

JAN 19 2007

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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. Chapter 514A, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§514A-       Limited common elements. Subject to sections  
5 514A-11 and 514A-13, if the association amends the declaration  
6 or bylaws to amend or add any provision dealing with limited  
7 common elements, the association shall include the provisions of  
8 section 514B-39 as a part of the amended declaration or bylaws."

9           SECTION 2. Section 514B-39, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "~~{}~~§514B-39~~{}~~ Limited common elements. If the  
12 declaration designates any portion of the common elements as  
13 limited common elements, those limited common elements shall be  
14 subject to the exclusive use of the owner or owners of the unit  
15 or units to which they are appurtenant, subject to the  
16 provisions of the declaration and bylaws. No amendment of the  
17 declaration affecting any of the limited common elements shall



1 be effective without the consent of the owner or owners of the  
2 unit or units to which the limited common elements are  
3 appurtenant. The association shall regulate the use,  
4 maintenance, repair, replacement, and modification of the  
5 limited common elements."

6 SECTION 3. Section 514B-104, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

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

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



1 actions under chapter 480, associations shall be  
2 deemed to be "consumers";  
3 (5) Make contracts and incur liabilities;  
4 ~~[(6) Regulate the use, maintenance, repair, replacement,~~  
5 ~~and modification of common elements;~~  
6 ~~-(7)] (6) Cause additional improvements to be made as a  
7 part of the common elements;  
8 ~~[-(8)] (7) Acquire, hold, encumber, and convey in its own~~  
9 name any right, title, or interest to real or personal  
10 property; provided that:  
11 (A) Designation of additional areas to be common  
12 elements or subject to common expenses after the  
13 initial filing of the declaration or bylaws shall  
14 require the approval of at least sixty-seven per  
15 cent of the unit owners;  
16 (B) If the developer discloses to the initial buyer  
17 in writing that additional areas will be  
18 designated as common elements whether pursuant to  
19 an incremental or phased project or otherwise,  
20 the requirements of this paragraph shall not  
21 apply as to those additional areas; and~~



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

5 [~~9~~] (8) Subject to section 514B-38, grant easements,  
6 leases, licenses, and concessions through or over the  
7 common elements and permit encroachments on the common  
8 elements;

9 [~~10~~] (9) Impose and receive any payments, fees, or charges  
10 for the use, rental, or operation of the common  
11 elements, other than limited common elements described  
12 in section 514B-35(2) and (4), and for services  
13 provided to unit owners;

14 [~~11~~] (10) Impose charges and penalties, including late  
15 fees and interest, for late payment of assessments and  
16 levy reasonable fines for violations of the  
17 declaration, bylaws, rules, and regulations of the  
18 association, either in accordance with the bylaws or,  
19 if the bylaws are silent, pursuant to a resolution  
20 adopted by the board that establishes a fining  
21 procedure that states the basis for the fine and  
22 allows an appeal to the board of the fine with notice

1 and an opportunity to be heard and providing that if  
2 the fine is paid, the unit owner [~~shall have the right~~  
3 ~~to~~] may initiate a dispute resolution process as  
4 provided by sections 514B-161[7] and 514B-162, or by  
5 filing a request for an administrative hearing under a  
6 pilot program administered by the department of  
7 commerce and consumer affairs;

8 [~~(12)~~] (11) Impose reasonable charges for the preparation  
9 and recordation of amendments to the declaration,  
10 documents requested for resale of units, or statements  
11 of unpaid assessments;

12 [~~(13)~~] (12) Provide for cumulative voting through a  
13 provision in the bylaws;

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

17 [~~(15)~~] (14) Assign its right to future income, including the  
18 right to receive common expense assessments, but only  
19 to the extent section 514B-105(e) expressly so  
20 provides;

21 [~~(16)~~] (15) Exercise any other powers conferred by the  
22 declaration or bylaws;



1        [~~(17)~~] (16) Exercise all other powers that may be exercised  
2                    in this State by legal entities of the same type as  
3                    the association, except to the extent inconsistent  
4                    with this chapter;

5        [~~(18)~~] (17) Exercise any other powers necessary and proper  
6                    for the governance and operation of the association;  
7                    and

8        [~~(19)~~] (18) By regulation, subject to sections 514B-146,  
9                    514B-161, and 514B-162, require that disputes between  
10                   the board and unit owners or between two or more unit  
11                   owners regarding the condominium be submitted to  
12                   nonbinding alternative dispute resolution in the  
13                   manner described in the regulation as a prerequisite  
14                   to commencement of a judicial proceeding."

15        SECTION 4. For condominiums created between July 1, 2006,  
16                   and the effective date of this Act, and subject to section  
17                   514B-109, Hawaii Revised Statutes, if the association of  
18                   apartment owners amends the declaration or bylaws to amend or  
19                   add any provision dealing with limited common elements, the  
20                   association shall include the provisions of section 514B-39,  
21                   Hawaii Revised Statutes, as a part of the amended declaration or  
22                   bylaws.



# S.B. NO. 234

1           SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 6. This Act shall take effect on July 1, 2007.

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INTRODUCED BY: *Shiranne Chun Oakland*



**Report Title:**

Condominiums; Limited Common Elements

**Description:**

Requires the association of apartment owners to regulate the use, maintenance, repair, replacement, and modification of limited common elements.

