

---

---

# A BILL FOR AN ACT

RELATING TO MIXED-USE CONDOMINIUM PROJECTS.

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

1           SECTION 1. Section 514A-13, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3           "(d) Each apartment owner may use the common elements in  
4 accordance with the purpose for which they were intended without  
5 hindering or encroaching upon the lawful rights of the other  
6 apartment owners, subject to:

7           (1) The right of the board of directors, upon the approval  
8 of the owners of seventy-five per cent of the common  
9 interests, except as provided in section 514A-13.4, to  
10 change the use of the common elements;

11           (2) The right of the board of directors, on behalf of the  
12 association of apartment owners, to lease or otherwise  
13 use for the benefit of the association of apartment  
14 owners those common elements [~~which~~] that are not  
15 actually used by any of the apartment owners for an  
16 originally intended special purpose, as determined by  
17 the board of directors; provided that, except for any  
18 leases, licenses, or other agreements entered into for



1 the purposes authorized by section 514A-13.4, unless  
2 the approval of the owners of seventy-five per cent of  
3 the common interest is obtained, any such lease [~~shall~~  
4 ~~not~~]:

5 (A) Shall not set rent at an amount below fair market  
6 rent;

7 (B) Shall not have a term exceeding five years [and  
8 shall contain]; and

9 (C) Shall contain a provision that the lease or  
10 agreement for use may be terminated by either  
11 party thereto on not more than sixty days written  
12 notice;

13 (3) The right of the board of directors to lease or  
14 otherwise use for the benefit of the association of  
15 apartment owners those common elements not falling  
16 within paragraph (2), upon obtaining:

17 (A) Except as provided in section 514A-13.4, the  
18 approval of the owners of seventy-five per cent  
19 of the common elements, including all directly  
20 affected owners and all owners of apartments to  
21 which [~~such~~] those common elements are



1                   appurtenant in the case of limited common  
2                   elements; and

3                   (B) The approval of all mortgagees of record on  
4                   apartments with respect to which owner approval  
5                   is required by subparagraph (A), if [~~such~~] the  
6                   lease or use would be in derogation of the  
7                   interest of [~~such~~] those mortgagees; and

8                   (4) The exclusive use of the limited common elements as  
9                   provided in the declaration."

10                  SECTION 2. Section 514A-15, Hawaii Revised Statutes, is  
11                  amended to read as follows:

12                  "**§514A-15 Common profits and expenses.** (a) The common  
13                  profits of the property shall be distributed among, and the  
14                  common expenses shall be charged to, the apartment owners,  
15                  including the developer, in proportion to the common interest  
16                  appurtenant to their respective apartments; provided that [~~in~~]:

17                  (1) In a mixed-use project containing apartments for both  
18                  residential and commercial use, [~~such~~] those charges  
19                  and distributions may be apportioned in a fair and  
20                  equitable manner as set forth in the declaration;  
21                  [~~provided further that all~~] and



1        (2) All limited common elements costs and expenses,  
2            including but not limited to, maintenance, repair,  
3            replacement, additions, and improvements shall be  
4            charged to the owner of the apartment to which the  
5            limited common element is appurtenant in an equitable  
6            manner as set forth in the declaration.

7            (b) An apartment owner, including the developer, shall  
8            become obligated for the payment of the share of the common  
9            expenses allocated to [~~his~~] the apartment owner's apartment at  
10           the time the certificate of occupancy relating to [~~his~~] the  
11           apartment owner's apartment is issued by the appropriate county  
12           agency; provided that a developer may assume all the actual  
13           common expenses in a residential project containing no mixed  
14           commercial and residential use, by stating in the abstract as  
15           required by section 514A-61 that the apartment owner shall not  
16           be obligated for the payment of [~~his~~] the apartment owner's  
17           respective share of the common expenses until [~~such time~~] the  
18           developer files an amended abstract with the commission [~~which~~]  
19           that shall provide, that after a date certain, the respective  
20           apartment owner shall thereafter be obligated to pay for [~~his~~]  
21           the apartment owner's respective share of common expenses that  
22           is allocated to [~~his~~] the apartment owner's apartment. The



1 amended abstract shall be filed at least thirty days in advance  
2 with the commission with a copy of the abstract being delivered  
3 either by mail or personal delivery after the filing to each of  
4 the apartment owners whose maintenance expenses were assumed by  
5 the developer.

6 (c) In a condominium project that includes residential  
7 units and condominium hotel units, all direct costs attributable  
8 to the condominium hotel operations shall be charged only to the  
9 unit owners whose units are included in the condominium hotel  
10 operations."

11 SECTION 3. 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(c):



- 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 not set rent at an amount below fair market  
21 rent; shall have a term of no more than five years;  
22 and may be terminated by the board or the lessee on no



1 more than sixty days prior written notice; provided  
2 that the requirements of this paragraph shall not  
3 apply to any leases, licenses, or other agreements  
4 entered into for the purposes authorized by section  
5 514B-140(d); and

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

19 SECTION 4. Section 514B-41, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[+]§514B-41[+] **Common profits and expenses.** (a) The  
22 common profits of the property shall be distributed among, and



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

14 (b) A unit owner, including the developer, shall become  
15 obligated for the payment of the share of the common expenses  
16 allocated to the owner's unit at the time the certificate of  
17 occupancy relating to the owner's unit is issued by the  
18 appropriate county agency; provided that a developer may assume  
19 all the actual common expenses in a project by stating in the  
20 developer's public report required by section 514B-54 that the  
21 unit owner shall not be obligated for the payment of the owner's  
22 share of the common expenses until [~~such time as~~] the developer





1 sends the owners written notice that, after a specified date,  
2 the unit owners shall be obligated to pay for the portion of  
3 common expenses that is allocated to their respective units.  
4 The developer shall mail the written notice to the owners, the  
5 association, and the managing agent, if any, at least thirty  
6 days before the specified date.

7 (c) Unless otherwise provided in the declaration or  
8 bylaws, if the board reasonably determines that the extra cost  
9 incurred to separately account for and charge for the costs of  
10 maintenance, repair, or replacement of limited common elements  
11 is not justified, the board may adopt a resolution determining  
12 that certain limited common element expenses will be assessed in  
13 accordance with the undivided common interest appurtenant to  
14 each unit. In reaching its determination, the board shall  
15 consider:

- 16 (1) The amount at issue;  
17 (2) The difficulty of segregating the costs;  
18 (3) The number of units to which similar limited common  
19 elements are appurtenant;  
20 (4) The apparent difference between separate assessment  
21 and assessment based on the undivided common interest;  
22 and



1           (5) Any other relevant factors, as determined by the  
2           board.

3 The resolution shall be final and binding in the absence of a  
4 determination that the board abused its discretion.

5           (d) Unless made pursuant to rights reserved in the  
6 declaration and disclosed in the developer's public report, if  
7 an association amends its declaration or bylaws to change the  
8 use of the condominium property regime from residential to  
9 nonresidential, all direct and indirect costs attributable to  
10 the newly permitted nonresidential use shall be charged only to  
11 the unit owners using or directly benefiting from the new  
12 nonresidential use, in a fair and equitable manner as set forth  
13 in the amendment to the declaration or bylaws.

14           (e) In a condominium project that includes residential  
15 units and condominium hotel units, all direct costs attributable  
16 to the condominium hotel operations shall be charged only to the  
17 unit owners whose units are included in the condominium hotel  
18 operations."

19           SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



# H.B. NO. 78

1 SECTION 6. This Act shall take effect on July 1, 2009.

2

INTRODUCED BY:

A handwritten signature in black ink that reads "Cindy Evans". The signature is written in a cursive style and is positioned above a horizontal line.

JAN 21 2009



**Report Title:**

Condominiums; Condominium Hotels; Common Elements

**Description:**

Allows a condominium board of directors to lease common elements of the condominium, under certain conditions, if elements are not used by unit owners for purposes permitted in the declaration. Requires all direct costs attributable to condominium hotel operations to be charged only to unit owners whose units are included in condominium hotel operations.

