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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 **PART I**

2 SECTION 1. The legislature finds that two condominium  
3 statutes are currently maintained: chapter 514A, Hawaii Revised  
4 Statutes ("chapter 514A"), and chapter 514B, Hawaii Revised  
5 Statutes ("chapter 514B"). Chapter 514A is relevant only to  
6 condominium property regimes that were created before July 1,  
7 2006, but not yet brought to market for sale. Chapter 514B  
8 alone has applied to all condominiums created within the State  
9 since July 1, 2006.

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

15 (1) The specified provisions automatically apply only to  
16 events and circumstances occurring on or after July 1,  
17 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, i.e., the United States Constitution's  
6           Contracts Clause standard.

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

13           However, the legislature also finds that maintaining two  
14   condominium statutes within the Hawaii Revised Statutes has  
15   caused confusion for some condominium owners, boards, realtors,  
16   and attorneys. Additionally, although there are still some  
17   condominium projects that were created before July 1, 2006, but  
18   have never been built and sold to anyone in the general public,  
19   the legislature notes that the developers of such projects have  
20   had more than a decade to bring their condominium projects  
21   created under chapter 514A to market. Chapter 514B has superior



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3 it is appropriate to end any confusion, repeal the outdated  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

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

9 (1) Repealing chapter 514A;

10 (2) Making it clear that chapter 514B applies to all  
11 condominiums in the State, provided that such  
12 application shall not invalidate existing provisions  
13 of a condominium's governing documents, if to do so  
14 would invalidate a developer's reserved rights; and

15 (3) Removing associated references to the repealed chapter  
16 514A.

17 **PART II**

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

20 **PART III**



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

3 "[+]§514B-21[+] **Applicability** [~~to new condominiums~~]. (a)

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

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



1           "SECTION 4. Section 514B-22, Hawaii Revised Statutes, is  
2 repealed.

3           ~~["§514B-22 Applicability to preexisting condominiums.~~

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

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

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



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

3 **PART IV**

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

6 "(c) The board of acupuncture, board of public  
7 accountancy, board of barbering and cosmetology, boxing  
8 commission, board of chiropractic examiners, contractors license  
9 board, board of dental examiners, board of electricians and  
10 plumbers, elevator mechanics licensing board, board of  
11 professional engineers, architects, surveyors, and landscape  
12 architects, board of massage therapy, Hawaii medical board,  
13 motor vehicle industry licensing board, motor vehicle repair  
14 industry board, board of naturopathic medicine, board of  
15 nursing, board of examiners in optometry, pest control board,  
16 board of pharmacy, board of physical therapy, board of  
17 psychology, board of private detectives and guards, real estate  
18 commission, board of veterinary examiners, board of speech  
19 pathology and audiology, and any board, commission, program, or  
20 entity created pursuant to or specified by statute in  
21 furtherance of the purpose of this section including but not



1 limited to section 26H-4, or chapters 484, [~~514A,~~] 514B, and  
2 514E shall be placed within the department of commerce and  
3 consumer affairs for administrative purposes.

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

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

14 **"§92-28 State service fees; increase or decrease of.** Any  
15 law to the contrary notwithstanding, the fees or other nontax  
16 revenues assessed or charged by any board, commission, or other  
17 governmental agency may be increased or decreased by the body in  
18 an amount not to exceed fifty per cent of the statutorily  
19 assessed fee or nontax revenue, to maintain a reasonable  
20 relation between the revenues derived from such fee or nontax  
21 revenue and the cost or value of services rendered,



1 comparability among fees imposed by the State, or any other  
2 purpose which it may deem necessary and reasonable; provided  
3 that:

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





- 1           (3) The authority to increase or decrease fees or nontax  
2 revenues established by the University of Hawaii under  
3 chapter 304A shall be subject to the approval of the  
4 board of regents; provided that the board's approval  
5 of any increase or decrease in tuition for regular  
6 credit courses shall be preceded by an open public  
7 meeting held during or prior to the semester preceding  
8 the semester to which the tuition applies;
- 9           (4) This section shall not apply to judicial fees as may  
10 be set by any chapter cited in this section;
- 11          (5) The authority to increase or decrease fees or nontax  
12 revenues pursuant to this section shall be exempt from  
13 the public notice and public hearing requirements of  
14 chapter 91; and
- 15          (6) Fees for copies of proposed and final rules and public  
16 notices of proposed rulemaking actions under chapter  
17 91 shall not exceed 10 cents a page, as required by  
18 section 91-2.5."

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



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

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

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

14 Any such private restriction limiting or prohibiting  
15 agricultural use or activity shall be voidable, subject to  
16 special restrictions enacted by the county ordinance pursuant to  
17 section 46-4; except that restrictions taken to protect  
18 environmental or cultural resources, agricultural leases,  
19 utility easements, and access easements shall not be subject to  
20 this section."



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

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

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

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

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

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

19 (5) Except as otherwise expressly provided, payments made  
20 by the United States or this State, under an act of  
21 Congress or a law of this State, which by express



1 provision or administrative regulation or  
2 interpretation are exempt from both the normal and  
3 surtaxes of the United States, even though not so  
4 exempted by the Internal Revenue Code itself;

5 (6) Any income expressly exempted or excluded from the  
6 measure of the tax imposed by this chapter by any  
7 other law of the State, it being the intent of this  
8 chapter not to repeal or supersede any express  
9 exemption or exclusion;

10 (7) Income received by each member of the reserve  
11 components of the Army, Navy, Air Force, Marine Corps,  
12 or Coast Guard of the United States of America, and  
13 the Hawaii National Guard as compensation for  
14 performance of duty, equivalent to pay received for  
15 forty-eight drills (equivalent of twelve weekends) and  
16 fifteen days of annual duty, at an:

17 (A) E-1 pay grade after eight years of service;  
18 provided that this subparagraph shall apply to  
19 taxable years beginning after December 31, 2004;



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



# H.B. NO. 384

- 1 operation of ships or aircraft that are documented or  
2 registered under the laws of the United States;
- 3 (9) The value of legal services provided by a legal  
4 service plan to a taxpayer, the taxpayer's spouse, and  
5 the taxpayer's dependents;
- 6 (10) Amounts paid, directly or indirectly, by a legal  
7 service plan to a taxpayer as payment or reimbursement  
8 for the provision of legal services to the taxpayer,  
9 the taxpayer's spouse, and the taxpayer's dependents;
- 10 (11) Contributions by an employer to a legal service plan  
11 for compensation (through insurance or otherwise) to  
12 the employer's employees for the costs of legal  
13 services incurred by the employer's employees, their  
14 spouses, and their dependents;
- 15 (12) Amounts received in the form of a monthly surcharge by  
16 a utility acting on behalf of an affected utility  
17 under section 269-16.3; provided that amounts retained  
18 by the acting utility for collection or other costs  
19 shall not be included in this exemption;
- 20 (13) Amounts received in the form of a cable surcharge by  
21 an electric utility company acting on behalf of a



1 certified cable company under section 269-134;  
2 provided that any amounts retained by that electric  
3 utility company for collection or other costs shall  
4 not be included in this exemption; and

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

12 For purposes of this paragraph:

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

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

19 "Condominium project" and "cooperative project"  
20 shall have the same meanings as provided under section  
21 514C-1."



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

3 "(e) As used in this section:

4 "Lease" means the rental of real property under an  
5 instrument in writing by which one conveys real property for a  
6 specified term and for a specified consideration, and includes  
7 the written extension or renegotiation of a lease, and any  
8 holdover tenancy.

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

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

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

16 "Sublease" includes the rental of real property which is  
17 held under a lease and is made in a written document by which  
18 one conveys real property for a specified term and for a  
19 specified consideration. A sublease includes the written  
20 extension or renegotiation of a sublease and any holdover  
21 tenancy under the written sublease.





1 "Sublessee" means one who holds real property under a  
2 sublease.

3 "Sublessor" means one who conveys real property by  
4 sublease."

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

7 "**§237-24.3 Additional amounts not taxable.** In addition to  
8 the amounts not taxable under section 237-24, this chapter shall  
9 not apply to:

10 (1) Amounts received from the loading, transportation, and  
11 unloading of agricultural commodities shipped for a  
12 producer or produce dealer on one island of this State  
13 to a person, firm, or organization on another island  
14 of this State. The terms "agricultural commodity",  
15 "producer", and "produce dealer" shall be defined in  
16 the same manner as they are defined in section 147-1;  
17 provided that agricultural commodities need not have  
18 been produced in the State;

19 (2) Amounts received by the manager, submanager, or board  
20 of directors of:



- 1           (A) An association [~~of owners~~] of a condominium
- 2                           property regime established in accordance with
- 3                           chapter [~~514A or~~] 514B; or
- 4           (B) A nonprofit homeowners or community association
- 5                           incorporated in accordance with chapter 414D or
- 6                           any predecessor thereto and existing pursuant to
- 7                           covenants running with the land,
- 8                           in reimbursement of sums paid for common expenses;
- 9       (3) Amounts received or accrued from:
  - 10           (A) The loading or unloading of cargo from ships,
  - 11                           barges, vessels, or aircraft, whether or not the
  - 12                           ships, barges, vessels, or aircraft travel
  - 13                           between the State and other states or countries
  - 14                           or between the islands of the State;
  - 15           (B) Tugboat services including pilotage fees
  - 16                           performed within the State, and the towage of
  - 17                           ships, barges, or vessels in and out of state
  - 18                           harbors, or from one pier to another; and
  - 19           (C) The transportation of pilots or governmental
  - 20                           officials to ships, barges, or vessels offshore;
  - 21                           rigging gear; checking freight and similar



1 services; standby charges; and use of moorings  
2 and running mooring lines;

- 3 (4) Amounts received by an employee benefit plan by way of  
4 contributions, dividends, interest, and other income;  
5 and amounts received by a nonprofit organization or  
6 office, as payments for costs and expenses incurred  
7 for the administration of an employee benefit plan;  
8 provided that this exemption shall not apply to any  
9 gross rental income or gross rental proceeds received  
10 after June 30, 1994, as income from investments in  
11 real property in this State; and provided further that  
12 gross rental income or gross rental proceeds from  
13 investments in real property received by an employee  
14 benefit plan after June 30, 1994, under written  
15 contracts executed prior to July 1, 1994, shall not be  
16 taxed until the contracts are renegotiated, renewed,  
17 or extended, or until after December 31, 1998,  
18 whichever is earlier. For the purposes of this  
19 paragraph, "employee benefit plan" means any plan as  
20 defined in section 1002(3) of title 29 of the United  
21 States Code, as amended;



1           (5) Amounts received for purchases made with United States  
2           Department of Agriculture food coupons under the  
3           federal food stamp program, and amounts received for  
4           purchases made with United States Department of  
5           Agriculture food vouchers under the Special  
6           Supplemental Foods Program for Women, Infants and  
7           Children;

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

16                 "Prescription drugs" are those drugs defined  
17          under section 328-1 and dispensed by filling or  
18          refilling a written or oral prescription by a  
19          practitioner licensed under law to administer the drug  
20          and sold by a licensed pharmacist under section 328-16  
21          or practitioners licensed to administer drugs;



1 provided that "prescription drugs" shall not include  
2 marijuana or manufactured marijuana products  
3 authorized pursuant to chapters 329 and 329D[+];  
4 and[+]

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

17 (7) Taxes on transient accommodations imposed by chapter  
18 237D and passed on and collected by operators holding  
19 certificates of registration under that chapter;

20 (8) Amounts received as dues by an unincorporated  
21 merchants association from its membership for



1 advertising media, promotional, and advertising costs  
2 for the promotion of the association for the benefit  
3 of its members as a whole and not for the benefit of  
4 an individual member or group of members less than the  
5 entire membership;

6 (9) Amounts received by a labor organization for real  
7 property leased to:

8 (A) A labor organization; or

9 (B) A trust fund established by a labor organization  
10 for the benefit of its members, families, and  
11 dependents for medical or hospital care, pensions  
12 on retirement or death of employees,  
13 apprenticeship and training, and other membership  
14 service programs.

15 As used in this paragraph, "labor organization" means  
16 a labor organization exempt from federal income tax  
17 under section 501(c)(5) of the Internal Revenue Code,  
18 as amended;

19 (10) Amounts received from foreign diplomats and consular  
20 officials who are holding cards issued or authorized



1 by the United States Department of State granting them  
2 an exemption from state taxes; and  
3 (11) Amounts received as rent for the rental or leasing of  
4 aircraft or aircraft engines used by the lessees or  
5 renters for interstate air transportation of  
6 passengers and goods. For purposes of this paragraph,  
7 payments made pursuant to a lease shall be considered  
8 rent regardless of whether the lease is an operating  
9 lease or a financing lease. The definition of  
10 "interstate air transportation" is the same as in 49  
11 U.S.C. section 40102."

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

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

16 "'Lease", "let", or "rental" means the leasing or renting  
17 of living quarters or sleeping or housekeeping accommodations in  
18 hotels, apartment hotels, motels, [~~condominium property regimes~~  
19 ~~or apartments defined in chapter 514A~~] condominiums or units  
20 defined in chapter 514B, cooperative apartments, rooming houses,  
21 or other places in which lodgings are regularly furnished to



1 transients for a consideration, without transfer of the title of  
2 such property."

3 2. By amending the definition of "transient  
4 accommodations" to read:

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

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

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

18 ""Condominium hotel" means an establishment consisting of  
19 one or more buildings that includes:

20 (1) Guest rooms that are [~~apartments, as defined in  
21 section 514A-3, or]~~ units, as defined in section 514B-





1           3, which are used to provide transient lodging for  
2           periods of less than thirty days under a written  
3           contract with the owner of the apartment or unit in  
4           the condominium hotel operation; and

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

9    A "condominium hotel" does not include a hotel that may be part  
10   of a condominium [~~property regime~~] established under chapter  
11   [~~514A or~~] 514B[~~7~~] or that does not have guest rooms that are  
12   separate [~~apartments, as defined in section 514A-3, or~~] units,  
13   as defined in section 514B-3."

14           2. By amending the definition of "premises" or "licensed  
15   premises" to read:

16           ""Premises" or "licensed premises" means the building and  
17   property that houses the establishment for which a license has  
18   been or is proposed to be issued; provided that in the case of  
19   class 12 hotel license, "premises" includes the hotel premises;  
20   provided further that in the case of a class 15 condominium  
21   hotel license, "premises" includes [~~apartments, as defined in~~



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

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

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

17 (1) Based on:

18 (A) Estimated preventive and scheduled maintenance  
19 costs;

20 (B) Budgeted recurring maintenance;

21 (C) Health and safety requirements; and



- 1 (D) Legal mandates;
- 2 (2) Insofar as is practical, prepared in accordance with
- 3 the principles and procedures contained in section
- 4 [~~514A-83.6 or~~] 514B-148; and
- 5 (3) Submitted initially to the legislature not less than
- 6 thirty days prior to the convening of the 2002 regular
- 7 session, with annual funding requirements for the
- 8 physical plant operations and maintenance account
- 9 submitted not less than thirty days prior to the
- 10 convening of the 2002 regular session and each regular
- 11 session thereafter;

12 provided that the governor may incorporate the six-year program  
13 and financial plan required by this subsection into the six-year  
14 program and financial plan required by section 37-69, if the  
15 plan required by this subsection is incorporated without  
16 reductions or restrictions."

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

19 "(d) Notwithstanding subsections (b) and (c), the  
20 requirement that inquiry into and consideration of a prospective  
21 employee's conviction record may take place only after the



1 individual has received a conditional job offer, and the  
2 limitation to the most recent ten-year period, excluding the  
3 period of incarceration, shall not apply to employers who are  
4 expressly permitted to inquire into an individual's criminal  
5 history for employment purposes pursuant to any federal or state  
6 law other than subsection (a), including:

- 7 (1) The State or any of its branches, political  
8 subdivisions, or agencies pursuant to sections 78-2.7  
9 and 831-3.1;
- 10 (2) The department of education pursuant to section  
11 302A-601.5;
- 12 (3) The department of health with respect to employees,  
13 providers, or subcontractors in positions that place  
14 them in direct contact with clients when providing  
15 non-witnessed direct mental health services pursuant  
16 to section 321-171.5;
- 17 (4) The judiciary pursuant to section 571-34;
- 18 (5) The counties pursuant to section 846-2.7(b)(5), (33),  
19 (34), (35), (36), and (38);
- 20 (6) Armed security services pursuant to section 261-17(b);



- 1 (7) Providers of a developmental disabilities domiciliary  
2 home pursuant to section 321-15.2;
- 3 (8) Private schools pursuant to sections 302C-1 and  
4 378-3(8);
- 5 (9) Financial institutions in which deposits are insured  
6 by a federal agency having jurisdiction over the  
7 financial institution pursuant to section 378-3(9);
- 8 (10) Detective agencies and security guard agencies  
9 pursuant to sections 463-6(b) and 463-8(b);
- 10 (11) Employers in the business of insurance pursuant to  
11 section 431:2-201.3;
- 12 (12) Employers of individuals or supervisors of individuals  
13 responsible for screening passengers or property under  
14 title 49 United States Code section 44901 or  
15 individuals with unescorted access to an aircraft of  
16 an air carrier or foreign carrier or in a secured area  
17 of an airport in the United States pursuant to title  
18 49 United States Code section 44936(a);
- 19 (13) The department of human services pursuant to sections  
20 346-97 and 352-5.5;



- 1 (14) The public library system pursuant to section  
2 302A-601.5;
- 3 (15) The department of public safety pursuant to section  
4 353C-5;
- 5 (16) The board of directors of a cooperative housing  
6 corporation or the manager of a cooperative housing  
7 project pursuant to section 421I-12;
- 8 (17) The board of directors of an association [~~of owners~~]  
9 under chapter [~~514A-02~~] 514B, or the [~~manager~~]  
10 managing agent or resident manager of a condominium  
11 [~~project~~] pursuant to section [~~514A-82.1-02~~] 514B-133;  
12 and
- 13 (18) The department of health pursuant to section  
14 321-15.2."

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

17 "**§414D-311 Superseding chapters.** In the event of any  
18 conflict between the provisions of this chapter and the  
19 provisions of chapter 421J, [~~514A, 7~~] 514B, or 514E, the  
20 provisions of chapter 421J, [~~514A, 7~~] 514B, or 514E shall  
21 supersede and control the provisions of this chapter."



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

3 **"§421I-9 Mediation and arbitration of disputes.** At the  
4 request of any party, any dispute concerning or involving one or  
5 more shareholders and a corporation, its board of directors,  
6 managing agent, resident manager, or one or more other  
7 shareholders relating to the interpretation, application, or  
8 enforcement of this chapter or the corporation's articles of  
9 incorporation, bylaws, or rules adopted in accordance with its  
10 bylaws shall be submitted first to mediation. When all  
11 reasonable efforts for mediation have been made and the dispute  
12 is not settled either in conference between the parties or  
13 through mediation, the dispute shall be submitted to arbitration  
14 in the same manner and subject to the same requirements, to the  
15 extent practicable, which now apply to [~~condominium property~~  
16 ~~regimes~~] condominiums under [~~part VII of chapter 514A or~~  
17 section 514B-162."

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



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

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

15            "**§467-14 Revocation, suspension, and fine.** In addition to  
16 any other actions authorized by law, the commission may revoke  
17 any license issued under this chapter, suspend the right of the  
18 licensee to use the license, fine any person holding a license,  
19 registration, or certificate issued under this chapter, or  
20 terminate any registration or certificate issued under this





1 chapter, for any cause authorized by law, including but not  
2 limited to the following:

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



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

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

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

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

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



1 salesperson's license to act as a real estate

2 salesperson therefor;

3 (10) When the licensee, being a corporation, permits any  
4 officer or employee of the corporation who does not  
5 hold a real estate broker's license to have the direct  
6 management of the real estate brokerage business  
7 thereof or permits any officer or employee thereof who  
8 does not hold a real estate salesperson's license to  
9 act as a real estate salesperson therefor;

10 (11) When the licensee, being a real estate salesperson,  
11 fails to file with the commission a written statement  
12 setting forth the name of the real estate broker by  
13 whom the licensee is employed or with whom the  
14 licensee is associated;

15 (12) When the licensee fails to obtain on the contract  
16 between the parties to the real estate transaction  
17 confirmation of who the real estate broker represents;

18 (13) Violating this chapter; chapter 484, [~~514A,~~] 514B,  
19 514E, or 515; section 516-71; or the rules adopted  
20 pursuant thereto;



1           (14) Splitting fees with or otherwise compensating others  
2           not licensed hereunder for referring business;  
3           provided that notwithstanding paragraph (5), a real  
4           estate broker may pay a commission to:

5           (A) A licensed real estate broker of another state,  
6           territory, or possession of the United States if  
7           that real estate broker does not conduct in this  
8           State any of the negotiations for which a  
9           commission is paid;

10          (B) A real estate broker lawfully engaged in real  
11          estate brokerage activity under the laws of a  
12          foreign country if that real estate broker does  
13          not conduct in this State any of the negotiations  
14          for which a commission is paid; or

15          (C) A travel agency that in the course of business as  
16          a travel agency or sales representative, arranges  
17          for compensation the rental of a transient  
18          vacation rental; provided that for purposes of  
19          this paragraph, "travel agency" means any person  
20          that, for compensation or other consideration,  
21          acts or attempts to act as an intermediary



- 1                   between a person seeking to purchase travel  
2                   services and any person seeking to sell travel  
3                   services, including an air or ocean carrier;
- 4           (15)   Commingling the money or other property of the  
5           licensee's principal with the licensee's own;
- 6           (16)   Converting other people's moneys to the licensee's own  
7           use;
- 8           (17)   The licensee is adjudicated insane or incompetent;
- 9           (18)   Failing to ascertain and disclose all material facts  
10           concerning every property for which the licensee  
11           accepts the agency, so that the licensee may fulfill  
12           the licensee's obligation to avoid error,  
13           misrepresentation, or concealment of material facts;  
14           provided that for the purposes of this paragraph, the  
15           fact that an occupant has AIDS or AIDS Related Complex  
16           (ARC) or has been tested for HIV (human  
17           immunodeficiency virus) infection shall not be  
18           considered a material fact;
- 19           (19)   When the licensee obtains or causes to be obtained,  
20           directly or indirectly, any licensing examination or  
21           licensing examination question for the purpose of



- 1            disseminating the information to future takers of the  
2            examination for the benefit or gain of the licensee;
- 3            (20) Failure to maintain a reputation for or record of  
4            competency, honesty, truthfulness, financial  
5            integrity, and fair dealing;
- 6            (21) Acquiring an ownership interest, directly or  
7            indirectly, or by means of a subsidiary or affiliate,  
8            in any distressed property that is listed with the  
9            licensee or within three hundred sixty-five days after  
10           the licensee's listing agreement for the distressed  
11           property has expired or is terminated; or
- 12           (22) When the licensee, being a real estate broker or a  
13           real estate salesperson, acting on behalf of a seller  
14           or purchaser of real estate, acts in a manner that  
15           prohibits a prospective purchaser or prospective  
16           seller of real estate from being able to retain the  
17           services of a real estate broker or real estate  
18           salesperson.

19           For the purposes of paragraphs (1) and (18), the real  
20           estate commission shall consider whether the licensee relied in



1 good faith on information provided by other persons or third  
2 parties.

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

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

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

10 "(a) As used in this section, "condominium hotel" includes  
11 those [~~apartments or~~] units in a project as defined in section  
12 [~~514A-3 or~~] 514B-3 and subject to chapter [~~514A or~~] 514B, which  
13 are used to provide transient lodging for periods of less than  
14 thirty days."

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

17 "(a) Unless the method of disposition is adopted for the  
18 purpose of evasion of this chapter, or unless the subdivider  
19 files in writing with the director that this chapter shall apply  
20 to the subdivider's subdivision, this chapter shall not apply to  
21 offers or dispositions of an interest in land:



- 1           (1) By a purchaser of subdivided lands for the purchaser's  
2           own account in a single or isolated transaction;
- 3           (2) If fewer than twenty separate lots, parcels, units, or  
4           interests in subdivided lands are offered by a person  
5           in a period of twelve months;
- 6           (3) Where the division of lands is a leasehold  
7           agricultural lot within state agricultural districts  
8           on which no dwelling structures are constructed as  
9           provided in section 205-4.5(f);
- 10          (4) On which there is a residential, commercial, or  
11          industrial building, or as to which there is a legal  
12          obligation on the part of the seller to construct a  
13          building on the land within two years from the date of  
14          disposition; provided that the obligation to construct  
15          shall not be, directly or indirectly, transferred to  
16          or otherwise imposed upon the purchaser;
- 17          (5) To persons who are engaged in, and are duly licensed  
18          to engage in, the business of construction of  
19          buildings for resale, or to persons who acquire an  
20          interest in subdivided lands for the purpose of  
21          engaging, and do engage in, and are duly licensed to





1 engage in, the business of construction of buildings  
2 for resale;

3 (6) Pursuant to court order;

4 (7) By any government or government agency;

5 (8) As cemetery lots or interests;

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

8 (10) Registered as a time share plan pursuant to chapter  
9 514E."

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

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

14 (1) An isolated nonissuer transaction, whether or not  
15 effected by or through a broker-dealer;

16 (2) A nonissuer transaction by or through a broker-dealer  
17 registered or exempt from registration under this  
18 chapter, and a resale transaction by a sponsor of a  
19 unit investment trust registered under the Investment  
20 Company Act of 1940, in a security of a class that has



1           been outstanding in the hands of the public for at  
2           least ninety days, if, at the date of the transaction:

3           (A) The issuer of the security is engaged in  
4           business, the issuer is not in the organizational  
5           stage or in bankruptcy or receivership, and the  
6           issuer is not a blank check, blind pool, or shell  
7           company that has no specific business plan or  
8           purpose or has indicated that its primary  
9           business plan is to engage in a merger or  
10          combination of the business with, or an  
11          acquisition of, an unidentified person;

12          (B) The security is sold at a price reasonably  
13          related to its current market price;

14          (C) The security does not constitute the whole or  
15          part of an unsold allotment to, or a subscription  
16          or participation by, the broker-dealer as an  
17          underwriter of the security or a redistribution;

18          (D) A nationally recognized securities manual or its  
19          electronic equivalent designated by rule adopted  
20          or order issued under this chapter or a record



1 filed with the Securities and Exchange Commission  
2 that is publicly available and contains:  
3 (i) A description of the business and operations  
4 of the issuer;  
5 (ii) The names of the issuer's executive officers  
6 and the names of the issuer's directors, if  
7 any;  
8 (iii) An audited balance sheet of the issuer as of  
9 a date within eighteen months before the  
10 date of the transaction or, in the case of a  
11 reorganization or merger when the parties to  
12 the reorganization or merger each had an  
13 audited balance sheet, a pro forma balance  
14 sheet for the combined organization; and  
15 (iv) An audited income statement for each of the  
16 issuer's two immediate previous fiscal years  
17 or for the period of existence of the  
18 issuer, whichever is shorter, or, in the  
19 case of a reorganization or merger when each  
20 party to the reorganization or merger had



1                    audited income statements, a pro forma  
2                    income statement; and

3                    (E) Any one of the following requirements is met:

4                    (i) The issuer of the security has a class of  
5                    equity securities listed on a national  
6                    securities exchange registered under section  
7                    6 of the Securities Exchange Act of 1934 or  
8                    designated for trading on the National  
9                    Association of Securities Dealers' Automated  
10                    Quotation System;

11                    (ii) The issuer of the security is a unit  
12                    investment trust registered under the  
13                    Investment Company Act of 1940;

14                    (iii) The issuer of the security, including its  
15                    predecessors, has been engaged in continuous  
16                    business for at least three years; or

17                    (iv) The issuer of the security has total assets  
18                    of at least \$2,000,000 based on an audited  
19                    balance sheet as of a date within eighteen  
20                    months before the date of the transaction  
21                    or, in the case of a reorganization or



1 merger when the parties to the  
2 reorganization or merger each had such an  
3 audited balance sheet, a pro forma balance  
4 sheet for the combined organization;

5 (3) A nonissuer transaction by or through a broker-dealer  
6 registered or exempt from registration under this  
7 chapter in a security of a foreign issuer that is a  
8 margin security defined in regulations or rules  
9 adopted by the Board of Governors of the Federal  
10 Reserve System;

11 (4) A nonissuer transaction by or through a broker-dealer  
12 registered or exempt from registration under this  
13 chapter in an outstanding security if the guarantor of  
14 the security files reports with the Securities and  
15 Exchange Commission under the reporting requirements  
16 of section 13 or 15(d) of the Securities Exchange Act  
17 of 1934 (15 U.S.C. 78m or 78o(d));

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



- 1           (A) Is rated at the time of the transaction by a
- 2                   nationally recognized statistical rating
- 3                   organization in one of its four highest rating
- 4                   categories; or
- 5           (B) Has a fixed maturity or a fixed interest or
- 6                   dividend, if:
- 7                   (i) A default has not occurred during the
- 8                           current fiscal year or within the three
- 9                           previous fiscal years or during the
- 10                           existence of the issuer and any predecessor
- 11                           if less than three fiscal years, in the
- 12                           payment of principal, interest, or dividends
- 13                           on the security; and
- 14                   (ii) The issuer is engaged in business, is not in
- 15                           the organizational stage or in bankruptcy or
- 16                           receivership, and is not and has not been
- 17                           within the previous twelve months a blank
- 18                           check, blind pool, or shell company that has
- 19                           no specific business plan or purpose or has
- 20                           indicated that its primary business plan is
- 21                           to engage in a merger or combination of the

1                   business with, or an acquisition of, an  
2                   unidentified person;

3       (6) A nonissuer transaction by or through a broker-dealer  
4           registered or exempt from registration under this  
5           chapter effecting an unsolicited order or offer to  
6           purchase;

7       (7) A nonissuer transaction executed by a bona fide  
8           pledgee without the purpose of evading this chapter;

9       (8) A nonissuer transaction by a federal covered  
10          investment adviser with investments under management  
11          in excess of \$100,000,000, acting in the exercise of  
12          discretionary authority in a signed record for the  
13          account of others;

14       (9) A transaction between the issuer or other person on  
15          whose behalf the offering is made and an underwriter,  
16          or among underwriters;

17       (10) A transaction in a note, bond, debenture, or other  
18          evidence of indebtedness secured by a mortgage or  
19          other security agreement if:



- 1 (A) The note, bond, debenture, or other evidence of  
2 indebtedness is offered and sold with the  
3 mortgage or other security agreement as a unit;
- 4 (B) A general solicitation or general advertisement  
5 of the transaction is not made; and
- 6 (C) A commission or other remuneration is not paid or  
7 given, directly or indirectly, to a person not  
8 registered under this chapter as a broker-dealer  
9 or as an agent;
- 10 (11) A transaction by an executor, administrator of an  
11 estate, personal representative, sheriff, marshal,  
12 receiver, trustee in bankruptcy, guardian, or  
13 conservator;
- 14 (12) A sale or offer to sell to:
- 15 (A) An institutional investor;
- 16 (B) A federal covered investment adviser; or
- 17 (C) Any other person exempted by rule adopted or  
18 order issued under this chapter;
- 19 (13) Any transaction pursuant to a sale or an offer to sell  
20 securities of an issuer, if the transaction is part of  
21 an issue in which:





1 (A) There are no more than twenty-five purchasers  
2 (other than those designated in paragraph (12)),  
3 wherever located, during any twelve consecutive  
4 months;

5 (B) The issuer reasonably believes that all  
6 purchasers (other than those designated in  
7 paragraph (12)), wherever located, are purchasing  
8 for investment purposes and not with the view to,  
9 or for sales in connection with, a distribution  
10 of the security. The purchase shall be presumed  
11 to be made with a view to distribute and not to  
12 invest if any resale of a security sold in  
13 reliance on this exemption is within twelve  
14 months of sale, except a resale pursuant to a  
15 registration statement effective under section  
16 485A-301, or to an accredited investor pursuant  
17 to an exemption available under this chapter;

18 (C) No commission, discount, or other remuneration is  
19 paid or given, directly or indirectly, to a  
20 person, other than a broker-dealer or agent



1 registered under this chapter, for soliciting a  
2 prospective purchaser in this State; and

3 (D) The securities of the issuer are not offered or  
4 sold by general solicitation or any general  
5 advertisement or other advertising medium;

6 (14) A transaction under an offer to existing security  
7 holders of the issuer, including persons who at the  
8 date of the transaction are holders of convertible  
9 securities, options, or warrants, if a commission or  
10 other remuneration, other than a standby commission,  
11 is not paid or given, directly or indirectly, for  
12 soliciting a security holder in this State;

13 (15) (A) A transaction involving the offer or sale of a  
14 security by an issuer to an accredited investor  
15 that meets the following requirements:

16 (i) The issuer reasonably believes that the sale  
17 is to persons who are accredited investors;

18 (ii) The issuer is not in the development stage,  
19 without specific business plan or purpose;

20 (iii) The issuer has not indicated that the  
21 issuer's business plan is to engage in a



1 merger or acquisition with an unidentified  
2 company or companies, or other entity or  
3 person; and

4 (iv) The issuer reasonably believes that all  
5 purchasers are purchasing for investment  
6 purposes and not with the view to, or for  
7 sales in connection with, a distribution of  
8 the security. The purchase shall be  
9 presumed to be made with a view to  
10 distribute and not to invest if any resale  
11 of a security sold in reliance on this  
12 exemption is within twelve months of sale,  
13 except a resale pursuant to a registration  
14 statement effective under section 485A-301,  
15 or to an accredited investor pursuant to an  
16 exemption available under this chapter;

17 (B) The exemption under this paragraph shall not  
18 apply to an issuer if the issuer; any affiliated  
19 issuer; any beneficial owner of ten per cent or  
20 more of any class of the issuer's equity  
21 securities; any issuer's predecessor, director,



1 officer, general partner, or promoter presently  
2 connected in any capacity with the issuer; and  
3 any underwriter or partner, director, or officer  
4 of the underwriter of the securities to be  
5 offered:

6 (i) Within the last five years has filed a  
7 registration statement that is the subject  
8 of a currently effective registration stop  
9 order entered by any state securities  
10 administrator or the Securities and Exchange  
11 Commission;

12 (ii) Within the last five years has been  
13 convicted of any criminal offense in  
14 connection with the offer, purchase, or sale  
15 of any security, or involving fraud or  
16 deceit;

17 (iii) Is currently subject to any state or federal  
18 administrative enforcement order or judgment  
19 entered within the last five years, finding  
20 fraud or deceit in connection with the  
21 purchase or sale of any security; or



1 (iv) Is currently subject to any order, judgment,  
2 or decree of any court of competent  
3 jurisdiction, entered within the last five  
4 years, temporarily, preliminarily, or  
5 permanently restraining or enjoining such  
6 party from engaging in or continuing to  
7 engage in any conduct or practice involving  
8 fraud or deceit in connection with the  
9 purchase or sale of any security;

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

11 (i) The party subject to the disqualification is  
12 licensed or registered to conduct  
13 securities-related business in the state in  
14 which the order, judgment, or decree  
15 creating the disqualification was entered  
16 against such party;

17 (ii) Before the first offer under this exemption,  
18 the commissioner, or the court or regulatory  
19 authority that entered the order, judgment,  
20 or decree waives the disqualifications; or



# H.B. NO. 384

1 (iii) The issuer establishes that the issuer did  
2 not know and in the exercise of reasonable  
3 care, based on a factual inquiry, could not  
4 have known that a disqualification existed  
5 under this paragraph; and

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

13 For the purposes of this paragraph, "accredited  
14 investor" shall have the same meaning as provided in  
15 rule 501(a) adopted under the Securities Act of 1933  
16 (17 C.F.R. 230.501(a));

17 (16) An offer to sell, but not a sale, of a security not  
18 exempt from registration under the Securities Act of  
19 1933 if:

20 (A) A registration or offering statement or similar  
21 record as required under the Securities Act of



# H.B. NO. 384

1                   1933 has been filed, but is not effective, or the  
2                   offer is made in compliance with Rule 165 adopted  
3                   under the Securities Act of 1933 (17 C.F.R.  
4                   230.165); and

5                   (B) A stop order of which the offeror is aware has  
6                   not been issued against the offeror by the  
7                   commissioner or the Securities and Exchange  
8                   Commission, and an audit, inspection, or  
9                   proceeding that is public and that may culminate  
10                  in a stop order is not known by the offeror to be  
11                  pending;

12                 (17) An offer to sell, but not a sale, of a security exempt  
13                 from registration under the Securities Act of 1933 if:

14                 (A) A registration statement has been filed under  
15                 this chapter, but is not effective;

16                 (B) A solicitation of interest is provided in a  
17                 record to offerees in compliance with a rule  
18                 adopted by the commissioner under this chapter;  
19                 and

20                 (C) A stop order of which the offeror is aware has  
21                 not been issued by the commissioner under this

1 chapter and an audit, inspection, or proceeding  
2 that may culminate in a stop order is not known  
3 by the offeror to be pending;

4 (18) A transaction involving the distribution of the  
5 securities of an issuer to the security holders of  
6 another person in connection with a merger,  
7 consolidation, exchange of securities, sale of assets,  
8 or other reorganization to which the issuer, or its  
9 parent or subsidiary and the other person, or its  
10 parent or subsidiary, are parties;

11 (19) A rescission offer, sale, or purchase under section  
12 485A-510;

13 (20) An offer or sale of a security to a person not a  
14 resident of this State and not present in this State  
15 if the offer or sale does not constitute a violation  
16 of the laws of the state or foreign jurisdiction in  
17 which the offeree or purchaser is present and is not  
18 part of an unlawful plan or scheme to evade this  
19 chapter;

20 (21) Employees' stock purchase, savings, option, profit-  
21 sharing, pension, or similar employees' benefit plan,





1 including any securities, plan interests, and  
2 guarantees issued under a compensatory benefit plan or  
3 compensation contract, contained in a record,  
4 established by the issuer, its parents, its majority-  
5 owned subsidiaries, or the majority-owned subsidiaries  
6 of the issuer's parent for the participation of their  
7 employees, including offers or sales of such  
8 securities to:

9 (A) Directors; general partners; trustees, if the  
10 issuer is a business trust; officers;  
11 consultants; and advisors;

12 (B) Family members who acquire the securities from  
13 those persons through gifts or domestic relations  
14 orders;

15 (C) Former employees, directors, general partners,  
16 trustees, officers, consultants, and advisors if  
17 those individuals were employed by or providing  
18 services to the issuer when the securities were  
19 offered; and

20 (D) Insurance agents who are exclusive insurance  
21 agents of the issuer, or the issuer's



1 subsidiaries or parents, or who derive more than  
2 fifty per cent of their annual income from those  
3 organizations;

4 (22) A transaction involving:

5 (A) A stock dividend or equivalent equity  
6 distribution, whether or not the corporation or  
7 other business organization distributing the  
8 dividend or equivalent equity distribution is the  
9 issuer, if nothing of value is given by  
10 stockholders or other equity holders for the  
11 dividend or equivalent equity distribution other  
12 than the surrender of a right to a cash or  
13 property dividend if each stockholder or other  
14 equity holder may elect to take the dividend or  
15 equivalent equity distribution in cash, property,  
16 or stock;

17 (B) An act incident to a judicially approved  
18 reorganization in which a security is issued in  
19 exchange for one or more outstanding securities,  
20 claims, or property interests, or partly in such  
21 exchange and partly for cash; or



1 (C) The solicitation of tenders of securities by an  
2 offeror in a tender offer in compliance with Rule  
3 162 adopted under the Securities Act of 1933 (17  
4 C.F.R. 230.162);

5 (23) A nonissuer transaction in an outstanding security by  
6 or through a broker-dealer registered or exempt from  
7 registration under this chapter, if the issuer is a  
8 reporting issuer in a foreign jurisdiction designated  
9 by this paragraph or by rule adopted or order issued  
10 under this chapter; has been subject to continuous  
11 reporting requirements in the foreign jurisdiction for  
12 not less than one hundred eighty days before the  
13 transaction; and the security is listed on the foreign  
14 jurisdiction's securities exchange that has been  
15 designated by this paragraph or by rule adopted or  
16 order issued under this chapter, or is a security of  
17 the same issuer that is of senior or substantially  
18 equal rank to the listed security or is a warrant or  
19 right to purchase or subscribe to any of the  
20 foregoing. For purposes of this paragraph, Canada,  
21 together with its provinces and territories, is a



1 designated foreign jurisdiction and the Toronto Stock  
2 Exchange, Inc., is a designated securities exchange.  
3 After an administrative hearing in accordance with  
4 chapter 91, the commissioner, by rule adopted or order  
5 issued under this chapter, may revoke the designation  
6 of a securities exchange under this paragraph, if the  
7 commissioner finds that revocation is necessary or  
8 appropriate in the public interest and for the  
9 protection of investors;

10 (24) Any offer or sale by or through a real estate broker  
11 or real estate salesperson licensed under the laws of  
12 this State, of a security issued on or after July 1,  
13 1961, by a corporation organized under the laws of  
14 this State, the holder of which is entitled solely by  
15 reason of the holder's ownership thereof, to occupy  
16 for dwelling purposes a house, or an apartment in a  
17 building, owned or leased by such corporation;  
18 provided that the issuer of the security shall apply  
19 for the exemption to the commissioner on such form and  
20 containing such information as the commissioner may  
21 prescribe. If the commissioner finds that the



1 business applicant's proposed plan and the proposed  
2 issuance of securities are fair, just, and equitable,  
3 that the applicant intends to transact its business  
4 fairly and honestly, and that the securities that the  
5 applicant proposes to issue and the method to be used  
6 by the applicant in issuing or disposing of the  
7 securities will not, in the opinion of the  
8 commissioner, work a fraud upon the purchaser thereof,  
9 the commissioner shall issue to the applicant a permit  
10 authorizing the applicant to issue and dispose of the  
11 securities in this State in the manner provided herein  
12 and in such amounts and for such consideration as the  
13 commissioner may provide in the permit. Otherwise,  
14 the commissioner shall deny the application and refuse  
15 the permit and notify the applicant of the decision in  
16 writing, subject to appeal as provided in section  
17 485A-609. In any permit issued under this paragraph,  
18 the commissioner may require the deposit in escrow or  
19 impoundment of any or all securities, the proceeds  
20 from the sale thereof, approval of advertising  
21 material, and any of the conditions as set forth in



1 section 485A-304(f). The commissioner may act as  
2 escrow holder for securities required to be deposited  
3 in escrow by the commissioner's order or as a  
4 necessary signatory on any account in which impounded  
5 proceeds from the sale of escrowed securities are  
6 deposited;

7 (25) Any offer or sale by or through a real estate broker  
8 or real estate salesperson licensed under the laws of  
9 this State of [~~an apartment or~~] a unit in a  
10 condominium project, and a rental management contract  
11 relating to the [~~apartment or~~] unit, including an  
12 interest in a partnership formed for the purpose of  
13 managing the rental of [~~apartments or~~] units if the  
14 rental management contract or the interest in the  
15 partnership is offered at the same time as the  
16 [~~apartment or~~] unit is offered.

17 For the purposes of this paragraph, the terms  
18 [~~"apartment",~~] "unit", "condominium", and "project"  
19 shall have the meanings prescribed in section [~~514A-3~~  
20 ~~or~~] 514B-3; and



1           (26) Any transaction not involving a public offering within  
2           the meaning of section 4(2) of the Securities Act of  
3           1933 (15 U.S.C. 77d), but not including any  
4           transaction specified in the rules and regulations  
5           thereunder."

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

9           ""Apartment lease" means [~~an apartment or~~] a unit lease, a  
10          condominium conveyance document, [~~an apartment or~~] a unit deed  
11          and ground lease, or other instrument which has been registered  
12          pursuant to section 501-121 and which leases or subleases a  
13          condominium [~~apartment or~~] unit or its appurtenant undivided  
14          interest in the land of a condominium project established or  
15          existing under chapter [~~514A or~~] 514B or at common law."

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

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



- 1 (1) In pursuance of any deed or other voluntary
- 2 instrument;
- 3 (2) Upon the recording of a certificate of merger that
- 4 merges two or more condominium projects as provided by
- 5 section [~~514A-19 or~~] 514B-46;
- 6 (3) Upon the recording of an amendment to a declaration of
- 7 condominium property regime which alters the
- 8 percentage interest of the respective apartment or
- 9 unit owners in the common elements;
- 10 (4) In cases expressly provided for in this chapter; or
- 11 (5) Upon the order of the court, for cause shown."

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

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

- 17 (1) Any interest, charge, fee, or other amount payable by
- 18 a borrower to a lender pursuant to a loan secured by
- 19 real property, including any fee payable to the lender
- 20 for consenting to an assumption of the loan or
- 21 transfer of the real property, for providing an





1 estoppel letter or certificate, or for any shared  
2 appreciation interest or profit participation or other  
3 consideration payable to the lender in connection with  
4 the loan;

5 (2) Any fee, charge, assessment, or fine payable to [~~an~~  
6 ~~association of apartment owners as defined in section~~  
7 ~~514A-3,~~] an association as defined in section 514B-3,  
8 a cooperative housing corporation as described in  
9 section 421I-1, a limited-equity housing cooperative  
10 as defined in section 421H-1, or a planned community  
11 association as defined in section 607-14 and described  
12 in chapter 421J, pursuant to a declaration, covenant,  
13 or law applicable to such association or corporation,  
14 including a fee or charge to change the association or  
15 corporation's records as to the owner of the real  
16 property or to provide an estoppel letter or  
17 certificate;

18 (3) Any fee or charge payable to a lessor under a lease of  
19 real property, including a fee or charge payable to  
20 the lessor for consenting to an assignment of the  
21 lease, for providing an estoppel letter or



1 certificate, or to change the lessor's records as to  
2 the holder of the lessee's interest in the lease;

3 (4) Any consideration payable to the holder of an option  
4 to purchase an interest in real property or the holder  
5 of a right of first refusal or first offer to purchase  
6 an interest in real property for waiving, releasing,  
7 or not exercising the option or right upon transfer of  
8 the real property to another person;

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

11 (A) A person engaged in the business of the  
12 development of real property for resale to others  
13 and not for the person's own use or the use of  
14 the person's parent, affiliates, subsidiaries, or  
15 relatives;

16 (B) A person who acquires the real property for the  
17 purpose of engaging in the business of the  
18 development of real property for resale to others  
19 or for the purpose of reselling the real property  
20 to a person engaged in the business of the

1 development of real property for resale to  
2 others; or

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

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

15 (7) Any fee, charge, assessment, or other amount payable  
16 pursuant to a deed restriction or other covenant  
17 running with the land, regardless of when filed or  
18 recorded, that was required by a litigation settlement  
19 that was approved by a court of competent jurisdiction  
20 before [+]June 22, 2010[+]; or



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

3 (A) The qualified organization's management,  
4 stewardship, or enforcement of a qualified real  
5 property interest in the real property, granted  
6 exclusively for a conservation purpose; or

7 (B) Educating new owners of the real property on the  
8 restrictions imposed by the qualified real  
9 property interest granted exclusively for a  
10 conservation purpose.

11 As used in this paragraph, "qualified real property  
12 interest", "qualified organization", and "conservation  
13 purpose" have the same meaning as in section  
14 170(h) (2), (3), and (4), respectively, of the Internal  
15 Revenue Code."

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

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

19 "(b) Without limiting the generality of subsection (a),  
20 the following instruments need not be registered pursuant to  
21 this chapter to be effective and shall be recorded in the bureau



1 of conveyances pursuant to chapter 502:

- 2 (1) An assignment or other instrument transferring a  
3 leasehold time share interest;
- 4 (2) A mortgage or other instrument granting a lien on a  
5 leasehold time share interest;
- 6 (3) An agreement of sale for the sale of a leasehold time  
7 share interest. Any such agreement of sale shall be  
8 subject to section 502-85 and shall not be subject to  
9 section 501-101.5;
- 10 (4) A lien or notice of lien pertaining to a leasehold  
11 time share interest in favor of a time share owners  
12 association, an association [~~of owners~~] under chapter  
13 [~~514A-02~~] 514B, or a similar homeowner's association;
- 14 (5) A judgment, decree, order of court, attachment, writ,  
15 or other process against a leasehold time share  
16 interest;
- 17 (6) A mechanic's or materialman's lien or other lien upon  
18 a leasehold time share interest;
- 19 (7) A lis pendens or notice of pendency of action, notice,  
20 affidavit, demand, certificate, execution, copy of  
21 execution, officer's return, or other instrument



1 relating to a leasehold time share interest and  
2 otherwise required or permitted to be recorded or  
3 registered in connection with the enforcement or  
4 foreclosure of any lien, whether by way of power of  
5 sale pursuant to chapter 667 or otherwise;

6 (8) A power of attorney given by the owner of a leasehold  
7 time share interest or the vendor or vendee under an  
8 agreement of sale for the sale of a leasehold time  
9 share interest, a mortgagee or other lienor having a  
10 mortgage or lien upon a leasehold time share interest,  
11 or another party holding a claim or encumbrance  
12 against or an interest in a leasehold time share  
13 interest; or

14 (9) An instrument assigning, extending, continuing,  
15 dissolving, discharging, releasing in whole or in  
16 part, reducing, canceling, extinguishing, or otherwise  
17 modifying or amending any of the foregoing  
18 instruments."

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

20 "(e) Notwithstanding subsections (a), (b), and (c), the  
21 following instruments shall be registered by recording the



1 instrument with the assistant registrar and by a brief  
2 memorandum thereof made by the assistant registrar upon the  
3 certificate of title, and signed by the assistant registrar:

4 (1) The apartment [~~or unit~~] lease, and any amendments  
5 thereto, and any cancellation or extinguishment  
6 thereof;

7 (2) Any deed or other instrument conveying the fee  
8 interest in registered land and any other instrument  
9 encumbering or otherwise dealing with the fee interest  
10 in registered land including but not limited to a  
11 mortgage of the fee interest, an assignment of the  
12 lessor's interest in a lease, or the designation,  
13 grant, conveyance, transfer, cancellation, relocation,  
14 realignment, or amendment of any easement encumbering  
15 the fee interest;

16 (3) If the apartment [~~or unit~~] lease is a sublease, any  
17 assignment or other conveyance of the sublessor's  
18 estate or any other leasehold estate which is superior  
19 to the apartment [~~or unit~~] lease, and any other  
20 instrument mortgaging, encumbering, or otherwise  
21 dealing with the sublessor's estate or any other



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





1 thereto, and any cancellation or extinguishment  
2 thereof;

3 (7) Any declaration of covenants, conditions,  
4 restrictions, or similar instrument, by whatever name  
5 denominated, establishing the time share plan, the  
6 bylaws of the time share owners association, any  
7 declaration of annexation or deannexation, any  
8 amendments and supplements thereto, and any  
9 cancellation or extinguishment thereof; and

10 (8) Any notice of time share plan, any declaration of  
11 annexation or deannexation, any amendments thereto,  
12 and any cancellation or extinguishment thereof."

13 SECTION 26. Section 502-112, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

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

18 (1) Any interest, charge, fee, or other amount payable by  
19 a borrower to a lender pursuant to a loan secured by  
20 real property, including any fee payable to the lender  
21 for consenting to an assumption of the loan or



1 transfer of the real property, for providing an  
2 estoppel letter or certificate, or for any shared  
3 appreciation interest or profit participation or other  
4 consideration payable to the lender in connection with  
5 the loan;

6 (2) Any fee, charge, assessment, or fine payable to [~~an~~  
7 ~~association of apartment owners as defined in section~~  
8 ~~514A-3,~~] an association as defined in section 514B-3,  
9 a cooperative housing corporation as described in  
10 section 421I-1, a limited-equity housing cooperative  
11 as defined in section 421H-1, or a planned community  
12 association as defined in section 607-14 and described  
13 in chapter 421J, pursuant to a declaration, covenant,  
14 or law applicable to such association or corporation,  
15 including a fee or charge to change the association or  
16 corporation's records as to the owner of the real  
17 property or to provide an estoppel letter or  
18 certificate;

19 (3) Any fee or charge payable to a lessor under a lease of  
20 real property, including a fee or charge payable to  
21 the lessor for consenting to an assignment of the



1 lease, for providing an estoppel letter or  
2 certificate, or to change the lessor's records as to  
3 the holder of the lessee's interest in the lease;

4 (4) Any consideration payable to the holder of an option  
5 to purchase an interest in real property or the holder  
6 of a right of first refusal or first offer to purchase  
7 an interest in real property for waiving, releasing,  
8 or not exercising the option or right upon transfer of  
9 the real property to another person;

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

12 (A) A person engaged in the business of the  
13 development of real property for resale to others  
14 and not for the person's own use or the use of  
15 the person's parent, affiliates, subsidiaries, or  
16 relatives;

17 (B) A person who acquires the real property for the  
18 purpose of engaging in the business of the  
19 development of real property for resale to others  
20 or for the purpose of reselling the real property  
21 to a person engaged in the business of the



- 1           development of real property for resale to  
2           others; or
- 3           (C) A person who purchases real property initially  
4           transferred at a price below the then prevailing  
5           market value of the real property pursuant to an  
6           affordable housing program established by the  
7           seller; provided that such fee, charge, shared  
8           appreciation interest, profit participation, or  
9           other consideration becomes payable, if ever,  
10          within ten years of the recording of the deed  
11          restriction or other covenant running with the  
12          land imposing the fee or charge on the real  
13          property;
- 14          (6) Any fee or charge payable to a government entity;
- 15          (7) Any fee, charge, assessment, or other amount payable  
16          pursuant to a deed restriction or other covenant  
17          running with the land, regardless of when recorded or  
18          filed, that was required by a litigation settlement  
19          that was approved by a court of competent jurisdiction  
20          before [+]June 22, 2010[+]; or



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

3 (A) The qualified organization's management,  
4 stewardship, or enforcement of a qualified real  
5 property interest in the real property, granted  
6 exclusively for a conservation purpose; or

7 (B) Educating new owners of the real property on the  
8 restrictions imposed by the qualified real  
9 property interest granted exclusively for a  
10 conservation purpose.

11 As used in this paragraph, "qualified real property  
12 interest", "qualified organization", and "conservation  
13 purpose" have the same meaning as in section  
14 170(h)(2), (3), and (4), respectively, of the Internal  
15 Revenue Code."

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

18 1. By amending the definition of "common elements" or  
19 "common area" to read:

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



1 (1) The same as "common elements" as defined in section  
2 [~~514A-3 or~~] 514B-3; and

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

7 2. By amending the definition of "declaration" to read:  
8 ""Declaration" means:

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

13 (2) Any recorded instrument, however denominated, that  
14 imposes on an association maintenance or operational  
15 responsibilities for the common area and creates the  
16 authority in the association to impose on units, or on  
17 the owners or occupants of the units, any mandatory  
18 payment of money as a regular annual assessment or  
19 otherwise in connection with the provisions,  
20 maintenance, or services for the benefit of some or  
21 all of the units, the owners, or occupants of the

1 units or the common areas, including any amendment or  
2 supplement to the instrument."

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

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

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

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

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



- 1 (1) A condominium education trust fund fee within one year  
2 after the recordation of the purchase of the first  
3 unit or within thirty days of the association's first  
4 meeting, and thereafter, on or before June 30 of every  
5 odd-numbered year, as prescribed by rules adopted  
6 pursuant to chapter 91; and
- 7 (2) Beginning with the July 1, 2015, biennium  
8 registration, an additional annual condominium  
9 education trust fund fee in an amount equal to the  
10 product of \$1.50 times the number of condominium units  
11 included in the registered project or association to  
12 be dedicated to supporting mediation of condominium  
13 related disputes. The additional condominium  
14 education trust fund fee shall total \$3 per unit until  
15 the commission adopts rules pursuant to chapter 91.  
16 On June 30 of every odd-numbered year, any unexpended  
17 additional amounts paid into the condominium education  
18 trust fund and initially dedicated to supporting  
19 mediation of condominium related disputes, as required  
20 by this paragraph, shall be used for educational





1 purposes as provided in section 514B-71(a)(1), (2),  
2 and (3)."

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

4 "(d) The department of commerce and consumer affairs shall  
5 allocate the fees collected under this section [~~section 514A-~~  
6 ~~40, and section 514A-95.1~~] to the condominium education trust  
7 fund established pursuant to section 514B-71. The fees  
8 collected pursuant to this section shall be administratively and  
9 fiscally managed together as one condominium education trust  
10 fund established by section 514B-71."

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

14 "(a) The sums received by the commission for deposit in  
15 the condominium education trust fund pursuant to [~~sections 514A-~~  
16 ~~40, 514A-95.1, and~~] section 514B-72 shall be held by the  
17 commission in trust for carrying out the purpose of the fund.

18 (b) The commission and the director of commerce and  
19 consumer affairs may use moneys in the condominium education  
20 trust fund collected pursuant to [~~sections 514A-40, 514A-95.1,~~  
21 ~~and~~] section 514B-72, and the rules of the commission to employ



1 necessary personnel not subject to chapter 76 for additional  
2 staff support, to provide office space, and to purchase  
3 equipment, furniture, and supplies required by the commission to  
4 carry out its responsibilities under this part.

5 (c) The moneys in the condominium education trust fund  
6 collected pursuant to [~~sections 514A-40, 514A-95.1, and~~] section  
7 514B-72, and the rules of the commission may be invested and  
8 reinvested together with the real estate education fund  
9 established under section 467-19 in the same manner as are the  
10 funds of the employees' retirement system of the State. The  
11 interest and earnings from these investments shall be deposited  
12 to the credit of the condominium education trust fund."

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

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

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

19 "(a) The association [~~of owners~~] under chapter [~~514A or~~]  
20 514B[~~7~~] or cooperative housing corporation may purchase the  
21 leased fee interest in the land; provided that at least sixty-



1 seven per cent of the condominium unit lessees or cooperative  
2 unit lessees approve of the purchase. If the seller is also a  
3 condominium unit lessee or cooperative unit lessee, the seller's  
4 interest shall be disregarded in the computation to achieve the  
5 sixty-seven per cent requirement. As used herein:

6 (1) Sixty-seven per cent of the condominium unit lessees  
7 means the lessees of units to which sixty-seven per  
8 cent of the common interests are appurtenant; and

9 (2) Sixty-seven per cent of the cooperative unit lessees  
10 means shareholders having at least sixty-seven per  
11 cent of the shares in the cooperative housing  
12 corporation."

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

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

16 "(a) The association [~~of owners~~] under chapter [~~514A or~~  
17 514B may purchase the lessor's interest in the condominium  
18 project; provided that the declaration of condominium property  
19 regime shall either contain or be amended to include a provision  
20 authorizing the board of directors to effectuate such a  
21 purchase. If the lessor is also a condominium unit lessee, the



1 lessor's lessee interest shall be disregarded in the computation  
2 of the percentage of condominium unit lessees needed to achieve  
3 the vote or written consent required to amend the declaration of  
4 condominium property regime."

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

6 "(f) For purposes of this section:

7 "Remaining lessees" means the lessees of condominium units  
8 in a condominium project who have not purchased the leased fee  
9 interest in their condominium units as of the effective date of  
10 the amendment referred to in subsection (d) (1).

11 "Condominium unit" has the same meaning as the term  
12 [~~"apartment" or~~] "unit" as defined in section [~~514A-3 or~~] 514B-  
13 3."

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

17 ""Blanket lien" means any mortgage, deed of trust, option  
18 to purchase, master lease, vendor's lien or interest under a  
19 contract or agreement of sale, or any other lien or encumbrance  
20 that (i) affects more than one time share interest either  
21 directly or by reason of affecting an entire time share unit or



1 the property upon which the time share unit to be used by the  
2 purchasers is located, and (ii) secures or evidences the  
3 obligation to pay money or to sell or convey the property and  
4 that authorizes, permits, or requires the foreclosure and sale  
5 or other defeasance of the property affected; provided that for  
6 the purpose of this chapter, the following shall not be  
7 considered blanket liens:

8 (1) The lien of current real property taxes;

9 (2) Taxes and assessments levied by public authority and  
10 that are not yet due and payable;

11 (3) A lien for common expenses under chapter [~~514A~~ or]  
12 514B or a lien on an individual time share unit for  
13 similar expenses in favor of a homeowners or community  
14 association;

15 (4) An apartment lease or condominium conveyance document  
16 conveying or demising a single condominium [~~apartment~~  
17 ~~or~~] unit or a lease of a single cooperative apartment;  
18 and

19 (5) Any lien for costs or trustee's fees charged by a  
20 trustee holding title to time share units pursuant to  
21 a trust created under section 514E-19; provided that



1           the costs or trustee's fees are not yet due and  
2           payable."

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

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

8           (1) Liens for taxes and assessments lawfully imposed by  
9           governmental authority against the time share  
10           interest;

11           (2) All sums unpaid on any mortgage of record encumbering  
12           the time share interest which was recorded prior to  
13           the recordation of a notice of a lien by the  
14           association; and

15           (3) For a time share interest subject to a condominium  
16           property regime, the lien of the association [~~of~~  
17           ~~owners~~] under chapter [~~514A-09~~] 514B, created pursuant  
18           to section [~~514A-90-09~~] 514B-146."

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



1           "**§516D-1 Applicability.** This chapter applies to all lands  
2 on which are situated either residential condominium property  
3 regimes created under chapter [~~514A or~~] 514B, or cooperative  
4 housing corporations, which are owned or held privately or by  
5 the State or by the counties, except Hawaiian home lands subject  
6 to article XII of the state constitution and lands owned or held  
7 by the federal government."

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

10           "(d) An association [~~of owners~~] under chapter [~~514A or~~]  
11 514B shall have standing to initiate and prosecute a summary  
12 proceeding for possession against a tenant residing in the  
13 condominium project who repeatedly violates the association's  
14 governing documents or the rights of other occupants to quiet  
15 enjoyment and whose landlord refuses to act; provided that in  
16 such cases, the landlord shall be named as an additional party  
17 defendant."

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

20           "**§521-38 Tenants subject to rental agreement; notice of**  
21 **conversions.** When a period of tenancy is pursuant to any rental



1 agreement and where a landlord contemplates conversion to a  
2 condominium property regime under chapter [~~514A-er~~] 514B, the  
3 landlord shall provide notice to the tenant at least one hundred  
4 twenty days in advance of the termination of the rental  
5 agreement."

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

8 "(d) If the dwelling unit is [~~an apartment-er~~] a unit in a  
9 condominium [~~property regime~~] the tenant shall comply with the  
10 bylaws of the association [~~of owners~~] under chapter [~~514A-er~~]  
11 514B and if the dwelling unit is an apartment in a cooperative  
12 housing corporation the tenant shall comply with the bylaws of  
13 the corporation."

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

16 "(c) Before a landlord terminates a month-to-month tenancy  
17 where the landlord contemplates voluntary demolition of the  
18 dwelling units, conversion to a condominium property regime  
19 under chapter [~~514A-er~~] 514B, or changing the use of the  
20 building to transient vacation rentals, the landlord shall  
21 provide notice to the tenant at least one hundred twenty days in





1 advance of the anticipated demolition or anticipated  
2 termination. If notice is revoked or amended and reissued, the  
3 notice period shall begin from the date it was reissued or  
4 amended. Any notice provided, revoked, or amended and reissued  
5 shall be in writing. When the landlord provides notification of  
6 termination pursuant to this subsection, the tenant may vacate  
7 at any time within the one-hundred-twenty-day period between the  
8 notification and the termination date, but the tenant shall  
9 notify the landlord of the date the tenant will vacate the  
10 dwelling unit and shall pay a prorated rent for that period of  
11 occupation."

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

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

15 "(a) Each board of directors of an association [~~of~~  
16 ~~apartment owners~~] governed by chapter [~~514A or~~] 514B,  
17 cooperative housing corporation governed by chapter 421I, and  
18 planned community association governed by chapter 421J shall  
19 establish, if entry to the property is inaccessible to the  
20 general public, a policy to provide reasonable access as  
21 specified in subsection (b) to the building or community to



1 persons authorized to serve civil process for the purpose of  
2 serving any summons, subpoena, notice, or order on a person who  
3 is identified by the document being served as residing or  
4 present in the condominium, cooperative housing project, or  
5 planned community."

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

7 "(c) An association [~~of apartment owners~~] governed by  
8 chapter [~~514A or~~] 514B, a cooperative housing corporation  
9 governed by chapter 421I, or a planned community association  
10 governed by chapter 421J shall not be liable to:

11 (1) Any person if, after access is allowed to the building  
12 or community in accordance with this chapter, service  
13 of civil process is not actually effected for whatever  
14 reason; and

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

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

19 "[~~§~~667-19~~§~~] **Association foreclosures; cure of default;**  
20 **payment plan.** If a foreclosure by action is initiated by an



1 association pursuant to section 421J-10.5[~~7-514A-907~~] or 514B-  
2 146:

3 (1) At the time of the commencement of the foreclosure by  
4 action, the association shall serve the unit owner  
5 with written contact information for approved housing  
6 counselors and approved budget and credit counselors;

7 (2) A unit owner may cure the default within sixty days  
8 after service of the association's complaint for  
9 foreclosure by action by paying the association the  
10 full amount of the default, including the foreclosing  
11 association's attorneys' fees and costs, and all other  
12 fees and costs related to the default, along with any  
13 additional amounts estimated to be incurred by the  
14 foreclosing association;

15 (3) A unit owner may submit a payment plan within thirty  
16 days after service of the association's complaint for  
17 foreclosure by action. The unit owner shall submit  
18 the payment plan to the association or its attorney by  
19 certified mail return receipt requested or by hand  
20 delivery. The association shall not reject a  
21 reasonable payment plan. A unit owner's failure to



1 strictly perform any agreed-upon payment plan shall  
2 entitle the association to pursue its remedies without  
3 further delay. For purposes of this paragraph,  
4 "reasonable payment plan" means a plan that provides  
5 for:

6 (A) Timely payment of all assessments that become due  
7 after the date that the payment plan is proposed;  
8 and

9 (B) Additional monthly payments of an amount  
10 sufficient to cure the default, within a  
11 reasonable period under the circumstances as  
12 determined by the board of directors in its  
13 discretion; provided that a period of up to  
14 twelve months shall be deemed reasonable; and  
15 provided further that the board of directors  
16 shall have the discretion to agree to a payment  
17 plan in excess of twelve months;

18 (4) From and after the date that the unit owner gives  
19 written notice to the association of the unit owner's  
20 intent to cure the default pursuant to paragraph (2)  
21 or timely submits a payment plan pursuant to paragraph



1           (3), any foreclosure by action shall be stayed during  
2           the sixty-day period to cure the default or during the  
3           term of the payment plan or a longer period that is  
4           agreed upon by the parties;

5           (5) If the default is cured pursuant to paragraph (2), the  
6           association shall dismiss the foreclosure by action.  
7           If the parties have agreed on a payment plan pursuant  
8           to paragraph (3), the association shall stay the  
9           foreclosure by action. Within fourteen days of the  
10          date of the cure or an agreement on a payment plan,  
11          the association shall notify any person who was served  
12          as a result of the foreclosure by action that the  
13          action has been dismissed or stayed, as the case may  
14          be. If a notice of pendency of action for the  
15          foreclosure by action was recorded, a release of the  
16          notice of pendency of action shall be recorded if the  
17          action is dismissed; and

18          (6) If the default is not cured pursuant to paragraph (2),  
19          or the parties have not agreed on a payment plan  
20          pursuant to paragraph (3), the association may



1 continue to foreclose the association's lien under  
2 foreclosure by action."

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

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

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

10 "(b) This part shall not apply to actions by an  
11 association to foreclose on a lien for amounts owed to the  
12 association that arise under a declaration filed pursuant to  
13 chapter 421J[~~7-514A~~] or 514B, or to a mortgagor who has  
14 previously participated in dispute resolution under this part  
15 for the same property on the same mortgage loan."

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

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

21 (1) Inspect the premises;



1 (2) Document any alleged construction defects; and

2 (3) Perform any testing required to evaluate the nature,

3 extent, and cause of the asserted construction defect,

4 and the nature and extent of any repair or replacement

5 that may be necessary to remedy the asserted

6 construction defect;

7 provided that if the claimant is an association [~~of owners~~]

8 under chapter [~~514A or~~] 514B, the claimant shall have forty-five

9 days to provide such access. If access to an individual

10 condominium [~~apartment or~~] unit is necessary, and the

11 association is unable to obtain such access, then the

12 association shall have a reasonable time to provide access. If

13 destructive testing is required, the contractor shall give

14 advance notice of tests and return the premises to its pre-

15 testing condition. If inspection or testing reveals a condition

16 that requires additional testing to fully and completely

17 evaluate the nature, cause, and extent of the construction

18 defect, the contractor shall provide notice to the claimant of

19 the need for additional testing. The claimant shall provide

20 additional access to the premises. If a claim is asserted on

21 behalf of owners of multiple dwellings, or multiple owners of



1 units within a multi-family complex, the contractor shall be  
2 entitled to inspect each of the dwellings or units."

3 **PART V**

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

9 **PART VI**

10 SECTION 46. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 47. This Act shall take effect on January 1, 2019;  
13 provided that on or after the effective date of this Act,  
14 condominiums formerly subject to chapter 514A, Hawaii Revised  
15 Statutes, shall be transitioned to and governed by chapter 514B,  
16 Hawaii Revised Statutes, without paying any additional costs or  
17 filing any additional paperwork with the real estate commission.

18

INTRODUCED BY:

*[Handwritten signature]*  
*[Handwritten signature]*

JAN 20 2017





# H.B. NO. 384

**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. Effective January 1, 2019.

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

