

JAN 28 2008

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 that took effect
2 on July 1, 2006, is the result of Act 164, Session Laws of
3 Hawaii 2004; Act 93, Session Laws of Hawaii 2005; and Act 273,
4 Session Laws of Hawaii 2006. Since July 1, 2006, time and
5 experience has confirmed that the recodified condominium law
6 needs minor amendments to assist in the clarifying and
7 implementing its provisions.

8 The purpose of this Act it is to make various minor
9 amendments to assist in clarifying and implementing the
10 recodified condominium law.

11 SECTION 2. Section 514B-3, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding a new definition to be appropriately inserted
14 and to read:

15 "Approval" means approval by a note or the written consent
16 of the unit owners."

17 2. By amending the definition of "managing agent" to read:



1 "Managing agent" means any person retained, as an
2 independent contractor, for the purpose of assisting the board
3 in managing the operation of the property."

4 3. By amending the definition of "resident manager" to
5 read:

6 "Resident manager" means any person retained as an
7 employee by the association to manage, on-site, the operation of
8 the property[-], including a site manager and general manager."

9 SECTION 3. Section 514B-22, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§514B-22 Applicability to preexisting condominiums.**

12 Sections 514B-4, 514B-5, 514B-32, 514B-35, 514B-41(c), 514B-46,
13 514B-72, and part VI, and section 514B-3 to the extent
14 definitions are necessary in construing any of those provisions,
15 and all amendments thereto, apply to all condominiums created in
16 this State before July 1, 2006; provided that those sections:

- 17 (1) Shall apply only with respect to events and
18 circumstances occurring on or after July 1, 2006; and
19 (2) Shall not invalidate existing provisions of the
20 declaration, bylaws, condominium map, or other
21 constituent documents of those condominiums if to do



1 so would invalidate the reserved rights of a developer
2 or be an unreasonable impairment of contract.

3 For purposes of interpreting this chapter, the terms
4 "condominium property regime" and "horizontal property regime"
5 shall be deemed to correspond to the term "condominium"; the
6 term "apartment" shall be deemed to correspond to the term
7 "unit"; the term "apartment owner" shall be deemed to correspond
8 to the term "unit owner"; and the term "association of apartment
9 owners" shall be deemed to correspond to the term
10 "association".

11 SECTION 4. Section 514B-38, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§514B-38 Common elements.** Each unit owner may use the
14 common elements in accordance with the purposes permitted under
15 the declaration, subject to:

16 (1) The rights of other unit owners to use the common
17 elements;

18 (2) Any owner's exclusive right to use of the limited
19 common elements as provided in the declaration;

20 (3) The right of the owners to amend the declaration to
21 change the permitted uses of the common elements;
22 provided that ~~[subject to [section] 514B-140(e)]~~:



- 1 (A) Changing common element open spaces or landscaped
2 spaces to other uses shall not require an
3 amendment to the declaration; and
- 4 (B) Minor additions to or alterations of the common
5 elements for the benefit of individual units are
6 permitted if the additions or alterations can be
7 accomplished without substantial impact on the
8 interests of other owners in the common elements,
9 as reasonably determined by the board;
- 10 (4) Any rights reserved in the declaration to amend the
11 declaration to change the permitted uses of the common
12 elements;
- 13 (5) The right of the board, on behalf of the association,
14 to lease or otherwise use for the benefit of the
15 association those common elements that the board
16 determines are not actually used by any of the unit
17 owners for a purpose permitted in the declaration.
18 Unless the lease is approved by the owners of at least
19 sixty-seven per cent of the common interest, the lease
20 shall have a term of no more than five years and may
21 be terminated by the board or the lessee on no more
22 than sixty days prior written notice; provided that



1 the requirements of this paragraph shall not apply to
2 any leases, licenses, or other agreements entered into
3 for the purposes authorized by section 514B-140(d);
4 and

5 (6) The right of the board, on behalf of the association,
6 to lease or otherwise use for the benefit of the
7 association those common elements that the board
8 determines are actually used by one or more unit
9 owners for a purpose permitted in the declaration.
10 The lease or use shall be approved by the owners of at
11 least sixty-seven per cent of the common interest,
12 including all directly affected unit owners that the
13 board reasonably determines actually use the common
14 elements, and the owners' mortgagees; provided that
15 the requirements of this paragraph shall not apply to
16 any leases, licenses, or other agreements entered into
17 for the purposes authorized by section 514B-140(d)."

18 SECTION 5. Section 514B-41, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) The common profits of the property shall be
21 distributed among, and the common expenses shall be charged to,
22 the unit owners, including the developer, in proportion to the



1 common interest appurtenant to their respective units, except as
2 otherwise provided in the declaration or bylaws. In a mixed-use
3 project containing units for both residential and nonresidential
4 use, the charges and distributions may be apportioned in a fair
5 and equitable manner as set forth in the declaration. Except as
6 otherwise provided in subsection (c) or the declaration or
7 bylaws, all limited common element costs and expenses, including
8 but not limited to maintenance, repair, replacement, additions,
9 and improvements, shall be charged to the owner or owners of the
10 unit or units to which the limited common element is appurtenant
11 in an equitable manner as set forth in the declaration.

12 Notwithstanding the preceding limitations, all costs and
13 expenses of items designated as limited common elements pursuant
14 to section 514B-35, including but not limited to the costs and
15 expenses of maintenance, repair, replacement, additions, and
16 improvements, shall be charged to any appropriate unit owners to
17 which the limited common elements are appurtenant."

18 SECTION 6. Section 514B-83, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) A developer's public report shall contain:

- 21 (1) The name and address of the project, and the name,
22 address, telephone number, and electronic mail



1 address, if any, of the developer or the developer's
2 agent;

3 (2) A statement of the deadline, pursuant to section
4 514B-89, for completion of construction or, in the
5 case of a conversion, for the completion of any
6 repairs required to comply with section 514B-5, and
7 the remedies available to the purchaser, including but
8 not limited to cancellation of the sales contract, if
9 the completion of construction or repairs does not
10 occur on or before the completion deadline;

11 (3) A breakdown of the annual maintenance fees, including
12 minimum reserve contributions, and the monthly
13 estimated cost for each unit, certified to have been
14 based on generally accepted accounting principles, and
15 a statement regarding when a purchaser shall become
16 obligated to start paying the fees pursuant to section
17 514B-41(b);

18 (4) A description of all warranties for the individual
19 units and the common elements, including the date of
20 initiation and expiration of any such warranties, or a
21 statement that no warranties exist;



- 1 (5) A summary of the permitted uses of the units and, if
- 2 applicable, the number of units planned to be devoted
- 3 to a particular use;
- 4 (6) A description of any development rights reserved to
- 5 the developer or others;
- 6 (7) A declaration, subject to the penalties set forth in
- 7 section 514B-69(b), that the project is in compliance
- 8 with all county zoning and building ordinances and
- 9 codes, and all other county permitting requirements
- 10 applicable to the project, pursuant to sections 514B-5
- 11 and 514B-32(a)(13); and
- 12 (8) Any other facts, documents, or information that would
- 13 have a material impact on the use or value of a unit
- 14 or any appurtenant limited common elements or
- 15 amenities of the project available for an owner's use,
- 16 or that may be required by the commission."

17 SECTION 7. Section 514B-106, Hawaii Revised Statutes, is
18 amended as follows:

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

20 "(c) [~~Within thirty days after the adoption~~] Prior to the
21 effective date of any proposed budget for the condominium, the
22 board shall [~~make available~~] send a copy of the budget to all



1 the unit owners [~~and shall notify each unit owner that the unit~~
2 ~~owner may request a copy of the budget~~]."

3 2. By amending subsection (f) to read:

4 "(f) At any regular or special meeting of the association,
5 any member of the board may be removed and successors shall be
6 elected for the remainder of the term to fill the vacancies thus
7 created. The removal [~~and replacement~~] shall be by a vote of a
8 majority of the unit owners and, otherwise, in accordance with
9 all applicable requirements and procedures in the bylaws for the
10 removal and replacement of directors and, if removal and
11 replacement is to occur at a special meeting, section
12 514B-121(b)."

13 SECTION 8. Section 514B-122, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Minutes of meetings of the association shall be
16 approved at the next succeeding regular meeting or by the board,
17 within sixty days after the meeting, if authorized by the owners
18 at an annual meeting. If approved by the board, owners shall be
19 given a copy of the approved minutes [~~or notified of the~~
20 ~~availability of the minutes within thirty days after approval.~~]
21 prior to the next association meeting."



1 SECTION 9. Section 514B-143, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§514B-143 Insurance.** (a) Unless otherwise provided in
4 the declaration or bylaws, the association shall purchase and at
5 all times maintain the following:

6 (1) Property insurance:

7 (A) On the common elements;

8 (B) Providing coverage for special form causes of
9 loss; and

10 (C) In a total amount of not less than the full
11 insurable replacement cost of the insured
12 property, less deductibles, but including
13 coverage for the increased costs of construction
14 due to building code requirements, at the time
15 the insurance is purchased and at each renewal
16 date;

17 (2) Commercial general liability insurance against claims
18 and liabilities arising in connection with the
19 ownership, existence, use, or management of the
20 property in a minimum amount of \$1,000,000, or a
21 greater amount deemed sufficient in the judgment of
22 the board;



1 (3) A fidelity bond, as follows:

2 (A) An association with more than five dwelling units
3 shall obtain and maintain a fidelity bond
4 covering persons, including the managing agent
5 and its employees who control or disburse funds
6 of the association, in an amount equal to \$500
7 multiplied by the number of units; provided that
8 the amount of the fidelity bond required by this
9 paragraph shall not be less than \$20,000 nor
10 greater than \$200,000; and

11 (B) All management companies that are responsible for
12 the funds held or administered by the association
13 shall be covered by a fidelity bond as provided
14 in section 514B-132(a)(3). The association shall
15 have standing to make a loss claim against the
16 bond of the managing agent as a party covered
17 under the bond; and

18 (4) The board shall obtain directors and officers
19 liability coverage at a level deemed reasonable by the
20 board, if not otherwise limited by the declaration or
21 bylaws.

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

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

15 (c) If a project contains detached units, then
16 notwithstanding the requirement in this section that the
17 association obtain the requisite coverage, if the board
18 determines that it is in the best interest of the association to
19 do so, the insurance to be maintained under subsection (a)(1)
20 may be obtained separately for each unit by the unit owners;
21 provided that the requirements of subsection (a)(1) shall be
22 met; and provided further that evidence of such insurance



1 coverage shall be delivered annually to the association. In
2 such event, the association shall be named as an additional
3 insured.

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

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

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

11 (3) Require the unit owners of the units affected to pay
12 the deductible amount.

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



1 comply with the requirements of the National Flood Insurance
2 Program and the Federal Insurance Administration.

3 (f) Any loss covered by the property policy under
4 subsection (a)(1) shall be adjusted by and with the association.
5 The insurance proceeds for that loss shall be payable to the
6 association, or to an insurance trustee designated by the
7 association for that purpose. The insurance trustee or the
8 association shall hold any insurance proceeds in trust for unit
9 owners and secured parties as their interests may appear.

10 (g) The board, with the vote or written consent of a
11 majority of the owners, may require unit owners to obtain
12 reasonable types and levels of insurance. The liability of a
13 unit owner shall include but not be limited to the deductible of
14 the owner whose unit was damaged, any damage not covered by
15 insurance required by this subsection, as well as the
16 decorating, painting, wall and floor coverings, trim,
17 appliances, equipment, and other furnishings.

18 If the unit owner does not purchase or produce evidence of
19 insurance requested by the board, the directors may, in good
20 faith, purchase the insurance coverage and charge the reasonable
21 premium cost back to the unit owner. In no event is the
22 association or board liable to any person either with regard to



1 the failure of a unit owner to purchase insurance or a decision
2 by the board not to purchase the insurance for the owner, or
3 with regard to the timing of its purchase of the insurance or
4 the amounts or types of coverages obtained.

5 (h) The provisions of this section may be varied or waived
6 in the case of a project in which all units are restricted to
7 nonresidential use.

8 (i) Any association insurance policy provided under this
9 section shall contain a provision requiring the insurance
10 carrier, at the inception of the policy and on each anniversary
11 date of the policy, to provide the board of directors with a
12 written summary, in layman's terms, of the policy. The summary
13 shall include the type of policy, a description of the coverage
14 and the limits of it, the amount of the annual premium, and the
15 renewal dates. The board of directors shall provide this
16 information to each apartment owner."

17 SECTION 10. Section 514B-148, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) The association shall assess the unit 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 need not collect estimated~~
 2 ~~replacement reserves until the fiscal year which begins after~~
 3 ~~the association's first annual meeting]. For each fiscal year,~~
 4 the association shall collect the amount assessed to fund the
 5 estimated replacement for that fiscal year reserves, as
 6 determined by the association's plan."

7 SECTION 11. Section 514B-153, Hawaii Revised Statutes, is
 8 amended by amending subsection (e) to read as follows:

9 "(e) The managing agent, resident manager, or board shall
 10 keep an accurate and current list of members of the association
 11 and their current addresses, and the names and addresses of the
 12 vendees under an agreement of sale, if ~~any~~ the information is
 13 provided by the members and vendees. The list shall be
 14 maintained at a place designated by the board, and a copy shall
 15 be available, at cost, to any member of the association as
 16 provided in the declaration or bylaws or rules and regulations
 17 or, in any case, to any member who furnishes to the managing
 18 agent or resident manager or the board a duly executed and
 19 acknowledged affidavit stating that the list:

- 20 (1) Will be used by the owner personally and only for the
- 21 purpose of soliciting votes or proxies, or for



1 providing information to other owners with respect to
2 association matters; and

3 (2) Shall not be used by the owner or furnished to anyone
4 else for any other purpose.

5 A board may prohibit commercial solicitations."

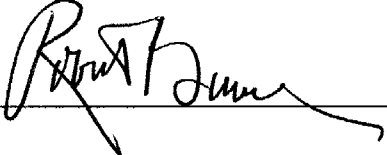
6 SECTION 12. This Act does not affect rights and duties
7 that matured, penalties that were incurred, and proceedings that
8 were begun, before its effective date.

9 SECTION 13. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 14. This Act shall take effect upon its approval.

12

INTRODUCED BY:





Report Title:

Condominiums; Housekeeping Amendments

Description:

Makes various housekeeping amendments to clarify the recodification of the condominium laws.

