

## ACT 28

S.B. NO. 2401

A Bill for an Act Relating to Condominiums: Making Various Technical Amendments to the Hawaii Revised Statutes for the Purpose of Correcting Errors and References, and Clarifying Language.

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

## PART I

SECTION 1. In 1961, Hawaii became the first state in the nation to enact a comprehensive framework recognizing and incorporating the creation of condominium property regimes (Act 180, Session Laws of Hawaii 1961). Codified as chapter 170A, Revised Laws of Hawaii, this landmark legislation now stands as chapter 514A, Hawaii Revised Statutes.

The four decades that passed since the establishment of the Hawaii Horizontal Property Regimes Act have seen enormous economic growth and population dispersal on a very limited land base, resulting in a concomitant explosion in the creation of condominiums throughout the islands that has fostered debate over the fundamental issues of housing needs, land tenure, and property rights in the State. The legislature, through the years, has responded to ever increasing demands to clarify these issues as they relate to condominiums through piecemeal amendments to chapter 514A, Hawaii Revised Statutes, resulting in a cumbersome and overwhelming document.

Recognizing the need to clarify and update the condominium laws in the State, in 2000 the legislature mandated the real estate commission of the department of commerce and consumer affairs to conduct a comprehensive review and recodification of chapter 514A (Act 213, Session Laws of Hawaii 2000, and Act 131, Session Laws of Hawaii 2003).

The results of the commission's study were reported to the legislature in December, 2003, and included proposed legislation (S.B. 2210 (2004)) that repealed the existing chapter 514A, replaced it with a new comprehensive condominium law, and made amendments to existing statutes to conform to this change. The final version of that measure that passed the legislature and was signed into law, however, veered significantly from the original vision of the real estate commission's study. Act 164, Session Laws of Hawaii 2004, not only removed parts of the new condominium law, but also retained parts of the existing chapter 514A. The legislature again revisited the issue of condominium regulation in the 2005, 2006, and 2007 sessions, fine-tuning the "new" condominium law (codified as chapter 514B) and reinstating the "old" condominium law (chapter 514A) resulting in two separate chapters on condominiums in the Hawaii Revised Statutes.

The purpose of this Act is to amend various sections of the Hawaii Revised Statutes to reflect the existence of the two chapters on condominiums.

The substantive portions of this Act are divided into three parts:

- Part II amends sections of the Hawaii Revised Statutes amended by Act 164, Session Laws of Hawaii 2004, to reinstate references to chapter 514A and its various sections deleted by that Act;
- Part III amends statutes that have been enacted or amended since 2004 and that refer only to chapter 514B and its sections, to include references to chapter 514A and its sections; and
- Part IV amends statutes to conform terminology differences found between chapters 514A and 514B, Hawaii Revised Statutes.

## PART II

SECTION 2. The real estate commission's final report to the legislature on the recodification of chapter 514A, Hawaii Revised Statutes, recommended that the existing condominium law be repealed and replaced with a new chapter setting forth updated statutory provisions. Senate Bill 2210 (2004) incorporated the commission's recommendations. That bill not only proposed the repeal of chapter 514A and the enactment of its replacement chapter, but also made numerous amendments to existing sections of the Hawaii Revised Statutes to change references to chapter 514A and its sections to reflect the new chapter (codified as chapter 514B, Hawaii Revised Statutes) and its sections. The final version of S.B. 2210 that was enacted (Act 164, Session Laws of Hawaii 2004) retained both the "old" chapter 514A and the "new" chapter 514B; however, the amendments to other sections of the Hawaii Revised Statutes in the original proposed language to change references to chapter 514A and its sections to chapter 514B and its sections, were not corrected to reflect this two-chapter scheme. Thus, the various statutes amended by Act 164 apply only to condominiums under chapter 514B, and not to condominiums under chapter 514A.

The purpose of this part is to amend sections of the Hawaii Revised Statutes amended by Act 164, Session Laws of Hawaii 2004, to reinstate references to chapter 514A and its various sections, deleted by that Act.

SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) The board of acupuncture, board of public accountancy, board of barbering and cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of massage therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners in optometry, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, 514B, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes."

2. By amending subsection (o) to read:

"(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactiva-

tion, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium management education fund, section 514A-131, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15); or
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

3. By amending subsection (o) to read:

"(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together

with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section [H]485A-202(a)(26)[H] shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium management education fund, section 514A-131, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section [H]485A-202(a)(26)[H] has complied with chapter 514E or section [H]485A-202(a)(26)[H];
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or

(5) Any person subject to chapter 467B has complied with that chapter; and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses.”

SECTION 4. Section 237-16.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) As used in this section:

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

“Lessee” means one who holds real property under lease, and includes a sublessee.

“Lessor” means one who conveys real property by lease, and includes a sublessor.

“Real property or space” means the area actually rented and used by the lessee, and includes common elements as defined in section 514A-3 or 514B-3.

“Sublease” includes the rental of real property which is held under a lease and is made in a written document by which one conveys real property for a specified term and for a specified consideration. [~~Sublease~~] A sublease includes the written extension or renegotiation of a sublease and any holdover tenancy under the written sublease.

“Sublessee” means one who holds real property under a sublease.

“Sublessor” means one who conveys real property by sublease.”

SECTION 5. Section 237D-1, Hawaii Revised Statutes, is amended by amending the definitions of “lease”, “let”, or “rental” and “transient accommodations” to read as follows:

““Lease”, “let”, or “rental” means the leasing or renting of living quarters or sleeping or housekeeping accommodations in hotels, apartment hotels, motels, condominium property regimes or apartments defined in chapter 514A or units defined in chapter 514B, cooperative apartments, rooming houses, or other places in which lodgings are regularly furnished to transients for a consideration, without transfer of the title of such property.

“Transient accommodations” [~~mean~~] means the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient for less than one hundred eighty consecutive days for each letting by a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter 514A or unit as defined in chapter 514B, cooperative apartment, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for consideration.”

SECTION 6. Section 302A-1312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

(1) Based on:

- (A) Estimated preventive and scheduled maintenance costs;
- (B) Budgeted recurring maintenance;
- (C) Health and safety requirements; and

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

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

SECTION 7. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to ~~[section]~~ sections 78-2.7 and 831-3.1 ~~[and section 78-2.7]~~;
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7;
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to ~~[section]~~ sections 302C-1 and 378-3(8) ~~[and section 302C-1]~~;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to sections 346-97 and 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 4211-12;

- (17) The board of directors of an association of ~~[apartment]~~ owners~~;~~ under chapter 514A or 514B, or the manager of a condominium project pursuant to section 514A-82.1 or 514B-133; and
- (18) The department of health pursuant to section 321-15.2.”

SECTION 8. Section 414D-311, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-311 Superseding chapters.** In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, 514A, 514B, or 514E, the provisions of chapter 421J, 514A, 514B, or 514E shall supersede and control the provisions of this chapter.”

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

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

SECTION 10. Section 467-1, Hawaii Revised Statutes, is amended by amending the definition of “hotel” to read as follows:

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

SECTION 11. 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) Where the division of lands is a leasehold agricultural lot within state agricultural districts on which no dwelling structures are constructed as provided in section 205-4.5(e);
- (4) 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;
- (5) 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;
- (6) Pursuant to court order;
- (7) By any government or government agency;
- (8) As cemetery lots or interests; or
- (9) Registered as a condominium property regime pursuant to chapter 514A or 514B.”

SECTION 12. Section 501-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

SECTION 13. Section 502C-1, Hawaii Revised Statutes, is amended by amending the definitions of “common elements” or “common area”, “declaration”, and “townhouse” to read as follows:

““Common elements” or “common area” means:

- (1) The same as “common elements” as defined in section 514A-3 or 514B-3; and
- (2) Real property within a planned community that is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

“Declaration” means:

- (1) The instrument by which property is submitted to chapter 514A or 514B, as provided in [~~that chapter,~~] those chapters, and such declaration as from time to time amended; and
- (2) Any recorded instrument, however denominated, that imposes on an association maintenance or operational responsibilities for the common area and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, including any amendment or supplement to the instrument.

“Townhouse” means a series of individual apartments or units having architectural unity and common elements, with each apartment or unit extending from ground to roof or from the first or second floor to roof, and where apartments or units may share a common wall or be freestanding structures, including townhouse projects that are created pursuant to chapters 514A, 514B, and 421J, as well as projects that are not created pursuant to those chapters but are governed by an association;



provided that “townhouse” shall not include any apartments or units located in a building of more than three stories.”

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

**“§514C-22 Power of association of [apartment] owners to negotiate, purchase, and sell lessor’s interest.** (a) The association of [apartment] owners under chapter 514A or 514B may purchase the lessor’s interest in the condominium project; provided that the declaration of condominium property regime shall either contain or be amended to include a provision authorizing the board of directors to effectuate such a purchase. If the lessor is also a condominium unit lessee, the lessor’s lessee interest shall be disregarded in the computation of the percentage of condominium unit lessees needed to achieve the vote or written consent required to amend the declaration of condominium property regime.

(b) If the association of [apartment] owners is authorized to purchase the lessor’s interest pursuant to this section, the following powers, in addition to any other existing powers, shall be conferred upon the association [~~of apartment owners~~]:

- (1) To purchase or otherwise acquire, own, improve, use, and deal in and with the lessor’s interest in the leased fee interest appurtenant to the various condominium units in the condominium project and in the various apartment, unit, and ground leases including but not limited to the interest of any sublessor 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 to effectuate acquisition of the lessor’s interest;
- (3) To assess, except as provided in subsection (d), as a common expense, the expenses incurred in acquiring and holding the leased fee interest, and to service any debt associated therewith; and
- (4) To sell the leased fee interest in a condominium unit and acquired from the lessor by the association of [apartment] owners, to the then condominium unit lessee or subsequent purchaser of such unit; provided that if the lessee or subsequent purchaser declines 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~~]<sup>2</sup> association’s intent to sell the leased fee interest to such 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.

(c) No condominium unit lessee shall be compelled to purchase the leased fee interest in such condominium unit and acquired from the lessor by the association of [apartment] owners, but may instead pay lease rent to the association [~~of apartment owners~~] together with the lessee’s share of the common expenses incurred in acquiring the leased fee interest in the condominium units in the project including any debt associated therewith.

(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) 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 or unit 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~~]'s association's 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.

(e) If the association of [~~apartment~~] owners acquires all of the remaining portion of the lessor's interest in accordance with subsection (d), any debt associated therewith shall be secured only by the interests so acquired and by the common expense assessments upon the condominium units of the remaining lessees.

(f) For purposes of this section:

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

"Condominium unit" has the same meaning as the term "apartment" or "unit" as defined in section 514A-3 or 514B-3."

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

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

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority and that are not yet due and payable;

- (3) A lien for common expenses under chapter 514A or 514B or a lien on an individual time share unit for similar expenses in favor of a homeowner or community association;
- (4) An apartment lease or condominium conveyance document conveying or demising a single condominium apartment or unit or a lease of a single cooperative apartment; and
- (5) Any lien for costs or trustee's fees charged by a trustee holding title to time share units pursuant to a trust created under section 514E-19; provided that the costs or trustee's fees are not yet due and payable."

SECTION 16. Section 514E-29, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the time share interest;
- (2) All sums unpaid on any mortgage of record encumbering the time share interest which was recorded prior to the recordation of a notice of a lien by the association; and
- (3) For a time share interest subject to a condominium property regime, the lien of the association of [~~apartment~~] owners under chapter 514A or 514B, created pursuant to section 514A-90 or 514B-146."

SECTION 17. Section 516D-1, Hawaii Revised Statutes, is amended to read as follows:

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

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

"**§521-38 Tenants subject to rental agreement; notice of conversions.** When a period of tenancy is pursuant to any rental agreement and where a landlord contemplates conversion to a condominium property regime under chapter 514A or 514B, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the termination of the rental agreement."

SECTION 19. Section 521-71, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, conversion to a condominium property regime under chapter 514A or 514B, or changing the use of the building to transient vacation rentals, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination. If notice is revoked or amended and reissued, the notice period shall begin from the date it was reissued or amended. Any notice provided, revoked, or amended and reissued shall be in writing. When the landlord provides notification of termination pursuant to this subsection, the tenant may vacate at any time within the one-hundred-twenty-day period between the notification and the termination date,

but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.”

### PART III

SECTION 20. Since the 2004 landmark legislation that enacted the new condominium law (chapter 514B, Hawaii Revised Statutes), numerous sections of the Hawaii Revised Statutes have been enacted or amended that contain references only to the new condominium regulatory scheme in chapter 514B, Hawaii Revised Statutes. As Hawaii now has two condominium laws, many of these provisions should be amended to apply to both condominiums under the “old” chapter 514A as well as under the “new” chapter 514B.

The purpose of this part is to amend sections of the Hawaii Revised Statutes that have been enacted or amended since the 2004 condominium legislation and that refer only to chapter 514B, Hawaii Revised Statutes, to include reference to chapter 514A, Hawaii Revised Statutes.

SECTION 21. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen’s disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen’s disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any express exemption or exclusion;
- (7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
  - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
  - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;

- (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
  - (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
  - (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country; provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;
  - (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
  - (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
  - (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents;
  - (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption; and
  - (13) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of ~~[apartment]~~ owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.

For purposes of this paragraph:

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

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

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

SECTION 22. Section 281-1, Hawaii Revised Statutes, is amended as follows:

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

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

- (1) Guest rooms that are apartments, as defined in section 514A-3, or units, as defined in section 514B-3, which are used to provide transient lodging for periods of less than thirty days under a written contract with the owner of [a] the apartment or unit in the condominium hotel operation;
- (2) Guest rooms that are units, owned or managed by the condominium hotel operator providing transient lodging for periods of less than thirty days, which are offered for adequate pay to transient guests; and
- (3) A suitable and adequate kitchen and dining room, where meals are regularly prepared and served to guests and other customers.

A “condominium hotel” does not include a hotel that may be part of a condominium property regime established under chapter 514A or 514B, that does not have guest rooms that are separate apartments, as defined in section 514A-3, or units, as defined in section 514B-3.”

2. By amending the definition of “premises” or “licensed premises” to read:

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

SECTION 23. Section 485A-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) An isolated nonissuer transaction, whether or not effected by or through a broker-dealer;
- (2) A nonissuer transaction by or through a broker-dealer registered[5] or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:
  - (A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
  - (B) The security is sold at a price reasonably related to its current market price;
  - (C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
  - (D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter

- or a record filed with the Securities and Exchange Commission that is publicly available and contains:
- (i) A description of the business and operations of the issuer;
  - (ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;
  - (iii) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
  - (iv) An audited income statement for each of the issuer's two immediate previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and
- (E) Any one of the following requirements is met:
- (i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers' Automated Quotation System;
  - (ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
  - (iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or
  - (iv) The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;
- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:
- (A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or
  - (B) Has a fixed maturity or a fixed interest or dividend, if:
    - (i) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and

- (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;
- (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;
- (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000, acting in the exercise of discretionary authority in a signed record for the account of others;
- (9) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (10) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
  - (A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
  - (B) A general solicitation or general advertisement of the transaction is not made; and
  - (C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;
- (11) A transaction by an executor, administrator of an estate, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (12) A sale or offer to sell to:
  - (A) An institutional investor;
  - (B) A federal covered investment adviser; or
  - (C) Any other person exempted by rule adopted or order issued under this chapter;
- (13) Any transaction pursuant to a sale or an offer to sell securities of an issuer, if the transaction is part of an issue in which:
  - (A) There are no more than twenty-five purchasers (other than those designated in paragraph (12)), wherever located, during any twelve consecutive months;
  - (B) The issuer reasonably believes that all purchasers (other than those designated in paragraph (12)), wherever located, are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. The purchase shall be presumed to be made with a view to distribute and not to invest if any resale of a security sold in reliance on this exemption is within twelve months of sale, except a resale pursuant to a registration statement effective under section 485A-301, or to an accredited investor pursuant to an exemption available under this chapter;
  - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a broker-dealer or



- agent registered under this chapter, for soliciting a prospective purchaser in this State; and
- (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
- (14) A transaction under an offer to existing security holders of the issuer, including persons ~~[that]~~ who at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;
- (15) (A) A transaction involving the offer or sale of a security by an issuer to an accredited investor that meets the following requirements:
- (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
  - (ii) The issuer is not in the development stage, without specific business plan or purpose;
  - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
  - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. The purchase shall be presumed to be made with a view to distribute and not to invest if any resale of a security sold in reliance on this exemption is within twelve months of sale, except a resale pursuant to a registration statement effective under section 485A-301, or to an accredited investor pursuant to an exemption available under this chapter;
- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
- (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;
  - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
  - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
  - (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:

- (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
  - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
  - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph; and
- (D) An issuer claiming the exemption under this paragraph, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the offering circular or similar document provided to the accredited investor and a \$200 filing fee.

For the purposes of this paragraph, “accredited investor” shall have the same meaning as provided in Rule 501(a) adopted under the Securities Act of 1933 (17 C.F.R. 230.501(a));

- (16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:
  - (A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and
  - (B) A stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;
- (17) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:
  - (A) A registration statement has been filed under this chapter, but is not effective;
  - (B) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this chapter; and
  - (C) A stop order of which the offeror is aware has not been issued by the commissioner under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;
- (18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;
- (19) A rescission offer, sale, or purchase under section 485A-510;
- (20) An offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;
- (21) Employees’ stock purchase, savings, option, profit-sharing, pension, or similar employees’ benefit plan, including any securities, plan interests,

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

- (A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
  - (B) Family members who acquire the securities from those persons through gifts or domestic relations orders;
  - (C) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
  - (D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty per cent of their annual income from those organizations;
- (22) A transaction involving:
- (A) A stock dividend or equivalent equity distribution, whether or not the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
  - (B) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
  - (C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162);
- (23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in accordance with chapter 91, the commissioner, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors;
- (24) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of this State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of this

State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation; provided that the issuer of the security shall apply for the exemption to the commissioner on such form and containing such information as the commissioner may prescribe. If the commissioner finds that the business applicant's proposed plan and the proposed issuance of securities are fair, just, and equitable, that the applicant intends to transact its business fairly and honestly, and that the securities that the applicant proposes to issue and the method to be used by the applicant in issuing or disposing of the securities will not, in the opinion of the commissioner, work a fraud upon the purchaser thereof, the commissioner shall issue to the applicant a permit authorizing the applicant to issue and dispose of the securities in this State in the manner provided herein and in such amounts and for such consideration as the commissioner may provide in the permit. Otherwise, the commissioner shall deny the application and refuse the permit and notify the applicant of the decision in writing, subject to appeal as provided in section 485A-609. In any permit issued under this paragraph, the commissioner may require the deposit in escrow or impoundment of any or all securities, the proceeds from the sale thereof, approval of advertising material, and any of the conditions as set forth in section 485A-304(f). The commissioner may act as escrow holder for securities required to be deposited in escrow by the commissioner's order or as a necessary signatory on any account in which impounded proceeds from the sale of escrowed securities are deposited;

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

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

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

SECTION 24. Section 521-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

#### PART IV

SECTION 25. There are fundamental differences between chapters 514A and 514B, Hawaii Revised Statutes, including changes in terminology. An "apartment"

under chapter 514A is a “unit” under chapter 514B, and an “association of apartment owners” under chapter 514A is a “unit owners’ association” under chapter 514B. Numerous statutory provisions in the Hawaii Revised Statutes delineate the powers and duties, rights and responsibilities of condominium owners and associations using terminology of common usage rather than referring to specific sections or chapters of the Hawaii Revised Statutes. To clarify that these provisions apply to both condominiums and owners under chapter 514B as well as condominiums and owners under chapter 514A, these sections should be amended to include terms used in both chapters.

The purpose of this part is to make amendments to sections of the Hawaii Revised Statutes to conform to the terminology used in chapters 514A and 514B, Hawaii Revised Statutes.

SECTION 26. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms “agricultural commodity”, “producer”, and “produce dealer” shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (2) Amounts received from sales of:
  - (A) Intoxicating liquor as the term “liquor” is defined in chapter 244D;
  - (B) Cigarettes and tobacco products as defined in chapter 245; and
  - (C) Agricultural, meat, or fish products;
 to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper’s vessels or airplanes;
- (3) Amounts received by the manager, submanager, or board of directors of:
  - (A) An association of [apartment] owners of a condominium property regime established in accordance with chapter 514A or 514B; or
  - (B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor thereto and existing pursuant to covenants running with the land, in reimbursement of sums paid for common expenses;
- (4) Amounts received or accrued from:
  - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
  - (B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
  - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;

- (5) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;
- (6) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- (7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:
  - "Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and
  - "Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;
- (8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;
- (9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;
- (10) Amounts received by a labor organization for real property leased to:
  - (A) A labor organization; or
  - (B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.

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

- (11) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes; and
- (12) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of “interstate air transportation” is the same as in 49 U.S.C. 40102.”

SECTION 27. Section 467-30, Hawaii Revised Statutes, is amended to read as follows:

**“§467-30 Registration, bonding, and other requirements for condominium hotel operators.** (a) As used in this section, “condominium hotel” includes those apartments or units in a project as defined in section 514A-3 or 514B-3 and subject to chapter 514A or 514B, which are used to provide transient lodging for periods of less than thirty days.

(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, limited liability company, or corporation and shall:

- (1) Register by submitting a completed commission application form with the commission requested information, receive commission approval prior to conducting condominium hotel activity, and re-register on or before the commission prescribed deadline prior to the registration expiration date. The registration and re-registration shall expire on December 31 of an even-numbered year. Registration information shall include but not be limited to the number of apartments or units managed for others as well as the number of apartments or units owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of apartments or units being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;
- (2) Obtain and keep current a fidelity bond from an insurance company authorized to issue fidelity bonds by the insurance division of the department of commerce and consumer affairs. The fidelity bond shall be in an amount equal to \$500 multiplied by the aggregate number of apartments or units in the condominium hotel operation; provided that the minimum amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of apartments or units excludes the number of apartments or units owned by the condominium hotel operator either as a sole proprietor, partnership, limited liability company, or corporation or those apartments or units included in a registered time share plan managed by a registered time share plan manager. The fidelity bond shall cover all of the condominium hotel operator’s employees handling or having custody and control of either the condominium hotel operator’s or the apartment or unit owner’s funds, or both. Upon request by the commission, the condominium hotel operator shall provide evidence of a current fidelity bond or a certification statement from an insurance representative of an insurance company authorized by the insurance divi-

sion of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The commission may adopt rules establishing conditions and terms by which it may grant a bond alternative or permit deductibles. No condominium hotel operator shall be exempt from the fidelity bond requirement; and

- (3) Pay an application fee and an initial registration or a re-registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o);

provided that this section shall not apply to persons who are subject to section 467-2.

(c) In the course of operating a condominium hotel, neither a real estate broker license nor a real estate salesperson license shall be required of those employees of a condominium hotel operator who only perform or facilitate the delivery of customary hotel services.

(d) All employees handling or having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond. The fidelity bond shall protect the condominium hotel operator against fraudulent or dishonest acts by the employees of the condominium hotel operator.

(e) As used in this section, “operating a condominium hotel” includes the management of the apartments or units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging. The condominium hotel operator shall provide a written contract to the owner or owners of each apartment or unit under the condominium hotel operation, expressing the exact agreements of each party including all financial and accounting obligations, and the notification requirements of subsection (g).

(f) A condominium hotel operator shall operate in condominium projects specifically authorized for transient lodgings by county zoning and regulations and specifically permitted by the condominium project’s declaration and bylaws.

(g) The registered condominium hotel operator:

- (1) Shall not provide or offer lodgings thirty days or longer;
- (2) Shall not be licensed as a real estate broker or a real estate salesperson;
- (3) Shall not conduct any other activities contained in the definition of the term “real estate broker”;
- (4) Shall appoint an employee or principal to have direct management and responsibility over condominium hotel operations; and
- (5) Shall provide evidence of written notification to all representing apartment or unit owners of the provisions of this section including the non-applicability of the real estate recovery fund.

(h) Any condominium hotel operator aggrieved by the fraudulent or dishonest acts of an employee shall act promptly and diligently to recover from the fidelity bond required by this section. The condominium hotel operator shall apply all proceeds received from the fidelity bond against all losses incurred by apartment or unit owners due to fraudulent or dishonest acts by employees. If more than one apartment or unit owner suffers a loss, the condominium hotel operator shall divide the proceeds among the [apartment] owners in proportion to each [apartment] owner’s loss.

(i) All persons handling or having custody and control of either the condominium hotel operator’s or the apartment or unit owner’s funds shall be either employees of the condominium hotel operator or principals of the condominium hotel operator.



(j) The registration and fidelity bond requirements of this section shall not apply to active real estate brokers, in compliance with and licensed under this chapter, conducting condominium hotel activity.”

SECTION 28. Section 501-20, Hawaii Revised Statutes, is amended by amending the definition of “apartment lease” to read as follows:

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

SECTION 29. Section 501-105, Hawaii Revised Statutes, is amended to read as follows:

**“§501-105 Grantee’s address, etc., to be stated.** Every deed or other voluntary instrument presented for recording shall contain or have indorsed upon it the full name or names, if more than one, and the address of the grantee or other person acquiring or claiming an interest under the instrument and every document shall also contain or have indorsed upon it a statement that the grantee is married or unmarried, and if married, the statement shall give the name in full of the husband or wife. Whenever the grantee is a corporation or partnership, the document shall contain or have indorsed upon it the state where the entity is registered and the entity’s address. All names and addresses shall also be entered on all certificates. Notices and processes issued in relation to registered land in pursuance of this chapter may be served upon any person in interest by mailing the same to the address so given, and shall be binding whether such person resides within or without the State.

Any deed conveying one or more but not all lots or all interests in a lot appurtenant to apartments or units in a condominium [~~property regime~~] project in a certificate shall contain full memoranda relating to easements, rights-of-way, and all other liens and encumbrances affecting the particular lot, lots, interest appurtenant to an apartment[;] or unit, or interests appurtenant to apartments or units conveyed. If the deed affects all of the land or interests appurtenant to apartments or units in a certificate of title, encumbrances may be referred to by reference.”

SECTION 30. Section 501-241, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

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

- (1) An assignment or other instrument transferring a leasehold time share interest;
- (2) A mortgage or other instrument granting a lien on a leasehold time share interest;
- (3) An agreement of sale for the sale of a leasehold time share interest. Any such agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;
- (4) A lien or notice of lien pertaining to a leasehold time share interest in favor of a time share owners association, an association of [~~apartment~~] owners[;] under chapter 514A or 514B, or a similar homeowner’s association;

- (5) A judgment, decree, order of court, attachment, writ, or other process against a leasehold time share interest;
- (6) A mechanic's or materialman's lien or other lien upon a leasehold time share interest;
- (7) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a leasehold time share interest and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to ~~[a power of sale under]~~ section 667-5, or otherwise;
- (8) A power of attorney given by the owner of a leasehold time share interest or the vendor or vendee under an agreement of sale for the sale of a leasehold time share interest, a mortgagee or other lienor having a mortgage or lien upon a leasehold time share interest, or another party holding a claim or encumbrance against or an interest in a leasehold time share interest; or
- (9) An instrument assigning, extending, continuing, dissolving, discharging, releasing in whole or in part, reducing, canceling, extinguishing, or otherwise modifying or amending any of the foregoing instruments."

2. By amending subsection (e) to read:

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

- (1) The apartment or unit lease, and any amendments thereto, and any cancellation or extinguishment thereof;
- (2) Any deed or other instrument conveying the fee interest in registered land and any other instrument encumbering or otherwise dealing with the fee interest in registered land including but not limited to a mortgage of the fee interest, an assignment of the lessor's interest in a lease, or the designation, grant, conveyance, transfer, cancellation, relocation, realignment, or amendment of any easement encumbering the fee interest;
- (3) If the apartment or unit lease is a sublease, any assignment or other conveyance of the sublessor's estate or any other leasehold estate which is superior to the apartment or unit lease, and any other instrument mortgaging, encumbering, or otherwise dealing with the sublessor's estate or any other estate which is prior and superior to the leasehold time share interest;
- (4) Any other instrument assigning, modifying, canceling, or otherwise dealing with an interest in registered land which is:
  - (A) Less than an estate in fee simple; and
  - (B) Prior or superior to the lessee's interest in a leasehold time share interest;
- (5) The declaration of condominium property regime or similar declaration by whatever name denominated, the bylaws of the association of ~~[apartment]~~ owners~~;~~ under chapter 514A or 514B, the condominium map, any declaration of annexation or deannexation, any declaration of merger and any instrument effecting a merger, and any amendments to any of the foregoing and any cancellation or extinguishment thereof;
- (6) Any declaration of covenants, conditions, and restrictions, or similar instrument, by whatever name denominated, encumbering the fee, the bylaws of any homeowners association, any declaration of annexation

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

SECTION 31. Section 508D-3, Hawaii Revised Statutes, is amended to read as follows:

**“§508D-3 Exemptions.** This chapter shall not apply to the following sales of residential real property:

- (1) Sale to a co-owner;
- (2) Sale to a spouse, parent, or child of the seller;
- (3) Sale by devise, descent, or court order;
- (4) Sale by operation of law, including<sup>[;]</sup> but not limited to<sup>[;]</sup> any transfer by foreclosure, bankruptcy, or partition, or any transfer to a seller’s creditor incident to a deed (or assignment) in lieu of foreclosure, workout, or the settlement or partial settlement of any preexisting obligation of a seller owed a creditor and any later sale of residential real property by such creditor;
- (5) Sale by a lessor to a lessee resulting from conversion of leased land to fee simple;
- (6) Initial sale of new residential real property pursuant to chapter 484 under a current public offering statement or chapter 484 exemption;
- (7) Sales of condominium apartments or units accompanied by delivery of an unexpired developer’s public report; or
- (8) Sale of time share interests as defined under chapter 514E.”

SECTION 32. Section 514C-1, Hawaii Revised Statutes, is amended by amending the definition of “condominium unit lessee” to read as follows:

““Condominium unit lessee” means an individual or individuals owning or leasing a condominium apartment or unit situated on leasehold land.”

SECTION 33. Section 514C-2, Hawaii Revised Statutes, is amended to read as follows:

**“[§514C-2] Right of first refusal.** When the leased fee interest in land under a condominium project or cooperative project or any part thereof is to be sold to any party other than the association of owners or the cooperative housing corporation, the seller shall first provide the board of directors of the association of owners or the cooperative housing corporation with written notice delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to any two of the president, vice-president, or managing agent (if any), of its intent to sell that interest, together with a complete and correct copy of the purchaser’s written offer, which offer shall contain the full and complete terms thereof. The association of [apartment] owners or cooperative housing corporation shall have a right of first refusal to purchase that leased fee interest for the same price as is contained in the written purchase offer.”

SECTION 34. Section 514C-5, Hawaii Revised Statutes, is amended to read as follows:

**“§514C-5 Offer to other prospective purchasers; time limit.** No lessor shall sell the leased fee interest in any land under a condominium project or cooperative project containing one or more residential units or any part thereof to any party other than the association of [apartment] owners or cooperative housing corporation for that project until a right of first refusal for the purchase of that interest has been offered as required by this part and has been rejected in writing by the board of directors, except in the case of sales to individual condominium unit lessees or cooperative unit lessees, which shall be subject to the requirements of section 514C-6.5; provided that an offer made pursuant to sections 514C-2, 514C-3, and 514C-6.5 shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of the written notice from the seller, as evidenced by the return receipts, or if the sale, through no fault of the seller, has not closed upon the purchase of one hundred per cent of the interest being sold within one hundred eighty days of receipt by the board of directors of such written notice, as evidenced by the return receipts. In the event that closing is delayed due to any fault of the seller, the deadline for closing shall be extended for a period of time equal to the delay caused by [the] seller.”

SECTION 35. Section 514C-6, Hawaii Revised Statutes, is amended to read as follows:

**“§514C-6 Powers of association of [apartment] owners and cooperative housing corporation.** (a) The association of [apartment] owners under chapter 514A or 514B, or cooperative housing corporation may purchase the leased fee interest in the land; provided that at least 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 sixty-seven per cent requirement. As used herein:

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

[ (b) ] 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 apartment or unit to any condominium unit lessee or subsequent purchaser of such unit.

[F](c)[3] No conveyance of the leased fee interest to or by an association of owners or cooperative housing corporation, and no borrowing, mortgage, or pledge by an association of owners or cooperative housing corporation shall be invalid because it was without capacity or power to do such an act or to make or receive such conveyance, transfer, or loan.

[F](d)[3] No condominium unit lessee shall be compelled to participate in the purchase of the leased fee interest of the property, but may instead pay lease rent to the association of owners.”

SECTION 36. Section 514C-6.5, Hawaii Revised Statutes, is amended to read as follows:

**“§514C-6.5 Sales to individual lessees.** Notwithstanding any other provision in this part to the contrary, a lessor may sell the leased fee interest in any land under a condominium project or cooperative project or any part thereof to individual condominium unit lessees or cooperative unit lessees; provided that the following requirements have been complied with:

- (1) No individual lessee shall be obligated to enter into a contract to purchase without having been afforded a period of at least ninety days within which to consider the offer made by the lessor; provided that the individual lessee may enter into a contract to purchase before the ninety days expires if the individual lessee so desires. The lessee shall further have the right to terminate such contract to purchase without penalty for a period of ninety days from the date the contract was first entered into;
- (2) At the time any offer to sell the leased fee interest is communicated to the lessee by the lessor, the association of owners or cooperative housing corporation shall be provided with written notice delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to any two of the president, vice-president, or managing agent (if any), of the lessor’s intent to sell the interest, together with a complete and correct copy of the offer, which offer shall contain the full and complete terms thereof. Except as provided in paragraph (3), where the board of directors of the association of [apartment] owners or cooperative housing corporation has written authorization to represent its members, then the association of owners or cooperative housing corporation shall have a right of first refusal to purchase that leased fee interest for the same price as is contained in the written purchase offer; provided that the offer shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of written notice from the seller, as evidenced by the return receipts;
- (3) Any board of directors of the association of [apartment] owners or cooperative housing corporation may fully or partially waive its right of first refusal at any time with written notice to the lessor; provided that it shall waive its right of first refusal with respect to the leased fee interest appurtenant to a lessee’s apartment at the written request of the lessee. The legislature hereby gives the board of directors of the association of [apartment] owners or cooperative housing corporation the authority to exercise the foregoing waiver without having to amend any bylaws, charter, or other governing documents;

- (4) Notwithstanding any provision contained in any bylaws, ~~[or]~~ any amendment thereto, or written authorization~~[-]~~ authorizing the board of directors of the association of ~~[apartment]~~ owners or cooperative housing corporation to represent the individual lessees in the lease-to-fee conversion, each ~~[individual]~~ lessee shall have the right to represent ~~[himself or herself]~~ oneself in such lease-to-fee conversion by giving written notice of such desire to the lessor and the board of directors; and
- (5) After the lessor (or its agent or representative) has been able to hold one meeting with the lessees and has been able to provide a written summary of the meeting to the lessees, then for a period of ninety days thereafter, the lessor, its agents, employees, and representatives, shall not initiate communication with the lessees regarding the offer, although such parties may respond to inquiries made by lessees.”

SECTION 37. Section 516D-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided ~~[for]~~ in this section, for any sale of a condominium or a cooperative residential leasehold apartment~~[-]~~ or unit, no later than ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract, the seller, either directly or through the seller’s agent, shall provide to the buyer for the buyer’s approval and acceptance one of the following lease documents which provide the major provisions of the lease, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated, and surrender clause provisions:

- (1) Master lease and any amendments thereto; ~~[or]~~
- (2) Apartment or unit lease and any amendments thereto; or
- (3) For initial buyers of condominium apartments or units only, an unexpired preliminary, final or supplemental condominium property regime public report.

A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse, parent, or child of the seller, or to any transfer by devise, descent, court order, or by operation of law, including~~[-]~~ but not limited to~~[-]~~ any transfer by foreclosure, bankruptcy, or partition sale. Upon receipt of the applicable lease document, the buyer shall have ten calendar days to review, accept or reject the terms of the lease.”

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

“(d) If the dwelling unit is an apartment or unit in a condominium property regime the tenant shall comply with the bylaws of the association of ~~[apartment]~~ owners under chapter 514A or 514B and if the dwelling unit is an apartment in a cooperative housing corporation the tenant shall comply with the bylaws of the corporation.”

SECTION 39. Section 667-5.5, Hawaii Revised Statutes, is amended to read as follows:

“**§667-5.5 Foreclosure notice.** Notwithstanding any law or agreement to the contrary, any person who forecloses on a property within a planned community ~~[association]~~, a condominium apartment~~[-]~~ or unit, or an apartment in a cooperative housing project shall notify, by way of registered or certified mail, the board of directors of the planned community association, the association of ~~[apartment]~~ owners of the condominium~~[-]~~ project, or the cooperative housing project in which the property

to be foreclosed is located, of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment<sup>[5]</sup> or unit, or cooperative apartment which is the subject of the foreclosure and identify the name or names of the person or persons bringing foreclosure proceedings. This section shall not apply when the planned community association, condominium association<sup>[5]</sup> of owners, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of [apartment] owners, or cooperative housing corporation.”

SECTION 40. Section 672E-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

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

provided that if the claimant is an association of [apartment] owners<sup>[5]</sup> under chapter 514A or 514B, the claimant shall have forty-five days to provide such access. If access to an individual condominium apartment or unit is necessary, and the association is unable to obtain such access, then the association shall have a reasonable time to provide access. If destructive testing is required, the contractor shall give advance notice of tests and return the premises to its pre-testing condition. If inspection or testing reveals a condition that requires additional testing to fully and completely evaluate the nature, cause, and extent of the construction defect, the contractor shall provide notice to the claimant of the need for additional testing. [Claimant] The claimant shall provide additional access to the premises. If a claim is asserted on behalf of owners of multiple dwellings, or multiple owners of units within a multi-family complex, the contractor shall be entitled to inspect each of the dwellings or units.”

## PART V

SECTION 41. This Act shall be amended to conform to all other acts passed by the legislature during the regular session of 2008, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 42. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 43. Upon its approval, this Act shall take effect retroactive to July 1, 2006; provided that:

- (1) Section 3(2) shall be repealed on June 30, 2008;
- (2) Sections 3(3) and (23) shall take effect on July 1, 2008; and
- (3) The amendments to section 237-24.3, Hawaii Revised Statutes, by section 26 of this Act shall not be repealed when that section is reenacted on December 31, 2009, by section 4 of Act 239, Session Laws of Hawaii 2007.

(Approved April 22, 2008.)