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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. The recodified condominium law is the result of  
2 Act 164, Session Laws of Hawaii 2004, Act 93, Session Laws of  
3 Hawaii 2005, and Act 273, Session Laws of Hawaii 2006. The  
4 administration of the recodified condominium law has brought up a  
5 number of issues that require some housekeeping amendments. The  
6 purpose of this Act is to make necessary technical and conforming  
7 amendments to relevant statutory provisions.

8           SECTION 2. Chapter 514A, Hawaii Revised Statutes, is  
9 amended by adding three new parts, to be appropriately inserted  
10 and to read as follows:

11                   **"PART I. GENERAL PROVISIONS AND DEFINITIONS**

12           **§514A-1 Title.** This chapter shall be known as the  
13 Condominium Property Act.

14           **§514A-1.5 Applicability of chapter.** (a) This chapter:

15           (1) Shall not apply to condominiums created on or after July  
16           1, 2006, or that are registered with the commission  
17           pursuant to part IV of chapter 514B; and

18           (2) On and after July 1, 2006, shall apply only to:



1 (A) Condominiums created prior to July 1, 2006, except  
2 as provided in subsection (b) and sections 514B-22  
3 and 514B-23; and

4 (B) A developer's sale of condominiums in a project for  
5 which a notice of intention was filed with the  
6 commission prior to July 1, 2006, pursuant to  
7 section 514A-31, except where the developer elects  
8 to register an existing project with the commission  
9 under part IV of chapter 514B, pursuant to section  
10 9(b) of Act 93, Session Laws of Hawaii 2005.

11 (b) This chapter shall not apply to any condominium project  
12 or association of apartment owners created prior to May 29, 1963,  
13 pursuant to Act 180, Session Laws of Hawaii 1961, unless all of  
14 the owners and holders of liens affecting any of the apartments in  
15 the project have expressly declared that this chapter shall apply  
16 to the property, and shall govern the rights, interests, and  
17 remedies of all persons owning interests in or liens upon the  
18 property; provided that any condominium project or association of  
19 apartment owners created prior to May 29, 1963, pursuant to Act  
20 180, Session Laws of Hawaii 1961, having seven or more apartments  
21 shall register with the commission and comply with the  
22 requirements pursuant to sections 514A-95.1 and 514A-132, except  
23 for the fidelity bond requirement. The express declaration shall  
24 be made through the execution and recordation of a declaration in



1 form and content required to establish a condominium property  
2 regime pursuant to this chapter.

3 **§514A-1.6 Conformance with county land use ordinances.** Any  
4 condominium property regime established under this chapter shall  
5 conform to the existing underlying county zoning for the property  
6 and all applicable county permitting requirements adopted by the  
7 county in which the property is located, including any  
8 supplemental rules adopted by the county, pursuant to section  
9 514A-45, to ensure the conformance of condominium property regimes  
10 to the purposes and provisions of county zoning and development  
11 ordinances and chapter 205. In the case of a property which  
12 includes one or more existing structures being converted to  
13 condominium status, the condominium property regime shall comply  
14 with section 514A-11(13) or section 514A-40(b).

15 **§514A-2 Chapter not exclusive.** This chapter is in addition  
16 and supplemental to all other provisions of the Revised Statutes;  
17 provided that this chapter shall not change the substantive law  
18 relating to land court property, and provided further that if this  
19 chapter conflicts with chapters 501 and 502, chapters 501 and 502  
20 shall prevail.

21 **§514A-3 Definitions.** Unless it is plainly evident from the  
22 context that a different meaning is intended, as used herein:

23 "Apartment" means a part of the property intended for any  
24 type of use or uses, and with an exit to a public street or  
25 highway or to a common element or elements leading to a public



1 street or highway, and may include such appurtenances as garage  
2 and other parking space, storage room, balcony, terrace, and  
3 patio.

4 "Apartment owner" means the person owning, or the persons  
5 owning jointly or in common, an apartment and the common interest  
6 appertaining thereto; provided that to such extent and for such  
7 purposes, including the exercise of voting rights, as shall be  
8 provided by lease registered under chapter 501 or recorded under  
9 chapter 502, a lessee of an apartment shall be deemed to be the  
10 owner thereof.

11 "Association of apartment owners" means all of the apartment  
12 owners acting as a group in accordance with the bylaws and  
13 declaration.

14 "Commission" means the real estate commission of the state  
15 department of commerce and consumer affairs.

16 "Common elements", unless otherwise provided in the  
17 declaration, means and includes:

- 18 (1) The land included in the condominium property regime,  
19 whether leased or in fee simple;
- 20 (2) The foundations, columns, girders, beams, supports, main  
21 walls, roofs, halls, corridors, lobbies, stairs,  
22 stairways, fire escapes, and entrances and exits of the  
23 building or buildings;
- 24 (3) The basements, flat roofs, yards, gardens, recreational  
25 facilities, parking areas, and storage spaces;



- 1 (4) The premises for the lodging or use of janitors and  
2 other persons employed for the operation of the  
3 property;
- 4 (5) Central and appurtenant installations for services such  
5 as power, light, gas, hot and cold water, heating,  
6 refrigeration, air conditioning, and incinerators;
- 7 (6) The elevators, escalators, tanks, pumps, motors, fans,  
8 compressors, ducts, and in general all apparatus and  
9 installations existing for common use;
- 10 (7) Such facilities as may be designated as common elements  
11 in the declaration; and
- 12 (8) All other parts of the property necessary or convenient  
13 to its existence, maintenance, and safety, or normally  
14 in common use.

15 "Common expense" means and includes:

- 16 (1) Expenses of operation of the property; and  
17 (2) All sums designated common expenses by or pursuant to  
18 this chapter, the declaration or the bylaws.

19 "Common interest" means the percentage of undivided interest  
20 in the common elements appertaining to each apartment, as  
21 expressed in the declaration, and any specified percentage of the  
22 common interests means such percentage of the undivided interests  
23 in the aggregate.



1 "Common profits" means the balance of all income, rents,  
2 profits, and revenues from the common elements remaining after the  
3 deduction of the common expenses.

4 "Completion of construction" means the issuance by the  
5 appropriate county official of a certificate of completion.

6 "Condominium" means the ownership of single units, with  
7 common elements, located on property within the condominium  
8 property regime.

9 "Declaration" means the instrument by which the property is  
10 submitted to this chapter, as hereinafter provided, and such  
11 declaration as from time to time amended.

12 "Developer" means a person who undertakes to develop a real  
13 estate condominium project.

14 "Limited common elements" means and includes those common  
15 elements designated in the declaration as reserved for the use of  
16 a certain apartment or certain apartments to the exclusion of the  
17 other apartments; provided that no amendment of the declaration  
18 affecting any of the limited common elements shall be effective  
19 without the consent of the owner or owners of the apartment or  
20 apartments for the use of which such limited common elements are  
21 reserved.

22 "Majority" or "majority of apartment owners" means the owners  
23 of apartments to which are appurtenant more than fifty per cent of  
24 the common interests, and any specified percentage of the



1 apartment owners means the owners of apartments to which are  
2 appurtenant such percentage of the common interests.

3 "Managing agent" means any person employed or retained for  
4 the purposes of managing the operation of the property.

5 "Master deed" or "master lease" means any deed or lease  
6 showing the extent of the interest of the person submitting the  
7 property to the condominium property regime.

8 "Operation of the property" means and includes the  
9 administration, fiscal management and operation of the property  
10 and the maintenance, repair, and replacement of, and the making of  
11 any additions and improvements to, the common elements.

12 "Person" means an individual, firm, corporation, partnership,  
13 association, trust, or other legal entity, or any combination  
14 thereof.

15 "Project" means a real estate condominium project; a plan or  
16 project whereby a condominium of two or more apartments located  
17 within the condominium property regime are offered or proposed to  
18 be offered for sale.

19 "Property" means and includes the land, whether or not  
20 contiguous and including more than one parcel of land, but located  
21 within the same vicinity, whether leasehold or in fee simple, to  
22 the extent of the interest held therein by the owner or lessee  
23 submitting such interest to the condominium property regime, the  
24 building or buildings, all improvements and all structures  
25 thereon, and all easements, rights, and appurtenances belonging



1 thereto, and all articles of personal property intended for use in  
2 connection therewith, which have been or are intended to be  
3 submitted to the regime established by this chapter.

4 "To record" means to record in accordance with chapter 502,  
5 or to register in accordance with chapter 501.

6 All pronouns used herein include the male, female, and neuter  
7 genders and include the singular or plural numbers, as the case  
8 may be.

9 **§514A-4 Status of apartments.** Each apartment, together with  
10 the common interest appertaining thereto, shall for all purposes  
11 constitute real property and may be individually conveyed, leased,  
12 or encumbered and be the subject of ownership, possession, or sale  
13 and for all other purposes be treated as if it were sole and  
14 entirely independent of the other apartment or apartments in the  
15 property of which it forms a part, and the corresponding  
16 individual titles and interests shall be recordable.

17 **§514A-5 Ownership of apartments.** The apartment owner is  
18 entitled to the exclusive ownership and possession of the  
19 apartment. Any apartment may be jointly or commonly owned by more  
20 than one person.

21 **§514A-6 Separate taxation.** The laws relating to home  
22 exemptions from state property taxes are applicable to the  
23 individual apartments, which shall have the benefit of home  
24 exemption in those cases where the owner of single-family dwelling  
25 would qualify. Property taxes assessed by the State shall be



1 assessed on and collected on the individual apartments and not on  
2 the property as a whole. Without limitation of the foregoing,  
3 each apartment and the common interest appertaining thereto shall  
4 be deemed to be a parcel and shall be subject to separate  
5 assessment and taxation for all types of taxes authorized by law,  
6 including, but not limited to, special assessments.

7 **§514A-7 Condominium specialist; appointment; duties.**

8 There are established two permanent condominium specialist  
9 positions within the department of commerce and consumer affairs  
10 to assist consumers with information, advice, and referral on any  
11 matter relating to this chapter or otherwise concerning  
12 condominium property regimes. There is also established a  
13 permanent secretarial position to provide assistance in carrying  
14 out these duties. The condominium specialists and secretary shall  
15 be appointed by the director of commerce and consumer affairs  
16 without regard to chapter 76. The condominium specialists and  
17 secretary shall be members of the employees retirement system of  
18 the State and shall be eligible to receive the benefits of any  
19 state or federal employee benefit program generally applicable to  
20 officers and employees of the State.

21 **PART V. CONDOMINIUM MANAGEMENT**

22 **§514A-81 Bylaws.** The operation of the property shall be  
23 governed by bylaws, a true copy of which shall be recorded in the  
24 same manner as the declaration. No amendment to the bylaws is  
25 valid unless the amendment is duly recorded.



1           **§514A-82 Contents of bylaws.** (a) The bylaws shall provide  
2 for at least the following:  
3           (1) Board of directors:  
4               (A) The election of a board of directors;  
5               (B) The number of persons constituting the board;  
6                     provided that condominiums with more than one  
7                     hundred individual apartment units shall have an  
8                     elected board of not less than nine members unless  
9                     not less than sixty-five per cent of all apartment  
10                    owners vote by mail ballot, or at a special or  
11                    annual meeting, to reduce the minimum number of  
12                    directors;  
13               (C) That for the initial term of office, directors  
14                    shall serve for a term of three years or the term  
15                    as specified by the bylaws or until their  
16                    successors have been elected or appointed;  
17               (D) The powers and duties of the board;  
18               (E) The compensation, if any, of the directors; and  
19               (F) Whether or not the board may engage the services of  
20                    a manager or managing agent, or both, and  
21                    specifying which of the powers and duties granted  
22                    to the board by this chapter or otherwise may be  
23                    delegated by the board to either or both of them;  
24           (2) Method of calling meetings of the apartment owners; what  
25               percentage, if other than a majority of apartment



- 1 owners, constitutes a quorum; what percentage,  
2 consistent with this chapter, is necessary to adopt  
3 decisions binding on all apartment owners and that votes  
4 allocated to any area that constitutes a common element  
5 under section 514A-13(h) shall not be cast at any  
6 association meeting, regardless of whether it is so  
7 designated in the declaration;
- 8 (3) Election of a president from among the board of  
9 directors who shall preside over the meetings of the  
10 board of directors and of the association of apartment  
11 owners;
- 12 (4) Election of a secretary who shall keep the minute book  
13 wherein resolutions shall be recorded;
- 14 (5) Election of a treasurer who shall keep the financial  
15 records and books of account;
- 16 (6) Operation of the property, payment of the common  
17 expenses, and determination and collection of the common  
18 charges;
- 19 (7) Manner of collecting common expenses, expenses, costs,  
20 and fees recoverable by the association under section  
21 514A-94, and any penalties and late charges;
- 22 (8) Designation and removal of personnel necessary for the  
23 maintenance, repair, and replacement of the common  
24 elements;



- 1           (9) Method of adopting and of amending administrative rules  
2           governing the details of the operation and use of the  
3           common elements;
- 4           (10) The restrictions on and requirements respecting the use  
5           and maintenance of the apartments and the use of the  
6           common elements, not set forth in the declaration, as  
7           are designed to prevent unreasonable interference with  
8           the use of their respective apartments and of the common  
9           elements by the several apartment owners;
- 10          (11) The first meeting of the association of apartment owners  
11          shall be held not later than one hundred eighty days  
12          after recordation of the first apartment conveyance;  
13          provided forty per cent or more of the project has been  
14          sold and recorded. If forty per cent of the project is  
15          not sold and recorded at the end of one year, an annual  
16          meeting shall be called; provided ten per cent of the  
17          apartment owners so request;
- 18          (12) All members of the board of directors shall be owners,  
19          co-owners, vendees under an agreement of sale, or an  
20          officer of any corporate owner of an apartment. The  
21          partners in a general partnership and the general  
22          partners of a limited partnership shall be deemed to be  
23          the owners of an apartment for this purpose. There  
24          shall not be more than one representative on the board  
25          of directors from any one apartment;



1 (13) A director shall not cast any proxy vote at any board  
2 meeting, nor shall a director vote at any board meeting  
3 on any issue in which the director has a conflict of  
4 interest;

5 (14) No resident manager of a condominium shall serve on its  
6 board of directors;

7 (15) The board of directors shall meet at least once a year;

8 (16) All association and board of directors meetings shall be  
9 conducted in accordance with the most current edition of  
10 Robert's Rules of Order;

11 (17) All meetings of the association of apartment owners  
12 shall be held at the address of the condominium project  
13 or elsewhere within the State as determined by the board  
14 of directors; and

15 (18) Penalties chargeable against persons for violation of  
16 the covenants, conditions, or restrictions set forth in  
17 the declaration, or of the bylaws and administrative  
18 rules adopted pursuant thereto, method of determination  
19 of violations, and manner of enforcing penalties, if  
20 any.

21 (b) In addition to the requirements of subsection (a), the  
22 bylaws shall be consistent with the following provisions:

23 (1) At any regular or special meeting of the apartment  
24 owners, any one or more members of the board of  
25 directors may be removed by the apartment owners and

1 successors shall then and there be elected for the  
2 remainder of the term to fill the vacancies thus  
3 created. The removal and replacement shall be by a vote  
4 of a majority of the apartment owners and, otherwise, in  
5 accordance with all applicable requirements and  
6 procedures in the bylaws for the removal and replacement  
7 of directors. If removal and replacement is to occur at  
8 a special association meeting, the call for the meeting  
9 shall be by the president or by a petition to the  
10 secretary or managing agent signed by not less than  
11 twenty-five per cent of the apartment owners as shown in  
12 the association's record of ownership; provided that if  
13 the secretary or managing agent shall fail to send out  
14 the notices for the special meeting within fourteen days  
15 of receipt of the petition, then the petitioners shall  
16 have the authority to set the time, date, and place for  
17 the special meeting and to send out the notices for the  
18 special meeting in accordance with the requirements of  
19 the bylaws. Except as otherwise provided in this  
20 section, the meeting for the removal and replacement  
21 from office of directors shall be scheduled, noticed,  
22 and conducted in accordance with the bylaws of the  
23 association;



1 (2) The bylaws may be amended at any time by the vote or  
2 written consent of sixty-five per cent of all apartment  
3 owners; provided that:

4 (A) Each one of the particulars set forth in this  
5 subsection shall be embodied in the bylaws always;  
6 and

7 (B) Any proposed bylaws with the rationale for the  
8 proposal may be submitted by the board of directors  
9 or by a volunteer apartment owners' committee. If  
10 submitted by that committee, the proposal shall be  
11 accompanied by a petition signed by not less than  
12 twenty-five per cent of the apartment owners as  
13 shown in the association's record of ownership.  
14 The proposed bylaws, rationale, and ballots for  
15 voting on any proposed bylaw shall be mailed by the  
16 board of directors to the owners at the expense of  
17 the association for vote or written consent without  
18 change within thirty days of the receipt of the  
19 petition by the board of directors. The vote or  
20 written consent required to adopt the proposed  
21 bylaw shall not be less than sixty-five per cent of  
22 all apartment owners; provided that the vote or  
23 written consent must be obtained within three  
24 hundred sixty-five days after mailing for a  
25 proposed bylaw submitted by either the board of



1 directors or a volunteer apartment owners'  
2 committee. If the bylaw is duly adopted, then the  
3 board shall cause the bylaw amendment to be  
4 recorded in the bureau of conveyances or filed in  
5 the land court, as the case may be. The volunteer  
6 apartment owners' committee shall be precluded from  
7 submitting a petition for a proposed bylaw that is  
8 substantially similar to that which has been  
9 previously mailed to the owners within one year  
10 after the original petition was submitted to the  
11 board.

12 This paragraph shall not preclude any apartment owner or  
13 voluntary apartment owners' committee from proposing any  
14 bylaw amendment at any annual association meeting;

15 (3) Notices of association meetings, whether annual or  
16 special, shall be sent to each member of the association  
17 of apartment owners at least fourteen days prior to the  
18 meeting and shall contain at least: the date, time, and  
19 place of the meeting, the items on the agenda for the  
20 meeting, and a standard proxy form authorized by the  
21 association, if any;

22 (4) No resident manager or managing agent shall solicit, for  
23 use by the manager or managing agent, any proxies from  
24 any apartment owner of the association of owners that  
25 employs the resident manager or managing agent, nor



1 shall the resident manager or managing agent cast any  
2 proxy vote at any association meeting except for the  
3 purpose of establishing a quorum. Any board of  
4 directors that intends to use association funds to  
5 distribute proxies, including the standard proxy form  
6 referred to in paragraph (3), shall first post notice of  
7 its intent to distribute proxies in prominent locations  
8 within the project at least thirty days prior to its  
9 distribution of proxies; provided that if the board  
10 receives within seven days of the posted notice a  
11 request by any owner for use of association funds to  
12 solicit proxies accompanied by a statement, the board  
13 shall mail to all owners either:

14 (A) A proxy form containing the names of all owners who  
15 have requested the use of association funds for  
16 soliciting proxies accompanied by their statements;  
17 or

18 (B) A proxy form containing no names, but accompanied  
19 by a list of names of all owners who have requested  
20 the use of association funds for soliciting proxies  
21 and their statements.

22 The statement shall not exceed one hundred words,  
23 indicating the owner's qualifications to serve on the  
24 board and reasons for wanting to receive proxies;

- 1           (5) A director who has a conflict of interest on any issue  
2           before the board shall disclose the nature of the  
3           conflict of interest prior to a vote on that issue at  
4           the board meeting, and the minutes of the meeting shall  
5           record the fact that a disclosure was made;
- 6           (6) The apartment owners shall have the irrevocable right,  
7           to be exercised by the board of directors, to have  
8           access to each apartment from time to time during  
9           reasonable hours as may be necessary for the operation  
10          of the property or for making emergency repairs therein  
11          necessary to prevent damage to the common elements or to  
12          another apartment or apartments;
- 13          (7) An owner shall not act as an officer of an association  
14          and an employee of the managing agent employed by the  
15          association;
- 16          (8) An association's employees shall not engage in selling  
17          or renting apartments in the condominium in which they  
18          are employed except association-owned units, unless such  
19          activity is approved by an affirmative vote of  
20          sixty-five per cent of the membership;
- 21          (9) The board of directors shall meet at least once a year.  
22          Whenever practicable, notice of all board meetings shall  
23          be posted by the resident manager or a member of the  
24          board in prominent locations within the project

1           seventy-two hours prior to the meeting or simultaneously  
2           with notice to the board of directors;

3           (10) Directors shall not expend association funds for their  
4           travel, directors' fees, and per diem, unless owners are  
5           informed and a majority approve of these expenses;

6           (11) Associations at their own expense shall provide all  
7           board members with a current copy of the association's  
8           declaration, bylaws, house rules, and, annually, a copy  
9           of this chapter with amendments;

10          (12) The directors may expend association funds, which shall  
11          not be deemed to be compensation to the directors, to  
12          educate and train themselves in subject areas directly  
13          related to their duties and responsibilities as  
14          directors; provided that the approved annual operating  
15          budget shall include these expenses as separate line  
16          items. These expenses may include registration fees,  
17          books, videos, tapes, other educational materials, and  
18          economy travel expenses. Except for economy travel  
19          expenses within the State, all other travel expenses  
20          incurred under this subsection shall be subject to the  
21          requirements of paragraph (10);

22          (13) A lien created pursuant to section 514A-90 may be  
23          enforced by the association in any manner permitted by  
24          law, including nonjudicial or power of sale foreclosure  
25          procedures authorized by chapter 667; and



1 (14) If the bylaws provide for cumulative voting by the  
2 owners, the owners may so vote if an owner gives notice  
3 of the owner's intent to cumulatively vote before voting  
4 commences.

5 The provisions of this subsection shall be deemed incorporated  
6 into the bylaws of all condominium projects existing as of January  
7 1, 1988, and all condominium projects created after that date.

8 **§514A-82.1 Employees of condominiums; background check.** The  
9 board of directors of an association of apartment owners or the  
10 manager of a condominium project, upon the written authorization  
11 of an applicant for employment as security guard or manager or for  
12 a position which would allow the employee access to the keys of or  
13 entry into the units in the condominium project or access to  
14 association funds, may conduct a background check on the applicant  
15 or direct another responsible party to conduct the check. Before  
16 initiating or requesting a check, the board of directors or the  
17 manager shall first certify that the signature on the  
18 authorization is authentic and that the person is an applicant for  
19 such employment. The background check, at a minimum, shall  
20 require the applicant to disclose whether the applicant has been  
21 convicted in any jurisdiction of a crime which would tend to  
22 indicate that the applicant may be unsuited for employment as a  
23 condominium employee with access to association funds or the keys  
24 of or entry into the units in the condominium project, and the  
25 judgment of conviction has not been vacated. For the purpose of



1 this section, the criminal history disclosure made by the  
2 applicant may be verified by the board of directors, manager, or  
3 other responsible party, if so directed by the board or the  
4 manager, by means of information obtained through the Hawaii  
5 criminal justice data center. The applicant shall provide the  
6 Hawaii criminal justice data center with personal identifying  
7 information which shall include but not be limited to the  
8 applicant's name, social security number, date of birth, and  
9 gender. This information shall be used only for the purpose of  
10 conducting the criminal history record check authorized by this  
11 section. Failure of an association of apartment owners or the  
12 manager to conduct or verify or cause to have conducted or  
13 verified a background check shall not alone give rise to any  
14 private cause of action against an association or manager for acts  
15 and omissions of the employee hired.

16 **§514A-82.15 Mixed use property; representation on the board**  
17 **of directors.** (a) The bylaws of an association of apartment  
18 owners may be amended to provide that the composition of the board  
19 reflect the proportionate number of apartments for a particular  
20 use, as set forth in the declaration. For example, an association  
21 of apartment owners may provide that for a nine-member board where  
22 two-thirds of the apartments are for residential use and one-third  
23 is for commercial use, sixty-six and two-thirds per cent of the  
24 nine-member board, or six members, shall be owners of residential



1 use apartments and thirty-three and one-third per cent, or three  
2 members, shall be owners of commercial use apartments.

3 (b) Any proposed bylaws amendment to modify the composition  
4 of the board in accordance with subsection (a) may be initiated  
5 by:

6 (1) A majority vote of the board of directors; or

7 (2) A submission of the proposed bylaw amendment to the  
8 board of directors from a volunteer apartment owner's  
9 committee accompanied by a petition from twenty-five per  
10 cent of the apartment owners of record.

11 (c) Within thirty days of a decision by the board or receipt  
12 of a petition to initiate a bylaws amendment, the board of  
13 directors shall mail a ballot with the proposed bylaws amendment  
14 to all of the apartment owners of record. For purposes of this  
15 section only and notwithstanding section 514A-82(b)(2), the bylaws  
16 may be initially amended by a vote or written consent of the  
17 majority (at least fifty-one per cent) of the apartment owners;  
18 and thereafter by sixty-five per cent of all apartment owners;  
19 provided that each of the requirements set forth in this section  
20 shall be embodied in the bylaws.

21 (d) The bylaws, as amended pursuant to this section, shall  
22 be recorded in the bureau of conveyances or filed in land court,  
23 as the case may be.

24 (e) Election of the new board of directors in accordance  
25 with an amendment adopted pursuant to this section shall be held



1 within sixty days from the date the amended bylaws are recorded  
2 pursuant to subsection (d).

3 (f) As permitted in the bylaws or declaration, the vote of a  
4 commercial apartment owner shall be cast and counted only for the  
5 commercial seats available on the board of directors and the vote  
6 of a residential apartment owner shall be cast and counted only  
7 for the residential seats available on the board of directors.

8 (g) No petition for a bylaw amendment pursuant to subsection  
9 (b) (2) to modify the composition of the board shall be distributed  
10 to the apartment owners within one year of the distribution of a  
11 prior petition to modify the composition of the board pursuant to  
12 that subsection.

13 (h) This section shall not preclude the removal and  
14 replacement of any one or more members of the board pursuant to  
15 section 514A-82(b) (1). Any removal and replacement shall not  
16 affect the proportionate composition of the board as prescribed in  
17 the bylaws as amended pursuant to this section.

18 (i) This section shall be deemed incorporated into the  
19 bylaws of all properties subject to this chapter existing as of  
20 July 1, 1998, and thereafter.

21 **§514A-82.2 Restatement of declaration and bylaws.** (a)  
22 Notwithstanding any other provision of this chapter or of any  
23 other statute or instrument, an association of apartment owners  
24 may at any time restate the declaration of condominium property  
25 regime of the project or the bylaws of the association to set

1 forth all amendments thereof by a resolution adopted by the board  
2 of directors.

3 (b) An association of apartment owners may at any time  
4 restate the declaration of condominium property regime of the  
5 project or the bylaws of the association to amend the declaration  
6 or bylaws as may be required in order to conform with the  
7 provisions of this chapter or of any other statute, ordinance,  
8 rule or regulation enacted by any governmental authority, by a  
9 resolution adopted by the board of directors, and the restated  
10 declaration or bylaws shall be as fully effective for all purposes  
11 as if adopted by the vote or written consent of the apartment  
12 owners; provided that any declaration of condominium property  
13 regime or bylaws restated pursuant to this subsection shall  
14 identify each portion so restated and shall contain a statement  
15 that those portions have been restated solely for purposes of  
16 information and convenience, identifying the statute, ordinance,  
17 rule, or regulation implemented by the amendment, and that in the  
18 event of any conflict, the restated declaration or bylaws shall be  
19 subordinate to the cited statute, ordinance, rule, or regulation.

20 (c) Upon the adoption of a resolution pursuant to subsection  
21 (a) or (b), the restated declaration of condominium property  
22 regime or bylaws shall set forth all of the operative provisions  
23 of the declaration of condominium property regime or bylaws, as  
24 amended, together with a statement that the restated declaration  
25 of condominium property regime or bylaws correctly sets forth



1 without change the corresponding provisions of the declaration of  
2 condominium property regime or bylaws, as amended, and that the  
3 restated declaration of condominium property regime or bylaws  
4 supersede the original declaration of condominium property regime  
5 or bylaws and all prior amendments thereto.

6 (d) The restated declaration of condominium property regime  
7 or bylaws shall be recorded in the manner provided in section  
8 514A-11 or 514A-82 or both and upon recordation shall supersede  
9 the original declaration of condominium property regime or bylaws  
10 and all prior amendments thereto; provided that in the event of  
11 any conflict, the restated declaration of condominium property  
12 regime or bylaws shall be subordinate to the original declaration  
13 of condominium property regime or bylaws and all prior amendments  
14 thereto.

15 **514A-82.3 Borrowing of money.** Subject to any approval  
16 requirements and spending limits contained in the declaration or  
17 bylaws of the association of apartment owners, the board of  
18 directors may authorize the borrowing of money to be used by the  
19 association for the repair, replacement, maintenance, operation,  
20 or administration of the common elements of the project, or the  
21 making of any additions, alterations, and improvements thereto.  
22 The cost of such borrowing, including, without limitation, all  
23 principal, interest, commitment fees, and other expenses payable  
24 with respect to such borrowing, shall be a common expense of the  
25 project; provided that owners representing fifty per cent of the



1 common interest and apartments give written consent to such  
2 borrowing, having been first notified of the purpose and use of  
3 the funds.

4 **§514A-82.4 Duty of directors.** Each director shall owe the  
5 association of apartment owners a fiduciary duty in the  
6 performance of the director's responsibilities.

7 **§514A-82.5 Pets in apartments.** (a) Whenever the bylaws do  
8 not forbid apartment owners from keeping animals as pets in their  
9 apartments, the bylaws shall not forbid the tenants of the  
10 apartment owners from keeping pets in the apartments rented or  
11 leased from the owners; provided that:

- 12 (1) The apartment owner agrees in writing to allow the
- 13 apartment owner's tenant to keep a pet in the apartment;
- 14 (2) The tenants may keep only those types of pets which may
- 15 be kept by apartment owners;
- 16 (3) The bylaws may allow each owner or tenant to keep only
- 17 one pet in the apartment;
- 18 (4) The animals shall not include those described as pests
- 19 under section 150A-2, or animals prohibited from
- 20 importation under section 141-2, 150A-5, or 150A-6;
- 21 (5) The bylaws may include reasonable restrictions or
- 22 prohibitions against excessive noise or other problems
- 23 caused by pets on the property; and



1 (6) The bylaws may reasonably restrict or prohibit the  
2 running of pets at large in the common areas of the  
3 property.

4 (b) Any amendments to the bylaws pertaining to pet  
5 restrictions or prohibitions which exempt circumstances existing  
6 prior to the adoption of the amendments shall apply equally to  
7 apartment owners and tenants.

8 **§514A-82.6 Pets, replacement of subsequent to prohibition.**

9 (a) Any apartment owner who keeps a pet in the owner's apartment  
10 pursuant to a provision in the bylaws which allows owners to keep  
11 pets or in the absence of any provision in the bylaws to the  
12 contrary may, upon the death of the animal, replace the animal  
13 with another and continue to do so for as long as the owner  
14 continues to reside in the owner's apartment or another apartment  
15 subject to the same bylaws.

16 (b) Any apartment owner who is keeping a pet pursuant to  
17 subsection (a) as of the effective date of an amendment to the  
18 bylaws which prohibits owners from keeping pets in their  
19 apartments shall not be subject to the prohibition but shall be  
20 entitled to keep the pet and acquire new pets as provided in  
21 subsection (a).

22 **§514A-83 Purchaser's right to vote.** The purchaser of an  
23 apartment pursuant to an agreement of sale recorded in the bureau  
24 of conveyances or land court shall have all the rights of an  
25 apartment owner, including the right to vote; provided that the



1 seller may retain the right to vote on matters substantially  
2 affecting the seller's security interest in the apartment,  
3 including but not limited to, the right to vote on:

- 4 (1) Any partition of all or part of the project;
- 5 (2) The nature and amount of any insurance covering the  
6 project and the disposition of any proceeds thereof;
- 7 (3) The manner in which any condemnation of the project  
8 shall be defended or settled and the disposition of any  
9 award or settlement in connection therewith;
- 10 (4) The payment of any amount in excess of insurance or  
11 condemnation proceeds;
- 12 (5) The construction of any additions or improvements, and  
13 any substantial repair or rebuilding of any portion of  
14 the project;
- 15 (6) The special assessment of any expenses;
- 16 (7) The acquisition of any apartment in the project;
- 17 (8) Any amendment to the declaration of condominium property  
18 regime or bylaws;
- 19 (9) Any removal of the project from the provisions of this  
20 chapter; and
- 21 (10) Any other matter which would substantially affect the  
22 security interest of the seller.

23 **§514A-83.1 Board meetings.** (a) All meetings of the board of  
24 directors, other than executive sessions, shall be open to all  
25 members of the association, and association members who are not on



1 the board of directors may participate in any deliberation or  
2 discussion, other than executive sessions, unless a majority of a  
3 quorum of the board of directors votes otherwise.

4 (b) The board of directors, with the approval of a majority  
5 of a quorum of its members, may adjourn a meeting and reconvene in  
6 executive session to discuss and vote upon personnel matters or  
7 litigation in which the association is or may become involved.  
8 The nature of any and all business to be considered in executive  
9 session shall first be announced in open session.

10 **§514A-83.2 Proxies.** (a) A proxy, to be valid, must:

11 (1) Be delivered to the secretary of the association of  
12 apartment owners or the managing agent, if any, no later  
13 than 4:30 p.m. on the second business day prior to the  
14 date of the meeting to which it pertains;

15 (2) Contain at least the name of the association of  
16 apartment owners, the date of the meeting of the  
17 association of apartment owners, the printed names and  
18 signatures of the persons giving the proxy, the  
19 apartments for which the proxy is given, and the date  
20 that the proxy is given; and

21 (3) Contain boxes wherein the owner has indicated that the  
22 proxy is given:

23 (A) For quorum purposes only;

24 (B) To the individual whose name is printed on a line  
25 next to this box;



1 (C) To the board of directors as a whole and that the  
2 vote be made on the basis of the preference of the  
3 majority of the board; or

4 (D) To those directors present at the meeting and the  
5 vote to be shared with each board member receiving  
6 an equal percentage.

7 (b) A proxy shall only be valid for the meeting to which the  
8 proxy pertains and its adjournments, may designate any person as  
9 proxy, and may be limited as the apartment owner desires and  
10 indicates; provided that no proxy shall be irrevocable unless  
11 coupled with a financial interest in the unit.

12 (c) No board of directors or member of the board shall use  
13 association funds to solicit proxies except for the distribution  
14 of proxies as set forth in section 514A-82(b)(4); provided that  
15 this shall not prevent an individual member of the board from  
16 soliciting proxies as an apartment owner under section  
17 514-82(b)(4).

18 (d) A copy, facsimile telecommunication, or other reliable  
19 reproduction of a proxy may be used in lieu of the original proxy  
20 for any and all purposes for which the original proxy could be  
21 used; provided that any copy, facsimile telecommunication, or  
22 other reproduction shall be a complete reproduction of the entire  
23 original proxy.



1 (e) Nothing in this section shall affect the holder of any  
2 proxy under a first mortgage of record encumbering an apartment or  
3 under an agreement of sale affecting an apartment.

4 **§514A-83.3 Membership list.** The resident manager or  
5 managing agent or board of directors shall keep an accurate and  
6 current list of members of the association of apartment owners and  
7 their current addresses and the names and addresses of the vendees  
8 under an agreement of sale, if any. The list shall be maintained  
9 at a place designated by the board of directors and a copy shall  
10 be available, at cost, to any member of the association as  
11 provided in the declaration or bylaws or rules and regulations or,  
12 in any case, to any member who furnishes to the resident manager  
13 or managing agent or board of directors a duly executed and  
14 acknowledged affidavit stating that the list (1) will be used by  
15 such owner personally and only for the purpose of soliciting votes  
16 or proxies or providing information to other owners with respect  
17 to association matters, and (2) shall not be used by such owner or  
18 furnished to anyone else for any other purpose. No board of  
19 directors shall adopt any rule prohibiting the solicitation of  
20 proxies or distribution of materials relating to association  
21 matters on the common elements by apartment owners; provided that  
22 a board of directors may adopt rules regulating reasonable time,  
23 place, and manner of such solicitations or distributions, or both.  
24 A board of directors may prohibit commercial solicitations.



1           **§514A-83.4 Meeting minutes.** (a) Minutes of meetings of the  
2 board of directors and association of apartment owners shall  
3 include the recorded vote of each board member on all motions  
4 except motions voted on in executive session.

5           (b) Minutes of meetings of the board of directors and  
6 association of apartment owners shall be approved at the next  
7 succeeding meeting; provided that for board of directors meetings,  
8 no later than the second succeeding meeting.

9           (c) Minutes of all meetings shall be available within seven  
10 calendar days after approval and unapproved final drafts of the  
11 minutes of a meeting shall be available within sixty days after  
12 the meeting; provided that the minutes of any executive session  
13 may be withheld if their publication would defeat the lawful  
14 purpose of the executive session.

15           **§514A-83.5 Documents of the association of apartment owners.**

16 (a) The association's most current financial statement shall be  
17 available to any owner at no cost or on twenty-four-hour loan, at  
18 a convenient location designated by the board of directors. The  
19 meeting minutes of the board of directors, once approved, for the  
20 current and prior year shall either:

21           (1) Be available for examination by apartment owners at no  
22 cost or on twenty-four-hour loan at a convenient location at the  
23 project, to be determined by the board of directors; or

24           (2) Be transmitted to any apartment owner making a request  
25 for the minutes, by the board of directors, the managing agent, or



1 the association's representative, within fifteen days of receipt  
2 of the request; provided that the minutes shall be transmitted by  
3 mail, electronic mail transmission, or facsimile, by the means  
4 indicated by the owner, if the owner indicated a preference at the  
5 time of the request; and provided further that the owner shall pay  
6 a reasonable fee for administrative costs associated with handling  
7 the request.

8 Costs incurred by apartment owners pursuant to this  
9 subsection shall be subject to section 514A-92.5.

10 (b) Minutes of board meetings shall include the recorded  
11 vote of each board member on all motions except motions voted on  
12 in executive session.

13 (c) Financial statements, general ledgers, the accounts  
14 receivable ledger, accounts payable ledgers, check ledgers,  
15 insurance policies, contracts, and invoices of the association of  
16 apartment owners for the duration those records are kept by the  
17 association and delinquencies of ninety days or more shall be  
18 available for examination by apartment owners at convenient hours  
19 at a place designated by the board; provided that:

20 (1) The board may require owners to furnish to the  
21 association a duly executed and acknowledged affidavit  
22 stating that the information is requested in good faith  
23 for the protection of the interests of the association,  
24 or its members, or both; and



1 (2) Owners pay for administrative costs in excess of eight  
2 hours per year.

3 Copies of these items shall be provided to any owner upon the  
4 owner's request; provided that the owner pays a reasonable fee for  
5 duplication, postage, stationery, and other administrative costs  
6 associated with handling the request.

7 (d) Owners shall also be permitted to view proxies, tally  
8 sheets, ballots, owners' check-in lists, and the certificate of  
9 election for a period of thirty days following any association  
10 meeting; provided:

11 (1) That the board may require owners to furnish to the  
12 association a duly executed and acknowledged affidavit  
13 stating that the information is requested in good faith  
14 for the protection of the interest of the association or  
15 its members or both; and

16 (2) That owners pay for administrative costs in excess of  
17 eight hours per year.

18 Proxies and ballots may be destroyed following the thirty-day  
19 period. Copies of tally sheets, owners' check-in lists, and the  
20 certificates of election from the most recent association meeting  
21 shall be provided to any owner upon the owner's request, provided  
22 that the owner pay a reasonable fee for duplicating, postage,  
23 stationery, and other administrative costs associated with  
24 handling the request.



1 (e) Owners may file a written request with the board to  
2 examine other documents. The board shall give written  
3 authorization or written refusal with an explanation of the  
4 refusal within thirty calendar days of receipt of the request.

5 **§514A-83.6 Associations of apartment owners; budgets and**

6 **reserves.** (a) The board of directors of each association of  
7 apartment owners shall prepare and adopt an annual operating  
8 budget and distribute it to the apartment owners. At a minimum,  
9 the budget shall include the following:

10 (1) The estimated revenues and operating expenses of the  
11 association;

12 (2) Information as to whether the budget has been prepared  
13 on a cash or accrual basis;

14 (3) The total replacement reserves of the association as of  
15 the date of the budget;

16 (4) The estimated replacement reserves the association will  
17 require to maintain the property based on a reserve  
18 study performed by the association;

19 (5) A general explanation of how the estimated replacement  
20 reserves are computed;

21 (6) The amount the association must collect for the fiscal  
22 year to fund the estimated replacement reserves; and

23 (7) Information as to whether the amount the association  
24 must collect for the fiscal year to fund the estimated  
25 replacement reserves was calculated using a per cent



1 funded or cash flow plan. The method or plan shall not  
2 circumvent the estimated replacement reserves amount  
3 determined by the reserve study pursuant to paragraph  
4 (4).

5 (b) The association shall assess the apartment owners to  
6 either fund a minimum of fifty per cent of the estimated  
7 replacement reserves or fund one hundred per cent of the estimated  
8 replacement reserves when using a cash flow plan; provided that a  
9 new association created after January 1, 1993, need not collect  
10 estimated replacement reserves until the fiscal year which begins  
11 after the association's first annual meeting. For each fiscal  
12 year, the association shall collect the amount assessed to fund  
13 the estimated replacement for that fiscal year reserves, as  
14 determined by the association's plan, except:

15 (1) The commission shall adopt rules to permit an existing  
16 association to fund its estimated replacement reserves  
17 in increments after January 1, 1993 and prior to January  
18 1, 2000; and

19 (2) The commission shall adopt rules to permit an  
20 association to fund in increments, over three years,  
21 estimated replacement reserves that have been  
22 substantially depleted by an emergency.

23 (c) The association shall compute the estimated replacement  
24 reserves by a formula which is based on the estimated life and the  
25 estimated capital expenditure or major maintenance required for



1 each part of the property. The estimated replacement reserves  
2 shall include:

3 (1) Adjustments for revenues which will be received and  
4 expenditures which will be made before the beginning of  
5 the fiscal year to which the budget relates; and

6 (2) Separate, designated reserves for each part of the  
7 property for which capital expenditures or major  
8 maintenance will exceed \$10,000. Parts of the property  
9 for which capital expenditures or major maintenance will  
10 not exceed \$10,000 may be aggregated in a single  
11 designated reserve.

12 (d) No association or apartment owner, director, officer,  
13 managing agent, or employee of an association who makes a good  
14 faith effort to calculate the estimated replacement reserves for  
15 an association shall be liable if the estimate subsequently proves  
16 incorrect.

17 (e) The commission may request a copy of the annual  
18 operating budget of the association of apartment owners as part of  
19 the association's registration with the commission under section  
20 514A-95.1.

21 (f) A board may not exceed its total adopted annual  
22 operating budget by more than twenty per cent during the fiscal  
23 year to which the budget relates, except in emergency situations.  
24 Prior to the imposition or collection of an assessment under this  
25 paragraph, the board shall pass a resolution containing written



1 findings as to the necessity of the extraordinary expense involved  
2 and why the expense was not or could not have been reasonably  
3 foreseen in the budgeting process, and the resolution shall be  
4 distributed to the members with the notice of assessment.

5 (g) The requirements of this section shall override any  
6 requirements in an association's declaration, bylaws, or any other  
7 association documents relating to preparation of budgets,  
8 calculation of reserve requirements, assessment and funding of  
9 reserves, with the exception of:

10 (1) Any provisions relating to the repair and maintenance of  
11 property;

12 (2) Any requirements in an association's declaration,  
13 bylaws, or any other association documents which require  
14 the association to collect more than fifty per cent of  
15 reserve requirements; or

16 (3) Any provisions relating to upgrading the common  
17 elements, such as additions, improvements, and  
18 alterations to the common elements.

19 (h) Subject to the procedures of section 514A-94 and any  
20 rules adopted by the commission, any apartment owner whose  
21 association board fails to comply with this section may enforce  
22 compliance by the board. In any proceeding to enforce compliance,  
23 a board which has not prepared an annual operating budget and  
24 reserve study shall have the burden of proving it has complied  
25 with this section.



1 (i) The commission may adopt rules to implement this  
2 section.

3 (j) As used in this section:

4 "Capital expenditure" means an expense that results from the  
5 purchase or replacement of an asset whose life is greater than one  
6 year, or the addition of an asset that extends the life of an  
7 existing asset for a period greater than one year.

8 "Cash flow plan" means a minimum twenty-year projection of an  
9 association's future income and expense requirements to fund fully  
10 its replacement reserves requirements each year during that  
11 twenty-year period, except in an emergency; provided that it does  
12 not include a projection of special assessments or loans during  
13 that twenty-year period, except in an emergency.

14 "Emergency situation" means any extraordinary expenses:

- 15 (1) Required by an order of a court;
- 16 (2) Necessary to repair or maintain any part of the property  
17 for which the association is responsible where a threat  
18 to personal safety on the property is discovered;
- 19 (3) Necessary to repair any part of the property for which  
20 the association is responsible that could not have been  
21 reasonably foreseen by the board in preparing and  
22 distributing the annual operating budget; or
- 23 (4) Necessary to respond to any legal or administrative  
24 proceeding brought against the association that could



1 not have been reasonably foreseen by the board in  
2 preparing and distributing the annual operating budget.

3 (5) Necessary for the association to obtain adequate  
4 insurance for the property which the association must  
5 insure.

6 "Major maintenance" means an expenditure for maintenance or  
7 repair that will result in extending the life of an asset for a  
8 period greater than one year.

9 "Replacement reserves" means funds for the upkeep, repair, or  
10 replacement of those parts of the property, including, but not  
11 limited to roofs, walls, decks, paving, and equipment, that the  
12 association is obligated to maintain.

13 **§514A-84 Management and contracts; developer, managing**  
14 **agent, and association of apartment owners.** (a) If the developer  
15 or any affiliate of the developer acts as the first managing agent  
16 for the association of apartment owners following its  
17 organization, the contract shall not have a term exceeding one  
18 year and shall contain a provision that the contract may be  
19 terminated by either party thereto on not more than sixty days'  
20 written notice. The identity of the managing agent as the  
21 developer or the developer's affiliate shall be disclosed to the  
22 association of apartment owners no later than the first meeting of  
23 the association of apartment owners, which is when the association  
24 of apartment owners is organized. An affiliate of, or person  
25 affiliated with, a developer is a person that directly or



1 indirectly controls, is controlled by, or is under common control  
2 with, the developer.

3 (b) Any developer or affiliate of the developer or a  
4 managing agent, who manages the operation of the property from the  
5 date of recordation of the first apartment conveyance until the  
6 organization of the association of apartment owners, shall comply  
7 with the requirements of sections 514A-95.1, 514A-97, and 514A-  
8 132, with the exception of the fidelity bond requirement for the  
9 association of apartment owners.

10 (c) The developer, affiliate of the developer, managing  
11 agent, and the association of apartment owners shall ensure that  
12 there is a written contract for managing the operation of the  
13 property, expressing the agreements of all parties including but  
14 not limited to financial and accounting obligations, services  
15 provided, and any compensation arrangements, including any  
16 subsequent amendments. Copies of the executed contract and any  
17 amendments shall be provided to all parties to the contract.  
18 Prior to the organization of the association of apartment owners,  
19 any apartment owner may request to inspect as well as receive a  
20 copy of the management contract from the entity that manages the  
21 operation of the property.

22 **§514A-84.5 Availability of project documents.** An accurate  
23 copy of the declaration of condominium property regime, the bylaws  
24 of the association of apartment owners, the house rules, if any,  
25 the master lease, if any, a sample original conveyance document,



1 all public reports and any amendments thereto, shall be kept at  
2 the managing agent's office. The managing agent shall provide  
3 copies of those documents to owners, prospective purchasers and  
4 their prospective agents during normal business hours, upon  
5 payment to the managing agent of a reasonable charge to defray any  
6 administrative or duplicating costs. In the event that the  
7 project is not managed by a managing agent, the foregoing  
8 requirements shall be undertaken by a person or entity, if any,  
9 employed by the association of apartment owners, to whom this  
10 function is delegated.

11 **§514A-85 Records; examination; disposal.** (a) The managing  
12 agent or board of directors shall keep detailed, accurate records  
13 in chronological order, of the receipts and expenditures affecting  
14 the common elements, specifying and itemizing the maintenance and  
15 repair expenses of the common elements and any other expenses  
16 incurred. The managing agent or board of directors shall also  
17 keep monthly statements indicating the total current delinquent  
18 dollar amount of any unpaid assessments for common expenses.

19 (b) All records and the vouchers authorizing the payments  
20 and statements shall be kept and maintained at the address of the  
21 project, or elsewhere within the State as determined by the board  
22 of directors.

23 (c) A managing agent employed or retained by one or more  
24 condominium associations may dispose of the records of any  
25 condominium association which are more than five years old



1 without liability if the managing agent first provides the board  
2 of directors of the condominium association affected with written  
3 notice of the managing agent's intent to dispose of the records if  
4 not retrieved by the board of directors within sixty days, which  
5 notice shall include an itemized list of the records which the  
6 managing agent intends to dispose of.

7 (d) No person shall knowingly make any false certificate,  
8 entry, or memorandum upon any of the books or records of any  
9 managing agent or association. No person shall knowingly alter,  
10 destroy, mutilate, or conceal any books or records of a managing  
11 agent or association.

12 **§514A-86 Insurance.** (a) The association of apartment owners  
13 shall purchase and at all times maintain insurance which covers  
14 the common elements and, whether or not part of the common  
15 elements, all exterior and interior walls, floors, and ceilings,  
16 in accordance with the as-built condominium plans and  
17 specifications, against loss or damage by fire sufficient to  
18 provide for the repair or replacement thereof in the event of such  
19 loss or damages. Flood insurance shall also be maintained if the  
20 property is located in a special flood hazard area as delineated  
21 on flood maps issued by the Federal Emergency Management Agency.  
22 The flood insurance policy shall comply with the requirements of  
23 the National Flood Insurance Program and the Federal Insurance  
24 Administration. Exterior glass may be insured at the option of  
25 the association of apartment owners. The insurance coverage shall



1 be written on the property in the name of the association of  
2 apartment owners. Premiums shall be common expenses. Provision  
3 for the insurance shall be without prejudice to the right of each  
4 apartment owner to insure the owner's own apartment for the  
5 owner's benefit.

6 (b) The association of apartment owners may purchase and  
7 maintain directors' and officers' liability insurance with minimum  
8 coverage in such amount as shall be determined by the board of  
9 directors. Premiums shall be common expenses.

10 (c) Any insurance policy providing the coverage required by  
11 subsections (a) and (b) shall contain a provision requiring the  
12 insurance carrier, at the inception of the policy and on each  
13 anniversary date thereof, to provide the board of directors with a  
14 written summary, in layperson's terms, of the policy. The summary  
15 shall include the type of policy, a description of the coverage  
16 and the limits thereof, amount of annual premium, and renewal  
17 dates. The board of directors shall provide this information to  
18 each apartment owner.

19 **§514A-87 Personal application.** (a) All apartment owners,  
20 tenants of such owners, employees of owners and tenants, or any  
21 other persons that may in any manner use property or any part  
22 thereof submitted to this chapter are subject to this chapter and  
23 to the declaration and bylaws of the association of apartment  
24 owners adopted pursuant to this chapter.



1 (b) All agreements, decisions, and determinations lawfully  
2 made by the association of apartment owners in accordance with the  
3 voting percentages established in this chapter, the declaration,  
4 or the bylaws are binding on all apartment owners.

5 **§514A-88 Compliance with covenants, bylaws, and**  
6 **administrative provisions.** Each apartment owner, tenants and  
7 employees of an owner, and other persons using the property shall  
8 comply strictly with the bylaws and with the administrative rules  
9 and regulations adopted pursuant thereto, as either of the same  
10 may be lawfully amended from time to time, and with the covenants,  
11 conditions, and restrictions set forth in the declaration.  
12 Failure to comply with any of the same shall be ground for an  
13 action to recover sums due, for damages or injunctive relief, or  
14 both, maintainable by the manager or board of directors on behalf  
15 of the association of apartment owners or, in a proper case, by an  
16 aggrieved apartment owner.

17 **§514A-89 Certain work prohibited.** (a) No apartment owner  
18 shall do any work that could jeopardize the soundness or safety of  
19 the property, reduce the value thereof, or impair any easement or  
20 hereditament.

21 (b) No apartment owner shall add any material structure or  
22 excavate any additional basement or cellar, without first  
23 obtaining in every such case the consent of seventy-five per cent  
24 of the apartment owners, together with the consent of all



1 apartment owners whose apartments or limited common elements  
2 appurtenant thereto are directly affected.

3 (c) Nonmaterial structural additions to the common elements,  
4 including, without limitation, additions to or alterations of an  
5 apartment made within the apartment or within a limited common  
6 element appurtenant to and for the exclusive use of the apartment  
7 shall require approval only by the board of directors of the  
8 association of apartment owners and such percentage, number, or  
9 group of apartment owners as may be required by the declaration or  
10 bylaws; provided that the installation of solar energy devices  
11 shall be allowed on single-family residential dwellings or  
12 townhouses pursuant to the provisions in section 196-7.

13 As used in this section:

14 "Nonmaterial structural additions to the common elements",  
15 means a structural addition to the common elements that does not  
16 jeopardize the soundness or safety of the property, reduce the  
17 value thereof, impair any easement or hereditament, detract from  
18 the appearance of the project, interfere with or deprive any  
19 nonconsenting owner of the use or enjoyment of any part of  
20 property, or directly affect any nonconsenting owner.

21 "Solar energy device" means any new identifiable facility,  
22 equipment, apparatus, or the like which makes use of solar energy  
23 for heating, cooling, or reducing the use of other types of energy  
24 dependent upon fossil fuel for its generation; provided that if  
25 the equipment sold cannot be used as a solar device without its



1 incorporation with other equipment, it must be installed in place  
2 and ready to be made operational in order to qualify as a "solar  
3 energy device; and provided further that "solar energy device"  
4 shall not include skylights or windows.

5 "Townhouse" means a series of individual houses having  
6 architectural unity and a common wall between each unit; provided  
7 that each unit extends from the ground to the roof.

8 **§514A-90 Priority of lien.** (a) All sums assessed by the  
9 association of apartment owners but unpaid for the share of the  
10 common expenses chargeable to any apartment constitute a lien on  
11 the apartment prior to all other liens, except:

12 (1) Liens for taxes and assessments lawfully imposed by  
13 governmental authority against the apartment; and

14 (2) All sums unpaid on any mortgage of record that was  
15 recorded prior to the recordation of notice of a lien by  
16 the association of apartment owners, and costs and  
17 expenses including attorneys' fees provided in such  
18 mortgages.

19 The lien of the association of apartment owners may be foreclosed  
20 by action or by non-judicial or power of sale foreclosure  
21 procedures set forth in chapter 667, by the managing agent or  
22 board of directors, acting on behalf of the association of  
23 apartment owners, in like manner as a mortgage of real property.  
24 In any such foreclosure the apartment owner shall be required to  
25 pay a reasonable rental for the apartment, if so provided in the



1 bylaws, and the plaintiff in the foreclosure shall be entitled to  
2 the appointment of a receiver to collect the rental owed. The  
3 managing agent or board of directors, acting on behalf of the  
4 association of apartment owners, unless prohibited by the  
5 declaration, may bid on the apartment at foreclosure sale, and  
6 acquire and hold, lease, mortgage, and convey the apartment.  
7 Action to recover a money judgment for unpaid common expenses  
8 shall be maintainable without foreclosing or waiving the lien  
9 securing the unpaid common expenses owed.

10 (b) Except as provided in subsection (g), when the mortgagee  
11 of a mortgage of record or other purchaser of an apartment obtains  
12 title to the apartment as a result of foreclosure of the mortgage,  
13 the acquirer of title and the acquirer's successors and assigns  
14 shall not be liable for the share of the common expenses or  
15 assessments by the association of apartment owners chargeable to  
16 the apartment which became due prior to the acquisition of title  
17 to the apartment by the acquirer. The unpaid share of common  
18 expenses or assessments shall be deemed to be common expenses  
19 collectible from all of the apartment owners, including the  
20 acquirer and the acquirer's successors and assigns. The mortgagee  
21 of record or other purchaser of the apartment shall be deemed to  
22 acquire title and shall be required to pay the apartment's share  
23 of common expenses and assessments beginning:

24 (1) Thirty-six days after the order confirming the sale to  
25 the purchaser has been filed with the court;



1           (2) Sixty days after the hearing at which the court grants  
2           the motion to confirm the sale to the purchaser;  
3           (3) Thirty days after the public sale in a nonjudicial power  
4           of sale foreclosure pursuant to section 667-5; or  
5           (4) Upon the recording of the instrument of conveyance,  
6 whichever occurs first; provided that the mortgagee of record or  
7 other purchaser of the apartment shall not be deemed to acquire  
8 title under paragraph (1), (2), or (3), if transfer of title is  
9 delayed past the thirty-six days specified in paragraph (1), the  
10 sixty days specified in paragraph (2), or the thirty days  
11 specified in paragraph (3), when a person who appears at the  
12 hearing on the motion or a party to the foreclosure action  
13 requests reconsideration of the motion or order to confirm sale,  
14 objects to the form of the proposed order to confirm sale, appeals  
15 the decision of the court to grant the motion to confirm sale, or  
16 the debtor or mortgagor declares bankruptcy or is involuntarily  
17 placed into bankruptcy. In any such case, the mortgagee of record  
18 or other purchaser of the apartment shall be deemed to acquire  
19 title upon recordation of the instrument of conveyance.

20           (c) No apartment owner shall withhold any assessment claimed  
21 by the association. An apartment owner who disputes the amount of  
22 an assessment may request a written statement clearly indicating:

23           (1) The amount of common expenses included in the  
24           assessment, including the due date of each amount  
25           claimed;



- 1           (2) The amount of any penalty, late fee, lien filing fee,  
2                   and any other charge included in the assessment;
- 3           (3) The amount of attorneys' fees and costs, if any,  
4                   included in the assessment;
- 5           (4) That under Hawaii law, an apartment owner has no right  
6                   to withhold assessments for any reason;
- 7           (5) That an apartment owner has a right to demand mediation  
8                   or arbitration to resolve disputes about the amount or  
9                   validity of an association's assessment, provided the  
10                  apartment owner immediately pays the assessment in full  
11                  and keeps assessments current; and
- 12          (6) That payment in full of the assessment does not prevent  
13                  the owner from contesting the assessment or receiving a  
14                  refund of amounts not owed.

15 Nothing in this section shall limit the rights of an owner to the  
16 protection of all fair debt collection procedures mandated under  
17 federal and state law.

18           (d) An apartment owner who pays an association the full  
19 amount claimed by the association may file in small claims court  
20 or require the association to mediate to resolve any disputes  
21 concerning the amount or validity of the association's claim. If  
22 the apartment owner and the association are unable to resolve the  
23 dispute through mediation, either party may file for arbitration  
24 under part VII; provided that an apartment owner may only file for  
25 arbitration if all amounts claimed by the association are paid in

1 full on or before the date of filing. If the apartment owner  
2 fails to keep all association assessments current during the  
3 arbitration, the association may ask the arbitrator to temporarily  
4 suspend the arbitration proceedings. If the apartment owner pays  
5 all association assessments within thirty days of the date of  
6 suspension, the apartment owner may ask the arbitrator to  
7 recommence the arbitration proceedings. If the owner fails to pay  
8 all association assessments by the end of the thirty-day period,  
9 the association may ask the arbitrator to dismiss the arbitration  
10 proceedings. The apartment owner shall be entitled to a refund of  
11 any amounts paid to the association which are not owed.

12 (e) As an alternative to foreclosure proceedings under  
13 subsection (a), where an apartment is owner-occupied, the  
14 association of apartment owners may authorize its managing agent  
15 or board of directors to, after sixty days' written notice to the  
16 apartment owner and to the apartment's first mortgagee of the  
17 nonpayment of the apartment's share of the common expenses,  
18 terminate the delinquent apartment's access to the common elements  
19 and cease supplying a delinquent apartment with any and all  
20 services normally supplied or paid for by the association of  
21 apartment owners. Any terminated services and privileges shall be  
22 restored upon payment of all delinquent assessments.

23 (f) Before the board of directors or managing agent may take  
24 the actions permitted under subsection (e), the board must adopt a  
25 written policy providing for such actions and have the policy



1 approved by a majority vote of the apartment owners at an annual  
2 or special meeting of the association or by the written consent of  
3 a majority of the apartment owners.

4 (g) Subject to this subsection, and subsections (h) and (i),  
5 the board of an association of apartment owners may specially  
6 assess the amount of the unpaid regular monthly common assessments  
7 for common area expenses against a person who, in a judicial or  
8 nonjudicial power of sale foreclosure, purchases a delinquent  
9 apartment; provided that:

10 (1) A purchaser who holds a mortgage on a delinquent  
11 apartment that was recorded prior to the filing of a  
12 notice of lien by the association of apartment owners  
13 and who acquires the delinquent apartment through a  
14 judicial or nonjudicial foreclosure proceeding,  
15 including purchasing the delinquent apartment at a  
16 foreclosure auction, shall not be obligated to make, nor  
17 be liable for, payment of the special assessment as  
18 provided for under this subsection; and

19 (2) A person who subsequently purchases the delinquent  
20 apartment from the mortgagee referred to in paragraph  
21 (1) shall be obligated to make, and shall be liable for,  
22 payment of the special assessment provided for under  
23 this subsection; provided that the mortgagee or  
24 subsequent purchaser may require the association of  
25 apartment owners to provide at no charge a notice of the



1 association's intent to claim a lien against the  
2 delinquent apartment for the amount of the special  
3 assessment, prior to the subsequent purchaser's  
4 acquisition of title to the delinquent apartment. The  
5 notice shall state the amount of the special assessment,  
6 how that amount was calculated, and the legal  
7 description of the apartment.

8 (h) The amount of the special assessment assessed under  
9 subsection (g) shall not exceed the total amount of unpaid regular  
10 monthly common assessments that were assessed during the six  
11 months immediately preceding the completion of the judicial or  
12 nonjudicial power of sale foreclosure. In no event shall the  
13 amount of the special assessment exceed the sum of \$1,800.

14 (i) For purposes of subsections (g) and (h), the following  
15 definitions shall apply:

16 (1) "Completion" means:

17 (A) In a nonjudicial power of sale foreclosure, when  
18 the affidavit required under section 667-5 is  
19 filed; and

20 (B) In a judicial foreclosure, when a purchaser is  
21 deemed to acquire title pursuant to subsection (b).

22 (2) "Regular monthly common assessments" shall not include:

23 (A) Any other special assessment, except for a special  
24 assessment imposed on all apartments as part of a  
25 budget adopted pursuant to section 514A-83.6;



1 (B) Late charges, fines, or penalties;

2 (C) Interest assessed by the association of apartment  
3 owners;

4 (D) Any lien arising out of the assessment; or

5 (E) Any fees or costs related to the collection or  
6 enforcement of the assessment, including attorneys'  
7 fees and court costs.

8 **514A-90.5 Unpaid common expenses; collection from tenants.**

9 (a) If the owner of an apartment rents or leases the apartment  
10 and is in default for thirty days or more in the payment of the  
11 apartment's share of the common expenses, the board of directors,  
12 for as long as the default continues, may demand in writing and  
13 receive each month from any tenant occupying the apartment, an  
14 amount sufficient to pay all sums due from the apartment owner to  
15 the association, including interest, if any, but the amount shall  
16 not exceed the tenant's rent due each month. The tenant's payment  
17 under this section shall discharge that amount of payment from the  
18 tenant's rent obligation, and any contractual provision to the  
19 contrary shall be void as a matter of law.

20 (b) Prior to taking any action under this section, the board  
21 of directors shall give to the delinquent apartment owner written  
22 notice of its intent to collect the rent owed. The notice shall:

23 (1) Be sent both by first-class and certified mail;

24 (2) Set forth the exact amount the association claims is due  
25 and owing by the apartment owner; and



1 (3) Indicate the intent of the board of directors to collect  
2 such amount from the rent, along with any other amounts  
3 that become due and remain unpaid.

4 (c) The apartment owner shall not take any retaliatory  
5 action against the tenant for payments made under this section.

6 (d) The payment of any portion of the apartment's share of  
7 common expenses by the tenant pursuant to a written demand by the  
8 board is a complete defense, to the extent of the amount demanded  
9 and paid by the tenant, in an action for nonpayment of rent  
10 brought by the apartment owner against a tenant.

11 (e) The board may not demand payment from the tenant  
12 pursuant to this section if:

13 (1) A commissioner or receiver has been appointed to take  
14 charge of the premises pending a mortgage foreclosure;

15 (2) A mortgagee is in possession pending a mortgage  
16 foreclosure; or

17 (3) The tenant is served with a court order directing  
18 payment to a third party.

19 (f) In the event of any conflict between this section and  
20 any provision of chapter 521, the conflict shall be resolved in  
21 favor of this section; provided that if the tenant is entitled to  
22 an offset of rent under chapter 521, the tenant may deduct the  
23 offset from the amount due to the association, up to the limits  
24 stated in chapter 521. Nothing herein precludes the apartment  
25 owner or tenant from seeking equitable relief from a court of



1 competent jurisdiction or seeking a judicial determination of the  
2 amount owed.

3 (g) Before the board of directors may take the actions  
4 permitted under subsection (a), the board must adopt a written  
5 policy providing for the actions and have the policy approved by a  
6 majority vote of the apartment owners at an annual or special  
7 meeting of the association or by the written consent of a majority  
8 of the apartment owners.

9 **§514A-90.6 Lease rent renegotiation.** (a) Notwithstanding  
10 any provision in the declaration or bylaws of any property subject  
11 to this chapter, any lease or sublease of the property or of an  
12 apartment, or an undivided interest in the land to an apartment  
13 owner, whenever any lease or sublease of the property, an  
14 apartment, or an undivided interest in the land to an apartment  
15 owner provides for the periodic renegotiation of lease rent  
16 thereunder, the association of apartment owners shall represent  
17 the apartment owners in all negotiations and proceedings,  
18 including but not limited to appraisal or arbitration, for the  
19 determination of lease rent as a common expense of the  
20 association.

21 (b) If some, but not all of the apartment owners have  
22 purchased the leased fee interest appurtenant to their apartments,  
23 all costs and expenses of the renegotiation shall be assessed to  
24 the remaining lessees in the same proportion that the common  
25 interest appurtenant to each lessee's apartment bears to the



1 common interest appurtenant to all lessees' apartments. The  
2 unpaid amount of this assessment shall constitute a lien upon the  
3 lessee's apartment, which may be collected in accordance with  
4 sections 514A-90 and 514A-94 in the same manner as an unpaid  
5 common expense.

6 **§514A-91 Joint and several liability of grantor and grantee**  
7 **for unpaid common expenses.** In a voluntary conveyance the grantee  
8 of an apartment is jointly and severally liable with the grantor  
9 for all unpaid assessments against the latter for the grantor's  
10 share of the common expenses up to the time of the grant or  
11 conveyance, without prejudice to the grantee's right to recover  
12 from the grantor the amounts paid by the grantee therefor.  
13 However, any such grantor or grantee is entitled to a statement  
14 from the manager or board of directors setting forth the amount of  
15 the unpaid assessments against the grantor, and except as to the  
16 amount of subsequently dishonored checks mentioned in such  
17 statement as having been received within the thirty-day period  
18 immediately preceding the date of such statement, the grantee is  
19 not liable for, nor is the apartment conveyed subject to a lien  
20 for, any unpaid assessments against the grantor in excess of the  
21 amount therein set forth.

22 **§514A-92 Waiver of use of common elements; abandonment of**  
23 **apartment; conveyance to board of directors.** No apartment owner  
24 may exempt himself from liability for his contribution towards the  
25 common expenses by waiver of the use or enjoyment of any of the



1 common elements or by abandonment of his apartment. Subject to  
2 such terms and conditions as may be specified in the bylaws, any  
3 apartment owner may, by conveying his apartment and his common  
4 interest to the board of directors on behalf of all other  
5 apartment owners, exempt himself from common expenses thereafter  
6 accruing.

7 **§514A-92.1 Designation of additional areas.** Designation of  
8 additional areas to be common elements or subject to common  
9 expenses after the initial filing of the bylaws or declaration  
10 shall require the approval of ninety per cent of the apartment  
11 owners; provided that if the developer discloses to the initial  
12 buyer in writing that additional areas will be designated as  
13 common elements pursuant to an incremental or phased project, this  
14 requirement shall not apply as to those additional areas.

15 **§514A-92.2 Notification of maintenance fee increases.** The  
16 manager or board of directors shall notify the apartment owners in  
17 writing of maintenance fee increases at least thirty days prior to  
18 such an increase.

19 **§514A-92.5 Association of apartment owners; prior written**  
20 **notice of assessment of the cost of providing information.** No  
21 apartment owner who requests legal or other information from the  
22 association of apartment owners, the board of directors, the  
23 managing agent, or their employees or agents, shall be charged for  
24 the cost of providing the information unless the association  
25 notifies the apartment owner that it intends to charge the



1 apartment owner for the cost. The association shall notify the  
2 apartment owner in writing at least ten days prior to incurring  
3 the cost of providing the information, except that no prior notice  
4 shall be required to assess the cost of providing information on  
5 delinquent assessments or in connection with proceedings to  
6 enforce the law or the association's governing documents.

7 After being notified of the cost of providing the  
8 information, the apartment owner may withdraw the request, in  
9 writing. An apartment owner who withdraws a request for  
10 information shall not be charged for the cost of providing the  
11 information.

12 **§514A-93 Actions.** Without limiting the rights of any  
13 apartment owner, actions may be brought by the manager or board of  
14 directors, in either case in the discretion of the board of  
15 directors on behalf of two or more of the apartment owners, as  
16 their respective interests may appear, with respect to any cause  
17 of action relating to the common elements or more than one  
18 apartment. Service of process on two or more apartment owners in  
19 any action relating to the common elements or more than one  
20 apartment may be made on the person designated in the declaration  
21 to receive service of process.

22 **§514A-93.5 Disposition of unclaimed possessions.** (a) When  
23 personalty in or on the common elements of a project has been  
24 abandoned, the board of directors may sell the personalty in a  
25 commercially reasonable manner, store such personalty at the



1 expense of its owner, donate such personalty to a charitable  
2 organization, or otherwise dispose of such personalty in its sole  
3 discretion; provided that no such sale, storage, or donation shall  
4 occur until sixty days after the board complies with the  
5 following:

6 (1) The board notifies the owner in writing of:

7 (A) The identity and location of the personalty, and

8 (B) The board of directors' intent to so sell, store,  
9 donate, or dispose of the personalty.

10 Notification shall be by certified mail, return receipt  
11 requested to the owner's address as shown by the records  
12 of the association or to an address designated by the  
13 owner for the purpose of notification or, if neither of  
14 these is available, to the owner's last known address,  
15 if any; or

16 (2) If the identity or address of the owner is unknown, the  
17 board of directors shall first advertise the sale,  
18 donation, or disposition at least once in a daily paper  
19 of general circulation within the circuit in which the  
20 personalty is located.

21 (b) The proceeds of any sale or disposition of personalty  
22 under subsection (a) shall, after deduction of any accrued costs  
23 of mailing, advertising, storage, and sale, be held for the owner  
24 for thirty days. Any proceeds not claimed within this period  
25 shall become the property of the association of apartment owners.



1           **§514A-94 Attorneys' fees, delinquent assessments, and**  
2 **expenses of enforcement.** (a) All costs and expenses, including  
3 reasonable attorneys' fees, incurred by or on behalf of the  
4 association for:

5           (1) Collecting any delinquent assessments against any  
6           owner's apartment;  
7           (2) Foreclosing any lien thereon; or  
8           (3) Enforcing any provision of the declaration, bylaws,  
9           house rules, and the Condominium Property Act; or the  
10           rules of the real estate commission;  
11 against an owner, occupant, tenant, employee of an owner, or any  
12 other person who may in any manner use the property shall be  
13 promptly paid on demand to the association by such person or  
14 persons; provided that if the claims upon which the association  
15 takes any action are not substantiated, all costs and expenses,  
16 including reasonable attorneys' fees, incurred by any such person  
17 or persons as a result of the action of the association, shall be  
18 promptly paid on demand to such person or persons by the  
19 association.

20           (b) If any claim by an owner is substantiated in any action  
21 against an association, any of its officers or directors, or its  
22 board of directors to enforce any provision of the declaration,  
23 bylaws, house rules, or this chapter, then all reasonable and  
24 necessary expenses, costs, and attorneys' fees incurred by an



1 owner shall be awarded to such owner; provided that no such award  
2 shall be made in any derivative action unless:

3 (1) The owner first shall have demanded and allowed  
4 reasonable time for the board of directors to pursue  
5 such enforcement; or

6 (2) The owner demonstrates to the satisfaction of the court  
7 that a demand for enforcement made to the board of  
8 directors would have been fruitless.

9 If any claim by an owner is not substantiated in any court  
10 action against an association, any of its officers or directors,  
11 or its board of directors to enforce any provision of the  
12 declaration, bylaws, house rules, or this chapter, then all  
13 reasonable and necessary expenses, costs, and attorneys' fees  
14 incurred by an association shall be awarded to the association,  
15 unless the action was filed in small claims court or prior to  
16 filing the action in a higher court the owner has first submitted  
17 the claim to mediation, or to arbitration under part VII of this  
18 chapter, and made a good faith effort to resolve the dispute under  
19 any of those procedures.

20 (c) Anyone contracted by the association of apartment owners  
21 to collect delinquent assessments against any owner's apartment  
22 shall not share in any portion of any penalties or late charges  
23 collected.

24 **§514A-95 Managing agents.** (a) Every managing agent shall:



- 1 (1) Be licensed as a real estate broker in compliance with  
2 chapter 467 and the rules of the commission or be a  
3 corporation authorized to do business under article 8 of  
4 chapter 412;
- 5 (2) Register with the commission prior to conducting  
6 managing agent activity through approval of a completed  
7 registration application, payment of fees, and  
8 submission of any other additional information set forth  
9 by the commission. The registration shall be for a  
10 biennial period with termination on December 31 of an  
11 even-numbered year. The commission shall prescribe a  
12 deadline date prior to the termination date for the  
13 submission of a completed reregistration application,  
14 payment of fees, and any other additional information  
15 set forth by the commission. Any managing agent who has  
16 not met the submission requirements by the deadline date  
17 shall be considered a new applicant for registration and  
18 subject to initial registration requirements. The  
19 information required to be submitted with any  
20 application shall include the name, business address,  
21 phone number, and names of association of apartment  
22 owners managed;
- 23 (3) Obtain and keep current a fidelity bond in an amount  
24 equal to \$500 multiplied by the aggregate number of  
25 apartments of the association of apartment owners



1 managed by the managing agent; provided that the amount  
2 of the fidelity bond shall not be less than \$20,000 nor  
3 greater than \$100,000. Upon request by the commission,  
4 the managing agent shall provide evidence of a current  
5 fidelity bond or a certification statement from an  
6 insurance company authorized by the insurance division  
7 of the department of commerce and consumer affairs  
8 certifying that the fidelity bond is in effect and meets  
9 the requirement of this section and the rules adopted by  
10 the commission. The managing agent shall permit only  
11 employees covered by the fidelity bond to handle or have  
12 custody or control of any association of apartment  
13 owners funds, except any principals of the managing  
14 agent that cannot be covered by the fidelity bond. The  
15 fidelity bond shall protect the managing agent against  
16 the loss of any association of apartment owners' moneys,  
17 securities, or other properties caused by the fraudulent  
18 or dishonest acts of employees of the managing agent.  
19 Failure to obtain or maintain a fidelity bond in  
20 compliance with this chapter and the rules adopted  
21 pursuant thereto, including failure to provide evidence  
22 of the fidelity bond coverage in a timely manner to the  
23 commission, shall result in non-registration or the  
24 automatic termination of the registration, unless an  
25 approved exemption or a bond alternative is presently



1 maintained. A managing agent who is unable to obtain a  
2 fidelity bond may seek an exemption from the fidelity  
3 bond requirement from the commission. The commission  
4 shall adopt rules establishing the conditions and terms  
5 by which it may grant an exemption or a bond  
6 alternative, or permit deductibles;

7 (4) Act promptly and diligently to recover from the fidelity  
8 bond, if the fraud or dishonesty of the managing agent's  
9 employees causes a loss to an association of apartment  
10 owners, and apply the fidelity bond proceeds, if any, to  
11 reduce the association of apartment owners' loss. If  
12 more than one association of apartment owners suffers a  
13 loss, the managing agent shall divide the proceeds among  
14 the associations of apartment owners in proportion to  
15 each association of apartment owners' loss. An  
16 association of apartment owners may request a court  
17 order requiring the managing agent to act promptly and  
18 diligently to recover from the fidelity bond. If an  
19 association of apartment owners cannot recover its loss  
20 from the fidelity bond proceeds of the managing agent,  
21 the association of apartment owners may recover by court  
22 order from the real estate recovery fund established  
23 under section 467-16, provided that:

24 (A) The loss is caused by the fraud, misrepresentation,  
25 or deceit of the managing agent or its employees;



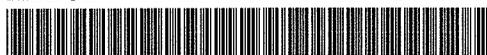
- 1 (B) The managing agent is a licensed real estate  
2 broker; and
- 3 (C) The association of apartment owners fulfills the  
4 requirements of sections 467-16 and 467-18 and any  
5 applicable rules of the commission;
- 6 (5) Pay a nonrefundable application fee and, upon approval,  
7 an initial registration fee, and subsequently pay a  
8 reregistration fee, as prescribed by rules adopted by  
9 the director of commerce and consumer affairs pursuant  
10 to chapter 91. A compliance resolution fee shall also  
11 be paid pursuant to section 26-9(o) and the rules  
12 adopted pursuant thereto; and
- 13 (6) Report immediately in writing to the commission any  
14 changes to the information contained on the registration  
15 application or any other documents provided for  
16 registration. Failure to do so may result in  
17 termination of registration and subject the managing  
18 agent to initial registration requirements.
- 19 (b) The commission may deny any registration or  
20 reregistration application or terminate a registration without  
21 hearing if the fidelity bond and its evidence fail to meet the  
22 requirements of this chapter and the rules adopted pursuant  
23 thereto.
- 24 (c) Every managing agent shall be considered a fiduciary  
25 with respect to any property managed by that managing agent.



1 (d) The registration and fidelity bond requirements of this  
2 section shall not apply to active real estate brokers in  
3 compliance with and licensed under chapter 467.

4 **§514A-95.1 Association of apartment owners registration;**  
5 **fidelity bond.** (a) Each condominium project or association of  
6 apartment owners having six or more apartments shall:

7 (1) Secure a fidelity bond in an amount equal to \$500  
8 multiplied by the number of apartments, to cover all  
9 officers, directors, employees, and managing agents of  
10 the association of apartment owners who handle, control,  
11 or have custody of the funds of the association of  
12 apartment owners; provided that the amount of the  
13 fidelity bond required by this subsection shall not be  
14 less than \$20,000 nor greater than \$100,000. The  
15 fidelity bond shall protect the association of apartment  
16 owners against fraudulent or dishonest acts by persons,  
17 including any managing agent, handling the funds of the  
18 association of apartment owners. An association of  
19 apartment owners shall act promptly and diligently to  
20 recover from the fidelity bond required by this section.  
21 An association of apartment owners that is unable to  
22 obtain a fidelity bond may seek approval for an  
23 exemption or a bond alternative from the commission.  
24 The commission shall adopt rules establishing the  
25 conditions and terms for which it may grant an exemption



1 or a bond alternative, or permit deductibles. Failure  
2 to obtain or maintain a fidelity bond in compliance with  
3 this chapter and the rules adopted pursuant thereto,  
4 including failure to provide current evidence of the  
5 fidelity bond coverage in a timely manner to the  
6 commission, shall result in non-registration or the  
7 automatic termination of the registration, unless an  
8 approved exemption or a bond alternative is presently  
9 maintained. Current evidence of a fidelity bond includes  
10 a certification statement from an insurance company  
11 registered with the department of commerce and consumer  
12 affairs certifying that the bond is in effect and meets  
13 the requirement of this section and the rules adopted by  
14 the commission;

15 (2) Register with the commission through approval of a  
16 completed registration application, payment of fees, and  
17 submission of any other additional information set forth  
18 by the commission. Beginning June 30, 1997, the  
19 registration shall be for a biennial period with  
20 termination on June 30 of an odd-numbered year. The  
21 commission shall prescribe a deadline date prior to the  
22 termination date for the submission of a completed  
23 reregistration application, payment of fees, and any  
24 other additional information set forth by the  
25 commission. Any condominium project or association of



1 apartment owners that has not met the submission  
2 requirements by the deadline date shall be considered a  
3 new applicant for registration and subject to initial  
4 registration requirements. Any new condominium project  
5 or association of apartment owners shall register within  
6 thirty days of the association of apartment owners'  
7 first meeting. If the association of apartment owners  
8 has not held its first meeting and it is at least one  
9 year after the recordation of the purchase of the first  
10 apartment in the condominium project, the developer or  
11 developer's affiliate or the managing agent shall  
12 register on behalf of the unorganized association of  
13 apartment owners and shall comply with this section,  
14 except the fidelity bond requirement for association of  
15 apartment owners. The public information required to be  
16 submitted on any completed application form shall  
17 include but not be limited to evidence of and  
18 information on fidelity bond coverage, names and  
19 positions of the officers of the association, the name  
20 of the association of apartment owners' managing agent,  
21 if any, the street and the postal address of the  
22 condominium, and the name and current mailing address of  
23 a designated officer of the association of apartment  
24 owners where the officer can be contacted directly;



- 1 (3) Pay a nonrefundable application fee and, upon approval,  
2 an initial registration fee and subsequently pay a  
3 reregistration fee, and the condominium management  
4 education fund fee, as provided in rules adopted by the  
5 director of commerce and consumer affairs pursuant to  
6 chapter 91;
- 7 (4) Register or reregister and pay the required fees by the  
8 due date. Failure to register or reregister or pay the  
9 required fees by the due date shall result in the  
10 assessment of a penalty equal to the amount of the  
11 registration or reregistration fee; and
- 12 (5) Report immediately in writing to the commission any  
13 changes to the information contained on the registration  
14 or reregistration application, the evidence of the  
15 fidelity bond, or any other documents set forth by the  
16 commission. Failure to do so may result in termination  
17 of registration and subject the condominium project or  
18 the association of apartment owners to initial  
19 registration requirements.
- 20 (b) The commission may reject or terminate any registration  
21 submitted by a condominium project or an association of apartment  
22 owners that fails to comply with this section. Any association of  
23 apartment owners that fails to register as required by this  
24 section or whose registration is rejected or terminated shall not  
25 have standing to maintain any action or proceeding in the courts



1 of this State until it registers. The failure of an association  
 2 of apartment owners to register, or rejection or termination of  
 3 its registration, shall not impair the validity of any contract or  
 4 act of the association of apartment owners nor prevent the  
 5 association of apartment owners from defending any action or  
 6 proceeding in any court in this State.

7 **§514A-96 Board of directors, audits, audited financial**  
 8 **statement, transmittal.** (a) The association of apartment owners  
 9 shall require an annual audit of the association financial  
 10 accounts and no less than one annual unannounced verification of  
 11 the association's cash balance by a public accountant; provided  
 12 that if the association is comprised of less than twenty owners,  
 13 the annual audit and the annual unannounced cash balance  
 14 verification may be waived by a majority vote of all apartment  
 15 owners taken at an association meeting.

16 (b) The board of directors of the association shall make  
 17 available a copy of the annual audit to each apartment owner at  
 18 least thirty days prior to the annual meeting which follows the  
 19 end of the fiscal year. The board shall provide upon all official  
 20 proxy forms a box wherein the owner may indicate that the owner  
 21 wishes to obtain a copy of the annual audit report. The board  
 22 shall not be required to submit a copy of the annual audit report  
 23 to the owner if the proxy form is not marked. If the annual audit  
 24 has not been completed by that date, the board shall make  
 25 available:



- 1 (1) An unaudited year end financial statement for the fiscal
- 2 year to each apartment owner at least thirty days prior
- 3 to the annual meeting; and
- 4 (2) The annual audit to all owners at the annual meeting, or
- 5 as soon as the audit is completed, whichever occurs
- 6 later.

7 If the association's fiscal year ends less than two months  
 8 prior to the convening of the annual meeting, the year to date  
 9 unaudited financial statement may cover the period from the  
 10 beginning of the association's fiscal year to the end of the month  
 11 preceding the date on which notice of the annual meeting is  
 12 mailed.

13 **§514A-97 Association of apartment owners funds; handling and**  
 14 **disbursement.** (a) The funds in the general operating account of  
 15 the association of apartment owners shall not be commingled with  
 16 funds of other activities such as lease rent collections and  
 17 rental operations, nor shall a managing agent commingle any  
 18 association funds with the managing agent's own funds.

19 (b) For purposes of subsection (a), lease rent collections  
 20 and rental operations shall not include the rental or leasing of  
 21 common elements that is conducted on behalf of the association or  
 22 the collection of ground lease rents from individual apartment  
 23 owners of a project and the payment of such ground lease rents to  
 24 the ground lessor; provided that:

- 1           (1) The collection is allowed by the provisions of the
- 2           declaration, bylaws, master deed, master lease, or
- 3           individual apartment leases of the project;
- 4           (2) If a management contract exists, it requires the
- 5           managing agent to collect ground lease rents from the
- 6           individual apartment owners and pay the ground lease
- 7           rents to the ground lessor;
- 8           (3) The system of lease rent collection is approved by a
- 9           majority vote of all apartment owners at a meeting of
- 10          the association; and
- 11          (4) No managing agent or association shall pay ground lease
- 12          rent to the ground lessor in excess of actual ground
- 13          lease rent collected from individual apartment owners.
- 14          (c) All funds collected by an association, or by a managing
- 15 agent for any association, shall be:
- 16          (1) Deposited in a financial institution, including a
- 17          federal or community credit union, located in the State
- 18          and whose deposits are insured by an agency of the
- 19          United States government;
- 20          (2) Held by a corporation authorized to do business under
- 21          article 8 of chapter 412;
- 22          (3) Held by the United States Treasury; or
- 23          (4) Purchased in the name of and held for the benefit of the
- 24          association through a securities broker that is
- 25          registered with the Securities and Exchange Commission,



1 has an office in the State, and the accounts of which  
2 are held by member firms of the New York Stock Exchange  
3 or National Association of Securities Dealers and  
4 insured by the Securities Insurance Protection  
5 Corporation.

6 All funds collected by an association, or by a managing agent  
7 for any association, shall be invested only in:

8 (1) Demand deposits, investment certificates, and  
9 certificates of deposit;

10 (2) Obligations of the United States government, the State  
11 of Hawaii, or their respective agencies; provided that  
12 those obligations shall have stated maturity dates no  
13 more than ten years after the purchase date unless  
14 approved otherwise by a majority vote of the apartment  
15 owners at an annual or special meeting of the  
16 association or by written consent of a majority of the  
17 apartment owners; or

18 (3) Mutual funds comprised solely of investments in the  
19 obligations of the United States government, the State  
20 of Hawaii, or their respective agencies; provided that  
21 those obligations shall have stated maturity dates no  
22 more than ten years after the purchase date unless  
23 approved otherwise by a majority vote of the apartment  
24 owners at an annual or special meeting of the



1           association or by written consent of a majority of the  
2           apartment owners;  
3 provided that before any investment longer than one year is made  
4 by an association, the board must approve the action; and provided  
5 further that the board must clearly disclose to owners all  
6 investments longer than one year at each year's association annual  
7 meeting.

8           Records of the deposits and disbursements shall be disclosed  
9 to the commission upon request. All funds collected by an  
10 association shall only be disbursed by employees of the  
11 association under the supervision of the association's board of  
12 directors. All funds collected by a managing agent from an  
13 association shall be held in a client trust fund account and shall  
14 be disbursed only by the managing agent or the managing agent's  
15 employees under the supervision of the association's board of  
16 directors. The commission may draft rules governing the handling  
17 and disbursement of condominium association funds.

18           (d) A managing agent or board of directors shall not  
19 transfer association funds by telephone between accounts,  
20 including but not limited to the general operating account and  
21 reserve fund account.

22           (e) A managing agent shall keep and disburse funds collected  
23 on behalf of the condominium owners in strict compliance with any  
24 agreement made with the condominium owners, chapter 467, the rules  
25 of the commission, and all other applicable laws.



1 (f) Any person who embezzles or knowingly misapplies  
2 association funds received by a managing agent or association of  
3 apartment owners shall be guilty of a class C felony.

4 **§514A-98 False statement.** It shall be unlawful for any  
5 person or person's agents to testify before or file with the  
6 commission any notice, statement, application, or other document  
7 required under this chapter that is false or untrue or contains  
8 any material misstatement of fact, or contains forgery. In  
9 addition to any sanctions or remedies as provided in this chapter,  
10 any violation of this section shall constitute a misdemeanor.

11 **§514A-99 Rules.** The commission shall adopt, amend, or  
12 repeal such rules as it may deem proper to fully effectuate this  
13 chapter.

14 **PART VII. ARBITRATION; MEDIATION**

15 **§514A-121 Arbitration of disputes.** (a) At the request of  
16 any party, any dispute concerning or involving one or more  
17 apartment owners and an association of apartment owners, its board  
18 of directors, managing agent, or one or more other apartment  
19 owners relating to the interpretation, application or enforcement  
20 of chapter 514A or the association's declaration, bylaws, or house  
21 rules adopted in accordance with its bylaws shall be submitted to  
22 arbitration. The arbitration shall be conducted, unless otherwise  
23 agreed by the parties, in accordance with the rules adopted by the  
24 commission and the provisions of chapter 658A; provided that the  
25 Condominium Property Regime Rules on Arbitration of Disputes of



1 the American Arbitration Association shall be used until the  
2 commission adopts its rules; provided further that where any  
3 arbitration rule conflicts with chapter 658A, chapter 658A shall  
4 prevail; provided further that notwithstanding any rule to the  
5 contrary, the arbitrator shall conduct the proceedings in a manner  
6 which affords substantial justice to all parties. The arbitrator  
7 shall be bound by rules of substantive law and shall not be bound  
8 by rules of evidence, whether or not set out by statute, except  
9 for provisions relating to privileged communications. The  
10 arbitrator shall permit discovery as provided for in the Hawaii  
11 rules of civil procedure; provided that the arbitrator may  
12 restrict the scope of such discovery for good cause to avoid  
13 excessive delay and costs to the parties or the arbitrator may  
14 refer any matter involving discovery to the circuit court for  
15 disposition in accordance with the Hawaii rules of civil procedure  
16 then in effect.

17 (b) Nothing in subsection (a) shall be interpreted to  
18 mandate the arbitration of any dispute involving:

- 19 (1) The real estate commission;
- 20 (2) The mortgagee of a mortgage of record;
- 21 (3) The developer, general contractor, subcontractors, or  
22 design professionals for the project; provided that when  
23 any person exempted by this paragraph is also an  
24 apartment owner, a director, or managing agent, such



- 1 person shall, in those capacities, be subject to the  
2 provisions of subsection (a);
- 3 (4) Actions seeking equitable relief involving threatened  
4 property damage or the health or safety of apartment  
5 owners or any other person;
- 6 (5) Actions to collect assessments which are liens or  
7 subject to foreclosure; provided that an apartment owner  
8 who pays the full amount of an assessment and fulfills  
9 the requirements of section 514A-90(d) shall have the  
10 right to demand arbitration of the owner's dispute,  
11 including a dispute about the amount and validity of the  
12 assessment;
- 13 (6) Personal injury claims;
- 14 (7) Actions for amounts in excess of \$2,500 against an  
15 association of apartment owners, a board of directors,  
16 or one or more directors, officers, agents, employees,  
17 or other persons, if insurance coverage under a policy  
18 or policies procured by the association of apartment  
19 owners or its board of directors would be unavailable  
20 because action by arbitration was pursued; or
- 21 (8) Any other cases which are determined, as provided in  
22 section 514A-122, to be unsuitable for disposition by  
23 arbitration.

24 **§514A-121.5 Mediation; condominium management dispute**  
25 **resolution; request for hearing; hearing.** (a) If an apartment



1 owner or the board of directors requests mediation of a dispute  
2 involving the interpretation or enforcement of the association of  
3 apartment owners' declaration, bylaws, or house rules, or  
4 involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15,  
5 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2,  
6 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, or 514A-92.5,  
7 the other party in the dispute shall be required to participate in  
8 mediation. Each party shall be wholly responsible for its own  
9 costs of participating in mediation; unless at the end of the  
10 mediation process, both parties agree that one party shall pay all  
11 or a specified portion of the mediation costs. If an apartment  
12 owner or the board of directors refuses to participate in the  
13 mediation of a particular dispute, a court may take this refusal  
14 into consideration when awarding expenses, costs, and attorney's  
15 fees in accordance with section 514A-94.

16 (b) If a dispute is not resolved by mediation as provided in  
17 subsection (a), in addition to any other legal remedies that may  
18 be available, any party that participated in the mediation may  
19 file a request for a hearing with the office of administrative  
20 hearings, department of commerce and consumer affairs, as follows:

21 (1) The party requesting the hearing must be a board of  
22 directors of a duly registered association of apartment  
23 owners, or an apartment owner that is a member of a duly  
24 registered association pursuant to section 514A-95.1;



1 (2) The request for hearing must be filed within thirty days  
2 from the final day of mediation;

3 (3) The request for hearing must name one or more parties  
4 that participated in the mediation as an adverse party  
5 and identify the statutory provisions in dispute; and

6 (4) The subject matter of the hearing before the hearing  
7 officer may include any matter that was the subject of  
8 the mediation pursuant to subsection (a).

9 (c) For purposes of the pilot program, the office of  
10 administrative hearing for the department of commerce and consumer  
11 affairs shall accept no more than thirty requests for hearing per  
12 fiscal year under this section.

13 (d) The party requesting the hearing shall pay a filing fee  
14 of \$25 to the department of commerce and consumer affairs, and the  
15 failure to do so shall result in the request for hearing being  
16 rejected for filing. All other parties shall file a response,  
17 accompanied by a filing fee of \$25 to the department of commerce  
18 and consumer affairs, within twenty days of being served with the  
19 request for hearing.

20 (e) The hearings officers appointed by the director of  
21 commerce and consumer affairs pursuant to section 26-9(f) shall  
22 have jurisdiction to review any request for hearing filed under  
23 subsection (b). The hearings officers shall have the power to  
24 issue subpoenas, administer oaths, hear testimony, find facts,  
25 make conclusions of law, and issue written decisions that shall be



1 final and conclusive, unless a party adversely affected by the  
2 decision files an appeal in the circuit court under section 91-14.

3 (f) Chapter 16-201, Hawaii Administrative Rules, shall  
4 govern all proceedings brought under this section. The burden of  
5 proof, including the burden of producing the evidence and the  
6 burden of persuasion, shall be upon the party initiating the  
7 proceeding. Proof of a matter shall be by a preponderance of the  
8 evidence.

9 (g) Hearings to review and make determinations upon any  
10 requests for hearings filed under subsection (b) shall commence  
11 within sixty days following the receipt of the request for  
12 hearing. The hearing officer shall issue written findings of  
13 fact, conclusions of law, and an order as expeditiously as  
14 practicable after the hearing has been concluded.

15 (h) Each party to the hearing shall bear the party's own  
16 costs, including attorney's fees, unless otherwise ordered by the  
17 hearing officer.

18 (i) Any party to a proceedings under this section who is  
19 aggrieved by a final decision of a hearings officer may apply for  
20 judicial review of that decision pursuant to section 91-14;  
21 provided that any party seeking judicial review pursuant to  
22 section 91-14 shall be responsible for the costs of preparing the  
23 record on appeal, including the cost of preparing the transcript  
24 of the hearing.



1 (j) The department of commerce and consumer affairs may  
2 adopt rules and forms, pursuant to chapter 91, to effectuate the  
3 purpose of this section and to implement its provisions.

4 **§514A-122 Determination of unsuitability.** At any time  
5 within twenty days of being served with a written demand for  
6 arbitration, any party so served may apply to the circuit court in  
7 the judicial circuit in which the condominium is located for a  
8 determination that the subject matter of the dispute is unsuitable  
9 for disposition by arbitration.

10 In determining whether the subject matter of a dispute is  
11 unsuitable for disposition by arbitration, a court may consider:

- 12 (1) The magnitude of the potential award, or any issue of  
13 broad public concern raised by the subject matter  
14 underlying the dispute;
- 15 (2) Problems referred to the court where court regulated  
16 discovery is necessary;
- 17 (3) The fact that the matter in dispute is a reasonable or  
18 necessary issue to be resolved in pending litigation and  
19 involves other matters not covered by or related to  
20 chapter 514A;
- 21 (4) The fact that the matter to be arbitrated is only part  
22 of a dispute involving other parties or issues which are  
23 not subject to arbitration under section 514A-121;
- 24 (5) Any matters of dispute where disposition by arbitration,  
25 in the absence of complete judicial review, would not

1           afford substantial justice to one or more of the  
2           parties.

3           Any such application to the circuit court shall be made and  
4 heard in a summary manner and in accordance with procedures for  
5 the making and hearing of motions. The prevailing party shall be  
6 awarded its attorneys' fees and costs in an amount not to exceed  
7 \$200.

8           **§514A-123 Determination of insurance coverage.** In the event  
9 of a dispute as to whether a claim shall be excluded from  
10 mandatory arbitration under section 514A-121(b)(7), any party to  
11 an arbitration may file a complaint for declaratory relief against  
12 the involved insurer or insurers for a determination of whether  
13 insurance coverage is unavailable due to the pursuit of action by  
14 arbitration. The complaint shall be filed with the circuit court  
15 in the judicial circuit in which the condominium is located. The  
16 insurer or insurers shall file an answer to the complaint within  
17 twenty days of the date of service of the complaint and the issue  
18 shall be disposed of by the circuit court at a hearing to be held  
19 at the earliest available date; provided that the hearing shall  
20 not be held within twenty days from the date of service of the  
21 complaint upon the insurer or insurers.

22           **§514A-124 Costs, expenses and legal fees.** Notwithstanding  
23 any provision in this chapter to the contrary, the declaration or  
24 the bylaws, the award of any costs, expenses, and legal fees by  
25 the arbitrator shall be in the sole discretion of the arbitrator



1 and the determination of costs, expenses and legal fees shall be  
2 binding upon all parties.

3       **§514A-125 Award; confirming award.** The award of the  
4 arbitrator shall be in writing and acknowledged or proved in like  
5 manner as a deed for the conveyance of real estate, and shall be  
6 served by the arbitrator on each of the parties to the  
7 arbitration, personally or by registered or certified mail. At  
8 any time within one year after the award is made and served, any  
9 party to the arbitration may apply to the circuit court of the  
10 judicial circuit in which the condominium is located for an order  
11 confirming the award. The court shall grant the order confirming  
12 the award, unless the award is vacated, modified, or corrected, as  
13 provided in sections 658A-9 and 658A-10, or a trial de novo is  
14 demanded under section 514A-127, or the award is successfully  
15 appealed under section 514A-127. The record shall be filed with  
16 the motion to confirm award as provided for in section 658A-13,  
17 and notice of the motion shall be served upon each other party or  
18 their respective attorneys in the manner required for service of  
19 notice of a motion.

20       **§514A-126 Findings of fact and conclusions of law.** Findings  
21 of fact and conclusions of law, as requested by any party prior to  
22 the arbitration hearing, shall be promptly provided to the  
23 requesting party upon payment of the reasonable cost thereof.



1           **§514A-127 Trial de novo and appeal.** (a) The submission of  
2 any dispute to an arbitration under section 514A-121 shall in no  
3 way limit or abridge the right of any party to a trial de novo.

4           (b) Written demand for a trial de novo by any party desiring  
5 a trial de novo shall be made upon the other parties within ten  
6 days after service of the arbitration award upon all parties.

7           (c) The award of arbitration shall not be made known to the  
8 trier of fact at a trial de novo.

9           (d) In any trial de novo demanded under subsection (b), if  
10 the party demanding a trial de novo does not prevail at trial, the  
11 party demanding the trial de novo shall be charged with all  
12 reasonable costs, expenses, and attorneys' fees of the trial.  
13 When there is more than one party on one or both sides of an  
14 action, or more than one issue in dispute, the court shall  
15 allocate its award of costs, expenses and attorneys' fees among  
16 the prevailing parties and tax such fees against those  
17 nonprevailing parties who demanded a trial de novo in accordance  
18 with the principles of equity.

19           (e) Any party to an arbitration under section 514A-121  
20 may apply to vacate, modify, or correct the arbitration award for  
21 the grounds set out in chapter 658A. All reasonable costs,  
22 expenses, and attorneys' fees on appeal shall be charged to the  
23 nonprevailing party."

24           SECTION 3. Section 467-14, Hawaii Revised Statutes, is  
25 amended to read as follows:



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

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



1 salesperson from any person other than the real estate  
2 salesperson's employer or the real estate broker with  
3 whom the real estate salesperson associates or, being a  
4 real estate broker or salesperson, compensates one not  
5 licensed under this chapter to perform any such act;

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

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

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

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

24 (10) When the licensee, being a corporation, permits any  
25 officer or employee of the corporation who does not

1 hold a real estate broker's license to have the direct  
2 management of the real estate brokerage business  
3 thereof or permits any officer or employee thereof who  
4 does not hold a real estate salesperson's license to  
5 act as a real estate salesperson therefore;

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

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

14 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,  
15 or 515; section 516-71; or the rules adopted pursuant  
16 thereto;

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

21 (A) A licensed real estate broker of another state,  
22 territory, or possession of the United States if  
23 that real estate broker does not conduct in this  
24 State any of the negotiations for which a  
25 commission is paid;



1 (B) A real estate broker lawfully engaged in real  
 2 estate brokerage activity under the laws of a  
 3 foreign country if that real estate broker does  
 4 not conduct in this State any of the negotiations  
 5 for which a commission is paid; or

6 (C) A travel agency that in the course of business as  
 7 a travel agency or sales representative, arranges  
 8 for compensation the rental of transient vacation  
 9 rental; provided that for purposes of this  
 10 paragraph "travel agency" means any person, which  
 11 for compensation or other consideration, acts or  
 12 attempts to act as an intermediary between a  
 13 person seeking to purchase travel services and any  
 14 person seeking to sell travel services, including  
 15 an air or ocean carrier;

16 (15) Commingling the money or other property of the  
 17 licensee's principal with the licensee's own;

18 (16) Converting other people's moneys to the licensee's own  
 19 use;

20 (17) The licensee is adjudicated insane or incompetent;

21 (18) Failing to ascertain and disclose all material facts  
 22 concerning every property for which the licensee  
 23 accepts the agency, so that the licensee may fulfill  
 24 the licensee's obligation to avoid error,  
 25 misrepresentation, or concealment of material facts;



1 provided that for the purposes of this paragraph, the  
2 fact that an occupant has AIDS or AIDS Related Complex  
3 (ARC) or has been tested for HIV (human  
4 immunodeficiency virus) infection shall not be  
5 considered a material fact;

6 (19) When the licensee obtains or causes to be obtained,  
7 directly or indirectly, any licensing examination or  
8 licensing examination question for the purpose of  
9 disseminating the information to future takers of the  
10 examination for the benefit or gain of the licensee; or

11 (20) Failure to maintain a reputation for or record of  
12 competency, honesty, truthfulness, financial integrity,  
13 and fair dealing.

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

17 SECTION 4. Section 514B-86, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) No sales contract for the purchase of a unit from a  
20 developer shall be binding on the developer, prospective  
21 purchaser, or purchaser until:

22 (1) The developer has delivered to the prospective  
23 purchaser:

24 (A) A true copy of the developer's public report,  
25 including all amendments with an effective date



1 issued by the commission. The developer's public  
2 report shall include the report itself, the  
3 condominium project's recorded declaration and  
4 bylaws, house rules if any, a letter-sized  
5 condominium project map, and all amendments[~~—~~  
6 ~~where it is impractical to include a letter sized~~  
7 ~~condominium project map, the prospective purchaser~~  
8 ~~or purchaser shall be provided a written notice of~~  
9 ~~an opportunity to examine the map. The copy of~~  
10 ~~the recorded declaration and bylaws creating the~~  
11 ~~project shall indicate the document number or land~~  
12 ~~court document number, or both, as applicable,];~~

13 (i) Attached to the developer's public report  
14 itself as exhibits or shall be concurrently  
15 and separately provided to the prospective  
16 purchaser or purchaser with the developer's  
17 public report;

18 (ii) Printed copies unless the commission,  
19 prospective purchaser, or purchaser indicate  
20 in a separate writing their election to  
21 receive the required condominium's  
22 declaration, bylaws, house rules, if any,  
23 letter-sized condominium map, and all  
24 amendments through means of a computer disc,



1           email, download from an Internet site, or by  
 2           any other means contemplated by chapter  
 3           489E. Where it is impractical to include a  
 4           letter-sized condominium project map, the  
 5           prospective purchaser or purchaser shall be  
 6           provided a written notice of an opportunity  
 7           to examine the map. The copy of the recorded  
 8           declaration and bylaws creating the project,  
 9           shall indicate the document number or land  
 10           court document number, or both, as  
 11           applicable; and

12           (B) A notice of the prospective purchaser's thirty-day  
 13           cancellation right on a form prescribed by the  
 14           commission, upon which the prospective purchaser  
 15           may indicate that the prospective purchaser has  
 16           had an opportunity to read the developer's public  
 17           report, understands the developer's public report,  
 18           and exercises the right to cancel or waives the  
 19           right to cancel; and

20           (2) The prospective purchaser has waived the right to  
 21           cancel or is deemed to have waived the right to  
 22           cancel."

23           SECTION 5. Section 514B-103, Hawaii Revised Statutes, is  
 24           amended by amending subsection (a) to read as follows:

1           "(a) Each project or association having more than five  
2 units shall:

3           (1) Secure and maintain a fidelity bond in an amount for  
4           the coverage and terms as required by section 514B-  
5           143(a)(3). An association shall act promptly and  
6           diligently to recover from the fidelity bond required  
7           by this section. An association that is unable to  
8           obtain a fidelity bond may seek approval for an  
9           exemption, a deductible, or a bond alternative from the  
10           commission. Current evidence of a fidelity bond  
11           includes a certification statement from an insurance  
12           company registered with the department of commerce and  
13           consumer affairs certifying that the bond is in effect  
14           and meets the requirement of this section and the rules  
15           adopted by the commission;

16        [±] (2) Register with the commission through approval of a  
17           completed registration application, payment of fees,  
18           and submission of any other additional information set  
19           forth by the commission. The registration shall be for  
20           a biennial period with termination on June 30 of each  
21           odd-numbered year. The commission shall prescribe a  
22           deadline date prior to the termination date for the  
23           submission of a completed reregistration application,  
24           payment of fees, and any other additional information  
25           set forth by the commission. Any project or



1 association that has not met the submission  
2 requirements by the deadline date shall be considered a  
3 new applicant for registration and be subject to  
4 initial registration requirements. Any new project or  
5 association shall register within thirty days of the  
6 association's first meeting. If the association has  
7 not held its first meeting and it is at least one year  
8 after the recordation of the purchase of the first unit  
9 in the project, the developer or developer's affiliate  
10 or the managing agent shall register on behalf of the  
11 association and shall comply with this section, except  
12 for the fidelity bond requirement for associations  
13 required by section 514B-43(a)(3). The public  
14 information required to be submitted on any completed  
15 application form shall include but not be limited to  
16 evidence of and information on fidelity bond coverage,  
17 names and positions of the officers of the association,  
18 the name of the association's managing agent, if any,  
19 the street and the postal address of the condominium,  
20 and the name and current mailing address of a  
21 designated officer of the association where the officer  
22 can be contacted directly;

23 ~~[-(2)]~~(3) Pay a nonrefundable application fee and, upon approval,  
24 an initial registration fee, a reregistration fee upon  
25 reregistration and the condominium education trust fund



1 fee, as provided in rules adopted by the director of  
 2 commerce and consumer affairs pursuant to chapter 91;  
 3 ~~[(3)]~~ (4) Register or reregister and pay the required fees by the  
 4 due date. Failure to register or reregister or pay the  
 5 required fees by the due date shall result in the  
 6 assessment of a penalty equal to the amount of the  
 7 registration or reregistration fee; and  
 8 ~~[(4)]~~ (5) Report promptly in writing to the commission any  
 9 changes to the information contained on the  
 10 registration or reregistration application or any other  
 11 documents required by the commission. Failure to do so  
 12 may result in termination of registration and subject  
 13 the project or the association to initial registration  
 14 requirements."

15 SECTION 6. Act 93, Session Laws of Hawaii 2005, is amended  
 16 by amending section 9(b) to read as follows:

17 "(b) The developer of a project ~~[registered]~~ created or  
 18 registered pursuant to chapter 514A, Hawaii Revised Statutes, may  
 19 elect to register the project under the new chapter established  
 20 by section 2 of Act 164, Session Laws of Hawaii 2004, as amended  
 21 by this Act, by submitting the application, documentation, and  
 22 fees required under sections ~~[-52]~~ 514B-52 and ~~[-54]~~ 514B-54,  
 23 Hawaii Revised Statutes, in section 3 of this Act~~[-];~~ provided  
 24 the property is removed from chapter 514A in accordance with  
 25 section 514A-21. Upon the issuance of an effective date for the



1 project's public report pursuant to the new chapter, the  
 2 project's registration under chapter 514A, Hawaii Revised  
 3 Statutes, shall terminate, the developer shall provide copies of  
 4 the new public report to all existing purchasers, and the rights  
 5 and obligations of the developer and all purchasers shall  
 6 thereafter be governed by the new chapter; provided that unless  
 7 the new public report reflects a material change to the project:

- 8 (1) The issuance of the new public report shall not affect  
 9 the enforceability of any purchase contract that  
 10 previously became binding upon the purchaser;
- 11 (2) A purchaser shall have the right to rescind the  
 12 purchase contract; and
- 13 (3) A developer shall not be required to deliver a notice  
 14 of thirty-day right of cancellation as specified in  
 15 section [~~867~~] 514B-86, Hawaii Revised Statutes, in  
 16 section 4 of this Act."

17 SECTION 7. Where an association is unable to obtain the  
 18 required fidelity bond of section 514B-103, the real estate  
 19 commission's current fidelity bond exemption policies shall be  
 20 used until such time as the real estate commission adopts rules.

21 SECTION 8. This Act does not affect rights and duties that  
 22 matured, penalties that were incurred, and proceedings that were  
 23 begun, before its effective date.

24 SECTION 9. Statutory material to be repealed is bracketed  
 25 and stricken. New statutory material is underscored.



1 SECTION 10. This Act shall take effect upon its approval;  
2 provided that section 2 shall take effect on July 1, 2006.



**Report Title:**

Condominiums

**Description:**

Makes technical and conforming amendments that relate to the recodified condominium law. (HB1627 HD1)

