require the applicant to disclose whether the  
22 applicant has been convicted in any jurisdiction of a crime



1 which would tend to indicate that the applicant may be unsuited  
2 for employment as a condominium employee with access to  
3 association funds or the keys of or entry into the units in the  
4 condominium project, and the judgment of conviction has not been  
5 vacated. For the purpose of this section, the criminal history  
6 disclosure made by the applicant may be verified by the board of  
7 directors, manager, or other responsible party, if so directed  
8 by the board or the manager, by means of information obtained  
9 through the Hawaii criminal justice data center. The applicant  
10 shall provide the Hawaii criminal justice data center with  
11 personal identifying information which shall include but not be  
12 limited to the applicant's name, social security number, date of  
13 birth, and gender. This information shall be used only for the  
14 purpose of conducting the criminal history record check  
15 authorized by this section. Failure of an association of  
16 apartment owners or the manager to conduct or verify or cause to  
17 have conducted or verified a background check shall not alone  
18 give rise to any private cause of action against an association  
19 or manager for acts and omissions of the employee hired.

20 **§514A-82.15 Mixed use property; representation on the**  
21 **board of directors.** (a) The bylaws of an association of  
22 apartment owners may be amended to provide that the composition





1 of the board reflect the proportionate number of apartments for  
2 a particular use, as set forth in the declaration. For example,  
3 an association of apartment owners may provide that for a nine-  
4 member board where two-thirds of the apartments are for  
5 residential use and one-third is for commercial use, sixty-six  
6 and two-thirds per cent of the nine-member board, or six  
7 members, shall be owners of residential use apartments and  
8 thirty-three and one-third per cent, or three members, shall be  
9 owners of commercial use apartments.

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

- 13 (1) A majority vote of the board of directors; or  
14 (2) A submission of the proposed bylaw amendment to the  
15 board of directors from a volunteer apartment owner's  
16 committee accompanied by a petition from twenty-five  
17 per cent of the apartment owners of record.

18 (c) Within thirty days of a decision by the board or  
19 receipt of a petition to initiate a bylaws amendment, the board  
20 of directors shall mail a ballot with the proposed bylaws  
21 amendment to all of the apartment owners of record. For  
22 purposes of this section only and notwithstanding section



1 514A-82(b)(2), the bylaws may be initially amended by a vote or  
2 written consent of the majority (at least fifty-one per cent) of  
3 the apartment owners; and thereafter by sixty-five per cent of  
4 all apartment owners; provided that each of the requirements set  
5 forth in this section shall be embodied in the bylaws.

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

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

13 (f) As permitted in the bylaws or declaration, the vote of  
14 a commercial apartment owner shall be cast and counted only for  
15 the commercial seats available on the board of directors and the  
16 vote of a residential apartment owner shall be cast and counted  
17 only for the residential seats available on the board of  
18 directors.

19 (g) No petition for a bylaw amendment pursuant to  
20 subsection (b)(2) to modify the composition of the board shall  
21 be distributed to the apartment owners within one year of the



1 distribution of a prior petition to modify the composition of  
2 the board pursuant to that subsection.

3 (h) This section shall not preclude the removal and  
4 replacement of any one or more members of the board pursuant to  
5 section 514A-82(b)(1). Any removal and replacement shall not  
6 affect the proportionate composition of the board as prescribed  
7 in the bylaws as amended pursuant to this section.

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

11 **§514A-82.2 Restatement of declaration and bylaws.** (a)  
12 Notwithstanding any other provision of this chapter or of any  
13 other statute or instrument, an association of apartment owners  
14 at any time may restate the declaration of condominium property  
15 regime of the project or the bylaws of the association to set  
16 forth all amendments thereof by a resolution adopted by the  
17 board of directors.

18 (b) An association of apartment owners at any time may  
19 restate the declaration of condominium property regime of the  
20 project or the bylaws of the association to amend the  
21 declaration or bylaws as may be required in order to conform  
22 with this chapter or of any other statute, ordinance, rule, or



1 regulation enacted by any governmental authority, by a  
2 resolution adopted by the board of directors, and the restated  
3 declaration or bylaws shall be as fully effective for all  
4 purposes as if adopted by the vote or written consent of the  
5 apartment owners; provided that any declaration of condominium  
6 property regime or bylaws restated pursuant to this subsection  
7 shall identify each portion so restated and shall contain a  
8 statement that those portions have been restated solely for  
9 purposes of information and convenience, identifying the  
10 statute, ordinance, rule, or regulation implemented by the  
11 amendment, and that in the event of any conflict, the restated  
12 declaration or bylaws shall be subordinate to the cited statute,  
13 ordinance, rule, or regulation.

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



1 property regime or bylaws supersede the original declaration of  
2 condominium property regime or bylaws and all prior amendments  
3 thereto.

4 (d) The restated declaration of condominium property  
5 regime or bylaws shall be recorded in the manner provided in  
6 section 514A-11 or 514A-82 or both and upon recordation shall  
7 supersede the original declaration of condominium property  
8 regime or bylaws and all prior amendments thereto; provided that  
9 in the event of any conflict, the restated declaration of  
10 condominium property regime or bylaws shall be subordinate to  
11 the original declaration of condominium property regime or  
12 bylaws and all prior amendments thereto.

13 **§514A-82.3 Borrowing of money.** Subject to any approval  
14 requirements and spending limits contained in the declaration or  
15 bylaws of the association of apartment owners, the board of  
16 directors may authorize the borrowing of money to be used by the  
17 association for the repair, replacement, maintenance, operation,  
18 or administration of the common elements of the project, or the  
19 making of any additions, alterations, and improvements thereto.  
20 The cost of such borrowing, including, without limitation, all  
21 principal, interest, commitment fees, and other expenses payable  
22 with respect to such borrowing, shall be a common expense of the



1 project; provided that owners representing fifty per cent of the  
2 common interest and apartments give written consent to such  
3 borrowing, having been first notified of the purpose and use of  
4 the funds.

5 **§514A-82.4 Duty of directors.** Each director shall owe the  
6 association of apartment owners a fiduciary duty in the  
7 performance of the director's responsibilities

8 **§514A-82.5 Pets in apartments.** (a) Whenever the bylaws  
9 do not forbid apartment owners from keeping animals as pets in  
10 their apartments, the bylaws shall not forbid the tenants of the  
11 apartment owners from keeping pets in the apartments rented or  
12 leased from the owners; provided that:

13 (1) The apartment owner agrees in writing to allow the  
14 apartment owner's tenant to keep a pet in the  
15 apartment;

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

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

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



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

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

7 (b) Any amendments to the bylaws pertaining to pet  
8 restrictions or prohibitions which exempt circumstances existing  
9 prior to the adoption of the amendments shall apply equally to  
10 apartment owners and tenants.

11 **§514A-82.6 Pets, replacement of subsequent to prohibition.**

12 (a) Any apartment owner who keeps a pet in the owner's  
13 apartment pursuant to a provision in the bylaws which allows  
14 owners to keep pets or in the absence of any provision in the  
15 bylaws to the contrary, upon the death of the animal, may  
16 replace the animal with another and continue to do so for as  
17 long as the owner continues to reside in the owner's apartment  
18 or another apartment subject to the same bylaws.

19 (b) Any apartment owner who is keeping a pet pursuant to  
20 subsection (a) as of the effective date of an amendment to the  
21 bylaws which prohibits owners from keeping pets in their  
22 apartments shall not be subject to the prohibition but shall be



1 entitled to keep the pet and acquire new pets as provided in  
2 subsection (a).

3       **§514A-83 Purchaser's right to vote.** The purchaser of an  
4 apartment pursuant to an agreement of sale recorded in the  
5 bureau of conveyances or land court shall have all the rights of  
6 an apartment owner, including the right to vote; provided that  
7 the seller may retain the right to vote on matters substantially  
8 affecting the seller's security interest in the apartment,  
9 including but not limited to, the right to vote on:

- 10       (1) Any partition of all or part of the project;
- 11       (2) The nature and amount of any insurance covering the  
12       project and the disposition of any proceeds thereof;
- 13       (3) The manner in which any condemnation of the project  
14       shall be defended or settled and the disposition of  
15       any award or settlement in connection therewith;
- 16       (4) The payment of any amount in excess of insurance or  
17       condemnation proceeds;
- 18       (5) The construction of any additions or improvements, and  
19       any substantial repair or rebuilding of any portion of  
20       the project;
- 21       (6) The special assessment of any expenses;
- 22       (7) The acquisition of any apartment in the project;





- 1           (8) Any amendment to the declaration of condominium  
2           property regime or bylaws;
- 3           (9) Any removal of the project from the provisions of this  
4           chapter; and
- 5           (10) Any other matter which would substantially affect the  
6           security interest of the seller.

7           **§514A-83.1 Board meetings.** (a) All meetings of the board  
8 of directors, other than executive sessions, shall be open to  
9 all members of the association, and association members who are  
10 not on the board of directors may participate in any  
11 deliberation or discussion, other than executive sessions,  
12 unless a majority of a quorum of the board of directors votes  
13 otherwise.

14           (b) The board of directors, with the approval of a  
15 majority of a quorum of its members, may adjourn a meeting and  
16 reconvene in executive session to discuss and vote upon  
17 personnel matters or litigation in which the association is or  
18 may become involved. The nature of any and all business to be  
19 considered in executive session shall first be announced in open  
20 session.

21           **§514A-83.2 Proxies.** (a) A proxy, to be valid, must:



- 1           (1) Be delivered to the secretary of the association of  
2           apartment owners or the managing agent, if any, no  
3           later than 4:30 p.m. on the second business day prior  
4           to the date of the meeting to which it pertains;
- 5           (2) Contain at least the name of the association of  
6           apartment owners, the date of the meeting of the  
7           association of apartment owners, the printed names and  
8           signatures of the persons giving the proxy, the  
9           apartments for which the proxy is given, and the date  
10          that the proxy is given; and
- 11          (3) Contain boxes wherein the owner has indicated that the  
12          proxy is given:
- 13               (A) For quorum purposes only;
- 14               (B) To the individual whose name is printed on a line  
15               next to this box;
- 16               (C) To the board of directors as a whole and that the  
17               vote be made on the basis of the preference of  
18               the majority of the board; or
- 19               (D) To those directors present at the meeting and the  
20               vote to be shared with each board member  
21               receiving an equal percentage.



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

7           (c) No board of directors or member of the board shall use  
8 association funds to solicit proxies except for the distribution  
9 of proxies as set forth in section 514A-82(b)(4); provided that  
10 this shall not prevent an individual member of the board from  
11 soliciting proxies as an apartment owner under section  
12 514A-82(b)(4).

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

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



1           **§514A-83.3 Membership list.** The resident manager or  
2 managing agent or board of directors shall keep an accurate and  
3 current list of members of the association of apartment owners  
4 and their current addresses and the names and addresses of the  
5 vendees under an agreement of sale, if any. The list shall be  
6 maintained at a place designated by the board of directors and a  
7 copy shall be available, at cost, to any member of the  
8 association as provided in the declaration or bylaws or rules  
9 and regulations or, in any case, to any member who furnishes to  
10 the resident manager or managing agent or board of directors a  
11 duly executed and acknowledged affidavit stating that the list:

12           (1) Will be used by such owner personally and only for the  
13           purpose of soliciting votes or proxies or providing  
14           information to other owners with respect to  
15           association matters; and

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

18 No board of directors shall adopt any rule prohibiting the  
19 solicitation of proxies or distribution of materials relating to  
20 association matters on the common elements by apartment owners;  
21 provided that a board of directors may adopt rules regulating  
22 reasonable time, place, and manner of such solicitations or



1 distributions, or both. A board of directors may prohibit  
2 commercial solicitations.

3 **§514A-83.4 Meeting minutes.** (a) Minutes of meetings of  
4 the board of directors and association of apartment owners shall  
5 include the recorded vote of each board member on all motions  
6 except motions voted on in executive session.

7 (b) Minutes of meetings of the board of directors and  
8 association of apartment owners shall be approved at the next  
9 succeeding meeting; provided that for board of directors  
10 meetings, no later than the second succeeding meeting.

11 (c) Minutes of all meetings shall be available within  
12 seven calendar days after approval and unapproved final drafts  
13 of the minutes of a meeting shall be available within sixty days  
14 after the meeting; provided that the minutes of any executive  
15 session may be withheld if their publication would defeat the  
16 lawful purpose of the executive session.

17 **§514A-83.5 Documents of the association of apartment**  
18 **owners.** (a) The association's most current financial statement  
19 shall be available to any owner at no cost or on twenty-four-  
20 hour loan, at a convenient location designated by the board of  
21 directors. The meeting minutes of the board of directors, once  
22 approved, for the current and prior year shall either:



1 (1) Be available for examination by apartment owners at no  
2 cost or on twenty-four-hour loan at a convenient  
3 location at the project, to be determined by the board  
4 of directors; or

5 (2) Be transmitted to any apartment owner making a request  
6 for the minutes, by the board of directors, the  
7 managing agent, or the association's representative,  
8 within fifteen days of receipt of the request;  
9 provided that the minutes shall be transmitted by  
10 mail, electronic mail transmission, or facsimile, by  
11 the means indicated by the owner, if the owner  
12 indicated a preference at the time of the request; and  
13 provided further that the owner shall pay a reasonable  
14 fee for administrative costs associated with handling  
15 the request.

16 (b) Minutes of board meetings shall include the recorded  
17 vote of each board member on all motions except motions voted on  
18 in executive session.

19 (c) Financial statements, general ledgers, the accounts  
20 receivable ledger, accounts payable ledgers, check ledgers,  
21 insurance policies, contracts, and invoices of the association  
22 of apartment owners for the duration those records are kept by



1 the association and delinquencies of ninety days or more shall  
2 be available for examination by apartment owners at convenient  
3 hours at a place designated by the board; provided that:

4 (1) The board may require owners to furnish to the  
5 association a duly executed and acknowledged affidavit  
6 stating that the information is requested in good  
7 faith for the protection of the interests of the  
8 association, or its members, or both; and

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

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

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

19 (1) That the board may require owners to furnish to the  
20 association a duly executed and acknowledged affidavit  
21 stating that the information is requested in good



1 faith for the protection of the interest of the  
2 association or its members or both; and  
3 (2) That owners pay for administrative costs in excess of  
4 eight hours per year.

5 Proxies and ballots may be destroyed following the thirty-day  
6 period. Copies of tally sheets, owners' check-in lists, and the  
7 certificates of election from the most recent association  
8 meeting shall be provided to any owner upon the owner's request;  
9 provided that the owner pay a reasonable fee for duplicating,  
10 postage, stationery, and other administrative costs associated  
11 with handling the request.

12 (e) Owners may file a written request with the board to  
13 examine other documents. The board shall give written  
14 authorization or written refusal with an explanation of the  
15 refusal within thirty calendar days of receipt of the request.

16 **§514A-83.6 Associations of apartment owners; budgets and**  
17 **reserves.** (a) The board of directors of each association of  
18 apartment owners shall prepare and adopt an annual operating  
19 budget and distribute it to the apartment owners. At a minimum,  
20 the budget shall include the following:

21 (1) The estimated revenues and operating expenses of the  
22 association;





- 1           (2) Information as to whether the budget has been prepared  
2           on a cash or accrual basis;
- 3           (3) The total replacement reserves of the association as  
4           of the date of the budget;
- 5           (4) The estimated replacement reserves the association  
6           will require to maintain the property based on a  
7           reserve study performed by the association;
- 8           (5) A general explanation of how the estimated replacement  
9           reserves are computed;
- 10          (6) The amount the association must collect for the fiscal  
11          year to fund the estimated replacement reserves; and
- 12          (7) Information as to whether the amount the association  
13          must collect for the fiscal year to fund the estimated  
14          replacement reserves was calculated using a per cent  
15          funded or cash flow plan. The method or plan shall  
16          not circumvent the estimated replacement reserves  
17          amount determined by the reserve study pursuant to  
18          paragraph (4).
- 19          (b) The association shall assess the apartment owners to  
20          either fund a minimum of fifty per cent of the estimated  
21          replacement reserves or fund one hundred per cent of the  
22          estimated replacement reserves when using a cash flow plan;



1 provided that a new association created after January 1, 1993,  
2 need not collect estimated replacement reserves until the fiscal  
3 year which begins after the association's first annual meeting.  
4 For each fiscal year, the association shall collect the amount  
5 assessed to fund the estimated replacement for that fiscal  
6 year's reserves, as determined by the association's plan,  
7 except:

8 (1) The commission shall adopt rules to permit an existing  
9 association to fund its estimated replacement reserves  
10 in increments after January 1, 1993, and prior to  
11 January 1, 2000; and

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

16 (c) The association shall compute the estimated  
17 replacement reserves by a formula that is based on the estimated  
18 life and the estimated capital expenditure or major maintenance  
19 required for each part of the property. The estimated  
20 replacement reserves shall include:



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

4 (2) Separate, designated reserves for each part of the  
5 property for which capital expenditures or major  
6 maintenance will exceed \$10,000. Parts of the  
7 property for which capital expenditures or major  
8 maintenance will not exceed \$10,000 may be aggregated  
9 in a single designated reserve.

10 (d) No association or apartment owner, director, officer,  
11 managing agent, or employee of an association who makes a good  
12 faith effort to calculate the estimated replacement reserves for  
13 an association shall be liable if the estimate subsequently  
14 proves incorrect.

15 (e) The commission may request a copy of the annual  
16 operating budget of the association of apartment owners as part  
17 of the association's registration with the commission under  
18 section 514A-95.1.

19 (f) A board may not exceed its total adopted annual  
20 operating budget by more than twenty per cent during the fiscal  
21 year to which the budget relates, except in emergency  
22 situations. Prior to the imposition or collection of an



1 assessment under this paragraph, the board shall pass a  
2 resolution containing written findings as to the necessity of  
3 the extraordinary expense involved and why the expense was not  
4 or could not have been reasonably foreseen in the budgeting  
5 process, and the resolution shall be distributed to the members  
6 with the notice of assessment.

7 (g) The requirements of this section shall override any  
8 requirements in an association's declaration, bylaws, or any  
9 other association documents relating to preparation of budgets,  
10 calculation of reserve requirements, assessment and funding of  
11 reserves, with the exception of:

- 12 (1) Any provisions relating to the repair and maintenance  
13 of property;
- 14 (2) Any requirements in an association's declaration,  
15 bylaws, or any other association documents which  
16 require the association to collect more than fifty per  
17 cent of reserve requirements; or
- 18 (3) Any provisions relating to upgrading the common  
19 elements, such as additions, improvements, and  
20 alterations to the common elements.

21 (h) Subject to the procedures of section 514A-94 and any  
22 rules adopted by the commission, any apartment owner whose



1 association board fails to comply with this section may enforce  
2 compliance by the board. In any proceeding to enforce  
3 compliance, a board which has not prepared an annual operating  
4 budget and reserve study shall have the burden of proving it has  
5 complied with this section.

6 (i) The commission may adopt rules to implement this  
7 section.

8 (j) As used in this section:

9 "Capital expenditure" means an expense that results from  
10 the purchase or replacement of an asset whose life is greater  
11 than one year, or the addition of an asset that extends the life  
12 of an existing asset for a period greater than one year.

13 "Cash flow plan" means a minimum twenty-year projection of  
14 an association's future income and expense requirements to fund  
15 fully its replacement reserves requirements each year during  
16 that twenty-year period, except in an emergency; provided that  
17 it does not include a projection of special assessments or loans  
18 during that twenty-year period, except in an emergency.

19 "Emergency situation" means any extraordinary expenses:

20 (1) Required by an order of a court;

21 (2) Necessary to repair or maintain any part of the  
22 property for which the association is responsible



1 where a threat to personal safety on the property is  
2 discovered;

3 (3) Necessary to repair any part of the property for which  
4 the association is responsible that could not have  
5 been reasonably foreseen by the board in preparing and  
6 distributing the annual operating budget;

7 (4) Necessary to respond to any legal or administrative  
8 proceeding brought against the association that could  
9 not have been reasonably foreseen by the board in  
10 preparing and distributing the annual operating  
11 budget; or

12 (5) Necessary for the association to obtain adequate  
13 insurance for the property that the association must  
14 insure.

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

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



1           **§514A-84 Management and contracts; developer, managing**  
2 **agent, and association of apartment owners.** (a) If the  
3 developer or any affiliate of the developer acts as the first  
4 managing agent for the association of apartment owners following  
5 its organization, the contract shall not have a term exceeding  
6 one year and shall contain a provision that the contract may be  
7 terminated by either party thereto on not more than sixty days'  
8 written notice. The identity of the managing agent as the  
9 developer or the developer's affiliate shall be disclosed to the  
10 association of apartment owners no later than the first meeting  
11 of the association of apartment owners, which is when the  
12 association of apartment owners is organized. An affiliate of,  
13 or person affiliated with, a developer is a person that directly  
14 or indirectly controls, is controlled by, or is under common  
15 control with, the developer.

16           (b) Any developer or affiliate of the developer or a  
17 managing agent, who manages the operation of the property from  
18 the date of recordation of the first apartment conveyance until  
19 the organization of the association of apartment owners, shall  
20 comply with the requirements of sections 514A-95.1, 514A-97, and  
21 514A-132, with the exception of the fidelity bond requirement  
22 for the association of apartment owners.



1 (c) The developer, affiliate of the developer, managing  
2 agent, and the association of apartment owners shall ensure that  
3 there is a written contract for managing the operation of the  
4 property, expressing the agreements of all parties including but  
5 not limited to financial and accounting obligations, services  
6 provided, and any compensation arrangements, including any  
7 subsequent amendments. Copies of the executed contract and any  
8 amendments shall be provided to all parties to the contract.  
9 Prior to the organization of the association of apartment  
10 owners, any apartment owner may request to inspect as well as  
11 receive a copy of the management contract from the entity that  
12 manages the operation of the property.

13 **§514A-84.5 Availability of project documents.** An accurate  
14 copy of the declaration of condominium property regime, the  
15 bylaws of the association of apartment owners, the house rules,  
16 if any, the master lease, if any, a sample original conveyance  
17 document, all public reports and any amendments thereto, shall  
18 be kept at the managing agent's office. The managing agent  
19 shall provide copies of those documents to owners, prospective  
20 purchasers and their prospective agents during normal business  
21 hours, upon payment to the managing agent of a reasonable charge  
22 to defray any administrative or duplicating costs. If the





1 project is not managed by a managing agent, the foregoing  
2 requirements shall be undertaken by a person or entity, if any,  
3 employed by the association of apartment owners, to whom this  
4 function is delegated.

5 **§514A-85 Records; examination; disposal.** (a) The  
6 managing agent or board of directors shall keep detailed,  
7 accurate records in chronological order, of the receipts and  
8 expenditures affecting the common elements, specifying and  
9 itemizing the maintenance and repair expenses of the common  
10 elements and any other expenses incurred. The managing agent or  
11 board of directors shall also keep monthly statements indicating  
12 the total current delinquent dollar amount of any unpaid  
13 assessments for common expenses.

14 (b) All records and the vouchers authorizing the payments  
15 and statements shall be kept and maintained at the address of  
16 the project, or elsewhere within the State as determined by the  
17 board of directors.

18 (c) A managing agent employed or retained by one or more  
19 condominium associations may dispose of the records of any  
20 condominium association which are more than five years old  
21 without liability if the managing agent first provides the board  
22 of directors of the condominium association affected with



1 written notice of the managing agent's intent to dispose of the  
2 records if not retrieved by the board of directors within sixty  
3 days, which notice shall include an itemized list of the records  
4 which the managing agent intends to dispose of.

5 (d) No person shall knowingly make any false certificate,  
6 entry, or memorandum upon any of the books or records of any  
7 managing agent or association. No person shall knowingly alter,  
8 destroy, mutilate, or conceal any books or records of a managing  
9 agent or association.

10 **§514A-86 Insurance.** (a) The association of apartment  
11 owners shall purchase and at all times maintain insurance which  
12 covers the common elements and, whether or not part of the  
13 common elements, all exterior and interior walls, floors, and  
14 ceilings, in accordance with the as-built condominium plans and  
15 specifications, against loss or damage by fire sufficient to  
16 provide for the repair or replacement thereof in the event of  
17 such loss or damages. Flood insurance shall also be maintained  
18 if the property is located in a special flood hazard area as  
19 delineated on flood maps issued by the Federal Emergency  
20 Management Agency. The flood insurance policy shall comply with  
21 the requirements of the National Flood Insurance Program and the  
22 Federal Insurance Administration. Exterior glass may be insured



1 at the option of the association of apartment owners. The  
2 insurance coverage shall be written on the property in the name  
3 of the association of apartment owners. Premiums shall be  
4 common expenses. Provision for the insurance shall be without  
5 prejudice to the right of each apartment owner to insure the  
6 owner's own apartment for the owner's benefit.

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

11 (c) Any insurance policy providing the coverage required  
12 by subsections (a) and (b) shall contain a provision requiring  
13 the insurance carrier, at the inception of the policy and on  
14 each anniversary date thereof, to provide the board of directors  
15 with a written summary, in layperson's terms, of the policy.  
16 The summary shall include the type of policy, a description of  
17 the coverage and the limits thereof, amount of annual premium,  
18 and renewal dates. The board of directors shall provide this  
19 information to each apartment owner.

20 **§514A-87 Personal application.** (a) All apartment owners,  
21 tenants of such owners, employees of owners and tenants, or any  
22 other persons that may in any manner use property or any part



1 thereof submitted to this chapter are subject to this chapter  
2 and to the declaration and bylaws of the association of  
3 apartment owners adopted pursuant to this chapter.

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

8 **§514A-88 Compliance with covenants, bylaws, and**  
9 **administrative provisions.** Each apartment owner, tenants and  
10 employees of an owner, and other persons using the property  
11 shall comply strictly with the bylaws and with the  
12 administrative rules and regulations adopted pursuant thereto,  
13 as either of the same may be lawfully amended from time to time,  
14 and with the covenants, conditions, and restrictions set forth  
15 in the declaration. Failure to comply with any of the same  
16 shall be ground for an action to recover sums due, for damages  
17 or injunctive relief, or both, maintainable by the manager or  
18 board of directors on behalf of the association of apartment  
19 owners or, in a proper case, by an aggrieved apartment owner.

20 **§514A-89 Certain work prohibited.** (a) No apartment owner  
21 shall do any work that could jeopardize the soundness or safety



1 of the property, reduce the value thereof, or impair any  
2 easement or hereditament.

3 (b) No apartment owner shall add any material structure or  
4 excavate any additional basement or cellar, without first  
5 obtaining in every such case the consent of seventy-five per  
6 cent of the apartment owners, together with the consent of all  
7 apartment owners whose apartments or limited common elements  
8 appurtenant thereto are directly affected.

9 (c) Nonmaterial structural additions to the common  
10 elements, including, without limitation, additions to or  
11 alterations of an apartment made within the apartment or within  
12 a limited common element appurtenant to and for the exclusive  
13 use of the apartment shall require approval only by the board of  
14 directors of the association of apartment owners and such  
15 percentage, number, or group of apartment owners as may be  
16 required by the declaration or bylaws; provided that the  
17 installation of solar energy devices shall be allowed on  
18 single-family residential dwellings or townhouses pursuant to  
19 section 196-7.

20 As used in this section:

21 "Nonmaterial structural additions to the common elements",  
22 means a structural addition to the common elements that does not



1 jeopardize the soundness or safety of the property, reduce the  
2 value thereof, impair any easement or hereditament, detract from  
3 the appearance of the project, interfere with or deprive any  
4 nonconsenting owner of the use or enjoyment of any part of  
5 property, or directly affect any nonconsenting owner.

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

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

18 **§514A-90 Priority of lien.** (a) All sums assessed by the  
19 association of apartment owners but unpaid for the share of the  
20 common expenses chargeable to any apartment constitute a lien on  
21 the apartment prior to all other liens, except:



- 1           (1) Liens for taxes and assessments lawfully imposed by  
2                   governmental authority against the apartment; and
- 3           (2) All sums unpaid on any mortgage of record that was  
4                   recorded prior to the recordation of a notice of a  
5                   lien by the association of apartment owners, and costs  
6                   and expenses including attorneys' fees provided in  
7                   such mortgages.

8   The lien of the association of apartment owners may be  
9   foreclosed by action or by nonjudicial or power of sale  
10   foreclosure procedures set forth in chapter 667, by the managing  
11   agent or board of directors, acting on behalf of the association  
12   of apartment owners, in like manner as a mortgage of real  
13   property. In any such foreclosure the apartment owner shall be  
14   required to pay a reasonable rental for the apartment, if so  
15   provided in the bylaws, and the plaintiff in the foreclosure  
16   shall be entitled to the appointment of a receiver to collect  
17   the rental owed. The managing agent or board of directors,  
18   acting on behalf of the association of apartment owners, unless  
19   prohibited by the declaration, may bid on the apartment at  
20   foreclosure sale, and acquire and hold, lease, mortgage, and  
21   convey the apartment. Action to recover a money judgment for



1 unpaid common expenses shall be maintainable without foreclosing  
2 or waiving the lien securing the unpaid common expenses owed.

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

- 18 (1) Thirty-six days after the order confirming the sale to  
19 the purchaser has been filed with the court;
- 20 (2) Sixty days after the hearing at which the court grants  
21 the motion to confirm the sale to the purchaser;





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

20          (c) No apartment owner shall withhold any assessment  
21          claimed by the association. An apartment owner who disputes the



1 amount of an assessment may request a written statement clearly  
2 indicating:

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

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



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

21 (e) As an alternative to foreclosure proceedings under  
22 subsection (a), where an apartment is owner-occupied, the



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

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

16 (g) Subject to this subsection, and subsections (h) and  
17 (i), the board of an association of apartment owners may  
18 specially assess the amount of the unpaid regular monthly common  
19 assessments for common area expenses against a person who, in a  
20 judicial or nonjudicial power of sale foreclosure, purchases a  
21 delinquent apartment; provided that:



- 1           (1) A purchaser who holds a mortgage on a delinquent  
2           apartment that was recorded prior to the filing of a  
3           notice of lien by the association of apartment owners  
4           and who acquires the delinquent apartment through a  
5           judicial or nonjudicial foreclosure proceeding,  
6           including purchasing the delinquent apartment at a  
7           foreclosure auction, shall not be obligated to make,  
8           nor be liable for, payment of the special assessment  
9           as provided for under this subsection; and
- 10          (2) A person who subsequently purchases the delinquent  
11          apartment from the mortgagee referred to in paragraph  
12          (1) shall be obligated to make, and shall be liable  
13          for, payment of the special assessment provided for  
14          under this subsection; provided that the mortgagee or  
15          subsequent purchaser may require the association of  
16          apartment owners to provide at no charge a notice of  
17          the association's intent to claim a lien against the  
18          delinquent apartment for the amount of the special  
19          assessment, prior to the subsequent purchaser's  
20          acquisition of title to the delinquent apartment. The  
21          notice shall state the amount of the special



1 assessment, how that amount was calculated, and the  
2 legal description of the apartment.

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

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

11 (1) "Completion" means:

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

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

18 (2) "Regular monthly common assessments" shall not  
19 include:

20 (A) Any other special assessment, except for a  
21 special assessment imposed on all apartments as



- 1 part of a budget adopted pursuant to section
- 2 514A-83.6;
- 3 (B) Late charges, fines, or penalties;
- 4 (C) Interest assessed by the association of apartment
- 5 owners;
- 6 (D) Any lien arising out of the assessment; or
- 7 (E) Any fees or costs related to the collection or
- 8 enforcement of the assessment, including
- 9 attorneys' fees and court costs.

10 **§514A-90.5 Unpaid common expenses; collection from**  
11 **tenants.** (a) If the owner of an apartment rents or leases the  
12 apartment and is in default for thirty days or more in the  
13 payment of the apartment's share of the common expenses, the  
14 board of directors, for as long as the default continues, may  
15 demand in writing and receive each month from any tenant  
16 occupying the apartment, an amount sufficient to pay all sums  
17 due from the apartment owner to the association, including  
18 interest, if any, but the amount shall not exceed the tenant's  
19 rent due each month. The tenant's payment under this section  
20 shall discharge that amount of payment from the tenant's rent  
21 obligation, and any contractual provision to the contrary shall  
22 be void as a matter of law.



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

- 5 (1) Be sent both by first-class and certified mail;  
6 (2) Set forth the exact amount the association claims is  
7 due and owing by the apartment owner; and  
8 (3) Indicate the intent of the board of directors to  
9 collect such amount from the rent, along with any  
10 other amounts that become due and remain unpaid.

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

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

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

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





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

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

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

14 (g) Before the board of directors may take the actions  
15 permitted under subsection (a), the board must adopt a written  
16 policy providing for the actions and have the policy approved by  
17 a majority vote of the apartment owners at an annual or special  
18 meeting of the association or by the written consent of a  
19 majority of the apartment owners.

20 **§514A-90.6 Lease rent renegotiation.** (a) Notwithstanding  
21 any provision in the declaration or bylaws of any property  
22 subject to this chapter, any lease or sublease of the property



1 or of an apartment, or an undivided interest in the land to an  
2 apartment owner, whenever any lease or sublease of the property,  
3 an apartment, or an undivided interest in the land to an  
4 apartment owner provides for the periodic renegotiation of lease  
5 rent thereunder, the association of apartment owners shall  
6 represent the apartment owners in all negotiations and  
7 proceedings, including but not limited to appraisal or  
8 arbitration, for the determination of lease rent as a common  
9 expense of the association.

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

20 **§514A-91 Joint and several liability of grantor and**  
21 **grantee for unpaid common expenses.** In a voluntary conveyance  
22 the grantee of an apartment is jointly and severally liable with



1 the grantor for all unpaid assessments against the latter for  
2 the grantor's share of the common expenses up to the time of the  
3 grant or conveyance, without prejudice to the grantee's right to  
4 recover from the grantor the amounts paid by the grantee  
5 therefor. However, any such grantor or grantee is entitled to a  
6 statement from the manager or board of directors setting forth  
7 the amount of the unpaid assessments against the grantor, and  
8 except as to the amount of subsequently dishonored checks  
9 mentioned in such statement as having been received within the  
10 thirty-day period immediately preceding the date of such  
11 statement, the grantee is not liable for, nor is the apartment  
12 conveyed subject to a lien for, any unpaid assessments against  
13 the grantor in excess of the amount therein set forth.

14 **§514A-92 Waiver of use of common elements; abandonment of**  
15 **apartment; conveyance to board of directors.** No apartment owner  
16 may exempt the owner's from liability for the owner's  
17 contribution towards the common expenses by waiver of the use or  
18 enjoyment of any of the common elements or by abandonment of the  
19 owner's apartment. Subject to such terms and conditions as may  
20 be specified in the bylaws, any apartment owner, by conveying  
21 the owner's apartment and common interest to the board of



1 directors on behalf of all other apartment owners, may exempt  
2 the owner's from common expenses thereafter accruing.

3       **§514A-92.1 Designation of additional areas.** Designation  
4 of additional areas to be common elements or subject to common  
5 expenses after the initial filing of the bylaws or declaration  
6 shall require the approval of ninety per cent of the apartment  
7 owners; provided that if the developer discloses to the initial  
8 buyer in writing that additional areas will be designated as  
9 common elements pursuant to an incremental or phased project,  
10 this requirement shall not apply as to those additional areas.

11       **§514A-92.2 Notification of maintenance fee increases.** The  
12 manager or board of directors shall notify the apartment owners  
13 in writing of maintenance fee increases at least thirty days  
14 prior to such an increase.

15       **§514A-92.5 Association of apartment owners; prior written**  
16 **notice of assessment of the cost of providing information.** No  
17 apartment owner who requests legal or other information from the  
18 association of apartment owners, the board of directors, the  
19 managing agent, or their employees or agents, shall be charged  
20 for the cost of providing the information unless the association  
21 notifies the apartment owner that it intends to charge the  
22 apartment owner for the cost. The association shall notify the



1 apartment owner in writing at least ten days prior to incurring  
2 the cost of providing the information, except that no prior  
3 notice shall be required to assess the cost of providing  
4 information on delinquent assessments or in connection with  
5 proceedings to enforce the law or the association's governing  
6 documents.

7 After being notified of the cost of providing the  
8 information, the apartment owner may withdraw the request, in  
9 writing. An apartment owner who withdraws a request for  
10 information shall not be charged for the cost of providing the  
11 information.

12 **§514A-93 Actions.** Without limiting the rights of any  
13 apartment owner, actions may be brought by the manager or board  
14 of directors, in either case in the discretion of the board of  
15 directors on behalf of two or more of the apartment owners, as  
16 their respective interests may appear, with respect to any cause  
17 of action relating to the common elements or more than one  
18 apartment. Service of process on two or more apartment owners  
19 in any action relating to the common elements or more than one  
20 apartment may be made on the person designated in the  
21 declaration to receive service of process.



1           **§514A-93.5 Disposition of unclaimed possessions.** (a)

2 When personalty in or on the common elements of a project has  
3 been abandoned, the board of directors may sell the personalty  
4 in a commercially reasonable manner, store such personalty at  
5 the expense of its owner, donate such personalty to a charitable  
6 organization, or otherwise dispose of such personalty in its  
7 sole discretion; provided that no such sale, storage, or  
8 donation shall occur until sixty days after the board complies  
9 with the following:

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

11                   (A) The identity and location of the personalty, and

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

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

20           (2) If the identity or address of the owner is unknown,  
21           the board of directors shall first advertise the sale,  
22           donation, or disposition at least once in a daily



1 paper of general circulation within the circuit in  
2 which the personalty is located.

3 (b) The proceeds of any sale or disposition of personalty  
4 under subsection (a), after deduction of any accrued costs of  
5 mailing, advertising, storage, and sale, shall be held for the  
6 owner for thirty days. Any proceeds not claimed within this  
7 period shall become the property of the association of apartment  
8 owners.

9 **§514A-94 Attorneys' fees, delinquent assessments, and**  
10 **expenses of enforcement.** (a) All costs and expenses, including  
11 reasonable attorneys' fees, incurred by or on behalf of the  
12 association for:

13 (1) Collecting any delinquent assessments against any  
14 owner's apartment;

15 (2) Foreclosing any lien thereon; or

16 (3) Enforcing any provision of the declaration, bylaws,  
17 house rules, and the Condominium Property Act; or the  
18 rules of the real estate commission;

19 against an owner, occupant, tenant, employee of an owner, or any  
20 other person who in any manner may use the property shall be  
21 promptly paid on demand to the association by such person or  
22 persons; provided that if the claims upon which the association



1 takes any action are not substantiated, all costs and expenses,  
2 including reasonable attorneys' fees, incurred by any such  
3 person or persons as a result of the action of the association,  
4 shall be promptly paid on demand to such person or persons by  
5 the association.

6 (b) If any claim by an owner is substantiated in any  
7 action against an association, any of its officers or directors,  
8 or its board of directors to enforce any provision of the  
9 declaration, bylaws, house rules, or this chapter, then all  
10 reasonable and necessary expenses, costs, and attorneys' fees  
11 incurred by an owner shall be awarded to such owner; provided  
12 that no such award shall be made in any derivative action  
13 unless:

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

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

20 If any claim by an owner is not substantiated in any court  
21 action against an association, any of its officers or directors,  
22 or its board of directors to enforce any provision of the





1 declaration, bylaws, house rules, or this chapter, then all  
2 reasonable and necessary expenses, costs, and attorneys' fees  
3 incurred by an association shall be awarded to the association,  
4 unless the action was filed in small claims court or prior to  
5 filing the action in a higher court the owner has first  
6 submitted the claim to mediation, or to arbitration under part  
7 VII of this chapter, and made a good faith effort to resolve the  
8 dispute under any of those procedures.

9 (c) Anyone contracted by the association of apartment  
10 owners to collect delinquent assessments against any owner's  
11 apartment shall not share in any portion of any penalties or  
12 late charges collected.

13 **§514A-95 Managing agents.** (a) Every managing agent shall:

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

18 (2) Register with the commission prior to conducting  
19 managing agent activity through approval of a  
20 completed registration application, payment of fees,  
21 and submission of any other additional information set  
22 forth by the commission. The registration shall be



1 for a biennial period with termination on December 31  
2 of an even-numbered year. The commission shall  
3 prescribe a deadline date prior to the termination  
4 date for the submission of a completed reregistration  
5 application, payment of fees, and any other additional  
6 information set forth by the commission. Any managing  
7 agent who has not met the submission requirements by  
8 the deadline date shall be considered a new applicant  
9 for registration and subject to initial registration  
10 requirements. The information required to be  
11 submitted with any application shall include the name,  
12 business address, phone number, and names of  
13 association of apartment owners managed;

- 14 (3) Obtain and keep current a fidelity bond in an amount  
15 equal to \$500 multiplied by the aggregate number of  
16 apartments of the association of apartment owners  
17 managed by the managing agent; provided that the  
18 amount of the fidelity bond shall not be less than  
19 \$20,000 nor greater than \$100,000. Upon request by  
20 the commission, the managing agent shall provide  
21 evidence of a current fidelity bond or a certification  
22 statement from an insurance company authorized by the



1 insurance division of the department of commerce and  
2 consumer affairs certifying that the fidelity bond is  
3 in effect and meets the requirement of this section  
4 and the rules adopted by the commission. The managing  
5 agent shall permit only employees covered by the  
6 fidelity bond to handle or have custody or control of  
7 any association of apartment owners funds, except any  
8 principals of the managing agent that cannot be  
9 covered by the fidelity bond. The fidelity bond shall  
10 protect the managing agent against the loss of any  
11 association of apartment owners' moneys, securities,  
12 or other properties caused by the fraudulent or  
13 dishonest acts of employees of the managing agent.  
14 Failure to obtain or maintain a fidelity bond in  
15 compliance with this chapter and the rules adopted  
16 pursuant thereto, including failure to provide  
17 evidence of the fidelity bond coverage in a timely  
18 manner to the commission, shall result in non-  
19 registration or the automatic termination of the  
20 registration, unless an approved exemption or a bond  
21 alternative is presently maintained. A managing agent  
22 who is unable to obtain a fidelity bond may seek an



1 exemption from the fidelity bond requirement from the  
2 commission. The commission shall adopt rules  
3 establishing the conditions and terms by which it may  
4 grant an exemption or a bond alternative, or permit  
5 deductibles;

- 6 (4) Act promptly and diligently to recover from the  
7 fidelity bond, if the fraud or dishonesty of the  
8 managing agent's employees causes a loss to an  
9 association of apartment owners, and apply the  
10 fidelity bond proceeds, if any, to reduce the  
11 association of apartment owners' loss. If more than  
12 one association of apartment owners suffers a loss,  
13 the managing agent shall divide the proceeds among the  
14 associations of apartment owners in proportion to each  
15 association of apartment owners' loss. An association  
16 of apartment owners may request a court order  
17 requiring the managing agent to act promptly and  
18 diligently to recover from the fidelity bond. If an  
19 association of apartment owners cannot recover its  
20 loss from the fidelity bond proceeds of the managing  
21 agent, the association of apartment owners may recover



1 by court order from the real estate recovery fund  
2 established under section 467-16, provided that:

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

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

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

11 (5) Pay a nonrefundable application fee and, upon  
12 approval, an initial registration fee, and  
13 subsequently pay a reregistration fee, as prescribed  
14 by rules adopted by the director of commerce and  
15 consumer affairs pursuant to chapter 91. A compliance  
16 resolution fee shall also be paid pursuant to section  
17 26-9(o) and the rules adopted pursuant thereto; and

18 (6) Report immediately in writing to the commission any  
19 changes to the information contained on the  
20 registration application or any other documents  
21 provided for registration. Failure to do so may



1 result in termination of registration and subject the  
2 managing agent to initial registration requirements.

3 (b) The commission may deny any registration or  
4 reregistration application or terminate a registration without  
5 hearing if the fidelity bond and its evidence fail to meet the  
6 requirements of this chapter and the rules adopted pursuant  
7 thereto.

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

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

13 **§514A-95.1 Association of apartment owners registration;**  
14 **fidelity bond.** (a) Each condominium project or association of  
15 apartment owners having six or more apartments shall:

16 (1) Secure a fidelity bond in an amount equal to \$500  
17 multiplied by the number of apartments, to cover all  
18 officers, directors, employees, and managing agents of  
19 the association of apartment owners who handle,  
20 control, or have custody of the funds of the  
21 association of apartment owners; provided that the  
22 amount of the fidelity bond required by this



1 subsection shall not be less than \$20,000 nor greater  
2 than \$100,000. The fidelity bond shall protect the  
3 association of apartment owners against fraudulent or  
4 dishonest acts by persons, including any managing  
5 agent, handling the funds of the association of  
6 apartment owners. An association of apartment owners  
7 shall act promptly and diligently to recover from the  
8 fidelity bond required by this section. An  
9 association of apartment owners that is unable to  
10 obtain a fidelity bond may seek approval for an  
11 exemption or a bond alternative from the commission.  
12 The commission shall adopt rules establishing the  
13 conditions and terms for which it may grant an  
14 exemption or a bond alternative, or permit  
15 deductibles. Failure to obtain or maintain a fidelity  
16 bond in compliance with this chapter and the rules  
17 adopted pursuant thereto, including failure to provide  
18 current evidence of the fidelity bond coverage in a  
19 timely manner to the commission, shall result in non-  
20 registration or the automatic termination of the  
21 registration, unless an approved exemption or a bond  
22 alternative is presently maintained. Current evidence



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

- 7 (2) Register with the commission through approval of a  
8 completed registration application, payment of fees,  
9 and submission of any other additional information set  
10 forth by the commission. Beginning June 30, 1997, the  
11 registration shall be for a biennial period with  
12 termination on June 30 of an odd-numbered year. The  
13 commission shall prescribe a deadline date prior to  
14 the termination date for the submission of a completed  
15 reregistration application, payment of fees, and any  
16 other additional information set forth by the  
17 commission. Any condominium project or association of  
18 apartment owners that has not met the submission  
19 requirements by the deadline date shall be considered  
20 a new applicant for registration and subject to  
21 initial registration requirements. Any new  
22 condominium project or association of apartment owners





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



- 1           (3) Pay a nonrefundable application fee and, upon  
2           approval, an initial registration fee and subsequently  
3           pay a reregistration fee, and the condominium  
4           management education fund fee, as provided in rules  
5           adopted by the director of commerce and consumer  
6           affairs pursuant to chapter 91;
- 7           (4) Register or reregister and pay the required fees by  
8           the due date. Failure to register or reregister or  
9           pay the required fees by the due date shall result in  
10          the assessment of a penalty equal to the amount of the  
11          registration or reregistration fee; and
- 12          (5) Report immediately in writing to the commission any  
13          changes to the information contained on the  
14          registration or reregistration application, the  
15          evidence of the fidelity bond, or any other documents  
16          set forth by the commission. Failure to do so may  
17          result in termination of registration and subject the  
18          condominium project or the association of apartment  
19          owners to initial registration requirements.
- 20          (b) The commission may reject or terminate any  
21          registration submitted by a condominium project or an  
22          association of apartment owners that fails to comply with this



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

11 **§514A-96 Board of directors, audits, audited financial**  
12 **statement, transmittal.** (a) The association of apartment  
13 owners shall require an annual audit of the association  
14 financial accounts and no less than one annual unannounced  
15 verification of the association's cash balance by a public  
16 accountant; provided that if the association is comprised of  
17 less than twenty owners, the annual audit and the annual  
18 unannounced cash balance verification may be waived by a  
19 majority vote of all apartment owners taken at an association  
20 meeting.

21 (b) The board of directors of the association shall make  
22 available a copy of the annual audit to each apartment owner at



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

- 9 (1) An unaudited year end financial statement for the  
10 fiscal year to each apartment owner at least thirty  
11 days prior to the annual meeting; and  
12 (2) The annual audit to all owners at the annual meeting,  
13 or as soon as the audit is completed, whichever occurs  
14 later.

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

21 **§514A-97 Association of apartment owners funds; handling**  
22 **and disbursement.** (a) The funds in the general operating



1 account of the association of apartment owners shall not be  
2 commingled with funds of other activities such as lease rent  
3 collections and rental operations, nor shall a managing agent  
4 commingle any association funds with the managing agent's own  
5 funds.

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

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

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

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



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

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

- 7 (1) Deposited in a financial institution, including a  
8 federal or community credit union, located in the  
9 State and whose deposits are insured by an agency of  
10 the United States government;
- 11 (2) Held by a corporation authorized to do business under  
12 article 8 of chapter 412;
- 13 (3) Held by the United States Treasury; or
- 14 (4) Purchased in the name of and held for the benefit of  
15 the association through a securities broker that is  
16 registered with the Securities and Exchange  
17 Commission, has an office in the State, and the  
18 accounts of which are held by member firms of the New  
19 York Stock Exchange or National Association of  
20 Securities Dealers and insured by the Securities  
21 Insurance Protection Corporation.



- 1 (d) All funds collected by an association, or by a  
2 managing agent for any association, shall be invested only in:
- 3 (1) Demand deposits, investment certificates, and  
4 certificates of deposit;
- 5 (2) Obligations of the United States government, the State  
6 of Hawaii, or their respective agencies; provided that  
7 those obligations shall have stated maturity dates no  
8 more than ten years after the purchase date unless  
9 approved otherwise by a majority vote of the apartment  
10 owners at an annual or special meeting of the  
11 association or by written consent of a majority of the  
12 apartment owners; or
- 13 (3) Mutual funds comprised solely of investments in the  
14 obligations of the United States government, the State  
15 of Hawaii, or their respective agencies; provided that  
16 those obligations shall have stated maturity dates no  
17 more than ten years after the purchase date unless  
18 approved otherwise by a majority vote of the apartment  
19 owners at an annual or special meeting of the  
20 association or by written consent of a majority of the  
21 apartment owners;



1 provided that before any investment longer than one year is made  
2 by an association, the board must approve the action; and  
3 provided further that the board must clearly disclose to owners  
4 all investments longer than one year at each year's association  
5 annual meeting.

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

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

20 (f) A managing agent shall keep and disburse funds  
21 collected on behalf of the condominium owners in strict  
22 compliance with any agreement made with the condominium owners,





1 chapter 467, the rules of the commission, and all other  
2 applicable laws.

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

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

14 **§514A-99 Rules.** The commission shall adopt, amend, or  
15 repeal such rules as it may deem proper to fully effectuate this  
16 chapter.

17 **PART VII. ARBITRATION; MEDIATION**

18 **§514A-121 Arbitration of disputes.** (a) At the request of  
19 any party, any dispute concerning or involving one or more  
20 apartment owners and an association of apartment owners, its  
21 board of directors, managing agent, or one or more other  
22 apartment owners relating to the interpretation, application, or



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



1 accordance with the Hawaii rules of civil procedure then in  
2 effect.

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

- 5 (1) The real estate commission;
- 6 (2) The mortgagee of a mortgage of record;
- 7 (3) The developer, general contractor, subcontractors, or  
8 design professionals for the project; provided that  
9 when any person exempted by this paragraph is also an  
10 apartment owner, a director, or managing agent, such  
11 person, in those capacities, shall be subject to  
12 subsection (a);
- 13 (4) Actions seeking equitable relief involving threatened  
14 property damage or the health or safety of apartment  
15 owners or any other person;
- 16 (5) Actions to collect assessments which are liens or  
17 subject to foreclosure; provided that an apartment  
18 owner who pays the full amount of an assessment and  
19 fulfills the requirements of section 514A-90(d) shall  
20 have the right to demand arbitration of the owner's  
21 dispute, including a dispute about the amount and  
22 validity of the assessment;



- 1 (6) Personal injury claims;
- 2 (7) Actions for amounts in excess of \$2,500 against an  
3 association of apartment owners, a board of directors,  
4 or one or more directors, officers, agents, employees,  
5 or other persons, if insurance coverage under a policy  
6 or policies procured by the association of apartment  
7 owners or its board of directors would be unavailable  
8 because action by arbitration was pursued; or
- 9 (8) Any other cases which are determined, as provided in  
10 section 514A-122, to be unsuitable for disposition by  
11 arbitration.

12 **§514A-121.5 Mediation; condominium management dispute**  
13 **resolution; request for hearing; hearing.** (a) If an apartment  
14 owner or the board of directors requests mediation of a dispute  
15 involving the interpretation or enforcement of the association  
16 of apartment owners' declaration, bylaws, or house rules, or  
17 involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15,  
18 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2,  
19 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, or  
20 514A-92.5, the other party in the dispute shall be required to  
21 participate in mediation. Each party shall be wholly  
22 responsible for its own costs of participating in mediation;



1 unless at the end of the mediation process, both parties agree  
2 that one party shall pay all or a specified portion of the  
3 mediation costs. If an apartment owner or the board of  
4 directors refuses to participate in the mediation of a  
5 particular dispute, a court may take this refusal into  
6 consideration when awarding expenses, costs, and attorney's fees  
7 in accordance with section 514A-94.

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

- 14 (1) The party requesting the hearing must be a board of  
15 directors of a duly registered association of  
16 apartment owners, or an apartment owner that is a  
17 member of a duly registered association;
- 18 (2) The request for hearing must be filed within thirty  
19 days from the final day of mediation;
- 20 (3) The request for hearing must name one or more parties  
21 that participated in the mediation as an adverse party  
22 and identify the statutory provisions in dispute; and



1           (4) The subject matter of the hearing before the hearing  
2           officer may include any matter that was the subject of  
3           the mediation pursuant to subsection (a).

4           (c) For purposes of the this section, the office of  
5           administrative hearing for the department of commerce and  
6           consumer affairs shall accept no more than thirty requests for  
7           hearing per fiscal year under this section.

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

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



1 (f) Chapter 16-201, Hawaii Administrative Rules, shall  
2 govern all proceedings brought under this section. The burden  
3 of proof, including the burden of producing the evidence and the  
4 burden of persuasion, shall be upon the party initiating the  
5 proceeding. Proof of a matter shall be by a preponderance of  
6 the evidence.

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

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

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



1 (j) The department of commerce and consumer affairs may  
2 adopt rules and forms, pursuant to chapter 91, to effectuate  
3 this section.

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

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

- 12 (1) The magnitude of the potential award, or any issue of  
13 broad public concern raised by the subject matter  
14 underlying the dispute;
- 15 (2) Problems referred to the court where court regulated  
16 discovery is necessary;
- 17 (3) The fact that the matter in dispute is a reasonable or  
18 necessary issue to be resolved in pending litigation  
19 and involves other matters not covered by or related  
20 to chapter 514A;





1 (4) The fact that the matter to be arbitrated is only part  
2 of a dispute involving other parties or issues which  
3 are not subject to arbitration under section 514A-121;

4 (5) Any matters of dispute where disposition by  
5 arbitration, in the absence of complete judicial  
6 review, would not afford substantial justice to one or  
7 more of the parties.

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

13 **§514A-123 Determination of insurance coverage.** In the  
14 event of a dispute as to whether a claim shall be excluded from  
15 mandatory arbitration under section 514A-121(b)(7), any party to  
16 an arbitration may file a complaint for declaratory relief  
17 against the involved insurer or insurers for a determination of  
18 whether insurance coverage is unavailable due to the pursuit of  
19 action by arbitration. The complaint shall be filed with the  
20 circuit court in the judicial circuit in which the condominium  
21 is located. The insurer or insurers shall file an answer to the  
22 complaint within twenty days of the date of service of the



1 complaint and the issue shall be disposed of by the circuit  
2 court at a hearing to be held at the earliest available date;  
3 provided that the hearing shall not be held within twenty days  
4 from the date of service of the complaint upon the insurer or  
5 insurers.

6 **§514A-124 Costs, expenses, and legal fees.**

7 Notwithstanding any provision in this chapter to the contrary,  
8 the declaration or the bylaws, the award of any costs, expenses,  
9 and legal fees by the arbitrator shall be in the sole discretion  
10 of the arbitrator and the determination of costs, expenses, and  
11 legal fees shall be binding upon all parties.

12 **§514A-125 Award; confirming award.** The award of the  
13 arbitrator shall be in writing and acknowledged or proved in  
14 like manner as a deed for the conveyance of real estate, and  
15 shall be served by the arbitrator on each of the parties to the  
16 arbitration, personally or by registered or certified mail. At  
17 any time within one year after the award is made and served, any  
18 party to the arbitration may apply to the circuit court of the  
19 judicial circuit in which the condominium is located for an  
20 order confirming the award. The court shall grant the order  
21 confirming the award pursuant to section 658A-22, unless the  
22 award is vacated, modified, or corrected, as provided in



1 sections 658A-20, 658A-23, and 658A-24, or a trial de novo is  
2 demanded under section 514A-127, or the award is successfully  
3 appealed under section 514A-127. The record shall be filed with  
4 the motion to confirm award, and notice of the motion shall be  
5 served upon each other party or their respective attorneys in  
6 the manner required for service of notice of a motion.

7 **§514A-126 Findings of fact and conclusions of law.**

8 Findings of fact and conclusions of law, as requested by any  
9 party prior to the arbitration hearing, shall be promptly  
10 provided to the requesting party upon payment of the reasonable  
11 cost thereof.

12 **§514A-127 Trial de novo and appeal.** (a) The submission  
13 of any dispute to an arbitration under section 514A-121 shall in  
14 no way limit or abridge the right of any party to a trial de  
15 novo.

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

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



1 (d) In any trial de novo demanded under subsection (b), if  
2 the party demanding a trial de novo does not prevail at trial,  
3 the party demanding the trial de novo shall be charged with all  
4 reasonable costs, expenses, and attorneys' fees of the trial.  
5 When there is more than one party on one or both sides of an  
6 action, or more than one issue in dispute, the court shall  
7 allocate its award of costs, expenses, and attorneys' fees among  
8 the prevailing parties and tax such fees against those  
9 nonprevailing parties who demanded a trial de novo in accordance  
10 with the principles of equity.

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

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

18 **"§467-14 Revocation, suspension, and fine.** In addition to  
19 any other actions authorized by law, the commission may revoke  
20 any license issued under this chapter, suspend the right of the  
21 licensee to use the license, fine any person holding a license,  
22 registration, or certificate issued under this chapter, or



1 terminate any registration or certificate issued under this  
2 chapter, for any cause authorized by law, including but not  
3 limited to the following:

- 4 (1) Making any misrepresentation concerning any real  
5 estate transaction;
- 6 (2) Making any false promises concerning any real estate  
7 transaction of a character likely to mislead another;
- 8 (3) Pursuing a continued and flagrant course of  
9 misrepresentation, or making of false promises through  
10 advertising or otherwise;
- 11 (4) Without first having obtained the written consent to  
12 do so of both parties involved in any real estate  
13 transaction, acting for both the parties in connection  
14 with the transaction, or collecting or attempting to  
15 collect commissions or other compensation for the  
16 licensee's services from both of the parties;
- 17 (5) When the licensee, being a real estate salesperson,  
18 accepts any commission or other compensation for the  
19 performance of any of the acts enumerated in the  
20 definition set forth in section 467-1 of real estate  
21 salesperson from any person other than the real estate  
22 salesperson's employer or the real estate broker with



1 whom the real estate salesperson associates or, being  
2 a real estate broker or salesperson, compensates one  
3 not licensed under this chapter to perform any such  
4 act;

5 (6) When the licensee, being a real estate salesperson,  
6 acts or attempts to act as a real estate broker or  
7 represents, or attempts to represent, any real estate  
8 broker other than the real estate salesperson's  
9 employer or the real estate broker with whom the real  
10 estate salesperson is associated;

11 (7) Failing, within a reasonable time, to account for any  
12 moneys belonging to others which may be in the  
13 possession or under the control of the licensee;

14 (8) Any other conduct constituting fraudulent or dishonest  
15 dealings;

16 (9) When the licensee, being a partnership, permits any  
17 member of the partnership who does not hold a real  
18 estate broker's license to actively participate in the  
19 real estate brokerage business thereof or permits any  
20 employee thereof who does not hold a real estate  
21 salesperson's license to act as a real estate  
22 salesperson therefor;



- 1 (10) When the licensee, being a corporation, permits any  
2 officer or employee of the corporation who does not  
3 hold a real estate broker's license to have the direct  
4 management of the real estate brokerage business  
5 thereof or permits any officer or employee thereof who  
6 does not hold a real estate salesperson's license to  
7 act as a real estate salesperson therefor;
- 8 (11) When the licensee, being a real estate salesperson,  
9 fails to file with the commission a written statement  
10 setting forth the name of the real estate broker by  
11 whom the licensee is employed or with whom the  
12 licensee is associated;
- 13 (12) When the licensee fails to obtain on the contract  
14 between the parties to the real estate transaction  
15 confirmation of who the real estate broker represents;
- 16 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,  
17 or 515; section 516-71; or the rules adopted pursuant  
18 thereto;
- 19 (14) Splitting fees with or otherwise compensating others  
20 not licensed hereunder for referring business;  
21 provided that notwithstanding paragraph (5), a real  
22 estate broker may pay a commission to:



- 1 (A) A licensed real estate broker of another state,  
2 territory, or possession of the United States if  
3 that real estate broker does not conduct in this  
4 State any of the negotiations for which a  
5 commission is paid;
- 6 (B) A real estate broker lawfully engaged in real  
7 estate brokerage activity under the laws of a  
8 foreign country if that real estate broker does  
9 not conduct in this State any of the negotiations  
10 for which a commission is paid; or
- 11 (C) A travel agency that in the course of business as  
12 a travel agency or sales representative, arranges  
13 for compensation the rental of transient vacation  
14 rental; provided that for purposes of this  
15 paragraph "travel agency" means any person, which  
16 for compensation or other consideration, acts or  
17 attempts to act as an intermediary between a  
18 person seeking to purchase travel services and  
19 any person seeking to sell travel services,  
20 including an air or ocean carrier;
- 21 (15) Commingling the money or other property of the  
22 licensee's principal with the licensee's own;





- 1 (16) Converting other people's moneys to the licensee's own  
2 use;
- 3 (17) The licensee is adjudicated insane or incompetent;
- 4 (18) Failing to ascertain and disclose all material facts  
5 concerning every property for which the licensee  
6 accepts the agency, so that the licensee may fulfill  
7 the licensee's obligation to avoid error,  
8 misrepresentation, or concealment of material facts;  
9 provided that for the purposes of this paragraph, the  
10 fact that an occupant has AIDS or AIDS Related Complex  
11 (ARC) or has been tested for HIV (human  
12 immunodeficiency virus) infection shall not be  
13 considered a material fact;
- 14 (19) When the licensee obtains or causes to be obtained,  
15 directly or indirectly, any licensing examination or  
16 licensing examination question for the purpose of  
17 disseminating the information to future takers of the  
18 examination for the benefit or gain of the licensee;  
19 or
- 20 (20) Failure to maintain a reputation for or record of  
21 competency, honesty, truthfulness, financial  
22 integrity, and fair dealing.



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

4 SECTION 4. Section 514A-14.5, Hawaii Revised Statutes, is  
5 amended by amending subsection (c) to read as follows:

6 "(c) This section does not apply:

7 (1) To apartments developed under chapter [~~201G~~] 201H;

8 (2) To apartments in a mixed-use project developed under  
9 chapter 206E that has a shared parking program  
10 approved by the Hawaii community development  
11 authority; provided that such a program shall require  
12 the availability of the use of not less than one  
13 parking space per apartment; and

14 (3) To apartments designated in the declaration of  
15 condominium property regime for hotel, time share,  
16 transient vacation rental, or commercial use."

17 SECTION 5. Section 514A-108, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) This part shall not apply to a project developed  
20 pursuant to section 46-15 or 46-15.1, or chapter 53, [~~201G~~]  
21 201H, or 206; provided that the developer of the project may



1 elect to be subject to this part through a written notification  
2 to the commission."

3 SECTION 6. Section 514B-86, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

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

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

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



1 ~~document number or land court document number, or~~  
2 ~~both, as applicable; and], which shall be:~~

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

8 (ii) Printed copies unless the commission,  
9 prospective purchaser, or purchaser indicate  
10 in a separate writing their election to  
11 receive the required condominium's  
12 declaration, bylaws, house rules, if any,  
13 letter-sized condominium map, and all  
14 amendments through means of a computer disc,  
15 email, download from an Internet site or by  
16 any other means provided in chapter 489E.

17 Where it is impractical to include a letter-  
18 sized condominium map, the prospective  
19 purchaser or purchaser shall be provided a  
20 written notice of an opportunity to examine  
21 the map. The copy of the recorded  
22 declaration and bylaws creating the project



1                   shall indicate the document number or land  
2                   court document number, or both, as  
3                   applicable; and

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

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

16          SECTION 7. Section 514B-103, Hawaii Revised Statutes, is  
17          amended by amending subsection (a) to read as follows:

18          "(a) Each project or association having more than five  
19          units shall:

20          (1) Secure and maintain a fidelity bond in an amount for  
21          coverage and terms as required by section

22          514B-143(a)(3). An association shall act promptly and



1 diligently to recover from the fidelity bond required  
2 by this section. An association that is unable to  
3 obtain a fidelity bond may seek approval for an  
4 exemption, a deductible, or a bond alternative from  
5 the commission. Current evidence of a fidelity bond  
6 includes a certification statement from an insurance  
7 company registered with the department of commerce and  
8 consumer affairs certifying that the bond is in effect  
9 and meets the requirements of this section and the  
10 rules adopted by the commission;

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



1 a new applicant for registration and be subject to  
2 initial registration requirements. Any new project or  
3 association shall register within thirty days of the  
4 association's first meeting. If the association has  
5 not held its first meeting and it is at least one year  
6 after the recordation of the purchase of the first  
7 unit in the project, the developer or developer's  
8 affiliate or the managing agent shall register on  
9 behalf of the association and shall comply with this  
10 section, except for the fidelity bond requirement for  
11 associations required by section 514B-143(a)(3). The  
12 public information required to be submitted on any  
13 completed application form shall include but not be  
14 limited to evidence of and information on fidelity  
15 bond coverage, names and positions of the officers of  
16 the association, the name of the association's  
17 managing agent, if any, the street and the postal  
18 address of the condominium, and the name and current  
19 mailing address of a designated officer of the  
20 association where the officer can be contacted  
21 directly;



1       ~~[(+2)]~~ (3) Pay a nonrefundable application fee and, upon  
2           approval, an initial registration fee, a  
3           reregistration fee upon reregistration and the  
4           condominium education trust fund fee, as provided in  
5           rules adopted by the director of commerce and consumer  
6           affairs pursuant to chapter 91;

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

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

19           SECTION 8. Act 164, Session Laws of Hawaii 2004, as  
20    amended by Act 93, Session Laws of Hawaii 2005, as amended by  
21    Act 273, Session Laws of Hawaii 2006, is amended by amending  
22    section 26 to read as follows:





1       "~~SECTION 26. Parts I, V, and VII of chapter 514A, Hawaii~~  
2 ~~Revised Statutes, are repealed.~~"

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

5       "(b) The developer of a project created or registered  
6 pursuant to chapter 514A, Hawaii Revised Statutes, may elect to  
7 register the project under the new chapter established by  
8 section 2 of Act 164, Session Laws of Hawaii 2004, as amended by  
9 this Act, by submitting the application, documentation, and fees  
10 required under sections [~~—52~~] 514B-52 and [~~—54,~~] 514B-54,  
11 Hawaii Revised Statutes, in section 3 of this Act~~[-]~~; provided  
12 that the property is removed from chapter 514A, Hawaii Revised  
13 Statutes, in accordance with section 514A-21, Hawaii Revised  
14 Statutes. Upon the issuance of an effective date for the  
15 project's public report pursuant to the new chapter, the  
16 project's registration under chapter 514A, Hawaii Revised  
17 Statutes, shall terminate, the developer shall provide copies of  
18 the new public report to all existing purchasers, and the rights  
19 and obligations of the developer and all purchasers shall  
20 thereafter be governed by the new chapter; provided that unless  
21 the new public report reflects a material change to the project:



- 1           (1) The issuance of the new public report shall not affect
- 2           the enforceability of any purchase contract that
- 3           previously became binding upon the purchaser;
- 4           (2) A purchaser shall have no right to rescind the
- 5           purchase contract; and
- 6           (3) A developer shall not be required to deliver a notice
- 7           of thirty-day right of cancellation as specified in
- 8           section [~~—86,~~] 514B-86, Hawaii Revised Statutes, in
- 9           section 4 of this Act."

10           SECTION 10. Where an association is unable to obtain a

11 fidelity bond as required in section 514B-103, Hawaii Revised

12 Statutes, the real estate commission's policy on bond exemption

13 shall be followed until such time as the real estate commission

14 adopts rules to effectuate section 514B-103, Hawaii Revised

15 Statutes.

16           SECTION 11. This Act does not affect rights and duties

17 that matured, penalties that were incurred, and proceedings that

18 were begun, before its effective date.

19           SECTION 12. Statutory material to be repealed is bracketed

20 and stricken. New statutory material is underscored.



1 SECTION 13. This Act shall take effect upon its approval;  
2 provided that sections 2 and 8 shall take effect on June 30,  
3 2007.



**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. (SD1)

