
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

PART I

SECTION 1. The legislature finds that two condominium statutes are currently maintained: chapter 514A, Hawaii Revised Statutes ("chapter 514A"), and chapter 514B, Hawaii Revised Statutes ("chapter 514B"). Chapter 514A is relevant only to condominium property regimes that were created before July 1, 2006, but not yet brought to market for sale. Chapter 514B alone has applied to all condominiums created within the State since July 1, 2006.

The legislature further finds that virtually all provisions of chapter 514B that affect the management of condominiums have applied automatically to condominiums in existence before July 1, 2006, the effective date of chapter 514B, subject to two provisos:

- (1) The specified provisions automatically apply only to events and circumstances occurring on or after July 1, 2006; and



1 (2) Such automatic application shall not invalidate
2 existing provisions of a condominium's governing
3 documents if to do so would invalidate a developer's
4 reserved rights or be an unreasonable impairment of
5 contract, in other words, if to do so would violate
6 the United States Constitution's Contracts Clause
7 standard.

8 Furthermore, the applicability provisions of chapter 514B, which
9 are based on sections 1-201, 1-204, and 1-206 of the Uniform
10 Common Interest Ownership Act (1994), seek to balance the
11 benefits of having the improved condominium law apply to all
12 condominiums against reasonable contractual expectations for
13 condominiums in existence before July 1, 2006.

14 However, the legislature also finds that maintaining two
15 condominium statutes within the Hawaii Revised Statutes has
16 caused confusion for some condominium owners, boards, realtors,
17 and attorneys. Additionally, although there are still some
18 condominium projects that were created before July 1, 2006, but
19 have never been built and sold to anyone in the general public,
20 the legislature notes that the developers of such projects have
21 had more than a decade to bring their condominium projects



1 created under chapter 514A to market. Chapter 514B has superior
2 consumer protection provisions, and since it has been over ten
3 years since chapter 514B was enacted, the legislature finds that
4 it is appropriate to end any confusion, repeal the outdated
5 chapter 514A, and have the documents of any remaining projects
6 created under chapter 514A conform to chapter 514B.

7 Accordingly, the purpose of this Act is to end confusion
8 and have only one condominium chapter in the Hawaii Revised
9 Statutes by:

- 10 (1) Repealing chapter 514A;
- 11 (2) Making it clear that chapter 514B applies to all
12 condominiums in the State, provided that such
13 application shall not invalidate existing provisions
14 of a condominium's governing documents, if it would
15 invalidate a developer's reserved rights; and
- 16 (3) Removing associated references to the repealed chapter
17 514A.

18 PART II

19 SECTION 2. Chapter 514A, Hawaii Revised Statutes, is
20 repealed.



1 PART III

2 SECTION 3. Section 514B-21, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "[+]§514B-21[+] Applicability [~~to new condominiums~~]. (a)

5 This chapter applies to all condominiums created within this
6 State [~~after July 1, 2006. The provisions of chapter 514A do~~
7 ~~not apply to condominiums created after July 1, 2006.~~]; provided
8 that such application shall not invalidate existing provisions
9 of the declaration, bylaws, condominium map, or other
10 constituent documents of those condominiums if to do so would
11 invalidate the reserved rights of a developer. Amendments to
12 this chapter apply to all condominiums [~~created after July 1,~~
13 ~~2006 or subjected to this chapter~~], regardless of when the
14 amendment is adopted.

15 (b) For purposes of interpreting this chapter, the terms
16 "condominium property regime" and "horizontal property regime"
17 shall be deemed to correspond to the term "condominium"; the
18 term "apartment" shall be deemed to correspond to the term
19 "unit"; the term "apartment owner" shall be deemed to correspond
20 to the term "unit owner"; and the term "association of apartment



1 owners" shall be deemed to correspond to the term
2 "association"."

3 SECTION 4. Section 514B-22, Hawaii Revised Statutes, is
4 repealed.

5 [~~"§514B-22 Applicability to preexisting condominiums.~~
6 ~~Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72,~~
7 ~~and part VI, and section 514B-3 to the extent definitions are~~
8 ~~necessary in construing any of these provisions, and all~~
9 ~~amendments thereto, apply to all condominiums created in this~~
10 ~~State before July 1, 2006; provided that these sections:~~

- 11 ~~(1) Shall apply only with respect to events and~~
- 12 ~~circumstances occurring on or after July 1, 2006; and~~
- 13 ~~(2) Shall not invalidate existing provisions of the~~
- 14 ~~declaration, bylaws, condominium map, or other~~
- 15 ~~constituent documents of those condominiums if to do~~
- 16 ~~so would invalidate the reserved rights of a developer~~
- 17 ~~or be an unreasonable impairment of contract.~~

18 ~~For purposes of interpreting this chapter, the terms~~
19 ~~"condominium property regime" and "horizontal property regime"~~
20 ~~shall be deemed to correspond to the term "condominium"; the~~
21 ~~term "apartment" shall be deemed to correspond to the term~~



1 ~~"unit"; the term "apartment owner" shall be deemed to correspond~~
2 ~~to the term "unit owner"; and the term "association of apartment~~
3 ~~owners" shall be deemed to correspond to the term~~
4 ~~"association"."]~~

5 PART IV

6 SECTION 5. Section 26-9, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) The board of acupuncture, board of public
9 accountancy, board of barbering and cosmetology, boxing
10 commission, board of chiropractic examiners, contractors license
11 board, board of dental examiners, board of electricians and
12 plumbers, elevator mechanics licensing board, board of
13 professional engineers, architects, surveyors, and landscape
14 architects, board of massage therapy, Hawaii medical board,
15 motor vehicle industry licensing board, motor vehicle repair
16 industry board, board of naturopathic medicine, board of
17 nursing, board of examiners in optometry, pest control board,
18 board of pharmacy, board of physical therapy, board of
19 psychology, board of private detectives and guards, real estate
20 commission, board of veterinary examiners, board of speech
21 pathology and audiology, and any board, commission, program, or



1 entity created pursuant to or specified by statute in
 2 furtherance of the purpose of this section including but not
 3 limited to section 26H-4, or chapters 484, [~~514A~~] 514B, and
 4 514E shall be placed within the department of commerce and
 5 consumer affairs for administrative purposes.

6 The public utilities commission shall be placed, for
 7 administrative purposes only, within the department of commerce
 8 and consumer affairs. Notwithstanding section 26-9(e), (f),
 9 (g), (h), (j), (k), (l), (m), (n), (p), (q), (r), and (s), and
 10 except as permitted by sections 269-2 and 269-3, the department
 11 of commerce and consumer affairs shall not direct or exert
 12 authority over the day-to-day operations or functions of the
 13 commission."

14 SECTION 6. Section 92-28, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "**§92-28 State service fees; increase or decrease of.** Any
 17 law to the contrary notwithstanding, the fees or other nontax
 18 revenues assessed or charged by any board, commission, or other
 19 governmental agency may be increased or decreased by the body in
 20 an amount not to exceed fifty per cent of the statutorily
 21 assessed fee or nontax revenue, to maintain a reasonable



1 relation between the revenues derived from such fee or nontax
2 revenue and the cost or value of services rendered,
3 comparability among fees imposed by the State, or any other
4 purpose which it may deem necessary and reasonable; provided
5 that:

6 (1) The authority to increase or decrease fees or nontax
7 revenues shall be subject to the approval of the
8 governor and extend only to the following: chapters
9 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189,
10 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A,
11 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431,
12 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444,
13 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453,
14 453D, 454, 455, 456, 457, 457A, 457B, 457G, 458, 459,
15 460J, 461, 461J, 462A, 463, 463E, 464, 465, 466, 466K,
16 467, 467E, 468E, 468L, 468M, 469, 471, 482, 482E, 484,
17 485A, 501, 502, 505, [~~514A,~~] 514B, 514E, 572, 574, and
18 846 (part II);

19 (2) The authority to increase or decrease fees or nontax
20 revenues under the chapters listed in paragraph (1)
21 that are established by the department of commerce and



1 consumer affairs shall apply to fees or nontax
2 revenues established by statute or rule;

3 (3) The authority to increase or decrease fees or nontax
4 revenues established by the University of Hawaii under
5 chapter 304A shall be subject to the approval of the
6 board of regents; provided that the board's approval
7 of any increase or decrease in tuition for regular
8 credit courses shall be preceded by an open public
9 meeting held during or prior to the semester preceding
10 the semester to which the tuition applies;

11 (4) This section shall not apply to judicial fees as may
12 be set by any chapter cited in this section;

13 (5) The authority to increase or decrease fees or nontax
14 revenues pursuant to this section shall be exempt from
15 the public notice and public hearing requirements of
16 chapter 91; and

17 (6) Fees for copies of proposed and final rules and public
18 notices of proposed rulemaking actions under chapter
19 91 shall not exceed 10 cents a page, as required by
20 section 91-2.5."



1 SECTION 7. Section 205-4.6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Agricultural uses and activities as defined in
4 sections 205-2(d) and 205-4.5(a) on lands classified as
5 agricultural shall not be restricted by any private agreement
6 contained in any:

7 (1) Deed, agreement of sale, or other conveyance of land
8 recorded in the bureau of conveyances after July 8,
9 2003, that subject such agricultural lands to any
10 servitude, including but not limited to covenants,
11 easements, or equitable and reciprocal negative
12 servitudes; and

13 (2) Condominium declaration, map, bylaws, and other
14 documents executed and submitted in accordance with
15 chapter [~~514A-01~~] 514B.

16 Any such private restriction limiting or prohibiting
17 agricultural use or activity shall be voidable, subject to
18 special restrictions enacted by the county ordinance pursuant to
19 section 46-4; except that restrictions taken to protect
20 environmental or cultural resources, agricultural leases,



1 utility easements, and access easements shall not be subject to
2 this section."

3 SECTION 8. Section 235-7, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) There shall be excluded from gross income, adjusted
6 gross income, and taxable income:

7 (1) Income not subject to taxation by the State under the
8 Constitution and laws of the United States;

9 (2) Rights, benefits, and other income exempted from
10 taxation by section 88-91, having to do with the state
11 retirement system, and the rights, benefits, and other
12 income, comparable to the rights, benefits, and other
13 income exempted by section 88-91, under any other
14 public retirement system;

15 (3) Any compensation received in the form of a pension for
16 past services;

17 (4) Compensation paid to a patient affected with Hansen's
18 disease employed by the State or the United States in
19 any hospital, settlement, or place for the treatment
20 of Hansen's disease;



- 1 (5) Except as otherwise expressly provided, payments made
2 by the United States or this State, under an act of
3 Congress or a law of this State, which by express
4 provision or administrative regulation or
5 interpretation are exempt from both the normal and
6 surtaxes of the United States, even though not so
7 exempted by the Internal Revenue Code itself;
- 8 (6) Any income expressly exempted or excluded from the
9 measure of the tax imposed by this chapter by any
10 other law of the State, it being the intent of this
11 chapter not to repeal or supersede any express
12 exemption or exclusion;
- 13 (7) Income received by each member of the reserve
14 components of the Army, Navy, Air Force, Marine Corps,
15 or Coast Guard of the United States of America, and
16 the Hawaii National Guard as compensation for
17 performance of duty, equivalent to pay received for
18 forty-eight drills (equivalent of twelve weekends) and
19 fifteen days of annual duty, at an:



- 1 (A) E-1 pay grade after eight years of service;
2 provided that this subparagraph shall apply to
3 taxable years beginning after December 31, 2004;
- 4 (B) E-2 pay grade after eight years of service;
5 provided that this subparagraph shall apply to
6 taxable years beginning after December 31, 2005;
- 7 (C) E-3 pay grade after eight years of service;
8 provided that this subparagraph shall apply to
9 taxable years beginning after December 31, 2006;
- 10 (D) E-4 pay grade after eight years of service;
11 provided that this subparagraph shall apply to
12 taxable years beginning after December 31, 2007;
13 and
- 14 (E) E-5 pay grade after eight years of service;
15 provided that this subparagraph shall apply to
16 taxable years beginning after December 31, 2008;
- 17 (8) Income derived from the operation of ships or aircraft
18 if the income is exempt under the Internal Revenue
19 Code pursuant to the provisions of an income tax
20 treaty or agreement entered into by and between the
21 United States and a foreign country; provided that the



1 tax laws of the local governments of that country
2 reciprocally exempt from the application of all of
3 their net income taxes, the income derived from the
4 operation of ships or aircraft that are documented or
5 registered under the laws of the United States;

6 (9) The value of legal services provided by a legal
7 service plan to a taxpayer, the taxpayer's spouse, and
8 the taxpayer's dependents;

9 (10) Amounts paid, directly or indirectly, by a legal
10 service plan to a taxpayer as payment or reimbursement
11 for the provision of legal services to the taxpayer,
12 the taxpayer's spouse, and the taxpayer's dependents;

13 (11) Contributions by an employer to a legal service plan
14 for compensation (through insurance or otherwise) to
15 the employer's employees for the costs of legal
16 services incurred by the employer's employees, their
17 spouses, and their dependents;

18 (12) Amounts received in the form of a monthly surcharge by
19 a utility acting on behalf of an affected utility
20 under section 269-16.3; provided that amounts retained



1 by the acting utility for collection or other costs
2 shall not be included in this exemption;

3 (13) Amounts received in the form of a cable surcharge by
4 an electric utility company acting on behalf of a
5 certified cable company under section 269-134;
6 provided that any amounts retained by that electric
7 utility company for collection or other costs shall
8 not be included in this exemption; and

9 (14) One hundred per cent of the gain realized by a fee
10 simple owner from the sale of a leased fee interest in
11 units within a condominium project, cooperative
12 project, or planned unit development to the
13 association [~~of owners~~] under chapter [~~514A or~~] 514B,
14 or the residential cooperative corporation of the
15 leasehold units.

16 For purposes of this paragraph:

17 "Fee simple owner" shall have the same meaning as
18 provided under section 516-1; provided that it shall
19 include legal and equitable owners;



1 "Legal and equitable owner", and "leased fee
2 interest" shall have the same meanings as provided
3 under section 516-1; and

4 "Condominium project" and "cooperative project"
5 shall have the same meanings as provided under section
6 514C-1."

7 SECTION 9. Section 237-16.5, Hawaii Revised Statutes, is
8 amended by amending subsection (e) to read as follows:

9 "(e) As used in this section:

10 "Lease" means the rental of real property under an
11 instrument in writing by which one conveys real property for a
12 specified term and for a specified consideration, and includes
13 the written extension or renegotiation of a lease, and any
14 holdover tenancy.

15 "Lessee" means one who holds real property under lease, and
16 includes a sublessee.

17 "Lessor" means one who conveys real property by lease, and
18 includes a sublessor.

19 "Real property or space" means the area actually rented and
20 used by the lessee, and includes common elements as defined in
21 section [~~514A-3 or~~] 514B-3.



1 "Sublease" includes the rental of real property which is
 2 held under a lease and is made in a written document by which
 3 one conveys real property for a specified term and for a
 4 specified consideration. A sublease includes the written
 5 extension or renegotiation of a sublease and any holdover
 6 tenancy under the written sublease.

7 "Sublessee" means one who holds real property under a
 8 sublease.

9 "Sublessor" means one who conveys real property by
 10 sublease."

11 SECTION 10. Section 237-24.3, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "§237-24.3 Additional amounts not taxable. In addition to
 14 the amounts not taxable under section 237-24, this chapter shall
 15 not apply to:

- 16 (1) Amounts received from the loading, transportation, and
 17 unloading of agricultural commodities shipped for a
 18 producer or produce dealer on one island of this State
 19 to a person, firm, or organization on another island
 20 of this State. The terms "agricultural commodity",
 21 "producer", and "produce dealer" shall be defined in



1 the same manner as they are defined in section 147-1;
2 provided that agricultural commodities need not have
3 been produced in the State;

4 (2) Amounts received by the manager, submanager, or board
5 of directors of:

6 (A) An association [~~of owners~~] of a condominium
7 property regime established in accordance with
8 chapter [~~514A or~~] 514B; or

9 (B) A nonprofit homeowners or community association
10 incorporated in accordance with chapter 414D or
11 any predecessor thereto and existing pursuant to
12 covenants running with the land,

13 in reimbursement of sums paid for common expenses;

14 (3) Amounts received or accrued from:

15 (A) The loading or unloading of cargo from ships,
16 barges, vessels, or aircraft, whether or not the
17 ships, barges, vessels, or aircraft travel
18 between the State and other states or countries
19 or between the islands of the State;

20 (B) Tugboat services including pilotage fees
21 performed within the State, and the towage of



1 ships, barges, or vessels in and out of state
2 harbors, or from one pier to another; and
3 (C) The transportation of pilots or governmental
4 officials to ships, barges, or vessels offshore;
5 rigging gear; checking freight and similar
6 services; standby charges; and use of moorings
7 and running mooring lines;
8 (4) Amounts received by an employee benefit plan by way of
9 contributions, dividends, interest, and other income;
10 and amounts received by a nonprofit organization or
11 office, as payments for costs and expenses incurred
12 for the administration of an employee benefit plan;
13 provided that this exemption shall not apply to any
14 gross rental income or gross rental proceeds received
15 after June 30, 1994, as income from investments in
16 real property in this State; and provided further that
17 gross rental income or gross rental proceeds from
18 investments in real property received by an employee
19 benefit plan after June 30, 1994, under written
20 contracts executed prior to July 1, 1994, shall not be
21 taxed until the contracts are renegotiated, renewed,



1 or extended, or until after December 31, 1998,
2 whichever is earlier. For the purposes of this
3 paragraph, "employee benefit plan" means any plan as
4 defined in section 1002(3) of title 29 of the United
5 States Code, as amended;

6 (5) Amounts received for purchases made with United States
7 Department of Agriculture food coupons under the
8 federal food stamp program, and amounts received for
9 purchases made with United States Department of
10 Agriculture food vouchers under the Special
11 Supplemental Foods Program for Women, Infants and
12 Children;

13 (6) Amounts received by a hospital, infirmary, medical
14 clinic, health care facility, pharmacy, or a
15 practitioner licensed to administer the drug to an
16 individual for selling prescription drugs or
17 prosthetic devices to an individual; provided that
18 this paragraph shall not apply to any amounts received
19 for services provided in selling prescription drugs or
20 prosthetic devices. As used in this paragraph:



1 "Prescription drugs" are those drugs defined
2 under section 328-1 and dispensed by filling or
3 refilling a written or oral prescription by a
4 practitioner licensed under law to administer the drug
5 and sold by a licensed pharmacist under section 328-16
6 or practitioners licensed to administer drugs;
7 provided that "prescription drugs" shall not include
8 marijuana or manufactured marijuana products
9 authorized pursuant to chapters 329 and 329D[+];
10 and[+]

11 "Prosthetic device" means any artificial device
12 or appliance, instrument, apparatus, or contrivance,
13 including their components, parts, accessories, and
14 replacements thereof, used to replace a missing or
15 surgically removed part of the human body, which is
16 prescribed by a licensed practitioner of medicine,
17 osteopathy, or podiatry and that is sold by the
18 practitioner or that is dispensed and sold by a dealer
19 of prosthetic devices; provided that "prosthetic
20 device" shall not mean any auditory, ophthalmic,



1 dental, or ocular device or appliance, instrument,
2 apparatus, or contrivance;

3 (7) Taxes on transient accommodations imposed by chapter
4 237D and passed on and collected by operators holding
5 certificates of registration under that chapter;

6 (8) Amounts received as dues by an unincorporated
7 merchants association from its membership for
8 advertising media, promotional, and advertising costs
9 for the promotion of the association for the benefit
10 of its members as a whole and not for the benefit of
11 an individual member or group of members less than the
12 entire membership;

13 (9) Amounts received by a labor organization for real
14 property leased to:

15 (A) A labor organization; or

16 (B) A trust fund established by a labor organization
17 for the benefit of its members, families, and
18 dependents for medical or hospital care, pensions
19 on retirement or death of employees,
20 apprenticeship and training, and other membership
21 service programs.



1 As used in this paragraph, "labor organization" means
2 a labor organization exempt from federal income tax
3 under section 501(c)(5) of the Internal Revenue Code,
4 as amended;

5 (10) Amounts received from foreign diplomats and consular
6 officials who are holding cards issued or authorized
7 by the United States Department of State granting them
8 an exemption from state taxes; and

9 (11) Amounts received as rent for the rental or leasing of
10 aircraft or aircraft engines used by the lessees or
11 renters for interstate air transportation of
12 passengers and goods. For purposes of this paragraph,
13 payments made pursuant to a lease shall be considered
14 rent regardless of whether the lease is an operating
15 lease or a financing lease. The definition of
16 "interstate air transportation" is the same as in 49
17 U.S.C. section 40102."

18 SECTION 11. Section 237D-1, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending the definition of "lease", "let", or
21 "rental" to read:



1 "Lease", "let", or "rental" means the leasing or renting
2 of living quarters or sleeping or housekeeping accommodations in
3 hotels, apartment hotels, motels, [~~condominium property regimes~~
4 ~~or apartments defined in chapter 514A~~] condominiums or units
5 defined in chapter 514B, cooperative apartments, rooming houses,
6 or other places in which lodgings are regularly furnished to
7 transients for a consideration, without transfer of the title of
8 such property."

9 2. By amending the definition of "transient
10 accommodations" to read:

11 "Transient accommodations" means the furnishing of a room,
12 apartment, suite, single family dwelling, or the like to a
13 transient for less than one hundred eighty consecutive days for
14 each letting in a hotel, apartment hotel, motel, [~~condominium~~
15 ~~property regime or apartment as defined in chapter 514A~~]
16 condominium or unit as defined in chapter 514B, cooperative
17 apartment, dwelling unit, or rooming house that provides living
18 quarters, sleeping, or housekeeping accommodations, or other
19 place in which lodgings are regularly furnished to transients."

20 SECTION 12. Section 281-1, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending the definition of "condominium hotel" to
2 read:

3 ""Condominium hotel" means an establishment consisting of
4 one or more buildings that includes:

5 (1) Guest rooms that are [~~apartments, as defined in~~
6 ~~section 514A-3, or~~] units, as defined in section 514B-
7 3, which are used to provide transient lodging for
8 periods of less than thirty days under a written
9 contract with the owner of the apartment or unit in
10 the condominium hotel operation; and

11 (2) Guest rooms that are units, owned or managed by the
12 condominium hotel operator providing transient lodging
13 for periods of less than thirty days, which are
14 offered for adequate pay to transient guests.

15 A "condominium hotel" does not include a hotel that may be part
16 of a condominium [~~property regime~~] established under chapter
17 [~~514A or~~] 514B[~~7~~] or that does not have guest rooms that are
18 separate [~~apartments, as defined in section 514A-3, or~~] units,
19 as defined in section 514B-3."

20 2. By amending the definition of "premises" or "licensed
21 premises" to read:



1 ""Premises" or "licensed premises" means the building and
2 property that houses the establishment for which a license has
3 been or is proposed to be issued; provided that in the case of
4 class 12 hotel license, "premises" includes the hotel premises;
5 provided further that in the case of a class 15 condominium
6 hotel license, "premises" includes [~~apartments, as defined in~~
7 ~~section 514A-3, or~~] units, as defined in section 514B-3, that
8 are used to provide transient lodging for periods of less than
9 thirty days under a written contract with the owner or owners of
10 each unit in, and common elements for access purposes as
11 established by the declaration of condominium property regime
12 of, the condominium hotel; and provided further that if an
13 establishment is in a retail shopping complex the businesses of
14 which have formed a merchants association, "premises" means the
15 establishment. As used in this definition, "establishment"
16 means a single physical location where the selling of liquor
17 takes place."

18 SECTION 13. Section 302A-1312, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:



1 "(a) The department of education shall prepare a six-year
2 program and financial plan for school repair and maintenance
3 that shall be:

4 (1) Based on:

5 (A) Estimated preventive and scheduled maintenance
6 costs;

7 (B) Budgeted recurring maintenance;

8 (C) Health and safety requirements; and

9 (D) Legal mandates;

10 (2) Insofar as is practical, prepared in accordance with
11 the principles and procedures contained in section
12 [~~514A-83.6 or~~] 514B-148; and

13 (3) Submitted initially to the legislature not less than
14 thirty days prior to the convening of the 2002 regular
15 session, with annual funding requirements for the
16 physical plant operations and maintenance account
17 submitted not less than thirty days prior to the
18 convening of the 2002 regular session and each regular
19 session thereafter;

20 provided that the governor may incorporate the six-year program
21 and financial plan required by this subsection into the six-year



1 program and financial plan required by section 37-69, if the
2 plan required by this subsection is incorporated without
3 reductions or restrictions."

4 SECTION 14. Section 378-2.5, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) Notwithstanding subsections (b) and (c), the
7 requirement that inquiry into and consideration of a prospective
8 employee's conviction record may take place only after the
9 individual has received a conditional job offer, and the
10 limitation to the most recent ten-year period, excluding the
11 period of incarceration, shall not apply to employers who are
12 expressly permitted to inquire into an individual's criminal
13 history for employment purposes pursuant to any federal or state
14 law other than subsection (a), including:

15 (1) The State or any of its branches, political
16 subdivisions, or agencies pursuant to sections 78-2.7
17 and 831-3.1;

18 (2) The department of education pursuant to section
19 302A-601.5;

20 (3) The department of health with respect to employees,
21 providers, or subcontractors in positions that place



- 1 them in direct contact with clients when providing
- 2 non-witnessed direct mental health services pursuant
- 3 to section 321-171.5;
- 4 (4) The judiciary pursuant to section 571-34;
- 5 (5) The counties pursuant to section 846-2.7(b)(5), (33),
- 6 (34), (35), (36), and (38);
- 7 (6) Armed security services pursuant to section 261-17(b);
- 8 (7) Providers of a developmental disabilities domiciliary
- 9 home pursuant to section 321-15.2;
- 10 (8) Private schools pursuant to sections 302C-1 and
- 11 378-3(8);
- 12 (9) Financial institutions in which deposits are insured
- 13 by a federal agency having jurisdiction over the
- 14 financial institution pursuant to section 378-3(9);
- 15 (10) Detective agencies and security guard agencies
- 16 pursuant to sections 463-6(b) and 463-8(b);
- 17 (11) Employers in the business of insurance pursuant to
- 18 section 431:2-201.3;
- 19 (12) Employers of individuals or supervisors of individuals
- 20 responsible for screening passengers or property under
- 21 title 49 United States Code section 44901 or



- 1 individuals with unescorted access to an aircraft of
2 an air carrier or foreign carrier or in a secured area
3 of an airport in the United States pursuant to title
4 49 United States Code section 44936(a);
- 5 (13) The department of human services pursuant to sections
6 346-97 and 352-5.5;
- 7 (14) The public library system pursuant to section
8 302A-601.5;
- 9 (15) The department of public safety pursuant to section
10 353C-5;
- 11 (16) The board of directors of a cooperative housing
12 corporation or the manager of a cooperative housing
13 project pursuant to section 421I-12;
- 14 (17) The board of directors of an association [~~of owners~~]
15 under chapter [~~514A-07~~] 514B, or the [~~manager~~]
16 managing agent or resident manager of a condominium
17 [~~project~~] pursuant to section [~~514A-82.1-07~~] 514B-133;
18 and
- 19 (18) The department of health pursuant to section
20 321-15.2."



1 SECTION 15. Section 414D-311, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§414D-311 Superseding chapters.** In the event of any
4 conflict between the provisions of this chapter and the
5 provisions of chapter 421J, [~~514A, 7~~] 514B, or 514E, the
6 provisions of chapter 421J, [~~514A, 7~~] 514B, or 514E shall
7 supersede and control the provisions of this chapter."

8 SECTION 16. Section 421I-9, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§421I-9 Mediation and arbitration of disputes.** At the
11 request of any party, any dispute concerning or involving one or
12 more shareholders and a corporation, its board of directors,
13 managing agent, resident manager, or one or more other
14 shareholders relating to the interpretation, application, or
15 enforcement of this chapter or the corporation's articles of
16 incorporation, bylaws, or rules adopted in accordance with its
17 bylaws shall be submitted first to mediation. When all
18 reasonable efforts for mediation have been made and the dispute
19 is not settled either in conference between the parties or
20 through mediation, the dispute shall be submitted to arbitration
21 in the same manner and subject to the same requirements, to the



1 extent practicable, which now apply to [~~condominium property~~
2 regimes] condominiums under [~~part VII of chapter 514A or~~
3 section 514B-162."

4 SECTION 17. Section 467-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "hotel" to read as
6 follows:

7 "Hotel" includes a structure or structures used primarily
8 for the business of providing transient lodging for periods of
9 less than thirty days and which furnishes customary hotel
10 services including but not limited to front desk, restaurant,
11 daily maid and linen service, bell service, or telephone
12 switchboard; provided that for the purposes of this chapter,
13 [~~apartments or~~] units in a project as defined by section [~~514A-3~~
14 ~~or~~] 514B-3 that provide customary hotel services shall be
15 excluded from the definition of hotel. The definition of
16 [+]"hotel" [+] as set forth in this section shall be in addition
17 to and supplement the definition of "hotel" as set forth in the
18 various county ordinances."

19 SECTION 18. Section 467-14, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§467-14 Revocation, suspension, and fine. In addition to
2 any other actions authorized by law, the commission may revoke
3 any license issued under this chapter, suspend the right of the
4 licensee to use the license, fine any person holding a license,
5 registration, or certificate issued under this chapter, or
6 terminate any registration or certificate issued under this
7 chapter, for any cause authorized by law, including but not
8 limited to the following:

- 9 (1) Making any misrepresentation concerning any real
10 estate transaction;
- 11 (2) Making any false promises concerning any real estate
12 transaction of a character likely to mislead another;
- 13 (3) Pursuing a continued and flagrant course of
14 misrepresentation, or making of false promises through
15 advertising or otherwise;
- 16 (4) Without first having obtained the written consent to
17 do so of both parties involved in any real estate
18 transaction, acting for both the parties in connection
19 with the transaction, or collecting or attempting to
20 collect commissions or other compensation for the
21 licensee's services from both of the parties;



- 1 (5) When the licensee, being a real estate salesperson,
2 accepts any commission or other compensation for the
3 performance of any of the acts enumerated in the
4 definition set forth in section 467-1 of real estate
5 salesperson from any person other than the real estate
6 salesperson's employer or the real estate broker with
7 whom the real estate salesperson associates or, being
8 a real estate broker or salesperson, compensates one
9 not licensed under this chapter to perform any such
10 act;
- 11 (6) When the licensee, being a real estate salesperson,
12 acts or attempts to act as a real estate broker or
13 represents, or attempts to represent, any real estate
14 broker other than the real estate salesperson's
15 employer or the real estate broker with whom the real
16 estate salesperson is associated;
- 17 (7) Failing, within a reasonable time, to account for any
18 moneys belonging to others that may be in the
19 possession or under the control of the licensee;
- 20 (8) Any other conduct constituting fraudulent or dishonest
21 dealings;



- 1 (9) When the licensee, being a partnership, permits any
2 member of the partnership who does not hold a real
3 estate broker's license to actively participate in the
4 real estate brokerage business thereof or permits any
5 employee thereof who does not hold a real estate
6 salesperson's license to act as a real estate
7 salesperson therefor;
- 8 (10) When the licensee, being a corporation, permits any
9 officer or employee of the corporation who does not
10 hold a real estate broker's license to have the direct
11 management of the real estate brokerage business
12 thereof or permits any officer or employee thereof who
13 does not hold a real estate salesperson's license to
14 act as a real estate salesperson therefor;
- 15 (11) When the licensee, being a real estate salesperson,
16 fails to file with the commission a written statement
17 setting forth the name of the real estate broker by
18 whom the licensee is employed or with whom the
19 licensee is associated;



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



- 1 (C) A travel agency that in the course of business as
2 a travel agency or sales representative, arranges
3 for compensation the rental of a transient
4 vacation rental; provided that for purposes of
5 this paragraph, "travel agency" means any person
6 that, for compensation or other consideration,
7 acts or attempts to act as an intermediary
8 between a person seeking to purchase travel
9 services and any person seeking to sell travel
10 services, including an air or ocean carrier;
- 11 (15) Commingling the money or other property of the
12 licensee's principal with the licensee's own;
- 13 (16) Converting other people's moneys to the licensee's own
14 use;
- 15 (17) The licensee is adjudicated insane or incompetent;
- 16 (18) Failing to ascertain and disclose all material facts
17 concerning every property for which the licensee
18 accepts the agency, so that the licensee may fulfill
19 the licensee's obligation to avoid error,
20 misrepresentation, or concealment of material facts;
21 provided that for the purposes of this paragraph, the



- 1 fact that an occupant has AIDS or AIDS Related Complex
2 (ARC) or has been tested for HIV (human
3 immunodeficiency virus) infection shall not be
4 considered a material fact;
- 5 (19) When the licensee obtains or causes to be obtained,
6 directly or indirectly, any licensing examination or
7 licensing examination question for the purpose of
8 disseminating the information to future takers of the
9 examination for the benefit or gain of the licensee;
- 10 (20) Failure to maintain a reputation for or record of
11 competency, honesty, truthfulness, financial
12 integrity, and fair dealing;
- 13 (21) Acquiring an ownership interest, directly or
14 indirectly, or by means of a subsidiary or affiliate,
15 in any distressed property that is listed with the
16 licensee or within three hundred sixty-five days after
17 the licensee's listing agreement for the distressed
18 property has expired or is terminated; or
- 19 (22) When the licensee, being a real estate broker or a
20 real estate salesperson, acting on behalf of a seller
21 or purchaser of real estate, acts in a manner that



1 prohibits a prospective purchaser or prospective
2 seller of real estate from being able to retain the
3 services of a real estate broker or real estate
4 salesperson.

5 For the purposes of paragraphs (1) and (18), the real
6 estate commission shall consider whether the licensee relied in
7 good faith on information provided by other persons or third
8 parties.

9 As used in this section, "distressed property" has the same
10 meaning as set forth in section 480E-2.

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

14 SECTION 19. Section 467-30, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) As used in this section, "condominium hotel" includes
17 those [~~apartments or~~] units in a project as defined in section
18 [~~514A-3 or~~] 514B-3 and subject to chapter [~~514A or~~] 514B, which
19 are used to provide transient lodging for periods of less than
20 thirty days."



1 SECTION 20. Section 484-3, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Unless the method of disposition is adopted for the
4 purpose of evasion of this chapter, or unless the subdivider
5 files in writing with the director that this chapter shall apply
6 to the subdivider's subdivision, this chapter shall not apply to
7 offers or dispositions of an interest in land:

8 (1) By a purchaser of subdivided lands for the purchaser's
9 own account in a single or isolated transaction;

10 (2) If fewer than twenty separate lots, parcels, units, or
11 interests in subdivided lands are offered by a person
12 in a period of twelve months;

13 (3) Where the division of lands is a leasehold
14 agricultural lot within state agricultural districts
15 on which no dwelling structures are constructed as
16 provided in section 205-4.5(f);

17 (4) On which there is a residential, commercial, or
18 industrial building, or as to which there is a legal
19 obligation on the part of the seller to construct a
20 building on the land within two years from the date of
21 disposition; provided that the obligation to construct



1 shall not be, directly or indirectly, transferred to
2 or otherwise imposed upon the purchaser;

3 (5) To persons who are engaged in, and are duly licensed
4 to engage in, the business of construction of
5 buildings for resale, or to persons who acquire an
6 interest in subdivided lands for the purpose of
7 engaging, and do engage in, and are duly licensed to
8 engage in, the business of construction of buildings
9 for resale;

10 (6) Pursuant to court order;

11 (7) By any government or government agency;

12 (8) As cemetery lots or interests;

13 (9) Registered as a condominium property regime pursuant
14 to chapter [~~514A~~] 514B; or

15 (10) Registered as a time share plan pursuant to chapter
16 514E."

17 SECTION 21. Section 485A-202, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The following transactions are exempt from the
20 requirements of sections 485A-301 to 485A-305 and 485A-504:



- 1 (1) An isolated nonissuer transaction, whether or not
2 effected by or through a broker-dealer;
- 3 (2) A nonissuer transaction by or through a broker-dealer
4 registered or exempt from registration under this
5 chapter, and a resale transaction by a sponsor of a
6 unit investment trust registered under the Investment
7 Company Act of 1940, in a security of a class that has
8 been outstanding in the hands of the public for at
9 least ninety days, if, at the date of the transaction:
- 10 (A) The issuer of the security is engaged in
11 business, the issuer is not in the organizational
12 stage or in bankruptcy or receivership, and the
13 issuer is not a blank check, blind pool, or shell
14 company that has no specific business plan or
15 purpose or has indicated that its primary
16 business plan is to engage in a merger or
17 combination of the business with, or an
18 acquisition of, an unidentified person;
- 19 (B) The security is sold at a price reasonably
20 related to its current market price;



1 (C) The security does not constitute the whole or
2 part of an unsold allotment to, or a subscription
3 or participation by, the broker-dealer as an
4 underwriter of the security or a redistribution;

5 (D) A nationally recognized securities manual or its
6 electronic equivalent designated by rule adopted
7 or order issued under this chapter or a record
8 filed with the Securities and Exchange Commission
9 that is publicly available and contains:

10 (i) A description of the business and operations
11 of the issuer;

12 (ii) The names of the issuer's executive officers
13 and the names of the issuer's directors, if
14 any;

15 (iii) An audited balance sheet of the issuer as of
16 a date within eighteen months before the
17 date of the transaction or, in the case of a
18 reorganization or merger when the parties to
19 the reorganization or merger each had an
20 audited balance sheet, a pro forma balance
21 sheet for the combined organization; and



- 1 (iv) An audited income statement for each of the
2 issuer's two immediate previous fiscal years
3 or for the period of existence of the
4 issuer, whichever is shorter, or, in the
5 case of a reorganization or merger when each
6 party to the reorganization or merger had
7 audited income statements, a pro forma
8 income statement; and
- 9 (E) Any one of the following requirements is met:
- 10 (i) The issuer of the security has a class of
11 equity securities listed on a national
12 securities exchange registered under section
13 6 of the Securities Exchange Act of 1934 or
14 designated for trading on the National
15 Association of Securities Dealers' Automated
16 Quotation System;
- 17 (ii) The issuer of the security is a unit
18 investment trust registered under the
19 Investment Company Act of 1940;



- 1 (iii) The issuer of the security, including its
2 predecessors, has been engaged in continuous
3 business for at least three years; or
- 4 (iv) The issuer of the security has total assets
5 of at least \$2,000,000 based on an audited
6 balance sheet as of a date within eighteen
7 months before the date of the transaction
8 or, in the case of a reorganization or
9 merger when the parties to the
10 reorganization or merger each had such an
11 audited balance sheet, a pro forma balance
12 sheet for the combined organization;
- 13 (3) A nonissuer transaction by or through a broker-dealer
14 registered or exempt from registration under this
15 chapter in a security of a foreign issuer that is a
16 margin security defined in regulations or rules
17 adopted by the Board of Governors of the Federal
18 Reserve System;
- 19 (4) A nonissuer transaction by or through a broker-dealer
20 registered or exempt from registration under this
21 chapter in an outstanding security if the guarantor of



1 the security files reports with the Securities and
2 Exchange Commission under the reporting requirements
3 of section 13 or 15(d) of the Securities Exchange Act
4 of 1934 (15 U.S.C. 78m or 78o(d));

5 (5) A nonissuer transaction by or through a broker-dealer
6 registered or exempt from registration under this
7 chapter in a security that:

8 (A) Is rated at the time of the transaction by a
9 nationally recognized statistical rating
10 organization in one of its four highest rating
11 categories; or

12 (B) Has a fixed maturity or a fixed interest or
13 dividend, if:

14 (i) A default has not occurred during the
15 current fiscal year or within the three
16 previous fiscal years or during the
17 existence of the issuer and any predecessor
18 if less than three fiscal years, in the
19 payment of principal, interest, or dividends
20 on the security; and



- 1 (ii) The issuer is engaged in business, is not in
2 the organizational stage or in bankruptcy or
3 receivership, and is not and has not been
4 within the previous twelve months a blank
5 check, blind pool, or shell company that has
6 no specific business plan or purpose or has
7 indicated that its primary business plan is
8 to engage in a merger or combination of the
9 business with, or an acquisition of, an
10 unidentified person;
- 11 (6) A nonissuer transaction by or through a broker-dealer
12 registered or exempt from registration under this
13 chapter effecting an unsolicited order or offer to
14 purchase;
- 15 (7) A nonissuer transaction executed by a bona fide
16 pledgee without the purpose of evading this chapter;
- 17 (8) A nonissuer transaction by a federal covered
18 investment adviser with investments under management
19 in excess of \$100,000,000, acting in the exercise of
20 discretionary authority in a signed record for the
21 account of others;



- 1 (9) A transaction between the issuer or other person on
- 2 whose behalf the offering is made and an underwriter,
- 3 or among underwriters;
- 4 (10) A transaction in a note, bond, debenture, or other
- 5 evidence of indebtedness secured by a mortgage or
- 6 other security agreement if:
- 7 (A) The note, bond, debenture, or other evidence of
- 8 indebtedness is offered and sold with the
- 9 mortgage or other security agreement as a unit;
- 10 (B) A general solicitation or general advertisement
- 11 of the transaction is not made; and
- 12 (C) A commission or other remuneration is not paid or
- 13 given, directly or indirectly, to a person not
- 14 registered under this chapter as a broker-dealer
- 15 or as an agent;
- 16 (11) A transaction by an executor, administrator of an
- 17 estate, personal representative, sheriff, marshal,
- 18 receiver, trustee in bankruptcy, guardian, or
- 19 conservator;
- 20 (12) A sale or offer to sell to:
- 21 (A) An institutional investor;



- 1 (B) A federal covered investment adviser; or
- 2 (C) Any other person exempted by rule adopted or
- 3 order issued under this chapter;
- 4 (13) Any transaction pursuant to a sale or an offer to sell
- 5 securities of an issuer, if the transaction is part of
- 6 an issue in which:
 - 7 (A) There are no more than twenty-five purchasers
 - 8 (other than those designated in paragraph (12)),
 - 9 wherever located, during any twelve consecutive
 - 10 months;
 - 11 (B) The issuer reasonably believes that all
 - 12 purchasers (other than those designated in
 - 13 paragraph (12)), wherever located, are purchasing
 - 14 for investment purposes and not with the view to,
 - 15 or for sales in connection with, a distribution
 - 16 of the security. The purchase shall be presumed
 - 17 to be made with a view to distribute and not to
 - 18 invest if any resale of a security sold in
 - 19 reliance on this exemption is within twelve
 - 20 months of sale, except a resale pursuant to a
 - 21 registration statement effective under section



1 485A-301, or to an accredited investor pursuant
2 to an exemption available under this chapter;
3 (C) No commission, discount, or other remuneration is
4 paid or given, directly or indirectly, to a
5 person, other than a broker-dealer or agent
6 registered under this chapter, for soliciting a
7 prospective purchaser in this State; and
8 (D) The securities of the issuer are not offered or
9 sold by general solicitation or any general
10 advertisement or other advertising medium;
11 (14) A transaction under an offer to existing security
12 holders of the issuer, including persons who at the
13 date of the transaction are holders of convertible
14 securities, options, or warrants, if a commission or
15 other remuneration, other than a standby commission,
16 is not paid or given, directly or indirectly, for
17 soliciting a security holder in this State;
18 (15) (A) A transaction involving the offer or sale of a
19 security by an issuer to an accredited investor
20 that meets the following requirements:



- 1 (i) The issuer reasonably believes that the sale
- 2 is to persons who are accredited investors;
- 3 (ii) The issuer is not in the development stage,
- 4 without specific business plan or purpose;
- 5 (iii) The issuer has not indicated that the
- 6 issuer's business plan is to engage in a
- 7 merger or acquisition with an unidentified
- 8 company or companies, or other entity or
- 9 person; and
- 10 (iv) The issuer reasonably believes that all
- 11 purchasers are purchasing for investment
- 12 purposes and not with the view to, or for
- 13 sales in connection with, a distribution of
- 14 the security. The purchase shall be
- 15 presumed to be made with a view to
- 16 distribute and not to invest if any resale
- 17 of a security sold in reliance on this
- 18 exemption is within twelve months of sale,
- 19 except a resale pursuant to a registration
- 20 statement effective under section 485A-301,



1 or to an accredited investor pursuant to an
2 exemption available under this chapter;

3 (B) The exemption under this paragraph shall not
4 apply to an issuer if the issuer; any affiliated
5 issuer; any beneficial owner of ten per cent or
6 more of any class of the issuer's equity
7 securities; any issuer's predecessor, director,
8 officer, general partner, or promoter presently
9 connected in any capacity with the issuer; and
10 any underwriter or partner, director, or officer
11 of the underwriter of the securities to be
12 offered:

13 (i) Within the last five years has filed a
14 registration statement that is the subject
15 of a currently effective registration stop
16 order entered by any state securities
17 administrator or the Securities and Exchange
18 Commission;

19 (ii) Within the last five years has been
20 convicted of any criminal offense in
21 connection with the offer, purchase, or sale



1 of any security, or involving fraud or
2 deceit;

3 (iii) Is currently subject to any state or federal
4 administrative enforcement order or judgment
5 entered within the last five years, finding
6 fraud or deceit in connection with the
7 purchase or sale of any security; or

8 (iv) Is currently subject to any order, judgment,
9 or decree of any court of competent
10 jurisdiction, entered within the last five
11 years, temporarily, preliminarily, or
12 permanently restraining or enjoining such
13 party from engaging in or continuing to
14 engage in any conduct or practice involving
15 fraud or deceit in connection with the
16 purchase or sale of any security;

17 (C) Subparagraph (B) shall not apply if:

18 (i) The party subject to the disqualification is
19 licensed or registered to conduct
20 securities-related business in the state in
21 which the order, judgment, or decree



1 creating the disqualification was entered
2 against such party;

3 (ii) Before the first offer under this exemption,
4 the commissioner, or the court or regulatory
5 authority that entered the order, judgment,
6 or decree waives the disqualifications; or

7 (iii) The issuer establishes that the issuer did
8 not know and in the exercise of reasonable
9 care, based on a factual inquiry, could not
10 have known that a disqualification existed
11 under this paragraph; and

12 (D) An issuer claiming the exemption under this
13 paragraph, no later than fifteen days after the
14 first sale in this State, shall file with the
15 commissioner a notice of transaction, a consent
16 to service of process, a copy of the offering
17 circular or similar document provided to the
18 accredited investor and a \$200 filing fee.

19 For the purposes of this paragraph, "accredited
20 investor" shall have the same meaning as provided in



- 1 rule 501(a) adopted under the Securities Act of 1933
2 (17 C.F.R. 230.501(a));
- 3 (16) An offer to sell, but not a sale, of a security not
4 exempt from registration under the Securities Act of
5 1933 if:
- 6 (A) A registration or offering statement or similar
7 record as required under the Securities Act of
8 1933 has been filed, but is not effective, or the
9 offer is made in compliance with Rule 165 adopted
10 under the Securities Act of 1933 (17 C.F.R.
11 230.165); and
- 12 (B) A stop order of which the offeror is aware has
13 not been issued against the offeror by the
14 commissioner or the Securities and Exchange
15 Commission, and an audit, inspection, or
16 proceeding that is public and that may culminate
17 in a stop order is not known by the offeror to be
18 pending;
- 19 (17) An offer to sell, but not a sale, of a security exempt
20 from registration under the Securities Act of 1933 if:



- 1 (A) A registration statement has been filed under
- 2 this chapter, but is not effective;
- 3 (B) A solicitation of interest is provided in a
- 4 record to offerees in compliance with a rule
- 5 adopted by the commissioner under this chapter;
- 6 and
- 7 (C) A stop order of which the offeror is aware has
- 8 not been issued by the commissioner under this
- 9 chapter and an audit, inspection, or proceeding
- 10 that may culminate in a stop order is not known
- 11 by the offeror to be pending;
- 12 (18) A transaction involving the distribution of the
- 13 securities of an issuer to the security holders of
- 14 another person in connection with a merger,
- 15 consolidation, exchange of securities, sale of assets,
- 16 or other reorganization to which the issuer, or its
- 17 parent or subsidiary and the other person, or its
- 18 parent or subsidiary, are parties;
- 19 (19) A rescission offer, sale, or purchase under section
- 20 485A-510;



- 1 (20) An offer or sale of a security to a person not a
2 resident of this State and not present in this State
3 if the offer or sale does not constitute a violation
4 of the laws of the state or foreign jurisdiction in
5 which the offeree or purchaser is present and is not
6 part of an unlawful plan or scheme to evade this
7 chapter;
- 8 (21) Employees' stock purchase, savings, option, profit-
9 sharing, pension, or similar employees' benefit plan,
10 including any securities, plan interests, and
11 guarantees issued under a compensatory benefit plan or
12 compensation contract, contained in a record,
13 established by the issuer, its parents, its majority-
14 owned subsidiaries, or the majority-owned subsidiaries
15 of the issuer's parent for the participation of their
16 employees, including offers or sales of such
17 securities to:
- 18 (A) Directors; general partners; trustees, if the
19 issuer is a business trust; officers;
20 consultants; and advisors;



- 1 (B) Family members who acquire the securities from
2 those persons through gifts or domestic relations
3 orders;
- 4 (C) Former employees, directors, general partners,
5 trustees, officers, consultants, and advisors if
6 those individuals were employed by or providing
7 services to the issuer when the securities were
8 offered; and
- 9 (D) Insurance agents who are exclusive insurance
10 agents of the issuer, or the issuer's
11 subsidiaries or parents, or who derive more than
12 fifty per cent of their annual income from those
13 organizations;
- 14 (22) A transaction involving:
- 15 (A) A stock dividend or equivalent equity
16 distribution, whether or not the corporation or
17 other business organization distributing the
18 dividend or equivalent equity distribution is the
19 issuer, if nothing of value is given by
20 stockholders or other equity holders for the
21 dividend or equivalent equity distribution other



1 than the surrender of a right to a cash or
2 property dividend if each stockholder or other
3 equity holder may elect to take the dividend or
4 equivalent equity distribution in cash, property,
5 or stock;

6 (B) An act incident to a judicially approved
7 reorganization in which a security is issued in
8 exchange for one or more outstanding securities,
9 claims, or property interests, or partly in such
10 exchange and partly for cash; or

11 (C) The solicitation of tenders of securities by an
12 offeror in a tender offer in compliance with Rule
13 162 adopted under the Securities Act of 1933 (17
14 C.F.R. 230.162);

15 (23) A nonissuer transaction in an outstanding security by
16 or through a broker-dealer registered or exempt from
17 registration under this chapter, if the issuer is a
18 reporting issuer in a foreign jurisdiction designated
19 by this paragraph or by rule adopted or order issued
20 under this chapter; has been subject to continuous
21 reporting requirements in the foreign jurisdiction for



1 not less than one hundred eighty days before the
2 transaction; and the security is listed on the foreign
3 jurisdiction's securities exchange that has been
4 designated by this paragraph or by rule adopted or
5 order issued under this chapter, or is a security of
6 the same issuer that is of senior or substantially
7 equal rank to the listed security or is a warrant or
8 right to purchase or subscribe to any of the
9 foregoing. For purposes of this paragraph, Canada,
10 together with its provinces and territories, is a
11 designated foreign jurisdiction and the Toronto Stock
12 Exchange, Inc., is a designated securities exchange.
13 After an administrative hearing in accordance with
14 chapter 91, the commissioner, by rule adopted or order
15 issued under this chapter, may revoke the designation
16 of a securities exchange under this paragraph, if the
17 commissioner finds that revocation is necessary or
18 appropriate in the public interest and for the
19 protection of investors;

20 (24) Any offer or sale by or through a real estate broker
21 or real estate salesperson licensed under the laws of



1 this State, of a security issued on or after July 1,
2 1961, by a corporation organized under the laws of
3 this State, the holder of which is entitled solely by
4 reason of the holder's ownership thereof, to occupy
5 for dwelling purposes a house, or an apartment in a
6 building, owned or leased by such corporation;
7 provided that the issuer of the security shall apply
8 for the exemption to the commissioner on such form and
9 containing such information as the commissioner may
10 prescribe. If the commissioner finds that the
11 business applicant's proposed plan and the proposed
12 issuance of securities are fair, just, and equitable,
13 that the applicant intends to transact its business
14 fairly and honestly, and that the securities that the
15 applicant proposes to issue and the method to be used
16 by the applicant in issuing or disposing of the
17 securities will not, in the opinion of the
18 commissioner, work a fraud upon the purchaser thereof,
19 the commissioner shall issue to the applicant a permit
20 authorizing the applicant to issue and dispose of the
21 securities in this State in the manner provided herein



1 and in such amounts and for such consideration as the
2 commissioner may provide in the permit. Otherwise,
3 the commissioner shall deny the application and refuse
4 the permit and notify the applicant of the decision in
5 writing, subject to appeal as provided in section
6 485A-609. In any permit issued under this paragraph,
7 the commissioner may require the deposit in escrow or
8 impoundment of any or all securities, the proceeds
9 from the sale thereof, approval of advertising
10 material, and any of the conditions as set forth in
11 section 485A-304(f). The commissioner may act as
12 escrow holder for securities required to be deposited
13 in escrow by the commissioner's order or as a
14 necessary signatory on any account in which impounded
15 proceeds from the sale of escrowed securities are
16 deposited;

- 17 (25) Any offer or sale by or through a real estate broker
18 or real estate salesperson licensed under the laws of
19 this State of [~~an apartment or~~] a a unit in a
20 condominium project, and a rental management contract
21 relating to the [~~apartment or~~] unit, including an



1 interest in a partnership formed for the purpose of
 2 managing the rental of [~~apartments or~~] units if the
 3 rental management contract or the interest in the
 4 partnership is offered at the same time as the
 5 [~~apartment or~~] unit is offered.

6 For the purposes of this paragraph, the terms
 7 [~~"apartment",~~] "unit", "condominium", and "project"
 8 shall have the meanings prescribed in section [~~514A-3~~
 9 ~~or~~] 514B-3; and

10 (26) Any transaction not involving a public offering within
 11 the meaning of section 4(2) of the Securities Act of
 12 1933 (15 U.S.C. 77d), but not including any
 13 transaction specified in the rules and regulations
 14 thereunder."

15 SECTION 22. Section 501-20, Hawaii Revised Statutes, is
 16 amended by amending the definition of "apartment lease" to read
 17 as follows:

18 ""Apartment lease" means [~~an apartment or~~] a unit lease, a
 19 condominium conveyance document, [~~an apartment or~~] a unit deed
 20 and ground lease, or other instrument which has been registered
 21 pursuant to section 501-121 and which leases or subleases a



1 condominium [~~apartment or~~] unit or its appurtenant undivided
2 interest in the land of a condominium project established or
3 existing under chapter [~~514A or~~] 514B or at common law."

4 SECTION 23. Section 501-106, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) No new certificate of title shall be entered, and no
7 memorandum shall be made upon any certificate of title by the
8 registrar or assistant registrar, except:

9 (1) In pursuance of any deed or other voluntary
10 instrument;

11 (2) Upon the recording of a certificate of merger that
12 merges two or more condominium projects as provided by
13 section [~~514A-19 or~~] 514B-46;

14 (3) Upon the recording of an amendment to a declaration of
15 condominium property regime which alters the
16 percentage interest of the respective apartment or
17 unit owners in the common elements;

18 (4) In cases expressly provided for in this chapter; or

19 (5) Upon the order of the court, for cause shown."

20 SECTION 24. Section 501-232, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) This section shall not apply to the following fees or
2 charges required by a deed restriction or other covenant running
3 with the land in connection with the transfer of real property:

4 (1) Any interest, charge, fee, or other amount payable by
5 a borrower to a lender pursuant to a loan secured by
6 real property, including any fee payable to the lender
7 for consenting to an assumption of the loan or
8 transfer of the real property, for providing an
9 estoppel letter or certificate, or for any shared
10 appreciation interest or profit participation or other
11 consideration payable to the lender in connection with
12 the loan;

13 (2) Any fee, charge, assessment, or fine payable to [~~an~~
14 ~~association of apartment owners as defined in section~~
15 ~~514A-3,~~] an association as defined in section 514B-3,
16 a cooperative housing corporation as described in
17 section 421I-1, a limited-equity housing cooperative
18 as defined in section 421H-1, or a planned community
19 association as defined in section 607-14 and described
20 in chapter 421J, pursuant to a declaration, covenant,
21 or law applicable to such association or corporation,



1 including a fee or charge to change the association or
2 corporation's records as to the owner of the real
3 property or to provide an estoppel letter or
4 certificate;

5 (3) Any fee or charge payable to a lessor under a lease of
6 real property, including a fee or charge payable to
7 the lessor for consenting to an assignment of the
8 lease, for providing an estoppel letter or
9 certificate, or to change the lessor's records as to
10 the holder of the lessee's interest in the lease;

11 (4) Any consideration payable to the holder of an option
12 to purchase an interest in real property or the holder
13 of a right of first refusal or first offer to purchase
14 an interest in real property for waiving, releasing,
15 or not exercising the option or right upon transfer of
16 the real property to another person;

17 (5) Any fee, charge, shared appreciation interest, profit
18 participation, or other consideration, payable by:

19 (A) A person engaged in the business of the
20 development of real property for resale to others
21 and not for the person's own use or the use of



1 the person's parent, affiliates, subsidiaries, or
2 relatives;

3 (B) A person who acquires the real property for the
4 purpose of engaging in the business of the
5 development of real property for resale to others
6 or for the purpose of reselling the real property
7 to a person engaged in the business of the
8 development of real property for resale to
9 others; or

10 (C) A person who purchases real property initially
11 transferred at a price below the then prevailing
12 market value of the real property pursuant to an
13 affordable housing program established by the
14 seller; provided that such fee, charge, shared
15 appreciation interest, profit participation, or
16 other consideration becomes payable, if ever,
17 within ten years of the recording of the deed
18 restriction or other covenant running with the
19 land imposing the fee or charge on the real
20 property;

21 (6) Any fee or charge payable to a government entity;



1 (7) Any fee, charge, assessment, or other amount payable
2 pursuant to a deed restriction or other covenant
3 running with the land, regardless of when filed or
4 recorded, that was required by a litigation settlement
5 that was approved by a court of competent jurisdiction
6 before [†]June 22, 2010[†]; or

7 (8) Any reasonable fee payable to a qualified organization
8 for:

9 (A) The qualified organization's management,
10 stewardship, or enforcement of a qualified real
11 property interest in the real property, granted
12 exclusively for a conservation purpose; or

13 (B) Educating new owners of the real property on the
14 restrictions imposed by the qualified real
15 property interest granted exclusively for a
16 conservation purpose.

17 As used in this paragraph, "qualified real property
18 interest", "qualified organization", and "conservation
19 purpose" have the same meaning as in section
20 170(h)(2), (3), and (4), respectively, of the Internal
21 Revenue Code."



1 SECTION 25. Section 501-241, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (b) to read:

4 "(b) Without limiting the generality of subsection (a),
5 the following instruments need not be registered pursuant to
6 this chapter to be effective and shall be recorded in the bureau
7 of conveyances pursuant to chapter 502:

8 (1) An assignment or other instrument transferring a
9 leasehold time share interest;

10 (2) A mortgage or other instrument granting a lien on a
11 leasehold time share interest;

12 (3) An agreement of sale for the sale of a leasehold time
13 share interest. Any such agreement of sale shall be
14 subject to section 502-85 and shall not be subject to
15 section 501-101.5;

16 (4) A lien or notice of lien pertaining to a leasehold
17 time share interest in favor of a time share owners
18 association, an association [~~of owners~~] under chapter
19 [~~514A-~~er~~~~] 514B, or a similar homeowner's association;

20 (5) A judgment, decree, order of court, attachment, writ,
21 or other process against a leasehold time share



- 1 interest;
- 2 (6) A mechanic's or materialman's lien or other lien upon
- 3 a leasehold time share interest;
- 4 (7) A lis pendens or notice of pendency of action, notice,
- 5 affidavit, demand, certificate, execution, copy of
- 6 execution, officer's return, or other instrument
- 7 relating to a leasehold time share interest and
- 8 otherwise required or permitted to be recorded or
- 9 registered in connection with the enforcement or
- 10 foreclosure of any lien, whether by way of power of
- 11 sale pursuant to chapter 667 or otherwise;
- 12 (8) A power of attorney given by the owner of a leasehold
- 13 time share interest or the vendor or vendee under an
- 14 agreement of sale for the sale of a leasehold time
- 15 share interest, a mortgagee or other lienor having a
- 16 mortgage or lien upon a leasehold time share interest,
- 17 or another party holding a claim or encumbrance
- 18 against or an interest in a leasehold time share
- 19 interest; or
- 20 (9) An instrument assigning, extending, continuing,
- 21 dissolving, discharging, releasing in whole or in



1 part, reducing, canceling, extinguishing, or otherwise
2 modifying or amending any of the foregoing
3 instruments."

4 2. By amending subsection (e) to read:

5 "(e) Notwithstanding subsections (a), (b), and (c), the
6 following instruments shall be registered by recording the
7 instrument with the assistant registrar and by a brief
8 memorandum thereof made by the assistant registrar upon the
9 certificate of title, and signed by the assistant registrar:

- 10 (1) The [~~apartment or~~] unit lease, and any amendments
11 thereto, and any cancellation or extinguishment
12 thereof;
- 13 (2) Any deed or other instrument conveying the fee
14 interest in registered land and any other instrument
15 encumbering or otherwise dealing with the fee interest
16 in registered land including but not limited to a
17 mortgage of the fee interest, an assignment of the
18 lessor's interest in a lease, or the designation,
19 grant, conveyance, transfer, cancellation, relocation,
20 realignment, or amendment of any easement encumbering
21 the fee interest;



- 1 (3) If the [~~apartment or~~] unit lease is a sublease, any
- 2 assignment or other conveyance of the sublessor's
- 3 estate or any other leasehold estate which is superior
- 4 to the [~~apartment or~~] unit lease, and any other
- 5 instrument mortgaging, encumbering, or otherwise
- 6 dealing with the sublessor's estate or any other
- 7 estate which is prior and superior to the leasehold
- 8 time share interest;
- 9 (4) Any other instrument assigning, modifying, canceling,
- 10 or otherwise dealing with an interest in registered
- 11 land which is:
- 12 (A) Less than an estate in fee simple; and
- 13 (B) Prior or superior to the lessee's interest in a
- 14 leasehold time share interest;
- 15 (5) The declaration of condominium property regime or
- 16 similar declaration by whatever name denominated, the
- 17 bylaws of the association [~~of owners~~] under chapter
- 18 [~~514A or~~] 514B, the condominium map, any declaration
- 19 of annexation or deannexation, any declaration of
- 20 merger and any instrument effecting a merger, and any
- 21 amendments to any of the foregoing and any



1 cancellation or extinguishment thereof;

2 (6) Any declaration of covenants, conditions, and

3 restrictions, or similar instrument, by whatever name

4 denominated, encumbering the fee, the bylaws of any

5 homeowners association, any declaration of annexation

6 or deannexation, any amendments and supplements

7 thereto, and any cancellation or extinguishment

8 thereof;

9 (7) Any declaration of covenants, conditions,

10 restrictions, or similar instrument, by whatever name

11 denominated, establishing the time share plan, the

12 bylaws of the time share owners association, any

13 declaration of annexation or deannexation, any

14 amendments and supplements thereto, and any

15 cancellation or extinguishment thereof; and

16 (8) Any notice of time share plan, any declaration of

17 annexation or deannexation, any amendments thereto,

18 and any cancellation or extinguishment thereof."

19 SECTION 26. Section 502-112, Hawaii Revised Statutes, is

20 amended by amending subsection (b) to read as follows:



1 "(b) This section shall not apply to the following fees or
2 charges required by a deed restriction or other covenant running
3 with the land in connection with the transfer of real property:

4 (1) Any interest, charge, fee, or other amount payable by
5 a borrower to a lender pursuant to a loan secured by
6 real property, including any fee payable to the lender
7 for consenting to an assumption of the loan or
8 transfer of the real property, for providing an
9 estoppel letter or certificate, or for any shared
10 appreciation interest or profit participation or other
11 consideration payable to the lender in connection with
12 the loan;

13 (2) Any fee, charge, assessment, or fine payable to [~~an~~
14 ~~association of apartment owners as defined in section~~
15 ~~514A-3,~~] an association as defined in section 514B-3,
16 a cooperative housing corporation as described in
17 section 421I-1, a limited-equity housing cooperative
18 as defined in section 421H-1, or a planned community
19 association as defined in section 607-14 and described
20 in chapter 421J, pursuant to a declaration, covenant,
21 or law applicable to such association or corporation,



- 1 including a fee or charge to change the association or
2 corporation's records as to the owner of the real
3 property or to provide an estoppel letter or
4 certificate;
- 5 (3) Any fee or charge payable to a lessor under a lease of
6 real property, including a fee or charge payable to
7 the lessor for consenting to an assignment of the
8 lease, for providing an estoppel letter or
9 certificate, or to change the lessor's records as to
10 the holder of the lessee's interest in the lease;
- 11 (4) Any consideration payable to the holder of an option
12 to purchase an interest in real property or the holder
13 of a right of first refusal or first offer to purchase
14 an interest in real property for waiving, releasing,
15 or not exercising the option or right upon transfer of
16 the real property to another person;
- 17 (5) Any fee, charge, shared appreciation interest, profit
18 participation, or other consideration, payable by:
- 19 (A) A person engaged in the business of the
20 development of real property for resale to others
21 and not for the person's own use or the use of



1 the person's parent, affiliates, subsidiaries, or
2 relatives;

3 (B) A person who acquires the real property for the
4 purpose of engaging in the business of the
5 development of real property for resale to others
6 or for the purpose of reselling the real property
7 to a person engaged in the business of the
8 development of real property for resale to
9 others; or

10 (C) A person who purchases real property initially
11 transferred at a price below the then prevailing
12 market value of the real property pursuant to an
13 affordable housing program established by the
14 seller; provided that such fee, charge, shared
15 appreciation interest, profit participation, or
16 other consideration becomes payable, if ever,
17 within ten years of the recording of the deed
18 restriction or other covenant running with the
19 land imposing the fee or charge on the real
20 property;

21 (6) Any fee or charge payable to a government entity;



- 1 (7) Any fee, charge, assessment, or other amount payable
2 pursuant to a deed restriction or other covenant
3 running with the land, regardless of when recorded or
4 filed, that was required by a litigation settlement
5 that was approved by a court of competent jurisdiction
6 before [†]June 22, 2010[†]; or
- 7 (8) Any reasonable fee payable to a qualified organization
8 for:
- 9 (A) The qualified organization's management,
10 stewardship, or enforcement of a qualified real
11 property interest in the real property, granted
12 exclusively for a conservation purpose; or
- 13 (B) Educating new owners of the real property on the
14 restrictions imposed by the qualified real
15 property interest granted exclusively for a
16 conservation purpose.
- 17 As used in this paragraph, "qualified real property
18 interest", "qualified organization", and "conservation
19 purpose" have the same meaning as in section
20 170(h)(2), (3), and (4), respectively, of the Internal
21 Revenue Code."



1 SECTION 27. Section 502C-1, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending the definition of "common elements" or
4 "common area" to read:

5 "Common elements" or "common area" means:

6 (1) The same as "common elements" as defined in section
7 ~~[514A-3 or]~~ 514B-3; and

8 (2) Real property within a planned community that is owned
9 or leased by the association or is otherwise available
10 for the use of its members or designated as common
11 area in or pursuant to the declaration."

12 2. By amending the definition of "declaration" to read:

13 "Declaration" means:

14 (1) The instrument by which property is submitted to
15 chapter ~~[514A or]~~ 514B, as provided in ~~[these~~
16 ~~chapters,]~~ that chapter, and such declaration as from
17 time to time amended; and

18 (2) Any recorded instrument, however denominated, that
19 imposes on an association maintenance or operational
20 responsibilities for the common area and creates the
21 authority in the association to impose on units, or on



1 the owners or occupants of the units, any mandatory
 2 payment of money as a regular annual assessment or
 3 otherwise in connection with the provisions,
 4 maintenance, or services for the benefit of some or
 5 all of the units, the owners, or occupants of the
 6 units or the common areas, including any amendment or
 7 supplement to the instrument."

8 3. By amending the definition of "townhouse" to read:

9 "Townhouse" means a series of individual apartments or
 10 units having architectural unity and common elements, with each
 11 apartment or unit extending from ground to roof or from the
 12 first or second floor to roof, and where apartments or units may
 13 share a common wall or be freestanding structures, including
 14 townhouse projects that are created pursuant to chapters [514A, 7]
 15 514B[7] and 421J, as well as projects that are not created
 16 pursuant to those chapters but are governed by an association;
 17 provided that "townhouse" shall not include any apartments or
 18 units located in a building of more than three stories."

19 SECTION 28. Section 514B-72, Hawaii Revised Statutes, is
 20 amended as follows:

21 1. By amending subsection (a) to read:



1 "(a) Each project or association with more than five
2 units [~~, including any project or association with more than five~~
3 ~~units subject to chapter 514A,~~] shall pay to the department of
4 commerce and consumer affairs:

5 (1) A condominium education trust fund fee within one year
6 after the recordation of the purchase of the first
7 unit or within thirty days of the association's first
8 meeting, and thereafter, on or before June 30 of every
9 odd-numbered year, as prescribed by rules adopted
10 pursuant to chapter 91; and

11 (2) Beginning with the July 1, 2015, biennium
12 registration, an additional annual condominium
13 education trust fund fee in an amount equal to the
14 product of \$1.50 times the number of condominium units
15 included in the registered project or association to
16 be dedicated to supporting mediation of condominium
17 related disputes. The additional condominium
18 education trust fund fee shall total \$3 per unit until
19 the commission adopts rules pursuant to chapter 91.
20 On June 30 of every odd-numbered year, any unexpended
21 additional amounts paid into the condominium education



1 trust fund and initially dedicated to supporting
2 mediation of condominium related disputes, as required
3 by this paragraph, shall be used for educational
4 purposes as provided in section 514B-71(a)(1), (2),
5 and (3)."

6 2. By amending subsection (d) to read:

7 "(d) The department of commerce and consumer affairs shall
8 allocate the fees collected under this section[, ~~section 514A-~~
9 ~~40, and section 514A-95.1~~] to the condominium education trust
10 fund established pursuant to section 514B-71. The fees
11 collected pursuant to this section shall be administratively and
12 fiscally managed together as one condominium education trust
13 fund established by section 514B-71."

14 SECTION 29. Section 514B-73, Hawaii Revised Statutes, is
15 amended by amending subsections (a) through (c) to read as
16 follows:

17 "(a) The sums received by the commission for deposit in
18 the condominium education trust fund pursuant to [~~sections 514A-~~
19 ~~40, 514A-95.1, and~~] section 514B-72 shall be held by the
20 commission in trust for carrying out the purpose of the fund.



1 (b) The commission and the director of commerce and
2 consumer affairs may use moneys in the condominium education
3 trust fund collected pursuant to [~~sections 514A-40, 514A-95.1,~~
4 ~~and] section 514B-72, and the rules of the commission to employ
5 necessary personnel not subject to chapter 76 for additional
6 staff support, to provide office space, and to purchase
7 equipment, furniture, and supplies required by the commission to
8 carry out its responsibilities under this part.~~

9 (c) The moneys in the condominium education trust fund
10 collected pursuant to [~~sections 514A-40, 514A-95.1, and] section
11 514B-72, and the rules of the commission may be invested and
12 reinvested together with the real estate education fund
13 established under section 467-19 in the same manner as are the
14 funds of the employees' retirement system of the State. The
15 interest and earnings from these investments shall be deposited
16 to the credit of the condominium education trust fund."~~

17 SECTION 30. Section 514B-154.5, Hawaii Revised Statutes,
18 is amended by amending subsection (g) to read as follows:

19 "(g) This section shall apply to all condominiums
20 organized under this chapter [~~514A or 514B~~]."



1 SECTION 31. Section 514C-6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The association [~~of owners~~] under chapter [~~514A or~~
4 514B[7]] or cooperative housing corporation may purchase the
5 leased fee interest in the land; provided that at least sixty-
6 seven per cent of the condominium unit lessees or cooperative
7 unit lessees approve of the purchase. If the seller is also a
8 condominium unit lessee or cooperative unit lessee, the seller's
9 interest shall be disregarded in the computation to achieve the
10 sixty-seven per cent requirement. As used herein:

- 11 (1) Sixty-seven per cent of the condominium unit lessees
12 means the lessees of units to which sixty-seven per
13 cent of the common interests are appurtenant; and
14 (2) Sixty-seven per cent of the cooperative unit lessees
15 means shareholders having at least sixty-seven per
16 cent of the shares in the cooperative housing
17 corporation."

18 SECTION 32. Section 514C-22, Hawaii Revised Statutes, is
19 amended as follows:

- 20 1. By amending subsection (a) to read:



1 "(a) The association [~~of owners~~] under chapter [~~514A or~~]
2 514B may purchase the lessor's interest in the condominium
3 project; provided that the declaration of condominium property
4 regime shall either contain or be amended to include a provision
5 authorizing the board of directors to effectuate such a
6 purchase. If the lessor is also a condominium unit lessee, the
7 lessor's lessee interest shall be disregarded in the computation
8 of the percentage of condominium unit lessees needed to achieve
9 the vote or written consent required to amend the declaration of
10 condominium property regime."

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

12 "(f) For purposes of this section:

13 "Remaining lessees" means the lessees of condominium units
14 in a condominium project who have not purchased the leased fee
15 interest in their condominium units as of the effective date of
16 the amendment referred to in subsection (d)(1).

17 "Condominium unit" has the same meaning as the term
18 [~~"apartment" or~~] "unit" as defined in section [~~514A-3 or~~] 514B-
19 3."



1 SECTION 33. Section 514E-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "blanket lien" to read as
3 follows:

4 "Blanket lien" means any mortgage, deed of trust, option
5 to purchase, master lease, vendor's lien or interest under a
6 contract or agreement of sale, or any other lien or encumbrance
7 that (i) affects more than one time share interest either
8 directly or by reason of affecting an entire time share unit or
9 the property upon which the time share unit to be used by the
10 purchasers is located, and (ii) secures or evidences the
11 obligation to pay money or to sell or convey the property and
12 that authorizes, permits, or requires the foreclosure and sale
13 or other defeasance of the property affected; provided that for
14 the purpose of this chapter, the following shall not be
15 considered blanket liens:

- 16 (1) The lien of current real property taxes;
- 17 (2) Taxes and assessments levied by public authority and
18 that are not yet due and payable;
- 19 (3) A lien for common expenses under chapter [~~514A or~~
20 514B or a lien on an individual time share unit for



1 similar expenses in favor of a homeowners or community
2 association;

3 (4) An apartment lease or condominium conveyance document
4 conveying or demising a single condominium [~~apartment~~
5 ~~or~~] unit or a lease of a single cooperative apartment;
6 and

7 (5) Any lien for costs or trustee's fees charged by a
8 trustee holding title to time share units pursuant to
9 a trust created under section 514E-19; provided that
10 the costs or trustee's fees are not yet due and
11 payable."

12 SECTION 34. Section 514E-29, Hawaii Revised Statutes, is
13 amended by amending subsection (d) to read as follows:

14 "(d) Notice of any delinquent lien created pursuant to
15 subsection (c) shall be recorded in the bureau of conveyances
16 and upon recordation shall be prior to all other liens, except:

17 (1) Liens for taxes and assessments lawfully imposed by
18 governmental authority against the time share
19 interest;

20 (2) All sums unpaid on any mortgage of record encumbering
21 the time share interest which was recorded prior to



1 the recordation of a notice of a lien by the
 2 association; and
 3 (3) For a time share interest subject to a condominium
 4 property regime, the lien of the association [~~of~~
 5 ~~owners~~] under chapter [~~514A-01~~] 514B, created pursuant
 6 to section [~~514A-90-01~~] 514B-146."

7 SECTION 35. Section 516D-1, Hawaii Revised Statutes, is
 8 amended to read as follows:

9 "§516D-1 Applicability. This chapter applies to all lands
 10 on which are situated either residential condominium property
 11 regimes created under chapter [~~514A-01~~] 514B, or cooperative
 12 housing corporations, which are owned or held privately or by
 13 the State or by the counties, except Hawaiian home lands subject
 14 to article XII of the state constitution and lands owned or held
 15 by the federal government."

16 SECTION 36. Section 521-3, Hawaii Revised Statutes, is
 17 amended by amending subsection (d) to read as follows:

18 "(d) An association [~~of owners~~] under chapter [~~514A-01~~]
 19 514B shall have standing to initiate and prosecute a summary
 20 proceeding for possession against a tenant residing in the
 21 condominium project who repeatedly violates the association's



1 governing documents or the rights of other occupants to quiet
2 enjoyment and whose landlord refuses to act; provided that in
3 such cases, the landlord shall be named as an additional party
4 defendant."

5 SECTION 37. Section 521-38, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§521-38 Tenants subject to rental agreement; notice of
8 conversions. When a period of tenancy is pursuant to any rental
9 agreement and where a landlord contemplates conversion to a
10 condominium property regime under chapter [~~514A-01~~] 514B, the
11 landlord shall provide notice to the tenant at least one hundred
12 twenty days in advance of the termination of the rental
13 agreement."

14 SECTION 38. Section 521-52, Hawaii Revised Statutes, is
15 amended by amending subsection (d) to read as follows:

16 "(d) If the dwelling unit is [~~an apartment or~~] a unit in a
17 condominium [~~property regime~~] the tenant shall comply with the
18 bylaws of the association [~~of owners~~] under chapter [~~514A-01~~]
19 514B and if the dwelling unit is an apartment in a cooperative
20 housing corporation the tenant shall comply with the bylaws of
21 the corporation."



1 SECTION 39. Section 521-71, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Before a landlord terminates a month-to-month tenancy
4 where the landlord contemplates voluntary demolition of the
5 dwelling units, conversion to a condominium property regime
6 under chapter [~~514A-0x~~] 514B, or changing the use of the
7 building to transient vacation rentals, the landlord shall
8 provide notice to the tenant at least one hundred twenty days in
9 advance of the anticipated demolition or anticipated
10 termination. If notice is revoked or amended and reissued, the
11 notice period shall begin from the date it was reissued or
12 amended. Any notice provided, revoked, or amended and reissued
13 shall be in writing. When the landlord provides notification of
14 termination pursuant to this subsection, the tenant may vacate
15 at any time within the one-hundred-twenty-day period between the
16 notification and the termination date, but the tenant shall
17 notify the landlord of the date the tenant will vacate the
18 dwelling unit and shall pay a prorated rent for that period of
19 occupation."

20 SECTION 40. Section 634-21.5, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending subsection (a) to read:
2 "(a) Each board of directors of an association [~~ef~~
3 ~~apartment owners~~] governed by chapter [~~514A-er~~] 514B,
4 cooperative housing corporation governed by chapter 421I, and
5 planned community association governed by chapter 421J shall
6 establish, if entry to the property is inaccessible to the
7 general public, a policy to provide reasonable access as
8 specified in subsection (b) to the building or community to
9 persons authorized to serve civil process for the purpose of
10 serving any summons, subpoena, notice, or order on a person who
11 is identified by the document being served as residing or
12 present in the condominium, cooperative housing project, or
13 planned community."

14 2. By amending subsection (c) to read:
15 "(c) An association [~~ef-apartment owners~~] governed by
16 chapter [~~514A-er~~] 514B, a cooperative housing corporation
17 governed by chapter 421I, or a planned community association
18 governed by chapter 421J shall not be liable to:

19 (1) Any person if, after access is allowed to the building
20 or community in accordance with this chapter, service

1 of civil process is not actually effected for whatever
2 reason; and

3 (2) A person upon whom service of process is actually
4 effected in accordance with this chapter."

5 SECTION 41. Section 667-19, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~[+]§667-19[+]~~ **Association foreclosures; cure of default;**
8 **payment plan.** If a foreclosure by action is initiated by an
9 association pursuant to section 421J-10.5 [~~7, 514A-90,~~] or 514B-
10 146:

11 (1) At the time of the commencement of the foreclosure by
12 action, the association shall serve the unit owner
13 with written contact information for approved housing
14 counselors and approved budget and credit counselors;

15 (2) A unit owner may cure the default within sixty days
16 after service of the association's complaint for
17 foreclosure by action by paying the association the
18 full amount of the default, including the foreclosing
19 association's attorneys' fees and costs, and all other
20 fees and costs related to the default, along with any



1 additional amounts estimated to be incurred by the
2 foreclosing association;

3 (3) A unit owner may submit a payment plan within thirty
4 days after service of the association's complaint for
5 foreclosure by action. The unit owner shall submit
6 the payment plan to the association or its attorney by
7 certified mail return receipt requested or by hand
8 delivery. The association shall not reject a
9 reasonable payment plan. A unit owner's failure to
10 strictly perform any agreed-upon payment plan shall
11 entitle the association to pursue its remedies without
12 further delay. For purposes of this paragraph,
13 "reasonable payment plan" means a plan that provides
14 for:

15 (A) Timely payment of all assessments that become due
16 after the date that the payment plan is proposed;
17 and

18 (B) Additional monthly payments of an amount
19 sufficient to cure the default, within a
20 reasonable period under the circumstances as
21 determined by the board of directors in its



1 discretion; provided that a period of up to
2 twelve months shall be deemed reasonable; and
3 provided further that the board of directors
4 shall have the discretion to agree to a payment
5 plan in excess of twelve months;

6 (4) From and after the date that the unit owner gives
7 written notice to the association of the unit owner's
8 intent to cure the default pursuant to paragraph (2)
9 or timely submits a payment plan pursuant to paragraph
10 (3), any foreclosure by action shall be stayed during
11 the sixty-day period to cure the default or during the
12 term of the payment plan or a longer period that is
13 agreed upon by the parties;

14 (5) If the default is cured pursuant to paragraph (2), the
15 association shall dismiss the foreclosure by action.
16 If the parties have agreed on a payment plan pursuant
17 to paragraph (3), the association shall stay the
18 foreclosure by action. Within fourteen days of the
19 date of the cure or an agreement on a payment plan,
20 the association shall notify any person who was served
21 as a result of the foreclosure by action that the



1 action has been dismissed or stayed, as the case may
2 be. If a notice of pendency of action for the
3 foreclosure by action was recorded, a release of the
4 notice of pendency of action shall be recorded if the
5 action is dismissed; and

6 (6) If the default is not cured pursuant to paragraph (2),
7 or the parties have not agreed on a payment plan
8 pursuant to paragraph (3), the association may
9 continue to foreclose the association's lien under
10 foreclosure by action."

11 SECTION 42. Section 667-53, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) This section shall not apply to foreclosures of
14 association liens that arise under a declaration filed pursuant
15 to chapter 421J[~~7-514A~~] or 514B."

16 SECTION 43. Section 667-71, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) This part shall not apply to actions by an
19 association to foreclose on a lien for amounts owed to the
20 association that arise under a declaration filed pursuant to
21 chapter 421J[~~7-514A~~] or 514B, or to a mortgagor who has



1 previously participated in dispute resolution under this part
2 for the same property on the same mortgage loan."

3 SECTION 44. Section 672E-4, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) Within thirty days following any proposal for
6 inspection under subsection (b)(2), the claimant shall provide
7 access to:

- 8 (1) Inspect the premises;
- 9 (2) Document any alleged construction defects; and
- 10 (3) Perform any testing required to evaluate the nature,
11 extent, and cause of the asserted construction defect,
12 and the nature and extent of any repair or replacement
13 that may be necessary to remedy the asserted
14 construction defect;

15 provided that if the claimant is an association [~~of owners~~]
16 under chapter [~~514A or~~] 514B, the claimant shall have forty-five
17 days to provide such access. If access to an individual
18 condominium [~~apartment or~~] unit is necessary, and the
19 association is unable to obtain such access, then the
20 association shall have a reasonable time to provide access. If
21 destructive testing is required, the contractor shall give



1 advance notice of tests and return the premises to its pre-
2 testing condition. If inspection or testing reveals a condition
3 that requires additional testing to fully and completely
4 evaluate the nature, cause, and extent of the construction
5 defect, the contractor shall provide notice to the claimant of
6 the need for additional testing. The claimant shall provide
7 additional access to the premises. If a claim is asserted on
8 behalf of owners of multiple dwellings, or multiple owners of
9 units within a multi-family complex, the contractor shall be
10 entitled to inspect each of the dwellings or units."

11 PART V

12 SECTION 45. A developer of a condominium project that was
13 created before July 1, 2006, but has not been brought to market
14 for sale shall have until January 1, 2019, to register the
15 developer's project with the real estate commission and bring
16 the project to market.

17 PART VI

18 SECTION 46. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 47. This Act shall take effect on July 1, 2112;
21 provided that on or after the effective date of this Act,



1 condominiums formerly subject to chapter 514A, Hawaii Revised
2 Statutes, shall be transitioned to and governed by chapter 514B,
3 Hawaii Revised Statutes, without paying any additional costs or
4 filing any additional paperwork with the real estate commission.



Report Title:

Condominiums; Condominium Property Regimes; Repeal

Description:

Repeals chapter 514A, Hawaii Revised Statutes, relating to condominium property regimes, and ensures that all condominiums in the State are governed under chapter 514B, Hawaii Revised Statutes, relating to condominiums. (HB244 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

