

ACT 273

H.B. NO. 3225

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

- (1) By a purchaser of subdivided lands for the purchaser’s own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;
- (4) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;

- (5) Pursuant to court order;
- (6) By any government or government agency;
- (7) As cemetery lots or interests; or
- (8) Registered as a condominium property regime pursuant to chapter 514A[-] or 514B.”

SECTION 2. Section 514A-1.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§514A-1.5**~~[H]~~ **Applicability of chapter.** (a) **This chapter:**

- (1) Shall not apply to condominiums created on or after July 1, 2006, or that are registered with the commission pursuant to part IV of chapter 514B; and
- (2) On and after July 1, 2006, shall apply only to:
 - (A) Condominiums created prior to July 1, 2006, except as provided in subsection (b) and sections 514B-22 and 514B-23; and
 - (B) A developer’s sale of condominiums in a project for which a notice of intention was filed with the commission prior to July 1, 2006, pursuant to section 514A-31, except where the developer elects to register an existing project with the commission under part IV of chapter 514B, pursuant to section 9(b) of Act 93, Session Laws of Hawaii 2005.

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

SECTION 3. Section 514B-3, Hawaii Revised Statutes, is amended by amending the definitions of “association,” “condominium map,” “material change,” and “structures” as follows:

““Association” means the unit owners’ association organized under section 514B-102[-] or under prior condominium property regime statutes.

“Condominium map” means, however denominated, a map or plan of the ~~[building or buildings]~~ condominium property regime containing the information required by section 514B-33.

“Material change” as used in parts IV and V of this chapter means any change that directly, substantially, and adversely affects the use or value of:

- (1) A purchaser’s unit or appurtenant limited common elements; or
 - (2) Those amenities of the project available for the purchaser’s use.
- “Structures” includes but is not limited to buildings.”

SECTION 4. Section 514B-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had

fully performed. ~~[Consequential, special, or punitive]~~ Punitive damages may not be awarded, however, except as specifically provided in this chapter or by other rule of law.”

SECTION 5. Section 514B-22, Hawaii Revised Statutes, is amended to read as follows:

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

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

For purposes of interpreting this chapter, the terms “condominium property regime” and “horizontal property regime” shall be deemed to correspond to the term “condominium”; the term “apartment” shall be deemed to correspond to the term “unit”; the term “apartment owner” shall be deemed to correspond to the term “unit owner”; and the term “association of apartment owners” shall be deemed to correspond to the term “association”.”

SECTION 6. Section 514B-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An amendment to the declaration, bylaws, condominium map or other constituent documents authorized by this section ~~[shall be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this chapter]~~ may be adopted by the vote or written consent of a majority of the owners; provided that any amendment adopted pursuant to this section shall not invalidate the reserved rights of a developer. If an amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.”

SECTION 7. Section 514B-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A declaration shall describe or include the following:
- (1) The land submitted to the condominium property regime;
 - (2) The number of the condominium ~~[property regime]~~ map filed concurrently with the declaration;
 - (3) The number of units in the condominium property regime;
 - (4) The unit number of each unit and common interest appurtenant to each unit;
 - (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
 - (6) The permitted and prohibited uses of each unit;
 - (7) To the extent not shown on the condominium ~~[property regime]~~ map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical

structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;

- (8) The condominium property regime's common elements;
- (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
- (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
- (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the approval of the owners of at least sixty-seven per cent of the common interest shall be required for all amendments to the declaration;
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium [property regime] map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
- (13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and specifying in the case of a property that includes one or more existing structures being converted to condominium property regime status:
 - (A) Any variances that have been granted to achieve the compliance; and
 - (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures; except that a property that is registered pursuant to section 514B-51 shall instead provide this declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain."

SECTION 8. Section 514B-33, Hawaii Revised Statutes, is amended to read as follows:

“[H]§514B-33[] Condominium [property regime] map. (a) A condominium [property regime] map shall be recorded with the declaration. The condominium [property regime] map shall contain the following:

- (1) A site plan for the condominium property regime, depicting the location, layout, and access to a public road of all buildings and projects included or anticipated to be included in the condominium property

regime, and depicting access for the units to a public road or to a common element leading to a public road;

- (2) Elevations and floor plans of all buildings in the condominium property regime;
- (3) The layout, location, boundaries, unit numbers, and dimensions of the units;
- (4) To the extent that there is parking in the condominium property regime, a parking plan for ~~[a project,]~~ the regime, showing the location, layout, and stall numbers of all parking stalls included in ~~[the project and]~~ the condominium property regime;
- (5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information of the limited common elements, if any; and
- (6) A description in sufficient detail, as may be determined by the commission, to identify any land area that constitutes a limited common element.

(b) The condominium ~~[property regime]~~ map may contain any additional information that is not inconsistent with this chapter.”

SECTION 9. Section 514B-34, Hawaii Revised Statutes, is amended to read as follows:

“[E]§514B-34[] Condominium ~~[property regime]~~ map; certification of architect, engineer, or surveyor. (a) The condominium ~~[property regime]~~ map shall bear the statement of a licensed architect, engineer, or surveyor certifying that the condominium ~~[property regime]~~ map is consistent with the plans of the condominium’s building or buildings filed or to be filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located. If the building or buildings have been built at the time the condominium ~~[property regime]~~ map is recorded, the certification shall state that, to the best of the architect’s, engineer’s, or surveyor’s knowledge, the condominium ~~[property regime]~~ map depicts the layout, location, dimensions, and numbers of the units substantially as built. If the building or buildings, or portions thereof, have not been built at the time the condominium ~~[property regime]~~ map is recorded, within thirty days from the completion of construction, the developer shall execute and record an amendment to the declaration accompanied by a certification of a licensed architect, engineer, or surveyor certifying that the condominium ~~[property regime]~~ map previously recorded, as amended by the revised pages filed with the amendment, if any, fully and accurately depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built.

(b) If the condominium property regime is a conversion and the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located is unable to locate the original permitted construction plans, the certification need only state that the condominium ~~[property regime]~~ map depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built. If there are no buildings, no certification shall be required.”

SECTION 10. Section 514B-38, Hawaii Revised Statutes, is amended to read as follows:

“~~“[H]§514B-38[H]~~ **Common elements.** Each unit owner may use the common elements in accordance with the purposes permitted under the declaration, subject to:

- (1) The rights of other unit owners to use the common elements;
- (2) Any owner’s exclusive right to use of the limited common elements as provided in the declaration;
- (3) The right of the owners to amend the declaration to change the permitted uses of the common elements ~~[or to designate any portion of the common elements as a limited common element];~~ provided that subject to subsection 514B-140(c):
 - (A) Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the declaration; and
 - (B) Minor additions to or alterations of the common elements for the benefit of individual units are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other owners in the common elements, as reasonably determined by the board;
- (4) Any rights reserved in the declaration to amend the declaration to change the permitted uses of the common elements;
- (5) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are not actually used by any of the unit owners for a purpose permitted in the declaration. Unless the lease is approved by the owners of at least sixty-seven per cent of the common interest, the lease shall have a term of no more than five years and may be terminated by the board or the lessee on no more than sixty days prior written notice; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d); and
- (6) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are actually used by one or more unit owners for a purpose permitted in the declaration. The lease or use shall be approved by the owners of at least sixty-seven per cent of the common interest, including all directly affected unit owners that the board reasonably determines actually use the common elements, and the owners’ mortgagees[-]; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d).”

SECTION 11. Section 514B-47, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding subsections (a) and (b), if the unit leases for a leasehold condominium property regime (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

- (1) The estate and interest of the unit owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the condominium property regime;
- (2) The unit owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the unit owner’s leasehold interest;

- (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;
- (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the unit owners of the buildings and improvements in accordance with their interests; and
- (5) The unit lease rents are reduced in proportion to the land so acquired or possessed;

the lessor and the developer, if the developer retains any interests or reserved rights in the project, shall file and record an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the unit owners or their respective mortgagees shall not be required, if the land acquired or possessed constitutes no more than five per cent of the total land of the condominium property regime. Upon the recordation of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or subject to this chapter. The lessor shall notify each unit owner in writing of the filing of the amendment and the rent abatement, if any, to which the unit owner is entitled. The lessor shall provide the association, through its board, with a copy of the recorded amendment.”

SECTION 12. Section 514B-58, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The developer, its successor, or assign shall be relieved from filing annual reports pursuant to this section when the initial sales of all units have been completed [~~and the developer, its successor, or assign has no ownership interest in any unit in the project~~].”

SECTION 13. Section 514B-98, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The developer may go to sale using either a chronological system or a lottery system at any time after issuance of an effective date for a developer’s public report [~~for which the effective date has not expired~~].”

SECTION 14. Section 514B-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

- (1) Adopt and amend the declaration, bylaws, and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 514B-148;
- (3) Hire and discharge managing agents and other independent contractors, agents, and employees;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be “consumers”;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;

- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that [designation]:
 - (A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners; ~~[provided further that if]~~
 - (B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, ~~[this requirement]~~ the requirements of this paragraph shall not apply as to those additional areas; and [provided further that]
 - (C) The requirements of this paragraph shall not apply to the purchase of a unit for a resident manager[;], which may be purchased with the approval of the board;
- (9) Subject to section 514B-38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;
- (11) Impose charges and penalties, including late fees and interest, for late payment of assessments and~~[-after notice and an opportunity to be heard,]~~ levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, ~~[for condominiums created after May 17, 1983,]~~ if the bylaws are silent, pursuant to a resolution adopted by the board ~~[and approved by sixty-seven per cent of all unit owners at an annual meeting of the association or by the written consent of sixty-seven per cent of all unit owners;]~~ that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;
- (13) Provide for cumulative voting through a provision in the bylaws; ~~[provided that an owner shall provide notice of the owner's intent to cumulatively vote before voting commences;]~~
- (14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;
- (15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section 514B-105(e) expressly so provides;
- (16) Exercise any other powers conferred by the declaration or bylaws;
- (17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;
- (18) Exercise any other powers necessary and proper for the governance and operation of the association; and

- (19) By regulation, subject to sections 514B-146, 514B-161, and 514B-162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.”

SECTION 15. Section 514B-105, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.”

SECTION 16. Section 514B-106, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Not later than the termination of any period of developer control, the unit owners shall elect a board of at least three members; provided that ~~[condominiums]~~ projects created after May [17,] 18, 1984, with one hundred or more individual units, shall have an elected board of at least nine members unless ~~[at least sixty-seven per cent of all unit owners vote by mail ballot, or at a special or annual meeting,]~~ the membership has amended the bylaws to reduce the number of directors; and provided further that [condominiums] projects with more than one hundred individual units where at least [seventy-five] seventy per cent of the unit owners do not reside [outside of the State] at the project may [have an elected board of at least three members. The board shall elect the officers. Board members and officers shall take office upon election.] amend the bylaws to reduce the board to as few as five members by the written consent of a majority of owners or the vote of a majority of a quorum at any annual meeting or special meeting called for that purpose. The association may rely on its membership records in determining whether a unit is owner-occupied. A decrease in the number of directors shall not deprive an incumbent director of any remaining term of office.”

SECTION 17. Section 514B-107, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Members of the board shall be unit owners or co-owners, vendees under an agreement of sale, a trustee ~~[or beneficiary]~~ of a trust which owns a unit, ~~[an officer of any corporate owner—including a limited liability corporation—of a unit, or a representative]~~ or an officer, partner, member, or other person authorized to act

on behalf of any other legal entity which owns a unit. [The partners in a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be the owners of a unit for the purpose of serving on the board.] There shall not be more than one representative on the board from any one unit.”

2. By amending subsection (c) to read:

“(c) An owner shall not act as ~~[a director]~~ an officer of an association and an employee of the managing agent retained by the association. Any owner who is a board member of an association and an employee of the managing agent retained by the association shall not participate in any discussion regarding a management contract at a board meeting and shall be excluded from any executive session of the board where the management contract or the property manager will be discussed.”

SECTION 18. Section 514B-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The bylaws shall provide for at least the following:

- (1) The number of members of the board and the titles of the officers of the association;
- (2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies;
- (4) Designation of the powers the board or officers may delegate to other persons or to a managing agent;
- (5) Designation of the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- (6) The compensation, if any, of the directors;
- (7) Subject to subsection [(d)] (e), a method for amending the bylaws; and
- (8) The percentage, consistent with this chapter, that is required to adopt decisions binding on all unit owners; provided that votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside units shall not be cast at any association meeting, regardless of their designation in the declaration.”

SECTION 19. Section 514B-109, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Subject to section 514B-23, an association at any time may restate the declaration or bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority, or to correct the percentage of common interest for the project so it totals one hundred per cent, by a resolution adopted by the board. If the restated declaration is to correct the percentage of common interest for the project so that it totals one hundred per cent, the proportion of each unit owner's percentage of common interest shall remain the same in relation to the other unit owners. The restated declaration or bylaws shall be as fully effective for all purposes as if adopted by a vote or written consent of the unit owners.

Any declaration or bylaws restated pursuant to this subsection shall:

- (1) Identify each portion so restated;
- (2) Contain a statement that those portions have been restated solely for purposes of information and convenience;

- (3) Identify the statute, ordinance, or rule implemented by the amendment; and
- (4) Contain a statement that, in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, or rule.

(c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated declaration or bylaws shall set forth all of the operative provisions of the declaration or bylaws, as amended, together with a statement that the restated declaration or bylaws correctly sets forth without change the corresponding provisions of the declaration or bylaws, as amended, and that the restated declaration or bylaws supersede the original declaration or bylaws and all prior amendments thereto. If the restated declaration corrects the percentage of common interest as provided in subsection (b), the restated declaration shall also amend the recorded conveyance instruments that govern the unit owner's interest in the unit."

SECTION 20. Section 514B-123, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration or bylaws expressly ~~[provides]~~ provide otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made by any of the other owners of the unit to the person presiding over the meeting before the polls are closed.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A unit owner may vote by mail or electronic transmission through a duly executed ~~[directed]~~ proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice."

SECTION 21. Section 514B-132, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) If a managing agent receives a request from the commission to distribute any commission-generated information, printed material, or documents to the association, its board, or unit owners, the managing agent shall make the distribution at the cost of the association within a reasonable period of time after receiving the request. The requirements of this subsection apply to all managing agents, including unregistered managing agents."

SECTION 22. Section 514B-137, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except to the extent provided by the declaration or bylaws, the association is responsible for the operation of the property, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to ~~[their agents or employees]~~ employees, independent contractors, or agents of the association or other unit owners, during reasonable hours, access through the owner's unit reason-

ably necessary for those purposes. [If] Unless entry is made pursuant to subsection (b), if damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association, if it is responsible, is liable for the prompt repair thereof; provided that the association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.”

SECTION 23. Section 514B-138, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If a unit owner fails to follow requirements imposed by the board pursuant to this section, the association, after reasonable notice, ~~[shall]~~ may enter the unit to perform the requirements with regard to such high-risk components at the sole cost and expense of the unit owner, which costs and expenses shall be a lien on the unit as provided in section 514B-146. Nothing in this section shall be deemed to limit the remedies of the association for damages, or injunctive relief, or both.”

SECTION 24. Section 514B-141, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any statute of limitation affecting the association’s right of action against a developer ~~[under this chapter]~~ is tolled until the period of developer control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the unit owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 514B-147.”

SECTION 25. Section 514B-143, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§514B-143**~~]] Insurance.~~ (a) Unless otherwise provided in the declaration or bylaws, ~~[and to the extent reasonably available,]~~ the association shall purchase and at all times maintain the following:

- (1) Property insurance:
 - (A) On the common elements;
 - (B) Providing coverage for special form causes of loss; and
 - (C) In a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date;
- (2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the board~~[-insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer shall be included as an additional insured in its capacity as a unit owner, managing agent or resident manager, board member, or officer. The unit owners shall be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.];~~
- (3) A fidelity bond, as follows:

- (A) An association with more than five dwelling units shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, in an amount equal to \$500 multiplied by the number of units; provided that the amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$200,000; and
 - (B) All management companies that are responsible for the funds held or administered by the association shall be covered by a fidelity bond as provided in section 514B-132(a)(3). The association shall have standing to make a loss claim against the bond of the managing agent as a party covered under the bond~~[- and]; and~~; and
 - ~~[(C)]~~ (4) The board shall obtain directors and officers liability coverage at a level deemed reasonable by the board, if not otherwise ~~[established]~~ limited by the declaration or bylaws. ~~[Directors and officers liability coverage shall extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but shall exclude actions for which the directors are not entitled to indemnification under chapter 414D or the declaration and bylaws.]~~
- (b) If a building contains attached units, the insurance maintained under subsection (a)(1), to the extent reasonably available, shall include the units, the limited common elements, except as otherwise determined by the board, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected.
- For the purposes of this section, "improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners.
- (c) If a project contains detached units, then notwithstanding the requirement in this section that [associations] the association obtain the requisite coverage, if the board determines that it is in the best interest of the association to do so, the insurance to be maintained under subsection (a)(1) may be obtained separately for each unit by the unit owners; provided that the requirements of subsection (a)(1) shall be met; and provided further that evidence of such insurance coverage shall be delivered annually to the association. In such event, the association shall be named as an additional insured.
- (d) The board, in the case of a claim for damage to a unit or the common elements, may:
- (1) Pay the deductible amount as a common expense;
 - (2) After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or
 - (3) Require the unit owners of the units affected to pay the deductible amount.
- (e) The declaration ~~[or]~~, bylaws, or the board may require the association to carry any other insurance, including workers' compensation, employment practices, environmental hazards, and equipment breakdown, that the board considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.

~~[(f) Insurance policies carried pursuant to subsections (a) and (b) shall include each of the following provisions:~~

- ~~(1) Each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association;~~
- ~~(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board; and~~
- ~~(3) The unit owner waives the unit owner's right to subrogation under the association policy against the association and the board.~~

~~(g) If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy shall be the primary insurance.]~~

~~[(h)] (f) Any loss covered by the property policy under subsection (a)(1) shall be adjusted by and with the association. The insurance proceeds for that loss shall be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. [The proceeds shall be disbursed first for the repair or restoration of the damaged common elements, the bare walls, ceilings, and floors of the units, and then to any improvements and betterments the association may insure. Unit owners shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the association has been terminated as trustee.]~~

~~[(i)] (g) The board, [under the declaration or bylaws,] with the vote or written consent of a majority of the owners, may require unit owners to obtain reasonable types and levels of insurance [covering their personal liability and compensatory but not consequential damages to another unit caused by the negligence of the owner or the owner's guests, tenants, or invitees, or regardless of any negligence originating from the unit]. The [personal] liability of a unit owner shall include but not be limited to the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.~~

If the unit owner does not purchase or produce evidence of insurance requested by the board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the unit owner. In no event is the association or board liable to any person either with regard to [its] the failure of a unit owner to purchase insurance or a decision by the board not to purchase the insurance[;] for the owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

~~[(j) Contractors and vendors, except public utilities doing business with an association, shall provide certificates of insurance naming the association, its board, and its managing agent as additional insured parties.]~~

~~[(k)] (h) The provisions of this section may be varied or waived in the case of a [condominium community] project in which all units are restricted to nonresidential use.~~

~~[(l) Any insurer defending a liability claim against an association shall notify the association of the terms of the settlement no less than ten days before settling the claim. The association may not veto the settlement unless otherwise provided by contract or statute.]''~~

SECTION 26. Section 514B-144, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

~~“(a) [Except as provided in section 514B-41, until the association makes a common expense assessment, the developer shall pay all common expenses. After an assessment has been made by the association, assessments]~~ Assessments shall be made ~~[at least annually,]~~ based on a budget adopted and distributed or made available to unit owners at least annually by the board.”

2. By amending subsection (g) to read as follows:

“(g) No unit owner may exempt the unit owner from liability for the unit owner’s contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit owner’s unit. Subject to such terms and conditions as may be specified in the declaration or bylaws, any unit owner, by conveying ~~[the unit owner’s]~~ his or her unit and common interest to the ~~[board]~~ association on behalf of all other unit owners, may exempt ~~[the unit owner’s self]~~ himself or herself from common expenses thereafter accruing.”

SECTION 27. Section 514B-145, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

~~“[§514B-145] Association fiscal matters; collection of unpaid assessments from tenants[-] or rental agents.~~ (a) If the owner of a unit rents or leases the unit and is in default for thirty days or more in the payment of the unit’s share of the common expenses, the board, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit~~[-]~~ or rental agent renting the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant’s rent due each month. The tenant’s payment under this section shall discharge that amount of payment from the tenant’s rent obligation, and any contractual provision to the contrary shall be void as a matter of law.”

SECTION 28. Section 514B-151, Hawaii Revised Statutes, is amended to read as follows:

~~“[§514B-151] Association fiscal matters; lease rent renegotiation.~~ (a) Notwithstanding any provision in the declaration or bylaws, any lease or sublease of the real estate or of a unit, or of an undivided interest in the real estate to a unit owner, whenever any lease or sublease of the real estate, a unit, or an undivided interest in the real estate to a unit owner provides for the periodic renegotiation of lease rent thereunder, the association shall represent the unit owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent; provided that the association’s representation in the renegotiation of lease rent shall be on behalf of at least two lessees. All costs and expenses incurred in such representation shall be a common expense of the association.

(b) Notwithstanding subsection (a), if some, but not all of the unit owners have already purchased the leased fee interest appurtenant to their units ~~[at the time of renegotiation,]~~ as of the earlier of any date specified in the lease or sublease for the commencement of lease rent renegotiation or nine months prior to the commencement of the term for which lease rent is to be renegotiated, all costs and expenses of the renegotiation shall be assessed to the remaining lessees whose lease rent is to be renegotiated in the same proportion that the common interest appurtenant to each lessee’s unit bears to the common interest appurtenant to all remaining lessees’ units[-] whose lease rent is to be renegotiated. The unpaid amount of this assessment shall constitute a lien upon the lessee’s unit, which may be collected in

accordance with section 514B-146 in the same manner as an unpaid common expense.

(c) In any project where the association is a lessor or sublessor, the association shall fulfill its obligations under this section by appointing independent counsel to represent the lessees in the negotiations and proceedings related to the rent renegotiation. The lessees' counsel shall act on behalf of the lessees in accordance with the vote or written consent of a majority of the lessees casting ballots or submitting written consents as determined by the ratio that the common interest appurtenant to each lessee's unit bears to the total common interest appurtenant to the units of participating lessees. Nothing in this subsection shall be interpreted to preclude the lessees from making a decision (by the vote or written consent of a majority of the lessees as described above) to retain other counsel or additional professional advisors as may be reasonably necessary or appropriate to complete the negotiations and proceedings. In the event of a deadlock among the lessees or other inability to proceed with the rent renegotiation on behalf of the lessees, the lessees' counsel may apply to the circuit court of the judicial circuit in which the condominium is located for instructions. The association shall not instruct or direct the lessees' counsel or other professional advisors. All costs and expenses incurred under this subsection shall be assessed by the association to the lessees as provided in subsection (a) or (b), as may be applicable.

(d) As used in this section, "lessees" or "remaining lessees" means all unit owners who have not purchased the leased fee interest appurtenant to their units as of the earlier of any date specified in the lease or sublease for the commencement of lease rent negotiation or nine months prior to the commencement of the term for which lease rent is to be renegotiated. The board's allocation of expenses under this section shall be final and binding in the absence of a determination that the board abused its discretion."

SECTION 29. Section 514B-154, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) An association may comply with this part by making information available to unit owners, at the option of each unit owner[;] and at no cost[;] to the unit owner for downloading the information, through an Internet site."

SECTION 30. Section 514C-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The association of apartment owners or cooperative housing corporation may purchase the leased fee interest in the land; provided that at least [~~seventy-five~~] sixty-seven per cent of the condominium unit lessees or cooperative unit lessees approve of the purchase. If the seller is also a condominium unit lessee or cooperative unit lessee, the seller's interest shall be disregarded in the computation to achieve the [~~seventy-five~~] sixty-seven per cent requirement. As used herein, [~~seventy-five~~]:

- (1) Sixty-seven per cent of the condominium unit lessees means the lessees of units to which [~~seventy-five~~] sixty-seven per cent of the common interests are appurtenant; and [~~seventy-five~~]
- (2) Sixty-seven per cent of the cooperative unit lessees means shareholders having at least [~~seventy-five~~] sixty-seven per cent of the shares in the cooperative housing corporation.

If the association of apartment owners or cooperative housing corporation accepts the seller's offer to purchase the leased fee interest in the land, the following powers, in addition to any other powers, shall be conferred upon the association of owners or cooperative housing corporation:

- (1) To purchase or otherwise acquire, own, improve, use, and otherwise deal in and with the leased fee interest to the land or any or all undivided interests therein;
- (2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge of all or any portion of its property, assessments, and funds;
- (3) To assess, in a fair and equitable manner, the condominium unit lessees or cooperative unit lessees for the expenses incurred in acquiring the leased fee interest to the land, or to service any debt associated therewith; and
- (4) To sell the leased fee interest appurtenant to a condominium unit to any condominium unit lessee or subsequent purchaser of such unit.”

SECTION 31. Section 514C-22, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If some, but not all, lessees have purchased the leased fee interest in their condominium units directly from the lessor, (other than purchases by the lessor or the association of apartment owners), the association of apartment owners may undertake the purchase of all or any part of the leased fee interest in the remaining leasehold condominium units in the project in accordance with subsection (b); provided that:

- (1) [~~Seventy-five~~] Sixty-seven per cent of the remaining lessees approve an amendment to the declaration authorizing the purchase of the leased fee interest by the association consistent with the requirements of this section;
- (2) All costs and expenses and all proceeds and benefits of acquiring and holding the leased fee interest and to service any debt associated therewith shall be separately assessed or credited to the condominium units of the remaining lessees in the same ratio that the common interest appurtenant to each remaining lessees’ apartment bears to the total common interest appurtenant to all of the remaining lessees’ condominium units;
- (3) The association of apartment owners shall sell the leased fee interest in a condominium unit only to the lessee of the condominium unit or to the permitted assigns or successors of the lessee; provided that if the lessee or the lessee’s permitted assigns or successors decline to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the association of apartment owners’ intent to sell the leased fee interest to the other persons and the disclosure includes a statement that the lessees may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the lessees; and
- (4) The association of apartment owners, through its board of directors in the exercise of its authority, may decide not to accept an offer from the lessor to sell all of the remaining portion of the lessor’s interest to the association of apartment owners on the basis that the purchase is not financially feasible or is otherwise not in the best interests of the association. In that event, the board shall adopt a resolution containing written findings as to its reasons for not accepting the offer and shall distribute the resolution to the remaining lessees.”

SECTION 32. Act 164, Session Laws of Hawaii 2004, as amended by Act 93, Session Laws of Hawaii 2005, is amended by amending section 35 to read as follows:

“SECTION 35. This Act shall take effect on July 1, 2006; provided that:

- (1) The text of section -146 in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;
- (2) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006; and
- (3) Sections 30 to 33 of this Act shall take effect on July 1, 2004[; and
- (4) ~~If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective July 1, 2006, parts I and II of this Act shall be repealed on June 30, 2006].”~~

SECTION 33. Act 93, Session Laws of Hawaii 2005, is amended by repealing section 6.

“~~[SECTION 6. Chapter 514A, Hawaii Revised Statutes, is repealed.]”~~

SECTION 34. Chapter 16-107, subchapter 6, Hawaii Administrative Rules, shall remain in effect until the real estate commission adopts rules pursuant to section 514B-61 to implement section 514B-148, Hawaii Revised Statutes.

SECTION 35. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 36. This Act shall take effect on July 1, 2006; provided that section 33 shall take effect on June 30, 2006.

(Approved July 5, 2006.)