

ACT 181

S.B. NO. 292

A Bill for an Act Relating to Condominiums.

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

PART I

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

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

- (1) The specified provisions automatically apply only to events and circumstances occurring on or after July 1, 2006; and
- (2) Such automatic application shall not invalidate existing provisions of a condominium’s governing documents if to do so would invalidate a developer’s reserved rights or be an unreasonable impairment of contract, i.e., the United States Constitution’s Contracts Clause standard.

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

However, the legislature also finds that maintaining two condominium chapters within the Hawaii Revised Statutes has caused confusion for some condominium owners, boards, realtors, and attorneys. Additionally, although there

are still some condominium projects that were created before July 1, 2006, but have never been built and sold to anyone in the general public, the legislature notes that the developers of such projects have had more than a decade to bring their condominium projects created under chapter 514A to market. Chapter 514B has superior consumer protection provisions, and since it has been over ten years since chapter 514B was enacted, the legislature finds that it is appropriate to end any confusion, repeal the outdated chapter 514A, and have the documents of any remaining projects created under chapter 514A conform to chapter 514B.

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

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

PART II

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

PART III

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

~~“[§514B-21] Applicability [to new condominiums]. (a) This chapter applies to all condominiums created within this State [after July 1, 2006. The provisions of chapter 514A do not apply to condominiums created after July 1, 2006.]; provided that such application shall not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents of those condominiums if to do so would invalidate the reserved rights of a developer. Amendments to this chapter apply to all condominiums [created after July 1, 2006 or subjected to this chapter], regardless of when the amendment is adopted.~~

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

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

PART IV

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

“(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, Hawaii medical board, motor vehicle industry licensing board, motor vehicle

repair industry board, board of naturopathic medicine, 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.

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

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

"§92-28 State service fees; increase or decrease of. Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453, 453D, 454, 455, 456, 457, 457A, 457B, 457G, 458, 459, 460J, 461, 461J, 462A, 463, 463E, 464, 465, 466, 466K, 467, 467E, 468E, 468L, 468M, 469, 471, 482, 482E, 484, 485A, 501, 502, 505, [~~514A,~~] 514B, 514E, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues under the chapters listed in paragraph (1) that are established by the department of commerce and consumer affairs shall apply to fees or nontax revenues established by statute or rule;
- (3) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapter 304A shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;
- (4) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
- (5) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and

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

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

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

- (1) Deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes; and
- (2) Condominium declaration, map, bylaws, and other documents executed and submitted in accordance with chapter ~~[514A-07]~~ 514B[-] or any predecessor thereto.

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

SECTION 8. 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 legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
 - (10) Amounts paid, directly or indirectly, by a 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 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; provided that amounts retained by the acting utility for collection or other costs shall not be included in this exemption;
 - (13) Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-134; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption; and
 - (14) 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 owners] under chapter [514A-07] 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 9. 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. 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 10. 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 by the manager, submanager, or board of directors of:
 - (A) An association ~~[of owners]~~ of a condominium property regime established in accordance with chapter ~~[514A- or]~~ 514B~~;~~ or any predecessor thereto; 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;
- (3) 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;
- (4) 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~~[-]~~ section 1002(3), as amended;
 - (5) 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;
 - (6) 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; provided that "prescription drugs" shall not include marijuana or manufactured marijuana products authorized pursuant to chapters 329 and 329D~~[]~~; 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 that is sold by the practitioner or that 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;
 - (7) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;
 - (8) 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;
- (9) 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;
- (10) 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
- (11) 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. section 40102."

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

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

""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~~] condominiums 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."
2. By amending the definition of "transient accommodations" to read:

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

SECTION 12. 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 the apartment or unit in the condominium hotel operation; and

- (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.

A "condominium hotel" does not include a hotel that may be part of a condominium ~~[property regime established under]~~ subject to chapter ~~[514A or]~~ 514B~~;~~ or 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 13. 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 14. 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 sections 78-2.7 and 831-3.1;
- (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(b)(5), (33), (34), (35), (36), and (38);
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 321-15.2;
- (8) Private schools pursuant to sections 302C-1 and 378-3(8);
- (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 title 49 United States Code section 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 title 49 United States Code section 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 421I-12;
- (17) The board of directors of an association [~~of owners~~] under chapter [~~514A or~~] 514B, or the [~~manager~~] managing agent or resident 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 15. 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 16. 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]~~ condominiums under ~~[part VII of chapter 514A or]~~ section 514B-162."

SECTION 17. 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 18. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for the licensee's services from both of the parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the real estate salesperson's em-

- ployer or the real estate broker with whom the real estate salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others that may be in the possession or under the control of the licensee;
 - (8) Any other conduct constituting fraudulent or dishonest dealings;
 - (9) When the licensee, being a partnership, permits any member of the partnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
 - (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
 - (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
 - (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the real estate broker represents;
 - (13) Violating this chapter; chapter 484, [514A,] 514B, 514E, or 515; section 516-71; or the rules adopted pursuant thereto;
 - (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a real estate broker may pay a commission to:
 - (A) A licensed real estate broker of another state, territory, or possession of the United States if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid; or
 - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of a transient vacation rental; provided that for purposes of this paragraph, "travel agency" means any person that, for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
 - (15) Commingling the money or other property of the licensee's principal with the licensee's own;
 - (16) Converting other people's moneys to the licensee's own use;
 - (17) The licensee is adjudicated insane or incompetent;
 - (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or

AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact;

- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee;
- (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing;
- (21) Acquiring an ownership interest, directly or indirectly, or by means of a subsidiary or affiliate, in any distressed property that is listed with the licensee or within three hundred sixty-five days after the licensee's listing agreement for the distressed property has expired or is terminated; or
- (22) When the licensee, being a real estate broker or a real estate salesperson, acting on behalf of a seller or purchaser of real estate, acts in a manner that prohibits a prospective purchaser or prospective seller of real estate from being able to retain the services of a real estate broker or real estate salesperson.

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

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

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

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

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

SECTION 20. 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(f);
- (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;
- (9) Registered as a condominium property regime pursuant to chapter ~~[514A-07]~~ 514B~~;~~ or any predecessor thereto; or
- (10) Registered as a time share plan pursuant to chapter 514E.”

SECTION 21. 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 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 reor-

- organization 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 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, no later than 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]~~ a 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 22. 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]~~ a unit lease, a condominium conveyance document, ~~[an apartment or]~~ a 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 chapter ~~[514A or]~~ 514B or at common law."

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

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“(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-19-07]~~ 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 elements;
- (4) In cases expressly provided for in this chapter; or
- (5) Upon the order of the court, for cause shown.”

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

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

- (1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the real property, for providing an estoppel letter or certificate, or for any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;
- (2) Any fee, charge, assessment, or fine payable to ~~[an association of apartment owners as defined in section 514A-3,]~~ an association as defined in section 514B-3, a cooperative housing corporation as described in section 421I-1, a limited-equity housing cooperative as defined in section 421H-1, or a planned community association as defined in section 607-14 and described in chapter 421J, pursuant to a declaration, covenant, or law applicable to such association or corporation, including a fee or charge to change the association or corporation's records as to the owner of the real property or to provide an estoppel letter or certificate;
- (3) Any fee or charge payable to a lessor under a lease of real property, including a fee or charge payable to the lessor for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the lessor's records as to the holder of the lessee's interest in the lease;
- (4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;
- (5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:
 - (A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives;
 - (B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property

- to a person engaged in the business of the development of real property for resale to others; or
- (C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller; provided that such fee, charge, shared appreciation interest, profit participation, or other consideration becomes payable, if ever, within ten years of the recording of the deed restriction or other covenant running with the land imposing the fee or charge on the real property;
- (6) Any fee or charge payable to a government entity;
- (7) Any fee, charge, assessment, or other amount payable pursuant to a deed restriction or other covenant running with the land, regardless of when filed or recorded, that was required by a litigation settlement that was approved by a court of competent jurisdiction before ~~[[~~June 22, 2010~~]]~~; or
- (8) Any reasonable fee payable to a qualified organization for:
- (A) The qualified organization's management, stewardship, or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or
- (B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

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

SECTION 25. 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 owners]~~ under chapter ~~[514A-0F]~~ 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 connec-

tion with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to chapter 667 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 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 26. Section 502-112, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the real property, for providing an estoppel letter or certificate, or for any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;
- (2) Any fee, charge, assessment, or fine payable to ~~[an association of apartment owners as defined in section 514A-3,]~~ an association as defined in section 514B-3, a cooperative housing corporation as described in section 421I-1, a limited-equity housing cooperative as defined in section 421H-1, or a planned community association as defined in section 607-14 and described in chapter 421J, pursuant to a declaration, covenant, or law applicable to such association or corporation, including a fee or charge to change the association or corporation’s records as to the owner of the real property or to provide an estoppel letter or certificate;
- (3) Any fee or charge payable to a lessor under a lease of real property, including a fee or charge payable to the lessor for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the lessor’s records as to the holder of the lessee’s interest in the lease;
- (4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;
- (5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:
 - (A) A person engaged in the business of the development of real property for resale to others and not for the person’s own use or the use of the person’s parent, affiliates, subsidiaries, or relatives;
 - (B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or
 - (C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller; provided that such fee, charge, shared appreciation interest, profit participation, or other consideration becomes

payable, if ever, within ten years of the recording of the deed restriction or other covenant running with the land imposing the fee or charge on the real property;

- (6) Any fee or charge payable to a government entity;
- (7) Any fee, charge, assessment, or other amount payable pursuant to a deed restriction or other covenant running with the land, regardless of when recorded or filed, that was required by a litigation settlement that was approved by a court of competent jurisdiction before ~~[[June 22, 2010]]~~; or
- (8) Any reasonable fee payable to a qualified organization for:
 - (A) The qualified organization's management, stewardship, or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or
 - (B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

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

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

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

"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."

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

"Declaration" means:

- (1) The instrument by which property is submitted to chapter ~~[514A or]~~ 514B~~;~~ or any predecessor thereto, as provided in ~~[those chapters]~~ that chapter, 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."

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

"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]~~ governed by chapters ~~[514A,]~~ 514B~~;~~ and 421J, as well as projects that are not ~~[created pursuant to]~~ governed by 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 28. Section 514B-72, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

- (1) A condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association’s first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91; and
- (2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of \$1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation of condominium related disputes. The additional condominium education trust fund fee shall total \$3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation of condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3).”

2. By amending subsection (d) to read:

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

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

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

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

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

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

“(g) This section shall apply to all condominiums organized under this chapter [514A-~~or~~ 514B.] or any predecessor thereto.”

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

“(a) The association [~~of 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 appurtenant; 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.”

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

1. By amending subsection (a) to read:

“(a) The association [~~of 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.”

2. By amending subsection (f) to read:

“(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 33. 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-07]~~ 514B or a lien on an individual time share unit for similar expenses in favor of a homeowners or community association;
- (4) An apartment lease or condominium conveyance document conveying or demising a single condominium ~~[apartment-07]~~ 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 34. 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 owners]~~ under chapter ~~[514A-07]~~ 514B, created pursuant to section ~~[514A-90-07]~~ 514B-146."

SECTION 35. 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-07]~~ 514B~~;~~ or any predecessor thereto, 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 XII of the state constitution and lands owned or held by the federal government."

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

"(d) An association ~~[of owners]~~ under chapter ~~[514A-07]~~ 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."

SECTION 37. 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-07]~~ 514B, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the termination of the rental agreement."

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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]~~ a unit in a condominium ~~[property regime]~~, the tenant shall comply with the bylaws of the association ~~[of 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 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.”

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

1. By amending subsection (a) to read:

“(a) Each board of directors of an association ~~[of apartment owners]~~ governed by chapter ~~[514A or]~~ 514B, cooperative housing corporation governed by chapter 421I, and planned community association governed by chapter 421J shall establish, if entry to the property is inaccessible to the general public, a policy to provide reasonable access as specified in subsection (b) to the building or community to persons authorized to serve civil process for the purpose of serving any summons, subpoena, notice, or order on a person who is identified by the document being served as residing or present in the condominium, cooperative housing project, or planned community.”

2. By amending subsection (c) to read:

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

- (1) Any person if, after access is allowed to the building or community in accordance with this chapter, service of civil process is not actually effected for whatever reason; and
- (2) A person upon whom service of process is actually effected in accordance with this chapter.”

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

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

- (1) At the time of the commencement of the foreclosure by action, the association shall serve the unit owner with written contact infor-

- mation for approved housing counselors and approved budget and credit counselors;
- (2) A unit owner may cure the default within sixty days after service of the association's complaint for foreclosure by action by paying the association the full amount of the default, including the foreclosing association's attorneys' fees and costs, and all other fees and costs related to the default, along with any additional amounts estimated to be incurred by the foreclosing association;
 - (3) A unit owner may submit a payment plan within thirty days after service of the association's complaint for foreclosure by action. The unit owner shall submit the payment plan to the association or its attorney by certified mail return receipt requested or by hand delivery. The association shall not reject a reasonable payment plan. A unit owner's failure to strictly perform any agreed-upon payment plan shall entitle the association to pursue its remedies without further delay. For purposes of this paragraph, "reasonable payment plan" means a plan that provides for:
 - (A) Timely payment of all assessments that become due after the date that the payment plan is proposed; and
 - (B) Additional monthly payments of an amount sufficient to cure the default, within a reasonable period under the circumstances as determined by the board of directors in its discretion; provided that a period of up to twelve months shall be deemed reasonable; and provided further that the board of directors shall have the discretion to agree to a payment plan in excess of twelve months;
 - (4) From and after the date that the unit owner gives written notice to the association of the unit owner's intent to cure the default pursuant to paragraph (2) or timely submits a payment plan pursuant to paragraph (3), any foreclosure by action shall be stayed during the sixty-day period to cure the default or during the term of the payment plan or a longer period that is agreed upon by the parties;
 - (5) If the default is cured pursuant to paragraph (2), the association shall dismiss the foreclosure by action. If the parties have agreed on a payment plan pursuant to paragraph (3), the association shall stay the foreclosure by action. Within fourteen days of the date of the cure or an agreement on a payment plan, the association shall notify any person who was served as a result of the foreclosure by action that the action has been dismissed or stayed, as the case may be. If a notice of pendency of action for the foreclosure by action was recorded, a release of the notice of pendency of action shall be recorded if the action is dismissed; and
 - (6) If the default is not cured pursuant to paragraph (2), or the parties have not agreed on a payment plan pursuant to paragraph (3), the association may continue to foreclose the association's lien under foreclosure by action."

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

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

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

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

SECTION 44. 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 owners]~~ under chapter ~~[514A-07]~~ 514B, the claimant shall have forty-five days to provide such access. If access to an individual condominium ~~[apartment-07]~~ 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. 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 45. Condominium property regimes created prior to July 1, 2006, that were issued an effective date pursuant to section 514A-40 and 514A-41, Hawaii Revised Statutes, may be sold on or after January 1, 2019, without revising any of the governing documents; provided that the developer's public report was active on January 1, 2019, and is accurate and not misleading. On January 1, 2019, all active, non-expired chapter 514A, Hawaii Revised Statutes, developer's public reports pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, along with their most recent disclosure abstract, if any, will be treated as non-expiring developer's public reports under part IV of chapter 514B, Hawaii Revised Statutes. Should any pertinent or material changes, or both, occur to the condominium project, the developer shall file an amended developer's public report superseding all prior reports pursuant to chapter 514B, Hawaii Revised Statutes; provided that such projects and their subsequent reports filed under chapter 514B, Hawaii Revised Statutes, shall be exempt from the conversion requirements under section 514B-84(a)(1) and (2), Hawaii Revised Statutes. Condominium property regimes created prior to July 1, 2006, that were not issued an effective date pursuant to sections 514A-40 and 514A-41, Hawaii Revised Statutes, and did not file a notice of intent pursuant to section 514A-1.5(2)(B), Hawaii Revised Statutes, shall revise their governing documents

and register under chapter 514B, Hawaii Revised Statutes, for a developer to offer for sale or to sell condominiums.

Nothing contained in this Act or in the condominium property act shall be deemed to invalidate any condominium property regime that was validly created under chapter 514A, Hawaii Revised Statutes, prior to July 1, 2006.

PART VI

SECTION 46. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 47. This Act shall take effect on January 1, 2019.
(Approved July 11, 2017.)

Note

1. Edited pursuant to HRS §23G-16.5.