

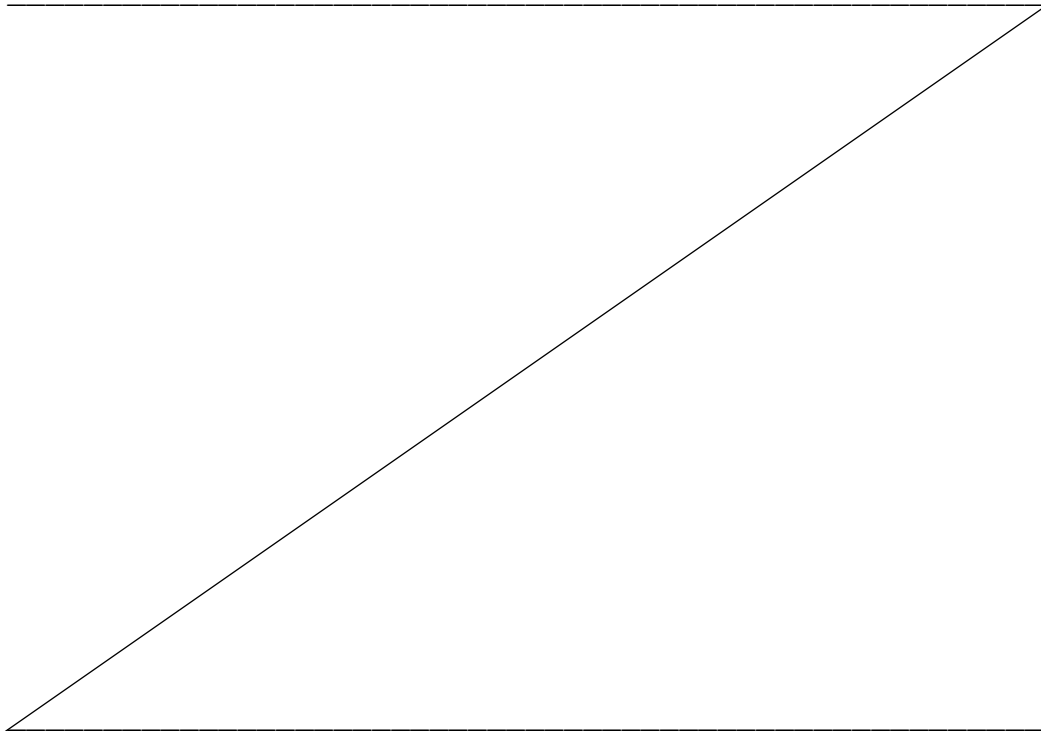
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Repeal of Chapter 16-107 and
Adoption of Chapters 16-119.1, 16-119.2, 16-119.3,
16-119.4, 16-119.5, 16-119.6, 16-119.7, and 16-119.8
Hawaii Administrative Rules

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1. Chapter 16-107, Hawaii Administrative Rules, entitled "Rules Relating to Horizontal Property Regimes", is repealed.

2. Chapter 16-119.1, Hawaii Administrative Rules, entitled "Condominiums - General Provisions", is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.1

CONDOMINIUMS - GENERAL PROVISIONS

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|-------------|---|
| §16-119.1-1 | Applicability |
| §16-119.1-2 | Severability |
| §16-119.1-3 | Objectives |
| §16-119.1-4 | Definitions |
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§16-119.1-1 Applicability. Chapters 16-119.1 through 16-119.8 shall apply only to chapter 514B, HRS, and this chapter shall apply to chapters 16-119.1 through 16-119.8, which chapters must be read in conjunction. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

§16-119.1-2 Severability. If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that

§16-119.1-2

decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this chapter shall continue to be separately and fully effective. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

§16-119.1-3 Objectives. The objectives of chapters 16-119.1 through 16-119.8 are to:

- (1) Clarify and implement chapter 514B, HRS;
- (2) Protect the public; and
- (3) Serve the public interest. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

§16-119.1-4 Definitions. As used in this chapter:

"Association" has the same meaning as in section 514B-3, HRS.

"Building permit for the project" as required by section 514B-92(b)(3)(C)(ii), HRS, includes a building permit that could be less than a final building permit as permitted by the county.

"Board" has the same meaning as in section 514B-3, HRS.

"Certificate of occupancy" means the final or temporary certificate of occupancy issued by the appropriate county agency for the structure or structures constructed on the project site.

"Certify", "certified", or "certification" means affirming or an affirmation as to the facts being true to the best of the person's knowledge and belief.

"Commission" means the real estate commission.

"Condominium" has the same meaning as in section 514B-3, HRS.

"Condominium property regime" has the same meaning as "condominium" in section 514B-3, HRS.

"Controlling interest" as used in section 514B-3, HRS, in defining "developer" includes a financial or voting interest or both.

"Department" means the department of commerce and consumer affairs.

"Developer" has the same meaning as in section 514B-3, HRS.

"Director" means the director of the department.

"Evidence of recordation" means a file-marked dated copy of the recorded document from the bureau of conveyances or office of the registrar of the land court or a certification of the recordation from a title insurer authorized to conduct business in this State pursuant to article 20, chapter 431, HRS.

"Financial institution" has the same meaning as in chapter 412, HRS.

"First unit conveyance" as used in sections 514B-102 and 514B-134(a), HRS, means the initial transfer of legal or equitable title from the developer to a person other than the developer or an affiliate of the developer.

"House rules" means rules adopted by an association or a board.

"Maintenance fee", unless otherwise provided in the declaration or bylaws, means an association's regular monthly assessment, including any special assessment for "common expenses" as defined in section 514B-3, HRS. "Maintenance fee" does not include any other special assessment, late charges, fines, penalties, interest assessed by the association, liens arising out of the regular monthly maintenance assessment, or fees and costs related to the collection or enforcement of the assessment, including attorney fees and court costs.

"Offer for sale" is any attempt to encourage a person to acquire any legal or equitable interest in a project or proposed project unit, including by any advertisement, inducement, solicitation of letters of intent to purchase, the giving of the selling agent's name, address, or telephone number regarding a project or proposed project unit, or any attempt to encourage a person to acquire any legal or equitable interest in

a project or proposed project unit. Preregistration solicitation pursuant to section 514B-85, HRS, is excluded from this definition. An offer for sale includes sales contracts, agreements of sale, reservation agreements, and options to purchase.

"Over the telephone" as used in section 514B-149(d), HRS, does not include a transfer made pursuant to prior written board authorization allowing the use of an electronic device or medium to transfer association funds between accounts that results in a written record of instructions made in the regular course of business.

"Project" has the same meaning as in section 514B-3, HRS.

"Sale [of] any units" as used in section 514B-51, HRS, means the initial sale to a member of the public, excluding a sale, transfer, or conveyance of a unit to a co-developer or affiliate of the developer. "Sale [of] any units" does not include the sale, transfer, or conveyance of a unit made pursuant to the registration exceptions of sections 514B-51(b) and 514B-81(b), HRS.

"Serious illness" as used in section 514B-98.5(b)(1), HRS, means an illness of any owner-occupant who executed the affidavit or any other person who was to or has occupied the residential unit which illness is certified by the treating United States-licensed physician of the affiant or the person who is or was to occupy the unit in a detailed writing as arising after the date of the affidavit and meets three criteria: not previously known; serious; and likely to exist for at least the remainder of the required owner-occupant period. The certification shall also state the reason the person is not able to occupy the unit. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-3, 514B-51, 514B-81(b), 514B-85, 514B-92(b)(3)(c)(ii), 514B-98.5(b)(1), 514B-102, 514B-134(a), 514B-149(d))

§16-119.1-5 Commission forms. An application for registration submitted pursuant to chapter 514B, HRS, shall be made on the most recent commission approved form as provided by the commission. The commission's form shall be used in its entirety and shall not be altered. If more space is needed, additional blank pages may be used. Additional pages shall be designated by the page number and any subsequent letter; for example, page 1a, page 1b, page 1c, etc. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-103)

§16-119.1-6 Filing of other documents and information. The commission may require an applicant to submit additional documents and information in support of or to complete any registration application. The commission may also require proof of any certified statement or information provided or submitted to the commission. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-61(a), 514B-84, 514B-103)

§16-119.1-7 Abandonment of incomplete registration application. (a) An "incomplete application" as used in section 514B-52(c), HRS, or submitted pursuant to section 514B-56, HRS, includes an application that does not provide the commission with the required information, supporting documents, and adequate and accurate inclusion and disclosures of material facts, material changes, and pertinent facts as required by chapter 514B, HRS.

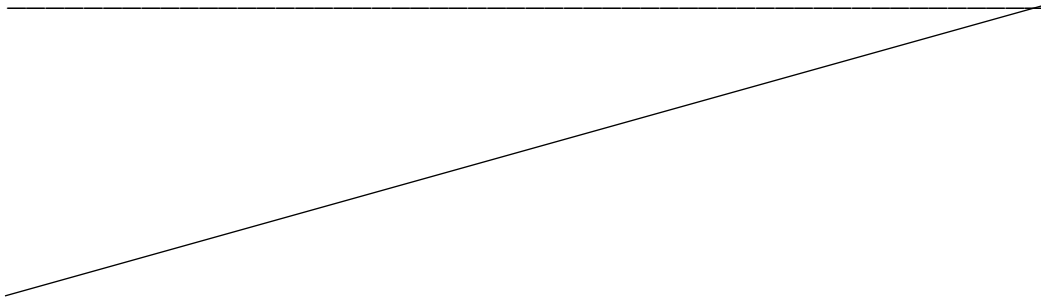
(b) Time spent by a developer curing an incomplete application prior to assignment to a private independent consultant may or may not be included as part of the six months referenced in section 514B-52(c), HRS, at the discretion of the commission. The developer shall submit to the commission written evidence of the developer's good

§16-119.1-7

faith efforts to timely cure an incomplete application prior to assignment to an independent private consultant. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-52(c), 514B-56)

§16-119.1-8 Documents and information. Upon the commission's issuance of an effective date for a developer's public report and any amendments thereto, the developer shall make available at the developer's office or online the public documents submitted by the developer to the commission pursuant to the condominium project registration requirements of chapter 514B, HRS, for review by prospective unit owners and purchasers. One year after the developer completes the initial sale of all units in the project, the developer may elect not to make the public report and any amendments thereto available online, provided the developer shall keep and maintain the public report and any amendments thereto for at least ten years or such other period specified in the sales contract or section 514B-70, HRS, after the one year." [Eff] (Auth: HRS §514B-61) (Imp: HRS §§92F-12(15), 514B-70)

3. Chapter 16-119.2, Hawaii Administrative Rules, entitled "Condominiums - Advertisement", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.2

CONDOMINIUMS - ADVERTISEMENT

- §16-119.2-1 Advertisement
- §16-119.2-2 Use of developer's public report for advertising
- §16-119.2-3 Name on advertising

§16-119.2-1 Advertisement. (a) "Advertisement" is a written or verbal statement or communication by or on behalf of a developer or developer's affiliate which is intended or designed to generate inquiries or offers to purchase or induces or attempts to induce a prospective unit owner or purchaser to purchase. The term includes but is not limited to: direct contact; publications; radio or television broadcasts; mass media; videos; electronic media including electronic mail, text messages, social media, social networking websites, and the internet; business stationery, cards, and signs; billboards; notices; brochures; flyers; information sheets; newspapers; magazines; mailings; announcements; displays; and verbal or physical presentations, including drawings, renderings, or models.

(b) Discussions or other communications with existing tenants initiated by a building owner or developer regarding possible conversion of the

building to condominium status is not an advertisement.

(c) An advertisement shall indicate that the project is a condominium. An advertisement shall not give any appearance that the project is subdivided or a subdivision unless the project is legally subdivided or a subdivision. Terms commonly used to describe separately subdivided lots or parcels, including but not limited to, "lot", "parcel", and "single family" shall not be used alone to identify, describe, or designate individual units and limited common elements. The descriptive terms "single family", "home", or "residence" may be used to describe individual units only if used in conjunction with the word "condominium", e.g., "condominium homes" or "single family condominium residences".

(d) Unless approved as a subdivision by the county government, all documents including declarations, bylaws, maps, advertising, developer's public reports, amendments, exhibits, and any other document provided to a prospective purchaser or purchaser, or made part of a public record, shall not have references or provide illustrations that indicate or imply that the condominium project is a subdivision or that the lots are subdivided lots.

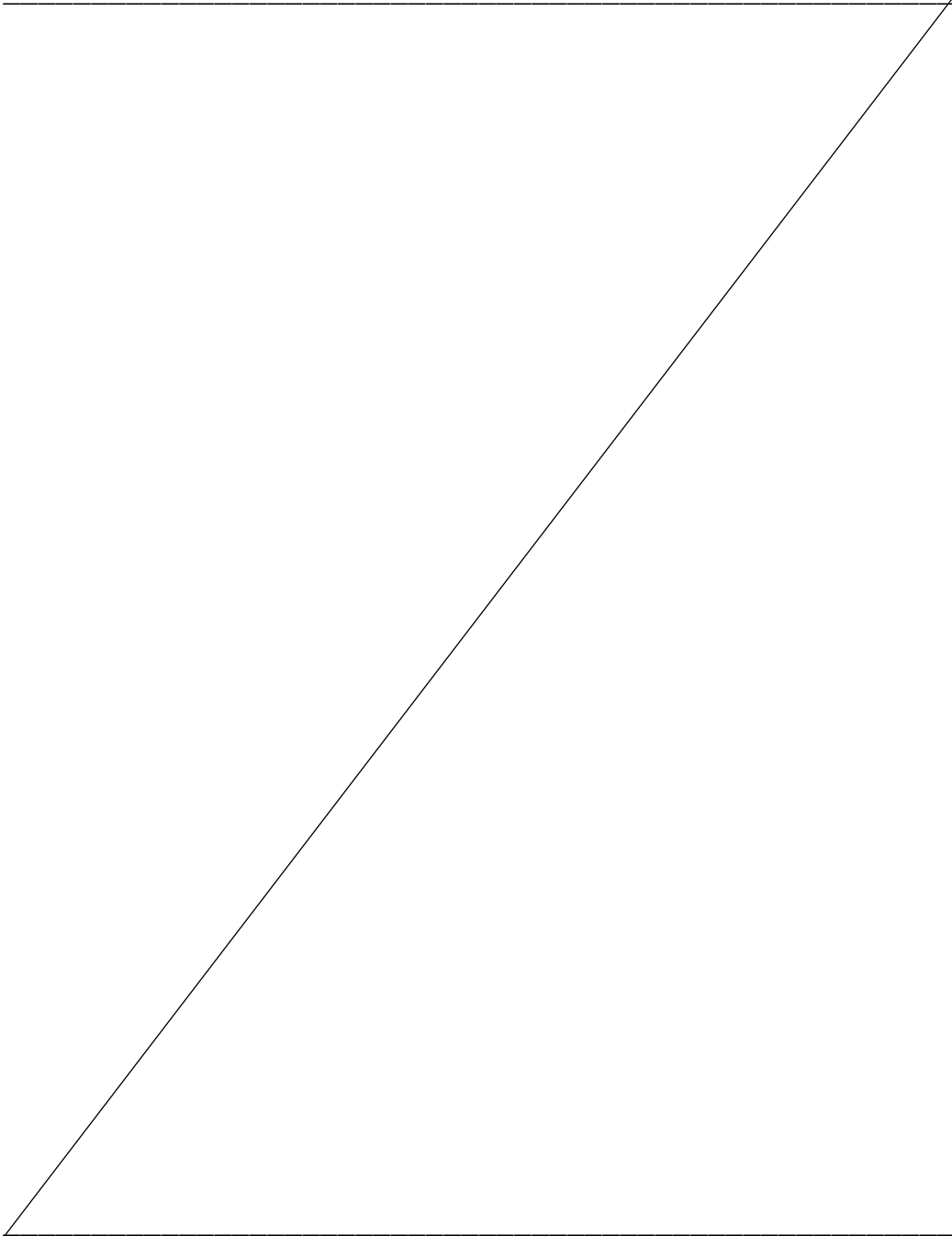
(e) Dotted or dashed lines may be used to delineate limited common element or common element boundaries. A written disclosure shall appear beside dotted or dashed lines stating that the lines are for identification purposes only and should not be construed to be the property lines of legally subdivided lots. Solid lines shall not be utilized to delineate limited common elements or common elements. Any metes and bounds descriptions or square footage figures of land areas shall be clearly and specifically identified as the condominium project's total land area, its common element land area, or as the limited common element land area. [Eff

] (Auth: HRS §514B-61) (Imp: HRS §§514B-60, 514B-94, 514B-95 to 514B-99.5)

§16-119.2-2 Use of developer's public report for advertising. The developer's public report shall not be used for advertising purposes unless the developer's public report is used in its entirety. No portion of the developer's public report shall be underscored, italicized, or printed in larger or heavier type than the remainder of the developer's public report, unless the true copy of the developer's public report issued an effective date by the commission shows likewise. [Eff]
(Auth: HRS §514B-61) (Imp: HRS §§514B-54, 514B-56, 514B-57, 514B-60, 514B-94)

§16-119.2-3 Name on advertising. An advertisement must use the same project name as indicated on the first page of the application for the developer's public report, if any, and the declaration." [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-60, 514B-94, 514B-95 to 514B-99.5)

4. Chapter 16-119.3, Hawaii Administrative Rules, entitled "Condominiums - Project Registration", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.3

CONDOMINIUMS - PROJECT REGISTRATION

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| §16-119.3-1 | Name of the condominium or project |
| §16-119.3-2 | Unit sale and project registration |
| §16-119.3-3 | Effective dates; developer's public reports; owner builder exemption |
| §16-119.3-4 | Copies of developer's public reports |
| §16-119.3-5 | Bulk sale; portion of developer's inventory |
| §16-119.3-6 | Filing of parking plan |
| §16-119.3-7 | Lost or destroyed plans |
| §16-119.3-8 | Method of computing percentage of common interest |
| §16-119.3-9 | Metes and bounds description |
| §16-119.3-10 | Method of computing floor area |
| §16-119.3-11 | Filing of other documents |
| §16-119.3-12 | Signature on an application for registration; developer's public report; other documents |
| §16-119.3-13 | Amendments to the developer's public report |
| §16-119.3-14 | Annual report |
| §16-119.3-15 | Spatial units |
| §16-119.3-16 | Registering new units |
| §16-119.3-17 | Cooperatives |

§16-119.3-1 Name of the condominium or project.

Unless otherwise permitted by law, the name or proposed name of any condominium or project submitted for registration in accordance with chapter 514B, HRS, and chapters 16-119.1 through 16-119.8 shall not be substantially like any name registered with the business registration division of the department and any name used by a condominium or project registered with the commission. The developer shall certify to the commission that the developer has conducted a search of the name or proposed name and that the public records of the commission and the business registration division of the department do not indicate that the name or proposed name is:

- (1) Registered with the business registration division;
- (2) Currently used by a condominium or project registered with the commission; and
- (3) Substantially like a name registered with the business registration division of the department and any name used by a condominium or project that is registered with the commission.

Use of a commission registered name for purposes other than the condominium or project constitutes a false or misleading statement in violation of section 514B-94, HRS. [Eff] (Auth: HRS §514B-61)
(Imp: HRS §514B-94)

§16-119.3-2 Unit sale and project registration.

(a) The project registration requirements of parts IV and V, as well as other related registration parts of chapter 514B, HRS, apply to the sale of units in a project for the first time to the public. These requirements do not apply to resale of units in a project after sale of units for the first time to the public. Parts IV and V, as well as other related registration parts of chapter 514B, HRS, apply to sales of units subsequent to a bulk sale, transfer, or conveyance to a co-developer (including a co-tenant)

and to sale of units to the public following the dispositions of the units made pursuant to sections 514B-51(b)(1), 514B-51(b)(3), and 514B-81(b), HRS.

(b) A project is deemed registered with the commission when the commission:

- (1) Determines that the developer has submitted all the documents and information concerning the project and the condominium property regime as required by sections 514B-54, 514B-83, and 514B-84, HRS, as applicable, and as otherwise required by the commission; and
- (2) Issues an effective date for the developer's public report.

The commission may consult with private consultants pursuant to section 514B-64, HRS, in making the required determinations. [Eff _____] (Auth: HRS §514B-61) (Imp: part IV and part V of chapter 514B)

§16-119.3-3 Effective dates; developer's public reports; owner builder exemption. The commission shall not issue an effective date for those units included in the project registration application that are subject to the provisions of the owner builder exemption of chapter 444, HRS, except the commission may issue an effective date for any units included in the developer's public report because of an eligible unforeseen hardship as determined by the contractor's license board pursuant to section 444-2.5, HRS. Upon the expiration of the owner builder one-year moratorium and prior to offering any units for sale that were the subject of an owner builder exemption, the developer shall amend the developer's public report and obtain an effective date for an amendment or an amended developer's public report. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-51, 514B-54, 514B-56, 514B-57, 514B-58, 514B-59)

§16-119.3-4 Copies of developer's public reports. Within thirty days of the issuance of an effective date for a developer's public report, amendment, or amended developer's public report, the developer shall provide the commission with copies of the public report, amendment, or amended public report at no charge. The commission shall determine the number of copies. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-54, 514B-56, 514B-57)

§16-119.3-5 Bulk sale; portion of developer's inventory. (a) A bulk sale includes the sale or transfer in bulk of all or a portion of the developer's entire inventory to a purchaser who is a developer with a transfer, assignment, or conveyance of any or all the developer's reserved rights to change, alter, or modify the condominium property regime or project.

(b) A bulk sale shall not have a single unit as remaining inventory. Any remaining inventory must include two or more units. [Eff _____] (Auth: HRS §§237-43, 514B-51) (Imp: HRS §514B-81)

§16-119.3-6 Filing of parking plan. The parking plan shall comply with county codes and ordinances, federal, state, and commission requirements, and specify whether each stall is for a compact, parallel parking compact, tandem, or regular size vehicle, including disability accessible, and covered or uncovered. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-33, 514B-57)

§16-119.3-7 Lost or destroyed plans. For an existing structure, where the plan of the building or buildings filed pursuant to section 514B-34, HRS, is

lost or destroyed, the commission may accept a site plan, floor plan of each floor, and elevation plan along with an as-built certificate of a Hawaii-licensed architect or engineer. [Eff]
(Auth: HRS §514B-61) (Imp: HRS §514B-34)

§16-119.3-8 Method of computing percentage of common interest. At the time of submitting an application for registration of a project, the developer shall submit a written explanation of the method or formula used in computing the percentage of common interest appurtenant to the condominium units. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33, 514B-37)

§16-119.3-9 Metes and bounds description. Limited common element areas with no visible demarcations, physical boundaries, or permanent or structural monuments, including roads, walls, fences, and parking stall striping shall be described in the condominium map by metes and bounds. The commission may accept a Hawaii-licensed land surveyor's certification of the metes and bounds as a supplement to the required architect or engineer statements submitted pursuant to section 514B-34, HRS. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33)

§16-119.3-10 Method of computing floor area. The floor area of the unit shall be computed and reported in the declaration and developer's public report as net living area. The reported net living area of the enclosed portion of the unit shall be a reasonable representation. Net living area of a unit shall be measured from the interior surface of the unit perimeter walls and shall exclude any area

§16-119.3-10

occupied by a load bearing structure. In a double construction wall, the perimeter wall means the inside double wall. Lanais, patios, storage areas, or garages that are considered part of the unit shall be computed and reported separate from the enclosed net living area. Boundaries of units shall minimally be described in accordance with section 514B-35, HRS. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33, 514B-34, 514B-35, 514B-54)

§16-119.3-11 Filing of other documents. The commission may require filing of other documents, papers, data, and information to complete the condominium registration file. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-103)

§16-119.3-12 Signature on an application for registration; developer's public report; other documents. (a) Subject to the penalties of section 514B-69, HRS, the developer shall sign the project registration application, including the questionnaire, the developer's public report, any amendments to the developer's public report, and other documents as required by chapter 514B, HRS. Where there is more than one fee owner or lessor submitting the land to the condominium property regime, all the fee owners or lessors shall sign the project registration application, including the questionnaire, the developer's public report, any amendments to the developer's public report, and other documents as required by chapter 514B, HRS, and the commission. Fee owners or lessors may execute a power of attorney permitting one or more co-owners or co-lessors to sign on their behalf.

(b) A person with any other right, title, or interest in the land electing to subordinate that person's interest to the condominium property regime,

other than a lender, shall also sign the developer's public report, any amendments to the developer's public report, and other documents as required by chapter 514B, HRS, and the commission indicating that person's subordination and consent to the creation of the condominium property regime and registration of the condominium project. Any recorded document joining in or subordinating a person's interest to the declaration shall also be submitted to the commission as part of the project registration application.

(c) Where the developer is a person or entity other than the fee owner or lessor, the person or entity shall submit evidence indicating the fee owner's or lessor's consent and agreement to the creation of the condominium property regime and the project registration and sale. Evidence includes an executed declaration, power of attorney, or agreement between the developer and fee owner or lessor authorizing the developer to create and register the project with the commission and the sale of units in the condominium property regime or project.

(d) The developer's name and signature on the developer's public report shall be the same name as the signatory to the executed declaration or in the name as otherwise specifically allowed by a duly executed notarized power of attorney, entity resolution, or other document.

(e) The required signatures may be obtained on separate additional signature pages of the developer's public report provided that each signatory makes the same required declarations as required by the commission approved form. [Eff]

(Auth: HRS §514B-61) (Imp: HRS §§514B-31, 514B-52, 514B-54)

§16-119.3-13 Amendments to the developer's public report. (a) Within thirty days of any changes, material or pertinent or both, to the information and documents included in or omitted from the developer's public report, the developer shall

submit to the commission an amendment to the developer's public report or an amended developer's public report clearly reflecting and disclosing the changes contained in or omitted from the developer's public report together with such supporting information as may be required by the commission.

(b) Unless the commission determines otherwise, a developer shall:

- (1) Include in an amendment no more than two material changes or no more than five pertinent changes to a developer's public report. If there are more than two material changes or five pertinent changes, a full amended developer's public report is required;
- (2) Submit a full amended developer's public report following the submittal of two consecutive amendments unless the amendment or amendments pertain solely to updating the name and address of the project or the address, electronic mail, and telephone number of the developer's agent if that agent relocates or changes its name where the agent remains the same legal entity or both. A full amended developer's public report is a restated developer's public report including all amendments. A developer may elect to submit a full amended developer's public report in lieu of an amendment; and
- (3) Submit with any amendment a title report dated not more than forty-five days prior to the date of filing of any proposed amendment with the commission. A developer may request that an administrative review be conducted by commission staff to determine that a proposed amendment does not warrant the submission of a current updated title report. Examples warranting the non-submission of a current updated title report include but are not limited to the

correction of typographical errors, non-substantive errors, or both.

(c) If the current updated title report reflects no further encumbrances against title, the developer shall include language in the amendment or amended developer's public report that there are no further encumbrances against title.

(d) In determining whether a prospective purchaser or purchaser cannot easily ascertain, determine, or understand the changes included or added by any proposed amendment or included in any amended developer's public report, the commission may consider the totality of the factors as set forth in this subsection.

(e) Amendments made to a developer's public report for a project containing any existing structures being converted to condominium status which may be occupied for residential use and that have been in existence for five years or more shall include at minimum the following disclosures:

- (1) Any outstanding notices of uncured violations of any building, plumbing, and electrical codes and of any other federal, state, and county regulations received or known to the developer within the last six months prior to the submission of the amendment. The update shall include but not be limited to information discovered by a developer's review of relevant federal, state, and county records; and
- (2) The estimated cost of curing any building, plumbing, and electrical codes and other federal, state, and county regulations or violations.

(f) Any amendment shall be read together with a previous developer's public report or read by itself as an amended developer's public report. The developer shall provide notice to the prospective purchaser or purchaser and the principal broker of any amendments made to the developer's public report.

[Eff] (Auth: HRS §514B-61) (Imp:

§16-119.3-13

HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-61, 514B-83)

§16-119.3-14 Annual report. (a) The annual report required by section 514B-58, HRS, shall be filed at least thirty days prior to the anniversary date of the effective date of a developer's public report or if amended, at least thirty days prior to the anniversary date of the effective date of the most recent amendment or amended developer's public report.

(b) In addition to other information updated and reported pursuant to section 514B-58, HRS, and as required by the commission, a developer shall also update and report that the developer:

- (1) Has conducted a current search of all relevant county, state, and federal public records, including administrative agency records, and that the respective records currently do not indicate any uncured violations of any building, plumbing, and electrical codes or other violations;
- (2) Has not received any notice of violations or notice of any county investigation of any uncured building, plumbing, and electrical code violation or other violations; and
- (3) Does not have any actual knowledge of any unreported building, plumbing, and electrical code violation or other violations.

(c) The initial fee for filing an annual report with the commission shall be pursuant to chapter 16-53 and thereafter shall be in an amount as adopted in rules by the director. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §514B-58)

§16-119.3-15 Spatial units. (a) A developer shall describe spatial units in any manner that complies with this section, chapter 514B, HRS, and as

required by the commission. At minimum, any description of a spatial unit shall specifically comply with the definition of unit as provided in sections 514B-3, 514B-32(a)(7), and 514B-32(a)(13), HRS, and any other applicable sections of chapter 514B, HRS, and chapters 16-119.1 through 16-119.8 and include that the unit:

- (1) Is designated for separate ownership or occupancy, has access to a public road or to a common element leading to a public road, and will have future boundaries in accordance with section 514B-35, HRS;
- (2) Contains no structures;
- (3) Is filled only with air, water, or both;
- (4) Has a location and dimensions with horizontal and vertical boundaries designated by spatial coordinates with beginning and ending points;
- (5) Complies with all zoning and building ordinance and codes and all other permitting requirements, including having dimensions not more than county, heights, setbacks, and other requirements; and
- (6) Complies with any other commission requirements.

(b) Any description of any permitted alterations to or replacement of a spatial unit shall include a description as to what could be built or replaced in the spatial unit pursuant to the declaration, county zoning and building permitting, and any applicable federal and state laws. [Eff] (Auth: HRS §§514B-57, 514B-61) (Imp: HRS §§514B-3, 514B-5, 514B-32)

§16-119.3-16 Registering new units. Developers may register new units created by dividing previously existing registered units by amendment or amended developer's public report. These newly created units are subject to the fees set forth in chapter 16-53. Developers shall register new units that are created

§16-119.3-16

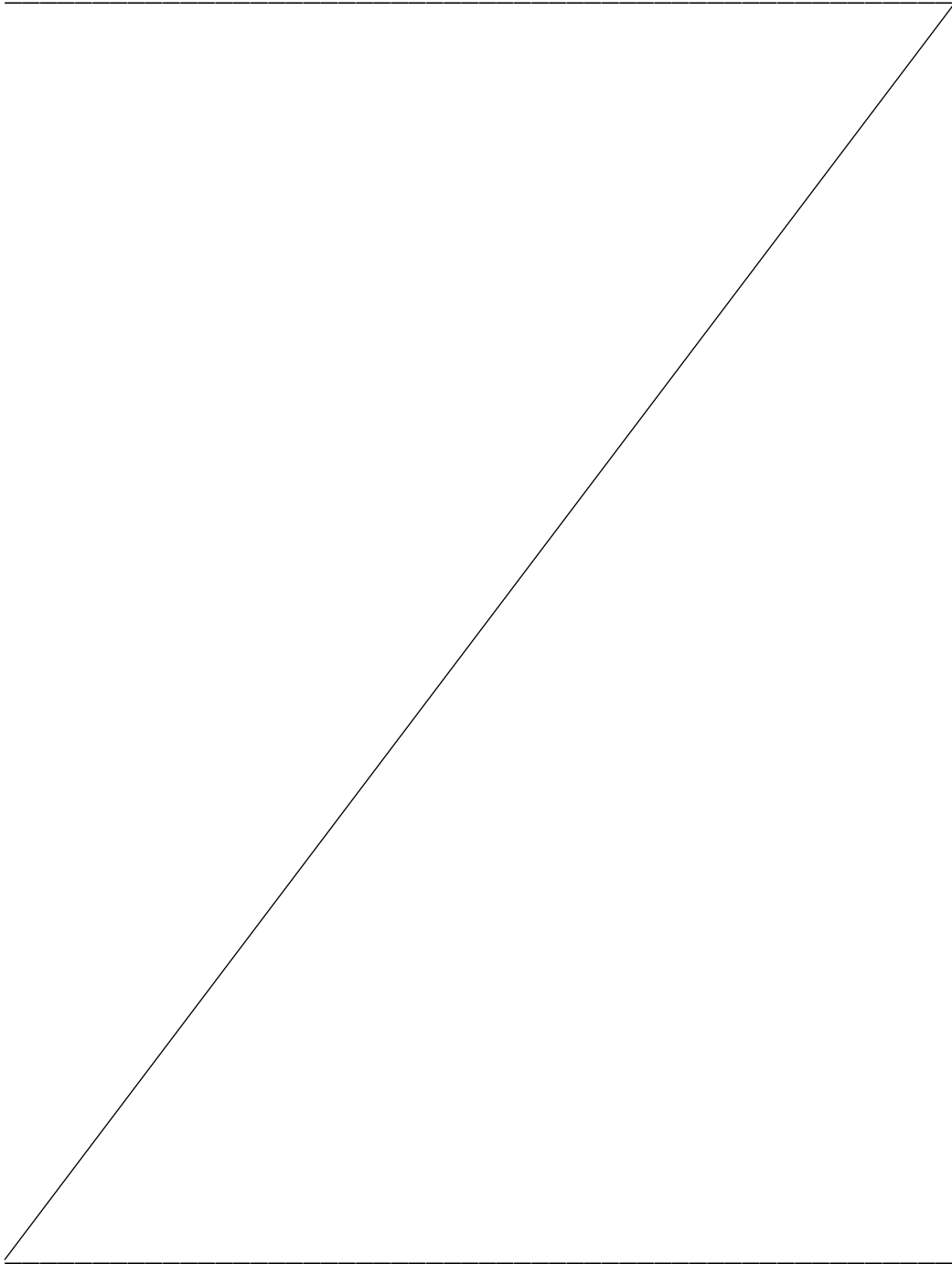
from previously unregistered property or unregistered units as a new project pursuant to the phasing rules in chapter 16-119.4 herein. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-51, 514B-52, 514B-56)

§16-119.3-17 Cooperatives. Cooperative housing projects converting to condominium status must comply with the registration requirements of parts IV and V, as well as other related registration parts of chapter 514B, HRS, this subsection, and as required by the commission. Such projects are not subject to part V(B) of chapter 514B (sales to owner occupants), HRS, and need not provide a broker listing agreement where:

- (1) One hundred per cent of the shareholders of record prior to the conversion have agreed to the conversion and will be parties to the submission of the property to the condominium property regime;
- (2) Upon conversion, the developer will not sell or offer to sell the apartments or units to the public and the developer is not able to sell or offer to sell the apartments or units to the public;
- (3) Existing shareholders and tenants will continue to reside in the apartments or units; and
- (4) And upon conversion, the existing tenants are permitted to continue their occupancy of the apartments or units. Furthermore, the developer's obligations to update the developer's public report cease upon conveyance of the condominium units to the former cooperative members who have traded their cooperative share for condominium units." [Eff _____] [Auth: HRS §514B-61] (Imp: HRS §§514B-51, 514B-54, 514B-83, 514B-84)

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5. Chapter 16-119.4, Hawaii Administrative Rules, entitled "Condominiums - Developer's Public Reports", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.4

CONDOMINIUMS - DEVELOPER'S PUBLIC REPORTS

- §16-119.4-1 Project registration application; documents and information
- §16-119.4-2 Content of developer's public report
- §16-119.4-3 Delivery of developer's public report
- §16-119.4-4 Use of purchaser deposits to pay project costs
- §16-119.4-5 Completion; performance bond; irrevocable letter of credit alternatives
- §16-119.4-6 Reduction of a completion, performance bond, letter of credit, or other alternative security amount for completion of construction

§16-119.4-1 Project registration application; documents and information. (a) To register a condominium property regime or project, a developer shall complete and submit a registration application on a commission prescribed form, which form the commission may amend, including the documents and information concerning the condominium property regime or project as required by sections 514B-54, 514B-83, and 514B-84, HRS, and as otherwise required by chapter

514B, HRS, chapters 16-119.1 through 16-119.8, and the commission.

(b) The commission shall establish a checklist of the documents and information concerning the condominium property regime or project that the developer must complete and submit to the commission.

(c) The checklist required by subsection (b) shall require the developer to submit with the developer's condominium project registration application the following:

- (1) A completed application form and project questionnaire executed in accordance with section 16-119.3-12;
- (2) Documents and information concerning the condominium property regime or project as required by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission;
- (3) Appropriate filing fees as prescribed by rules adopted by the director;
- (4) A title report dated not more than forty-five days immediately prior to the date of submission of the registration application. Where the circumstances necessitate, the commission may require a title report to be updated immediately prior to the issuance of an effective date for a developer's public report;
- (5) Draft of the developer's final public report which shall include the information, disclosures, and documents required by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission, and shall be executed in accordance with section 16-119.3-12;
- (6) Declaration which may be unexecuted and unrecorded;
- (7) Bylaws which may be unexecuted and unrecorded;
- (8) Condominium map which may be unrecorded with preliminary drawings, including a site plan

- prepared at least as required by section 514B-33(a)(1), HRS;
- (9) Proposed house rules, if any;
 - (10) Statement by the developer explaining the method or formula used in computing the common interest appurtenant to the respective units;
 - (11) Copy of the recorded master deed or master lease, agreement of sale, sales contract, or other document evidencing either that the developer holds the fee or leasehold interest or has a right to acquire same;
 - (12) Real estate broker listing agreement;
 - (13) Escrow agreement executed by the developer and escrow company and a summary of the agreement. The agreement shall minimally include provisions for the retention and disposition of purchasers' funds in accordance with the requirements of sections 514B-45, 514B-54(a)(6), 514B-86, 514B-87, 514B-89, 514B-90, 514B-91, 514B-92, and 514B-93, HRS;
 - (14) Copy of the letter to the planning department of the county in which the project is located transmitting, when requested by the county, true copies of the following documents:
 - (A) Questionnaire;
 - (B) Declaration which may be unexecuted and unrecorded;
 - (C) Bylaws which may be unexecuted and unrecorded;
 - (D) Condominium map which may be unrecorded; and
 - (E) Proposed developer's public report stamped "draft" and dated.The developer shall provide other documents relating to the project as requested by county officials;
 - (15) For a developer that is an entity:
 - (A) A certificate of good standing issued by the business registration division

- of the department and state of incorporation or formation (if applicable);
- (B) A certificate of authority issued by the business registration division of the department for an entity incorporated or formed not within this state; and
 - (C) A file-stamped copy of a developer's organizational document issued by the business registration division of the department or the state of incorporation or formation (if applicable); for example, corporation, partnership, limited liability partnership, limited liability company, or joint venture. The document shall be dated no more than ninety days immediately prior to the date of submission of the registration application;
- (16) Sample copies of the following forms:
- (A) Sales contract satisfying, among other requirements, the requirements of section 514B-89, HRS, including provisions disclosing any rights reserved by the developer, and where applicable, a completion deadline specifying a date certain following the expiration of time after the sales contract becomes binding, and other requirements of chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission. A summary of the sales contract shall also be submitted;
 - (B) Unit deed or lease, condominium conveyance document, or other document conveying title to the purchaser; and
 - (C) Executed management contract, if any, for managing the operation of the property. The contract shall minimally include the requirements of section

- 514B-134, HRS, chapters 16-119.1 through 16-119.8, other requirements of chapter 514B, HRS, and the commission;
- (17) Copy of any development, co-tenancy or subdivision agreements, master association documents, covenants and restrictions, any other similar documents, and summary of such documents;
 - (18) Copy of any state, county, or federal permits issued with special conditions, uses, and terms and summary of such documents, including but not limited to water use agreements, conditional use permits, existing use permits, development agreements, coastal management permits, and any other private agreements;
 - (19) An initial identification or designation of at least fifty per cent of the units for sale to prospective owner-occupants pursuant to section 514B-96, HRS, for any applicable project containing residential units;
 - (20) Other documents and information concerning the condominium property regime or project as required by the commission; and
 - (21) Other documents and information as required by the commission's prescribed checklist.

(d) For a project registration application for a project containing existing structures being converted to condominium status, a developer shall submit to the commission all the information and documents required by chapter 514B, HRS, the commission's prescribed checklist, chapters 16-119.1 through 16-119.8, and the commission and the following:

- (1) A verified statement by an appropriate county official satisfying the requirements of section 514B-84, HRS, that is signed no more than nine months immediately prior to the developer's submission of the project registration application and proposed developer's public report. The commission may accept alternatives to a verified county

- official statement approved by an appropriate county agency including, for example, a building permit report obtained from a county's internet site;
- (2) A sample copy of the notice to any existing tenants as to the conversion and termination of any rental agreement pursuant to section 521-38, HRS;
 - (3) A sample copy of an offering of each residential unit contained in the project for sale first to any individual occupying the unit immediately prior to the conversion as required by section 514B-98(b), HRS;
 - (4) A list of any outstanding notices of uncured violations of building code or other county regulations, together with the cost of curing these violations and the dates for completion of any repairs in compliance with section 514B-84, HRS;
 - (5) The statement by a developer required by section 514B-84(a)(1)(A), HRS, which shall include the following:
 - (A) A description of the present condition of all structural components and mechanical and electrical installations based upon a report prepared by a Hawaii-licensed architect or engineer. The commission will not accept a developer's general non-specific statements describing the present condition of all structural components and mechanical and electrical installations as "satisfactory condition consistent with its age" or similar without further explanation of the phrase or characterization; and
 - (B) A material facts disclosure of the present condition of all structural components and mechanical and electrical installations based upon a report prepared by a Hawaii-licensed architect or engineer;

- (6) A sample sales contract containing an agreement by the developer to make any repairs required by the county to address compliance with sections 514B-5, 514B-84, and 514B-89, HRS, including repairs that are required to be made to remedy any noted county building, electrical, and plumbing violations reported in any county records or that are the subject of any pending county investigation;
- (7) Such other documents and information as required by the commission's prescribed checklist and as otherwise required by the commission; and
- (8) A Hawaii-licensed architect's or engineer's required report shall be prepared within six months immediately prior to the submission of the project registration application and minimally include:
 - (A) Any county planning and permitting information relating to any uncured county code building, electrical, and plumbing violations or other violations or investigation;
 - (B) A description of any of the structural components and mechanical and electrical installations of the project, which compliant when originally installed, may no longer be compliant with current code requirements and whether the association and the unit owners may be required to bring certain elements up to code as a condition of obtaining permits for future renovation work in the project or unit;
 - (C) A description of the present condition, including a description of all material facts, of all structural components and mechanical and electrical installations material to the use and enjoyment of the units known to the Hawaii-licensed

architect or engineer preparing the report. Where prescribed by the commission, the Hawaii-licensed architect or engineer may prepare the required report by completing a checklist established by the commission. The completed checklist and any attachments shall be made part of the developer's public report as an exhibit. Any commission prescribed checklist shall at least include and provide the information required by chapter 514B, HRS, and this subsection;

- (D) No general statements describing or characterizing the present condition of all structural components and mechanical and electrical installations that are or like "satisfactory condition consistent with its age" without an explanation substantiating the characterization; and
- (E) Such other documents and information as may be required by the commission.

The time requirement of more than twelve months after completion of construction as set forth in the definition of "converted" or "conversion" in section 514B-3, HRS, shall be calculated back from the date on which the developer submits to the commission the project registration application.

(e) For a project registration application for a project located in an agriculturally zoned district, in addition to submitting all the information and documents required by subsections (a), (b), (c), and (d), where applicable, the developer shall also submit and include the following information in the developer's public report:

- (1) The developer's promotional plan for the project as required by section 514B-84(b), HRS, and a listing of permitted structures and uses in compliance with all applicable state and county land use laws and with

chapter 205, HRS, including section 205-4.6, HRS, where applicable. Any submitted promotional plan may include a general statement to the effect that the structures and uses are those as allowed by the county when accompanied by a listing of such structures and uses in compliance with all applicable state and county land use laws and chapter 205, HRS, including section 205-4.6, HRS, where applicable;

- (2) A statement that the project complies with chapter 205, HRS, including section 205-4.6, HRS, where applicable;
- (3) A verified statement as required by section 514B-52(b), HRS, signed by a county official no more than nine months immediately prior to the developer's submission of the project registration application and developer's public report;
- (4) A sample copy of any applicable farm dwelling agreement, except for spatial units, unless exempted by other law; and
- (5) Such other documents and information as required by the commission.

(f) The documents and information required by this section shall be submitted to the commission organized, bound, tabbed, and typed in not less than ten-point type, one-point lead, and with a table of contents and listing of all exhibits. [Eff

] (Auth: HRS §§514B-6, 514B-61)

(Imp: HRS §§467-7, 514B-3, 514B-5, 514B-32, 514B 33, 514B-34, 514B-45, 514B-51, 514B-52, 514B-54, 514B-57(A), 514B-81, 514B-83, 514B-84, 514B-86, 514B-87, 514B-89, 514B-90, 514B-91, 514B-92, 514B-93, 514B-96, 514B-98, 514B-108, 514B-134)

§16-119.4-2 Content of developer's public report. (a) The contents of a developer's public report and exhibits and any amendments thereto prepared by a developer, developer's agent, or pro se

developer shall be written in plain language at a level to be easily understood by a prospective purchaser or purchaser no higher than a twelfth-grade reading level. A developer shall use the Flesch Reading Ease Formula or any generally accepted reading ease readability formula to determine the readability level of the contents of its developer's public report and exhibits and any amendments.

(b) A developer shall include in its developer's public report and any amendments thereto, the information, disclosures, documents, and exhibits as required by this section, chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and any commission prescribed form and checklist. The commission prescribed form or checklist and any amendments thereto shall be made available online at the commission's webpage. At minimum, a developer's public report and any amendments thereto shall include the following:

- (1) The documents, disclosures, and information concerning the condominium property regime or project as submitted to the commission pursuant to section 16-119.4-1 herein;
- (2) The documents and information concerning the condominium property regime or project as required by sections 514B-54, 514B-83, and 514B-84, HRS, as applicable, this section, as otherwise may be specified by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission;
- (3) Any material facts, pertinent facts, material changes, omitted information, documents, and disclosures relating to the condominium property regime or project, including any updates;
- (4) All information, documents, and disclosures required to be included under the heading "Special Attention - Significant Matters" on the commission prescribed form of the developer's public report as may be amended in accordance with subsection (e). "Special Attention - Significant Matters" includes

any information that may impact the condominium property regime or project, unit, or both, or is required to be included in the developer's public report that should be conspicuously brought to the attention of the prospective purchaser or purchaser. "Special Attention - Significant Matters" shall be conspicuously disclosed on the first few pages of the developer's public report, and may be fully explained or discussed elsewhere in the commission approved developer's public report form; and

- (5) All other information, documents, and disclosures which the developer deems necessary to include in the developer's public report.

(c) The commission may establish a list of all information, documents, and disclosures required to be included in the developer's public report under the heading "Special Attention - Significant Matters". The developer shall provide the required information, documents, and disclosures by subject headings together with a summary of the disclosure, and shall provide, if any, an expanded written explanation of the disclosures elsewhere in the developer's public report referenced by page and paragraph number next to the subject headings. Any subject heading used by the developer shall provide a prospective purchaser or purchaser adequate notice of the nature of the information, documents, and disclosures.

(d) The commission's list of all information, documents, and disclosures required to be included in the developer's public report that are deemed "Special Attention - Significant Matters" shall not be construed to be an exhaustive list, constitute the commission's approval or disapproval of the condominium property regime or project, or constitute the commission's representation that all material facts or all material or pertinent changes or both concerning the condominium property regime or the project have been fully or adequately and accurately disclosed. The list does not relieve a developer from

the developer's responsibility to disclose material facts, material and pertinent changes, and other relevant information in the developer's application for registering the condominium project and in preparing the developer's public report and any amendments thereto.

(e) At a regularly scheduled monthly meeting of the commission or its standing subcommittee meeting, the commission may approve or amend the inclusion of any additional information, documents, and disclosures that a developer shall include or disclose in the "Special Attention - Significant Matters" page of the developer's public report.

(f) A "phased project" means any project that contemplates an incremental plan of development or where two or more projects are intended to be completed at different times. Each phase shall be separately registered with the commission. A "phasing plan" means a description of and schedule for developing the project in increments or phases. The contents of a developer's public report for a phased project shall include, but are not limited to, the following disclosures:

- (1) Whether the phases will be developed on:
 - (A) One subdivided lot; or
 - (B) Separately subdivided lots;
- (2) Whether the phasing plan contemplates:
 - (A) One declaration covering all phases within a project or a separate declaration for each phase and subsequent merger of the phases; and
 - (B) Any reduction of units for any phase and the addition of units to another phase.
- (3) Whether the merger of the phases will be:
 - (A) An ownership merger where the common interests of all units are adjusted as each phase is added and the common facilities of the merged phases are administered by one association of unit owners; or

- (B) An administrative merger where the common interests of units are not adjusted as phases are merged, and a formula is provided for sharing of certain common expenses in each of the merged phases and one association of unit owners is created to administer the common elements of the merged phases;
- (4) Whether an adjustment will be made to each unit owner's common interest, common profits and expenses, and replacement reserves;
- (5) Whether there will be an association of unit owners for each phase or one master association of unit owners for the whole project or both, and if there will be more than one association of unit owners, how each will function in relation to each other;
- (6) Whether there will be a master planned community association for the subdivision of which the project is part and the unit owners' rights and obligations;
- (7) Whether site work and improvements for the project will be undertaken in their entirety at the onset of construction of the project or in phases, and whether improvements to be built in future phases will be an integral part of improvements built in earlier phases;
- (8) Whether any utilities, facilities, or amenities that will be built in future phases will also be for the benefit of unit owners in earlier phases, and what assurances, if any, the developer will provide for the completion of such utilities, facilities, and amenities;
- (9) For a phased project on a single subdivided lot, the way future expenses for developing the land and improvements will be allocated and paid; and

(10) Whether the developer reserves the right to add, delete, reconfigure, or redesign future phases, the time limitations that apply to the developer's exercise of such reservation, and the anticipated impact on unit owners when the developer exercises such reservation.

(g) The contents of a developer's public report for a conversion project shall include, but are not limited to, the following disclosures:

- (1) Building limitations, restrictions, conditions on rebuilding, and non-conforming structures or uses;
- (2) County, state, and federal permitting requirements, if any, including but not limited to, water use agreements, conditional use permits, existing use permits, development agreements, coastal zone management permits, and private agreements;
- (3) All information submitted with the application as required by section 16-119.4-1(d) and all disclosures relating thereto; and
- (4) And any other applicable disclosures and information.

(h) The contents of a developer's public report for a project in an agricultural district shall include, but are not limited to, the following disclosures:

- (1) A specific statement describing how the structures and uses anticipated by the developer's promotional plan comply with all applicable state and county land use laws including section 205-4.6, HRS;
- (2) All information submitted with the application as required by section 16-119.4-1(f) and all disclosures relating thereto; and
- (3) Any other applicable disclosures and information.

(i) A developer's public report shall also include information about whether a reserve study was done in accordance with section 514B-148, HRS, and chapters 16-119.1 through 16-119.8 in arriving at the estimate of reserve funds necessary to maintain the condominium project. This information shall be specifically included on a developer prepared exhibit of estimates of initial maintenance fees and estimates of maintenance fee disbursements on a commission approved form.

(j) Persons who prepare the developer's public report for a project, including the attorney for the developer and any agent of the developer who is a non-attorney for the developer, shall include in the developer's public report the person's name and identity as an "agent". A developer and a developer's agent shall also provide a business address, business electronic mail address or a designated public electronic mail address, and business phone number. A pro se developer who prepares without the help of a Hawaii-licensed attorney or designated agent the registration application, information, and documents for registering a condominium project pursuant to chapter 514B, HRS, and chapters 16-119.1 through 16-119.8, shall also provide the information required by chapters 16-119.1 through 16-119.8 and the commission and identify the developer as a pro se developer.

(k) An exhibit of a summary of a sample sales contract and an escrow agreement shall at minimum include provisions and conditions consistent with the requirements of sections 514B-45, 514B-86, 514B-88, 514B-90, 514B-91, 514B-92, 514B-93, and 514B-98, HRS, and other applicable requirements of chapter 514B, HRS.

(l) If the developer elects to use a completion deadline connected to the expiration of any time after the sales contract becomes binding pursuant to section 514B-89, HRS, the developer shall notify purchasers in writing of a date certain for the completion date within 30 days of the expiration of any time when the sales contract becomes binding.

(m) Where applicable, all the following documents shall be listed in the developer's public report as documents a prospective purchaser or purchaser should review before signing the sales contract:

- (1) Farm dwelling agreement;
- (2) Subdivision covenants, conditions, and restrictions;
- (3) State and county water use agreements;
- (4) Copies of any comments and documents from any state, county, or federal government agency about the project;
- (5) Master association declaration and bylaws;
- (6) Co-tenancy agreements;
- (7) Agricultural dedication;
- (8) Shoreline management agreement;
- (9) Special management area permit;
- (10) Conditional use permit;
- (11) License agreements, such as trademark or branding agreements; and
- (12) Other related agreements the developer or commission deem necessary.

The commission may request that the developer include in the developer's public report a summary of any of the related documents and any other requirements of chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission. [Eff _____] (Auth: HRS §514B-61) (Imp: §§514B-45, 514B-57(A), 514B-81, 514B-83, 514B-84, 514B-86, 514B-88, 514B-89, 514B-90, 514B-91, 514B-92, 514B-93, 514B-98, 514B-148)

§16-119.4-3 Delivery of developer's public report. Items specified in section 514B-86(a)(1)(A)(ii), HRS, shall be deemed delivered concurrently and separately provided to a prospective purchaser or purchaser with the developer's public report on the day printed copies are delivered to the prospective purchaser or purchaser or the day the developer makes a download of the required documents available to a prospective purchaser or purchaser who

has elected in a separate writing to receive the required documents other than as printed copies as provided in section 514B-86(a)(1)(A)(ii), HRS. [Eff] (Auth: HRS §514B-61) (Imp: HRS §514B-86)

§16-119.4-4 Use of purchaser deposits to pay project costs. (a) "Cost of construction", "construction costs", "costs that are required to be paid in order to complete the project", and "other incidental expenses of the project" include those costs enumerated in sections 514B-92 and 514B-93, HRS, and include permitting fees, personnel costs, professional services costs, and any increases in such costs that are required to be paid or anticipated to be paid to complete the construction of the project. Any "cost of construction", "construction costs", and "costs that are required to be paid to complete the project" that have been paid are excluded from "costs". The project's architect or engineer and general contractor shall respectively certify payment of the amount of work completed and paid for.

(b) "Availability of sufficient funds" to pay all costs required to be paid to complete the project as used in sections 514B-92(b)(3)(A) and 514B-93(b)(3)(A), HRS, includes:

- (1) Interim or permanent loan commitments for financing construction costs and costs that are required to be paid to complete the project showing all parties have agreed to the loan and the loan amount. If there is a single agent, all parties shall agree in writing to the named single agent;
- (2) Equity funds identified and earmarked specifically for the project;
- (3) Purchaser's escrowed deposits as evidenced by a signed escrow agreement indicating the amount deposited in escrow; and
- (4) Other funds as required by the commission as evidenced by a signed escrow agreement

indicating the amount deposited in escrow. The commission shall only accept promissory notes where the funds have been escrowed.

(c) "Availability of sufficient funds" to pay all costs required to be paid to complete the project as used in sections 514B-92(b)(3)(B) and 514B-93(b)(3)(B), HRS, does not include:

- (1) Any projected purchaser's deposits not escrowed;
- (2) Interim or permanent loan commitments and other sources of funding from a developer's subsidiary or affiliate, except where a developer's subsidiary or affiliate has irrevocably earmarked funds to pay for all costs to complete the project as evidenced by a notarized declaration filed with any state, other than with the commission, or federal agency;
- (3) All funds encumbered for purposes other than those specified in sections 514B-92(b)(3)(A) and 514B-93(b)(3)(A) and (B), HRS; and
- (4) Other funds as excluded by the commission.

(d) Funds from any interim or permanent loan commitment and any other commission approved source of funds shall be:

- (1) Provided as follows:
 - (A) By a federally-insured financial institution located in this State or by a nationally chartered bank;
 - (B) By a federally-insured financial institution located in this State or by a nationally chartered bank or any other lending entity in good standing where the entity is qualified to do business; or
 - (C) Deposited in trust for purposes of sections 514B-92 and 514B-93, HRS, under a written escrow agreement with an escrow depository licensed pursuant to chapter 449, HRS. The escrow agreement and evidence of the deposited

funds shall be submitted to the commission;

- (2) Immediately available for use as provided by a written agreement to pay all costs to complete the project as required by sections 514B-92(b)(3) and 514B-93(b)(3), HRS;
- (3) Excluded as collateral for other projects or purposes;
- (4) Evidenced by a written agreement that is signed by the developer and all other parties to the agreement dated within nine months of the submission. The written agreement shall be submitted to the commission;
- (5) Excluded from the funds any portion which has been encumbered for purposes other than to those purposes specified in sections 514B-92 and 514B-93, HRS;
- (6) Exclusive of any projected deposits;
- (7) Exclusive of interim or permanent loan commitments and other sources of funding from a developer's parent entity, subsidiary, or affiliate, except where a developer's parent entity, subsidiary, or affiliate has irrevocably earmarked funds to pay for all costs to complete the registered project. A developer's declaration of the irrevocable earmarked funds shall be notarized and filed with a state, other than with the commission, or federal agency; and
- (8) In compliance with other excluded conditions as may be required by the commission. [Eff
] (Auth: HRS §514B-61)
(Imp: HRS §§514B-92, 514B-93)

§16-119.4-5 Completion; performance bond; irrevocable letter of credit alternatives. (a) A completion or performance bond issued by a non-surety material house shall at minimum contain the following:

- (1) The non-surety material house shall be:
 - (A) Located in this State;
 - (B) Duly qualified and registered to do business in this State; and
 - (C) An issuer in the normal course of its business of non-surety completion or performance bonds;
- (2) A letter from the project's construction lender, if any, stating that the completion bond or performance bond issued by a non-surety material house is satisfactory to the lender;
- (3) A written agreement between the developer and escrow agent that use of purchaser's deposits to pay project costs shall be made in accordance with section 514B-45, 514B-91, 514B-92, or 514B-93, HRS;
- (4) Names the commission and the developer as bond obligees;
- (5) Bond's obligation to complete the construction contract conditioned on the default of the contractor to faithfully perform the construction contract in accordance with the stipulations, agreements, covenants, and conditions of the construction contract, and any modifications of such, free from all liens and claims and without further cost, expense, or charge to the commission and the developer;
- (6) Provision that the bond's obligation also inures to the benefit of all persons entitled to file claims for labor performed or materials furnished;
- (7) Provision that upon default of the contractor, all bond funds shall be paid to and disbursed from an escrow account for the completion of construction;
- (8) Bond is maintained and continued in full force and effect continuously through the entire period from the beginning to the completion of construction;

- (9) Provision that the bond's expiration date is the date when construction is completed;
- (10) Provision that the contractor shall immediately amend the amount of the completion or performance bond to cover any significant cost increase to complete construction;
- (11) Disclosures in the developer's public report of the developer's use of a non-surety material house completion or performance bond and the restrictions on such use; and
- (12) Such other conditions and restrictions as required by the commission.

(b) As used in sections 514B-92(c) and 514B-93(c), HRS, "otherwise qualified, financially disinterested person" includes any third person unrelated to or not affiliated with the developer with financial expertise in accounting or with reviewing budgets, income, and expense documentation.

(c) An irrevocable letter of credit shall at minimum contain the following:

- (1) An amount in addition to the amount of the security for the administration of the letter of credit to cover at minimum the cost of escrow and the commission's hiring of a private consultant to oversee the completion of construction. The initial fee shall be set by the commission and any additional fees that may be adopted by the director;
- (2) The commission and commission's authorized representative as beneficiaries of the irrevocable letter of credit and the only entity which can withdraw funds from the irrevocable letter of credit or which can reduce the amount of the irrevocable letter of credit;
- (3) Issued by:
 - (A) A federally-insured financial institution located in this State;

- (B) A nationally chartered bank and confirmed by a state federally insured financial institution; or
- (C) An out-of-state federally insured financial institution and confirmed by a state federally insured financial institution;
- (4) Where the contractor and developer have failed to complete the project construction, a provision permitting the beneficiaries to draw funds from the letter of credit to complete the project construction;
- (5) A provision that the developer or the contractor shall immediately amend the amount of the irrevocable letter of credit to cover any significant cost increase to complete construction;
- (6) Provision for the same security and protections as a completion or performance bond issued by a Hawaii-licensed surety company; and
- (7) Such other conditions and restrictions as required by the commission.

The developer or contractor shall renew an irrevocable letter of credit or cause to be issued a new letter of credit in the amount required to complete construction thirty days prior to the expiration of an irrevocable letter of credit.

(d) Any other alternative security shall at minimum contain the following:

- (1) An amount in addition to the amount of the security for the administration of any other alternative security to cover at minimum the cost of escrow and the commission's hiring of a private consultant to oversee the completion of construction. The initial fee shall be set by the commission and any additional fees shall be adopted by the director;
- (2) The commission and commission's authorized representative as the beneficiaries of the security and the only entity which can

- withdraw funds from any other alternative security or which can reduce the amount of the alternative security;
- (3) A provision that the developer or the contractor shall immediately amend the amount of the other alternative security to cover any significant cost increase to complete construction;
 - (4) Provision for the same level of security and protections as a completion or performance bond issued by a Hawaii-licensed surety company; and
 - (5) Such other conditions and restrictions as required by the commission.

The developer or contractor shall renew any other alternative security or cause to be issued any other alternative security in the amount required to complete construction thirty days prior to the expiration of any other alternative security.

[Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-92, 514B-93)

§16-119.4-6 Reduction of a completion, performance bond, letter of credit, or other alternative security amount for completion of construction.

(a) The commission may approve a developer's written request to reduce the security amount of a completion, performance bond, letter of credit, or other alternative security for the completion of construction. The request must contain the following:

- (1) For each project or phase, an architect's certification as to the percentage of the project or phase that has been constructed;
- (2) Written evidence for each completed project or phase of construction that all construction work has been billed and paid for together with lien releases obtained from the general contractor and all subcontractors;

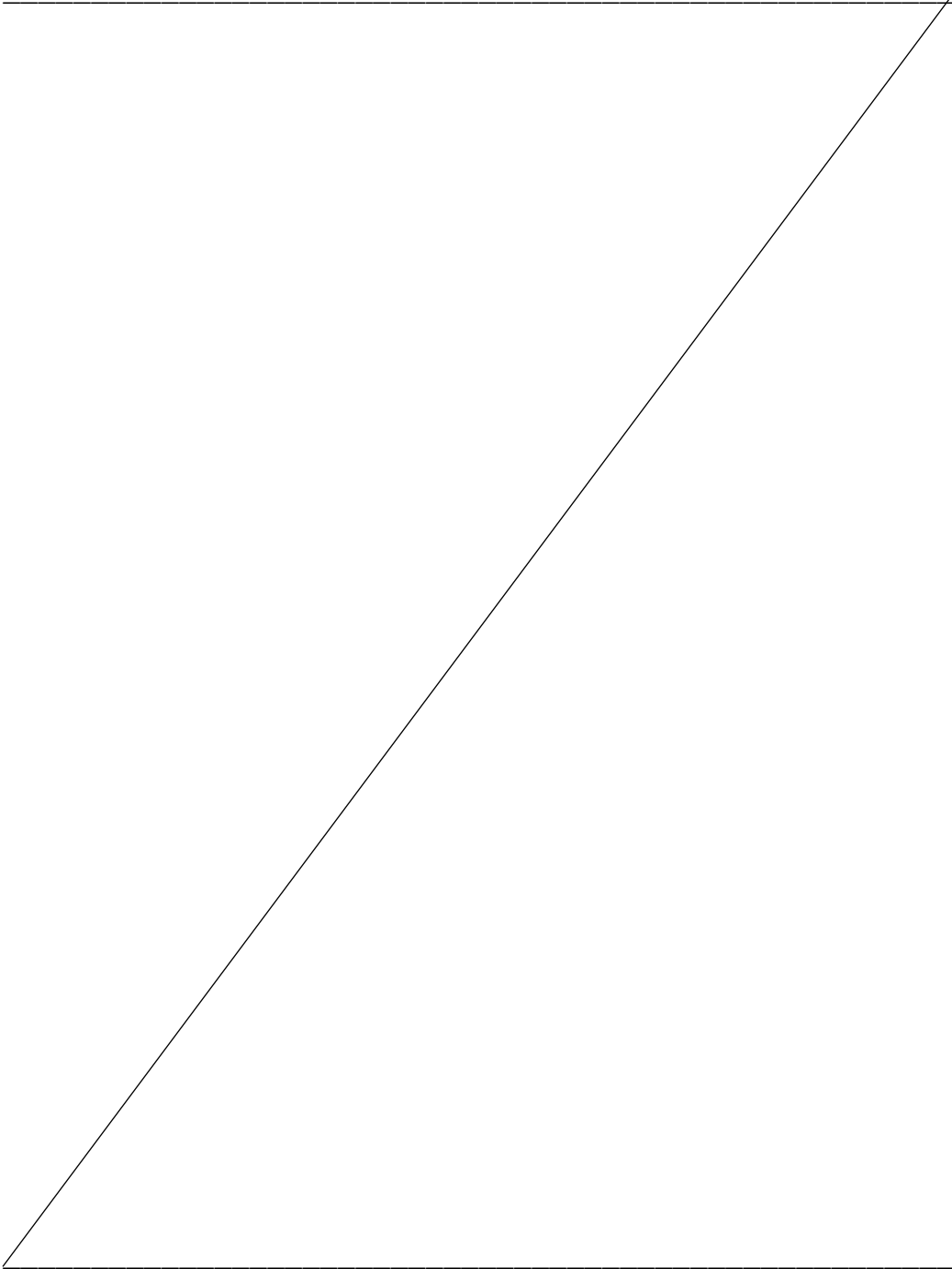
- (3) An agreement that the developer shall not convey any unit to a purchaser prior to the expiration of the forty-five-day mechanic's and materialman's lien period, unless the purchaser receives a title insurance policy with a mechanic's lien endorsement; and
- (4) An architect's and general contractor's certification as to the percentage of the project or phase remaining to be completed and the dollar amount needed to achieve full completion of the project's construction.

(b) The commission may approve a developer's written request that a submitted completion, performance bond, letter of credit, or other alternative security for the completion of construction be released. The request must contain the following:

- (1) An architect's certification that the project has been constructed and completed;
- (2) Written evidence that all construction work has been billed and paid for together with lien releases obtained from the general contractor and all subcontractors;
- (3) A filed marked court copy of the "Affidavit of Publication of Notice of Completion" and a copy of the notice covering the completion of construction for the entire registered project and the units therein made pursuant to section 507-43, HRS;
- (4) The developer's declaration that the mechanic's and materialman's lien period has expired and no application for a lien has been filed; and
- (5) An agreement that the developer shall not convey any unit to a purchaser prior to the expiration of the forty-five-day mechanic's lien period unless the purchaser receives a title insurance policy with a mechanic's lien endorsement." [Eff]
(Auth: HRS §514B-61) (Imp: HRS §§514B-45, 514B-92, 514B-93)

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6. Chapter 16-119.5, Hawaii Administrative Rules, entitled "Condominiums - Sales to Owner-Occupant", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.5

CONDOMINIUMS - SALES TO OWNER-OCCUPANT

| | |
|-------------|--|
| §16-119.5-1 | Exclusions |
| §16-119.5-2 | Sales exempt from owner-occupant requirements |
| §16-119.5-3 | Fifty per cent of units |
| §16-119.5-4 | Offers of sale of residential units |
| §16-119.5-5 | Publication of announcement |
| §16-119.5-6 | Extenuating circumstances affecting an owner-occupant's compliance |
| §16-119.5-7 | Sample copies of forms |
| §16-119.5-8 | Failure to comply |
| §16-119.5-9 | Owner-occupant affidavit |

§16-119.5-1 Exclusions. The following are not included in the definition of "residential unit" in section 514B-95, HRS:

- (1) Time share units built in a county zoned or designated hotel or resort use;
- (2) Leasehold fee interests offered for sale or sold to the unit owners who occupied the unit immediately prior to the leasehold conversion or leasehold fee interests being offered to the association of unit owners; and

§16-119.5-1

- (3) The sale of units in a project consisting of nonresidential units where one of the units is a residential unit. [Eff _____]
(Auth: HRS §§514B-61, 514B-98.5) (Imp: HRS §514B-95)

§16-119.5-2 Sales exempt from owner-occupant requirements. Residential projects built in a county zoned or designated hotel or resort area shall be exempt from the provisions of part V(B), Sales to Owner-Occupants, of chapter 514B, HRS, except residential projects situated in Waikiki shall not be exempt from the provisions of part V(B), Sales to Owner-Occupants, of chapter 514B, HRS.
[Eff _____] (Auth: HRS §§514B-6, 514B-61, 514B-98.5) (Imp: HRS §514B-95)

§16-119.5-3 Fifty per cent of units. Two units in a three-unit residential condominium project shall be designated as the units for sale to prospective owner-occupants. [Eff _____] (Auth: HRS §§514B-61, 514B-98.5) (Imp: HRS §514B-96)

§16-119.5-4 Offers of sale of residential units.
(a) At any time after issuance of an effective date for a developer's public report and after designating at least fifty per cent of the units for sale to prospective owner-occupants, the developer may offer for sale the non-designated owner-occupant units prior to or concurrently with offering to sell to prospective owner-occupants.

(b) A developer that uses either a chronological system or a lottery system may use, where applicable, the methods permitted by chapter 489E, HRS, Uniform Electronic Transactions Act, that are consistent with chapter 514B, HRS, and chapters 16-119.1 through

16-119.8 and as required by the commission.

(c) In computing any required time for offering the residential units to prospective owner-occupants, the first day of the publication is excluded and the last day is included unless the last day is a Sunday or holiday in which case the last day shall be the next day which is not a Sunday or holiday.

[Eff _____] (Auth: HRS §§514B-61, 514B-98.5) (Imp: HRS §§514B-95, 514B-95.5, 514B-96.5, 514B-98)

§16-119.5-5 Publication of announcement.

"General circulation" as used in section 514B-95.5, HRS, includes a newspaper that is published daily and distributed to all segments of the population and that reports national and statewide news and information of a general nature and interest. A newspaper published in the county includes a newspaper that is published at least weekly and distributed to all segments of the population and that reports national and statewide news and information of a general nature and interest.

[Eff _____] (Auth: HRS §514B-61) (Imp: HRS §514B-95.5)

16-119.5-6 Extenuating circumstances affecting an owner-occupant's compliance.

(a) Any person who executes an owner-occupant affidavit pursuant to part V(B) of chapter 514B, HRS, may request that the commission:

- (1) Issue an informal non-binding interpretation that an extenuating circumstance exists as specified in section 514B-98.5, HRS; and
- (2) Issue a "no action" letter for any violation of this subpart based on the existence of an extenuating circumstance described in the request with the commission reserving its right to initiate future action should new information substantiate possible violation.

(b) The request shall be made on a form approved by the commission. A copy of an executed owner-occupant affidavit shall be attached to the request.

(c) The commission may consider the following in determining the existence of an extenuating circumstance as provided in section 514B-98.5, HRS:

- (1) For a serious illness, a certified statement by the treating United States-licensed physician of the affiant or the person who was to have occupied the unit that the illness:
 - (A) Arose after the date of the execution of the owner affidavit;
 - (B) Was not previously known;
 - (C) Is serious;
 - (D) Is likely to exist for at least the remainder of the required owner-occupant period; and
 - (E) Is of such a nature and scope the specifics of which prevent such person from occupying the unit.
- (2) For an unforeseeable job or military transfer, a certification by the owner-occupant affiant of the following:
 - (A) Date of first knowledge of transfer;
 - (B) Date of transfer;
 - (C) Address of new job location; and
 - (D) Duration of transfer.An employer executed document supporting the certification shall be attached to the commission approved request form.
- (3) For an unforeseeable change in marital status or change in parental status, a certification by the owner-occupant affiant of the following:
 - (A) Date of marriage or date of separation or divorce (if applicable);
 - (B) Date of birth of the newborn child (if applicable);
 - (C) Date of change in legal custody of child or children and address on the date of taking custody or date custody

of child or children taken (if applicable);

- (D) Date that the owner-occupant affiant and family moved into the owner-occupant unit (if applicable); and
- (E) An explanation detailing specific reasons why the change in marital or parental status prevents the affiant from complying with the terms of the owner-occupant affidavit.

Third party, government, or court documents supporting the certification shall be attached to the commission approved request form.

- (4) For any other unforeseeable change, a certification by the owner-occupant affiant of the following:
 - (A) Chronological statement of the unforeseeable occurrence;
 - (B) Specific reasons supporting how the unforeseeable occurrence affects compliance with the executed owner-occupant affidavit; and
 - (C) Date of first knowledge of the unforeseeable occurrence.

Supporting documents substantiating the date of first knowledge of the unforeseeable change by the owner-occupant shall be attached to the commission approved request form. The commission may require the owner-occupant to submit to the commission other additional information and documents in support of the extenuating circumstance request.

(d) Commission staff shall issue a "no action" letter on behalf of the commission where the existence of any of the extenuating circumstances of section 514B-98.5(b), HRS, is supported and is prima facie evidenced by the individual's request. All other requests for a "no action" letter shall be determined by the commission. [Eff _____] (Auth: HRS

§16-119.5-6

§§436B-8(b), 514B-61, 514B-98.5) (Imp: HRS
§514B-98.5)

§16-119.5-7 Sample copies of forms. Upon request by the commission, the developer shall provide a sample copy of the following forms:

- (1) Affidavit of intent to become an owner-occupant of a residential unit; and
- (2) Reservation agreement between the developer and an owner-occupant of a residential unit.
[Eff] (Auth: HRS §514B-61)
(Imp: HRS §514B-98)

§16-119.5-8 Failure to comply. (a) Should a developer fail to comply with the requirements of section 514B-95.5, HRS, or this section, the developer shall immediately cease any sales offering, unless otherwise approved by the commission, and:

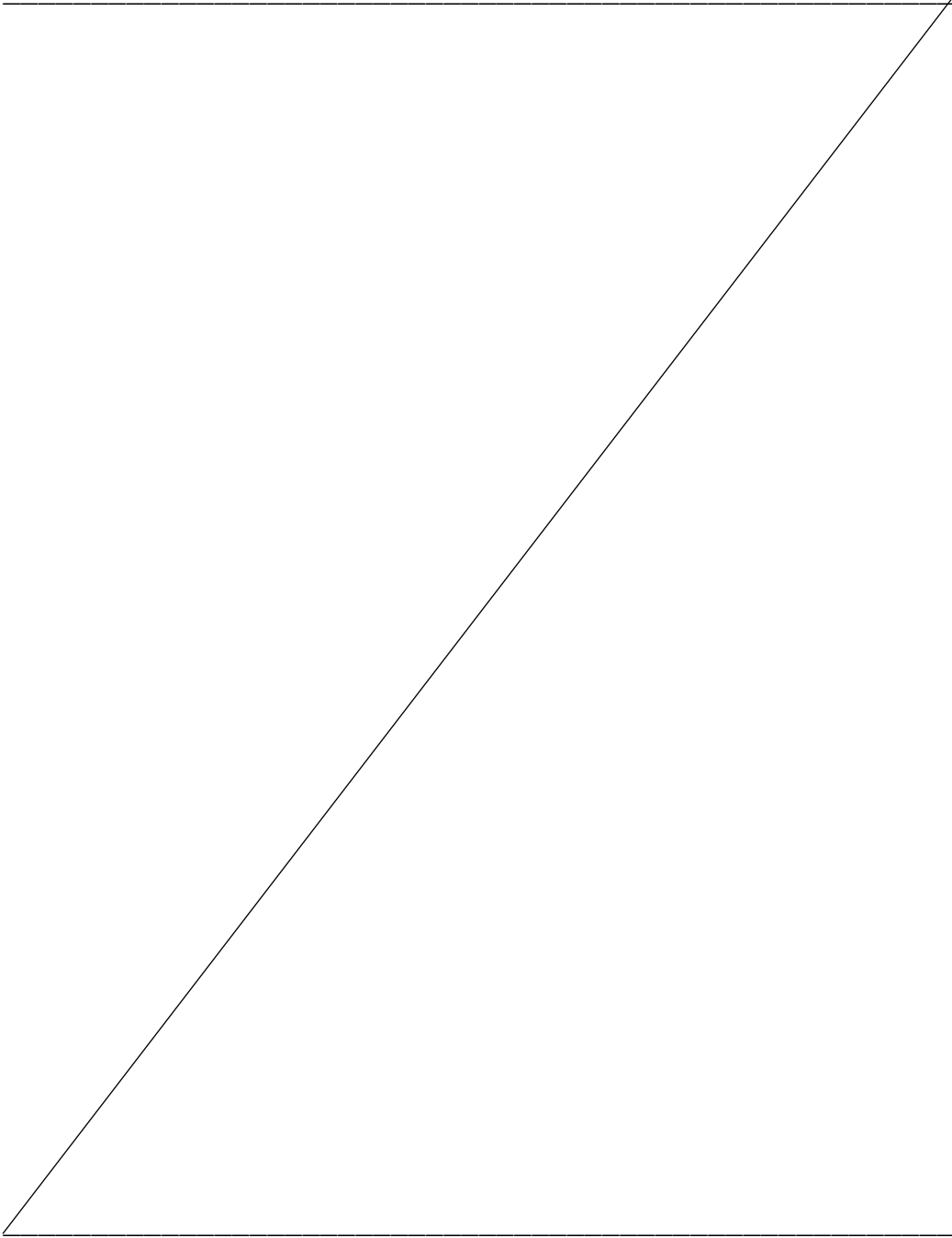
- (1) Refund all monetary deposits to persons on the reservation list;
- (2) Cancel all executed affidavits;
- (3) Cancel all executed sales contracts; and
- (4) Republish the owner-occupant announcement in accordance with section 514B-95.5, HRS.

(b) Subsection (a) applies to a developer exempt from but who elects to comply with and fails to comply with the provisions of part V(B) of chapter 514B, HRS.
[Eff] (Auth: HRS §514B-61) (Imp:
HRS §514B-95.5)

§16-119.5-9 Owner-occupant affidavit. For purposes of part V(B) of chapter 514B, HRS, a non-owner-occupant may share title with an owner-occupant subject to the following conditions:

- (1) The developer has received written confirmation that the owner-occupant's mortgage lender requires it; and
- (2) During the first three hundred sixty-five days of ownership, should the non-owner-occupant decide to convey or transfer their interest, the transfer or conveyance shall only be made to the owner-occupant on title." [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §514B-97)

7. Chapter 16-119.6, Hawaii Administrative Rules, entitled "Condominiums - Requirements for Replacement Reserves", is adopted.



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.6

CONDOMINIUMS - REQUIREMENTS FOR REPLACEMENT RESERVES

- §16-119.6-1 Objective
- §16-119.6-2 Applicability of chapter
- §16-119.6-3 Definitions
- §16-119.6-4 Effective date for establishing
statutory replacement reserves
- §16-119.6-5 Calculation of estimated replacement
reserves; reserve study; good faith
- §16-119.6-6 Fund accounting for each part of the
association property; use of separate
funds for other than stated purpose
- §16-119.6-7 Emergencies and emergency situations
- §16-119.6-8 Contingency reserves
- §16-119.6-9 Conflict of chapter
- §16-119.6-10 Reserve funds nontransferable
- §16-119.6-11 Exempt association property;
disclosure; transition to association
property
- §16-119.6-12 Borrowing and special assessments to
fund replacement reserves
- §16-119.6-13 Leasing of association property
- §16-119.6-14 Distribution of budgets and reserve
studies
- §16-119.6-15 Enforcement

§16-119.6-1

§16-119.6-1 Objective. This chapter implements the requirements of section 514B-148, HRS, that all condominium associations must follow budgets and establish statutory replacement reserves. These rules try to ensure that each unit owner in a project pays a fair share of the short-term and long-term costs of operating the project based upon the owner's period of ownership. The conduct of any reserve study and the selection of any reserve funding plan shall be consistent with the objectives of this section. The provisions of this chapter shall be read and interpreted consistent with these objectives.

[Eff _____] Auth: HRS §514B-61) (Imp: HRS §514B-148)

§16-119.6-2 Applicability of chapter. (a) This chapter applies to all condominiums created within this State.

(b) Notwithstanding section 514B-101(b), HRS, which states that a project's declaration or bylaws may specifically provide that part VI of chapter 514B, HRS, not apply to nonresidential unit usage and projects not subject to any continuing development rights containing no more than five units, the developer at minimum shall include some provisions in the declaration providing for replacement reserves, funding, and the calculation of replacement reserves and funding. The included provisions may be different than what is required by this chapter and chapter 514B, HRS, or the provisions may be the same.

[Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-23, 514B-101(b), 514B-148)

§16-119.6-3 Definitions. Unless the context indicates otherwise, the definitions in chapter 514B, HRS, apply to this chapter and the following definitions apply to chapter 514B, HRS, and this chapter:

"Asset" means any part of the association property.

"Association property" means those parts of a project which an association is obligated to maintain, repair, or replace, including but not limited to:

- (1) All the common elements of the project, as determined from the project's declaration and the bylaws and any master deeds, restrictive covenants, apartment or unit deeds, apartment or unit leases, or other documents affecting the project;
- (2) Any real property which is not part of the common elements but which the association either owns or leases for a term of more than one year, such as a manager's apartment acquired by the association after the project was developed;
- (3) Any personal or movable property owned or leased by the association;
- (4) Any fixtures owned or leased by the association;
- (5) Any limited common element expense determined by the board pursuant to section 514B-41(c), HRS;
- (6) Any components of association property; and
- (7) Solar and wind energy devices as provided by and defined in section 514B-140, HRS, and other renewable energy devices.

"Association property" does not include any part of the project that is "exempt association property" or which fewer than all unit owners are obligated to maintain, such as units or certain limited common elements.

Example:

A project's documents state that a deck is a limited common element assigned to less than all the owners. The project's documents also state that the owners of the units to which the deck is appurtenant must pay for the cost of maintaining and repairing the deck. Therefore, the

association need not set aside funds for replacement reserves for the deck.

"Budget year" means the association's fiscal year for accounting and budgetary purposes.

"Cash flow plan" means the same as defined in section 514B-148, HRS, provided that where an association assesses unit owners to fund one hundred per cent of the estimated replacement reserves using a cash flow plan, the different reserve funding plans that are tested against the anticipated schedule of reserve expenses until a desired funding goal is achieved shall not result in:

- (1) Disproportionate and unreasonable deferral of funding of the estimated replacement reserves to the last five years of the minimum twenty-year projection period;
- (2) Each owner in a project not paying a fair share of the short-term and long-term costs of operating the project based on the unit owner's period of ownership; or
- (3) Circumventing the requirements of section 514B-148(b), HRS, to collect the estimated replacement reserves amount for each part of the property for each year during the minimum twenty-year period to fund fully its replacement reserves requirements for each year during the minimum twenty-year period as determined by a reserve study.

"Component" means an individual line item in the reserve study developed or updated in the physical analysis part of the reserve study.

"Contingency reserves" means all reserve funds, other than replacement reserves, in an association's reserves accounts, including but not limited to reserves for:

- (1) Unexpected contingencies or emergencies that in the reasonable judgment of the board may occur;
- (2) The payment of insurance deductibles or other expenses relating to insurance;

- (3) Legal expenses and lease renegotiation or fee purchase expenses;
- (4) Legal or licensed professional services fees relating to the maintenance, repair, or replacement of association property;
- (5) Additions and improvements to the association property, such as new construction;
- (6) Late payment or nonpayment of an assessment by any unit owner; and
- (7) Large infrastructure major repairs that have an estimated remaining life of more than twenty years. Examples include replacement of aging plumbing components and elevators. Notwithstanding the minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency, a board may elect to include in the reserve study the funding of large infrastructure major repairs that have an estimated remaining life of more than twenty years.

"Emergency" means the same as "emergency situation" as defined in section 514B-148(h), HRS. A situation requiring an association payment of an unforeseeable extraordinary amount for a utility expense due in part to a utility company's miscalculation of amounts due or any other similar unforeseeable situation shall be included in the definition of "emergency situation" as provided by section 514B-148(h) (2), HRS.

"Estimated age" or "effective age" means the estimated useful life of an asset minus its estimated remaining life.

"Estimated remaining life" means any period (1) which is shorter than the estimated useful life of an asset, and (2) for which the asset will continue to serve its intended function without requiring capital expenditures or major maintenance.

"Estimated replacement reserves", "reserve fund contribution", or "funding goal" means funds which an association's reserve study indicates must be assessed and collected during a budget year to establish a full replacement reserve for the association by the end of that budget year.

"Estimated useful life" means the period a new asset or an existing asset which has been newly restored or refurbished will serve its intended function without requiring capital expenditures or major maintenance.

"Exempt association property" means any asset which:

- (1) At the end of its estimated useful life will require capital expenditures or major maintenance of less than \$1,000 or less than 0.1 per cent of the association's annual operating budget, whichever is greater; or
- (2) Has an estimated remaining life of more than twenty years.

Any asset which because of the passage of time ceases to be exempt shall become association property and be subject to the transitional rules stated in section 16-119.6-11.

"Full replacement reserve" means reserve funds for an asset equal to the projected capital expenditure or major maintenance required for the asset at the end of its estimated useful life multiplied by a fraction which has as its numerator and denominator the asset's estimated age and estimated useful life, respectively.

The total of the full replacement reserves for each asset shall be a full replacement reserve for the association.

Example:

A roof with an estimated useful life of ten years will cost \$100,000 to replace. At the end of its seventh year of life, a full replacement reserve would be $\$100,000 \times 7/10 = \$70,000$. In the tenth

year of its life, a full replacement reserve would be $\$100,000 \times 10/10 = \$100,000$.

Under a cash flow calculation, one hundred per cent means total funding of all projected annual expenses for a minimum twenty-year period.

"Funds", "fund balance", or "reserve funds" mean cash or cash equivalents but excludes any funds that the association has borrowed. No borrowed funds shall be included when calculating whether an association has collected its statutory replacement reserves, including the funding of one hundred per cent of the estimated replacement reserves when using a cash flow plan, provided loans made in accordance with section 16-119.6-12 may be included in "funds", "fund balance", or "reserve funds" only for the first year of the life of the loan. Subsequent year loans shall not be included in "funds" or "reserve funds".

"Managing agent" means, for purposes of the good faith exemption provided by section 514B-148(d), HRS, any person carrying out the fiduciary duties as prescribed by section 514B-132(c), HRS, who prepares a replacement reserve study and who:

- (1) Is a managing agent as defined by chapter 514B, HRS, and commission rules and policies relating to managing agents;
- (2) Meets all legal requirements for managing agents; and
- (3) Is the managing agent for the association for which the reserve study is prepared.

Any employee of a managing agent who prepares the replacement reserve study shall be deemed a managing agent for purposes of this definition.

"Minimum replacement reserve" means fifty per cent of a full replacement reserve or one hundred per cent of the full replacement reserve when using a cash flow plan.

"Reserve study" means a budget planning tool that consists of two parts, a physical analysis and a financial analysis, with both parts updated annually and that identifies the current status of the reserve

fund and a stable and equitable funding plan to fund the required "statutory replacement reserves".

"Statutory replacement reserves" means fifty per cent of an association's estimated replacement reserves or one hundred per cent of an association's estimated replacement reserves when using a cash flow plan.

"Substantially deplete" means any expense for an emergency which reduces the association's replacement reserves and contingency reserves by more than seventy-five per cent. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-41, 514B-101(b), 514B-148)

§16-119.6-4 Effective date for establishing statutory replacement reserves. (a) Each budget year, beginning with the fiscal year after a new association's first annual meeting, the board shall prepare and adopt an annual operating budget for the following budget year. Each annual operating budget shall include assessments sufficient to fund the association's statutory replacement reserves for the year to which the budget relates. Each budget year, beginning with the first budget year after a new association's first annual meeting, the association shall collect at least its statutory replacement reserves for that budget year.

(b) For those projects where the declaration has been recorded but the association has not held its first meeting as provided in section 514B-102, HRS, at least once each calendar year, commencing with the calendar year immediately following the date the first unit's conveyance was recorded, the developer shall, unless the developer owns one hundred per cent of the units in the project, notify in writing each unit owner of the way replacement reserves for future project maintenance and repairs will be addressed.

Such notice shall inform the unit owners in reasonable detail of at least the following:

- (1) The purpose for establishing replacement reserves;
- (2) A general summary of the replacement reserve requirements that would apply to associations under chapter 514B, HRS, and this chapter, on such form as the commission may provide;
- (3) Whether any replacement reserve studies have been prepared for the project; and
- (4) The amount of replacement reserves, if any, being collected as part of the unit owner's maintenance fees or otherwise being funded by the developer and the way those reserves were established. [Eff _____]
(Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-5 Calculation of estimated replacement reserves; reserve study; good faith. (a) The board shall calculate the association's estimated replacement reserves based on a reserve study developed in compliance with this chapter and chapter 514B, HRS, and as required by the commission.

(b) The board shall compile a list of the association's assets. If the project's declaration and association's bylaws fail to clearly state whether a part of a project is association property, the board may adopt a resolution allocating responsibility for that part to the association, an individual unit owner, or individual unit owners. The board's resolution shall be based on chapter 514B, HRS, the project's declaration and the association's bylaws, as required by the commission, and any other applicable legal requirements or documents. The resolution shall clearly indicate whether the part in question:

- (1) Is an asset of the association;
- (2) Is the responsibility of an individual owner or individual owners, but fewer than all owners; or

- (3) Is partly an asset of the association and partly the responsibility of fewer than all owners, such as plumbing or electrical systems.

The resolution shall state the basis of the board's decision and shall be effective to determine responsibility for replacement reserves for the part in question upon adoption and until changed by the board or by an amendment to the declaration or bylaws.

(c) The board shall determine the estimated useful life of each asset based on at least one of the following:

- (1) The association's experience with the asset;
- (2) Any professional or trade publication and any amendments or updates thereto that provide statistics on the estimated useful lives of items similar or comparable to the asset;
- (3) The estimate of any Hawaii-licensed contractor, architect, engineer, or other design professional or an authorized supplier for the asset for any item similar or comparable to the asset or any materials or services for the asset's upkeep, repair, or replacement; or
- (4) Any warranty provided by the supplier, installer, manufacturer, or builder of the asset or any services relating to its installation, upkeep, repair, or replacement.

(d) The board shall calculate the estimated capital expenditure or major maintenance required for each asset based on at least one of the following adjusted for inflation:

- (1) The association's experience with expenses relating to the asset;
- (2) Any professional or trade publication and any amendments or updates thereto that provide statistics on the estimated capital expenditure or major maintenance, required for the asset or items similar or comparable to the asset; or

- (3) The estimate of any Hawaii-licensed contractor, architect, engineer, or other design professional or an authorized supplier of the asset of any item similar or comparable to the asset or any materials or services for the asset's installation, upkeep, repair, or replacement.

(e) Each year, the board shall adjust the amount of the estimated replacement reserves for an asset based on reasonable projections for inflation and interest which may be earned during the estimated useful life of the asset. Adjustments for inflation shall not assume an annual inflation rate less than that of the Honolulu Consumer Price Index for All Urban Consumers for the prior year or its five-year historical average. Adjustments for interest earned shall not exceed the prior year's average interest rate for seven-year United States treasury bills or its five-year historical average.

(f) If a board plans to assess less than one hundred per cent of the association's estimated replacement reserves for a budget year, the association's operating budget for that year, the reserve study, and the association's other records shall clearly and prominently indicate:

- (1) The total amount the association's replacement reserve study indicates will be a full replacement reserve for the association at the end of the current budget year; and
- (2) The total amount the association will have collected at the end of the current budget year.

(g) Any association, unit owner, director, officer, managing agent, or employee of an association who calculates the association's estimated replacement reserves as provided in subsections (b), (c), (d), and (e) shall be deemed to have acted in good faith if the calculations subsequently prove incorrect, provided that an association, board, director, officer, or managing agent act as fiduciaries as provided in section 414D-149, HRS, and also make the disclosures

required by subsection (f) to be deemed to have acted in good faith. For purposes of this section, "in good faith" also includes honesty in fact in the investigation, research, and preparation of the reserve study and calculations of the full and estimated replacement reserves. [Eff]
(Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-6 Fund accounting for each part of the association property; use of separate funds for other than stated purpose. (a) Unless the association is funding its reserves through a cash flow plan, an association shall establish at least one reserve account for its projected full replacement reserves. Within the full replacement reserve account, the association shall establish a separate designated fund or funds for each asset for which estimated capital expenditures or major maintenance will exceed \$10,000. Projected full replacement reserves for all assets for which estimated capital expenditures or major maintenance will not exceed \$10,000 may be aggregated into a single designated fund in the projected full replacement reserve account.

(b) For each of the separate designated funds, the association's records for the projected full replacement reserve account shall state:

- (1) The purpose of each fund or the asset for which it is established; and
- (2) An amount for the projected full replacement reserves allocated to each fund provided:
 - (A) An association need not comply with paragraph (1) for the single, aggregated fund. Instead, the projected full replacement reserve account records may state the purpose of the fund as "miscellaneous" or similar term and indicate the amount in the aggregated fund. The association shall list the assets for which the

- aggregated fund is established elsewhere in its records; and
- (B) An association using a cash flow plan shall collect for each budget year an appropriate reasonable annual percentage of assessments for reserves to ensure compliance as provided in the definition of "cash flow" in chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and as required by the commission.
 - (C) An association using a cash flow plan shall comply with paragraphs (1) and (2) except:
 - (i) The amount of the estimated replacement reserves allocated to each fund may vary for each fiscal year from paragraph (1) and (2) to offset the variable annual expenditures from the reserve fund provided that the offset amount ensures that each unit owner in a project pays a fair share of the short-term and long term costs of operating the project based on the owner's period of ownership and provided that the board includes in the fiscal budget a line item indicating the allocated amount and percentage funded for each component identified by the physical analysis of the reserve study to fund the association's projected full replacement reserves; and
 - (ii) That an association record indicates how the funds are distributed, expended, and allocated.

(c) The board shall use replacement reserves allocated to a fund only for the stated purpose of that fund except:

- (1) In an emergency or emergency situation, the board may use the replacement reserves in any fund for any legitimate association purpose provided the board passes a resolution containing written findings as to the necessity of using the replacement reserves for other than their designated purpose, the necessity of the expense involved, and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution is distributed to all members of the association; and
- (2) The board may at any time use up to fifty per cent of the amount in any fund in the full replacement reserves for the stated purpose of any other fund. In such a case, the association records, including but not limited to board meeting minutes, and its annual budget shall indicate the change in use of the fund and the dollar amount of the fund used for another fund.

(d) If a board collects less than one hundred per cent of the association's estimated replacement reserves, the association's reserve account records shall clearly indicate how the board has allocated those reserves among each of the separate designated funds. Where an association has met its statutory replacement reserves, the board may fund each of the designated funds by an equal percentage, fund them by varying percentages, or fully fund some and not fund others. Regardless of the option chosen, the reserve account records shall accurately indicate the allocation and amount of funds allocated and adopted by the board and the expenditures made from those funds. [Eff _____] (Auth: HRS §514B-61)
(Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-7 Emergencies and emergency situations. (a) An association whose replacement reserves and contingency reserves have been substantially depleted by an emergency shall have three budget years to re-establish a minimum of fifty per cent of a full replacement reserve or fund one hundred per cent of a full replacement reserve when using a cash flow plan. The three years shall be calculated from the end of the budget year in which the association makes the payment which substantially depletes the association's replacement reserve.

(b) The board shall have the discretion to assess the unit owners in monthly, quarterly, or yearly installments to re-establish a minimum of fifty per cent of a full replacement reserve or fund one hundred per cent of a full replacement reserve when using a cash flow plan.

(c) In an emergency situation subject to section 514B-148(e), HRS, the board shall calculate the twenty per cent limit of that section based on the association's total annual operating budget for the budget year when the expense will occur. The board must notify the unit owners if an expense required because of an emergency will exceed the twenty per cent limit, but the board need not obtain unit owner approval for the expense.

(d) Section 514B-148(e), HRS, shall only limit a board's right to exceed its annual operating budget during the budget year to which the operating budget relates. That section shall not limit the board's right to increase an annual operating budget by more than twenty per cent over the annual operating budget of the previous year. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-8 Contingency reserves. Nothing in this chapter shall prohibit the establishment of a contingency reserve in compliance with this section. Unless the declaration or bylaws provide otherwise, the board may establish a contingency reserve in an

amount the board considers appropriate, based upon the age of the project, its maintenance history, plans for additions or improvements to the project, or any other factors the board deems relevant. The contingency reserve shall be subject to all the requirements relating to reserves except the requirements of sections 16-119.6-4, 16-119.6-5, 16-119.6-6(c) and (d), 16-119.6-7, and 16-119.6-9. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-9 Conflict of chapter. (a) Chapter 514B, HRS, and this chapter supersede any contrary provisions in a project's declaration, an association's bylaws, or any other applicable documents regarding preparation of budgets, calculation of reserve requirements, and assessment and funding of reserves. Except as stated in subsection (b), limits on spending or assessments shall not restrict the board's right to spend or assess for items required by the association's reserve study.

(b) Chapter 514B, HRS, and this chapter shall not supersede any contrary provisions in a project's declaration, an association's bylaws, or other applicable documents:

- (1) Requiring the board to collect more than the association's statutory replacement reserves;
- (2) Restricting a board's right to assess or spend to upgrade the common elements for such things as additions, alterations, or improvements; or
- (3) Requiring a board to repair or maintain assets more frequently than the law, this chapter, or the association's replacement reserve study requires.

This chapter shall not supersede any related state or federal tax laws. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-10 Reserve funds nontransferable.

Replacement reserve and contingency reserve funds that an association collects from unit owners become the property of the association. A unit owner who sells a unit shall have no right to reimbursement of the replacement reserve and contingency reserve funds from either the purchaser of a unit or the association. The replacement reserve and contingency reserve funds shall not be conveyed or transferred separately from the unit to which they relate. They shall be deemed conveyed or transferred with the unit, even though they are not specifically mentioned in any conveyance, assignment, or transfer of the unit.

[Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-11 Exempt association property; disclosure; transition to association property. (a)

The association's reserve study shall disclose all assets for which funds are not included in the replacement reserve study because they are exempt association property. The reserve study shall also contain a brief explanation of why those assets are exempt association property.

(b) An asset which is deemed to be exempt association property because its estimated remaining life is more than twenty years shall become association property on the date its estimated remaining life becomes less than twenty years, referred to in this subsection as the transition date. The asset shall be included in the association's reserve study for the first budget year after the transition date. In calculating a full replacement reserve for the asset after the transition date, the association may disregard the asset's actual age. The association may instead assume that at the beginning of the first budget year after the transition date, the asset's estimated age is zero and its estimated useful life is the same as its estimated remaining life.

Example:

An existing asset has an estimated useful life of fifty years, becomes thirty years old on January 1, 2018, has an estimated remaining life of twenty years, and an estimated replacement cost of \$100,000. Under the standard method of calculation, a full replacement reserve on December 31, 2018, for that asset would be \$62,000 ($\$100,000 \times 31/50$). If an association had not already established a replacement reserve for that asset, the full replacement reserve contribution by December 31, 2018, would be \$62,000 (or fifty per cent of that amount \$31,000 for the minimum replacement reserve). If the association adopts the method of calculation permitted by subsection (b), the full replacement reserve contribution required by December 31, 2018, for the same asset would be only \$5,000 ($\$100,000 \times 1/20$), or fifty per cent of that amount - \$2,500 - for the minimum replacement reserve, although subsequent annual contributions will be higher than in the first example. In effect, the asset is deemed to be only one-year old, not thirty-one years old on December 31, 2018. [Eff _____] (Auth: HRS §§514B-61, 514B-148) (Imp: HRS §514B-148)

§16-119.6-12 Borrowing and special assessments to fund replacement reserves. Provided an association assesses and collects sufficient funds to fund its statutory replacement reserves, complies with the law, chapters 16-119.1 through 16-119.8, and commission requirements, the board may in order to pay the cost to maintain, repair, or replace assets of the association:

- (1) Transfer funds between the separate, designated funds required by section 16-119.6-6, subject to the requirements of that section;
- (2) Borrow funds, subject to the requirements of section 514B-105(e), HRS; and
- (3) Specially assess the unit owners. This section shall apply if the board

underestimates the reserve requirements for an asset or if the cost to maintain, repair, or replace an asset will reduce the association's replacement reserve funds to less than fifty per cent of a full replacement reserve or to less than one hundred per cent of the full replacement reserves when using a cash flow plan during any budget year.

Example:

An association's full replacement reserve requirement is \$500,000, but the association has only \$250,000 of that amount in cash, as the law permits. The association's replacement reserve account designates \$200,000 of the \$250,000 to replace its roof in 2020 or to less than one hundred per cent of the replacement reserves when using a cash flow plan. In 2020, the association replaces its roof on schedule. If the association spends all the \$200,000 designated in its replacement reserve account for the roof, large assessments will be necessary to re-establish fifty per cent of a full replacement reserve in cash by the end of 2020.

Replacing the roof will reduce the association's replacement reserve requirements during 2020 by \$200,000, from \$500,000 to \$300,000 (to which must be added the funds required during 2020 for the other association assets). Nevertheless, spending the \$200,000 will also reduce the association's replacement reserve funds by \$200,000, from \$250,000 to \$50,000 (plus whatever the association collects during 2020).

Thus, by the end of 2020, the association will have only \$50,000 in reserves, but needs at least \$150,000 (i.e., fifty per cent of its full replacement reserve requirements of \$300,000). Therefore, the association must collect at least

§16-119.6-12

\$100,000 by the end of 2020 to reach the minimum replacement reserve of \$150,000 (plus whatever funds the reserve study indicates is necessary for other assets).

To reduce the hardship, the board can fund the expenses for the roof by borrowing or by special assessments. Even if the association has designated a specific fund in its replacement reserve account for the asset, the board may also transfer the money in that fund to other designated funds. Essentially, this section permits the board to use cash on hand, special assessments, borrowing, or any combination of the three to replace the roof and reduce the hardship on the unit owners. [Eff] (Auth: HRS §§514B-61, 514B-148) (Imp: HRS §514B-148)

§16-119.6-13 Leasing of association property. A board may lease rather than buy property to repair or replace any association property. Property which meets the definition of association property shall be deemed to be an asset of the association, and must be included in the association's reserve study, regardless of whether the association owns or leases the property. [Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

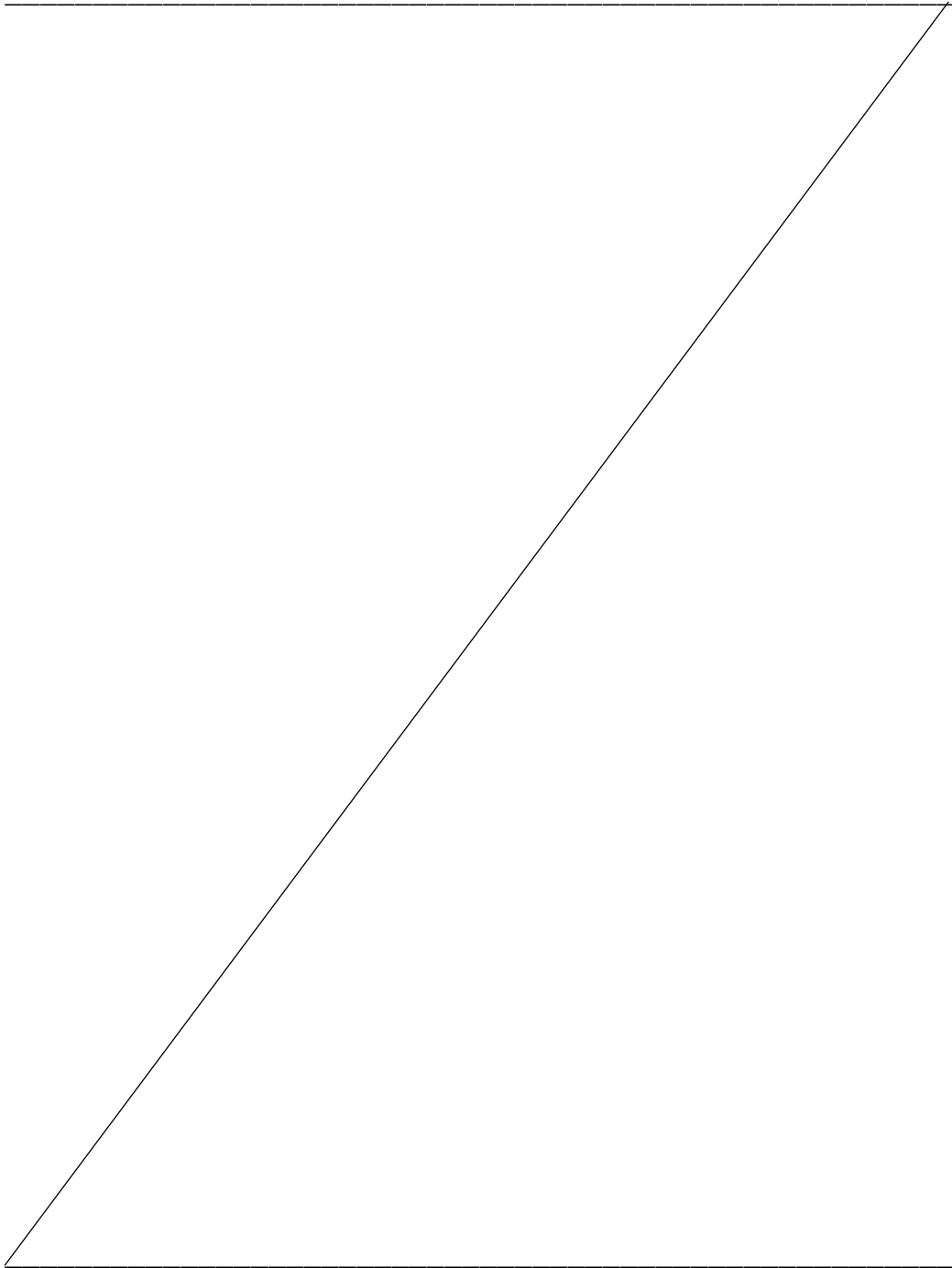
§16-119.6-14 Distribution of budgets and reserve studies. (a) A board shall distribute the annual operating budget required by section 514B-106(c), HRS, at least thirty days before the date of the association's annual meeting.

(b) The board shall attach to any approved budget that it makes available to any unit owner pursuant to section 514B-106(c), HRS, information about:

- (1) Any updates made to its reserve study and descriptions of and explanation for the updates or a statement that no updates were made;
- (2) A public accountant's findings about the adequacy of reserves or a statement that no findings were made; and
- (3) Where a unit owner may examine the supporting completed reserve study or request a copy of same. [Eff _____]
(Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

§16-119.6-15 Enforcement. If a board fails to prepare an annual operating budget or replacement reserve study in compliance with the requirements of section 514B-148, HRS, or this chapter, an association member may enforce those requirements. The association member may collect the costs of enforcement in compliance with the procedures provided in section 514B-157, HRS, including fees and costs incurred by the unit owner. If an arbitrator or judge determines that a board or board member has breached a fiduciary duty by intentionally ignoring the requirements of section 514B-148, HRS, or this chapter, the arbitrator or judge may award the unit owner fees and costs of enforcement against the board or board members, rather than against the association." [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

8. Chapter 16-119.7, Hawaii Administrative Rules, entitled "Condominiums - Managing Agent", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.7

CONDOMINIUMS - MANAGING AGENT

- §16-119.7-1 No registration required
- §16-119.7-2 Managing agent; bookkeeper; accountant
- §16-119.7-3 Conduct

§16-119.7-1 No registration required. The following persons who assist with the conduct of managing agent activity are excluded from the definition of managing agent:

- (1) An employee of an association;
- (2) An employee of a managing agent; or
- (3) A person independently contracted by the association for landscaping, gardening, painting, cleaning, construction, maintenance, repair, security, bookkeeping, accounting, and similar work who does not handle or have access to the funds of the association. Access includes receiving or depositing association funds, issuance of checks, transfers, or debits payable from association funds, or signature authority on any association bank account.
[Eff _____] (Auth: HRS §§514B-61, 514B-132) (Imp: HRS §514B-3)

16-119.7-2 Managing agent; bookkeeper; accountant. (a) Unless otherwise specifically prohibited by law, the declaration, or bylaws, an association may contract with an independent bookkeeper or accountant to assist with maintaining the association's fiscal records provided the independent bookkeeper or accountant:

- (1) Is not an employee of the association;
- (2) Does not have access to association funds;
- (3) Does not manage the operation of the project's property; and
- (4) Is not within the definition of managing agent pursuant to sections 514B-3 and 514B-132(1)(B), HRS.

(b) An association contracting with a bookkeeper or accountant in the manner provided by this section shall initially and annually adopt a resolution stating that the board is aware, acknowledges, and accepts that the independent bookkeeper or accountant:

- (1) Is not a currently registered managing agent pursuant to section 514B-132, HRS;
- (2) Has or has no fidelity bond;
- (3) Does not have access to association funds, including receipt or deposit of funds (including checks) or signature authority on association fund accounts; and
- (4) Does not manage the operation of the project's property.

The resolution shall be executed by the association's board and attached to the association's biennial registration application. The association's registration will be considered incomplete if the resolution is not attached. [Eff]
(Auth: HRS §514B-61) (Imp: HRS §§514B-3, 514B-132)

§16-119.7-3 Conduct. (a) A managing agent shall not accept any compensation, commission, rebate, or profit on any expenditure for an association that

it manages or from a unit owner without the association's knowledge and written consent.

(b) Where agreed upon in writing with an organized association, a managing agent shall complete the registration and reregistration of the association pursuant to section 514B-103, HRS.

(c) In managing the operation of the property, the managing agent shall be responsible for full compliance by its employees and agents with the applicable provisions of chapters 467 and 514B, HRS, the rules adopted pursuant thereto, and commission requirements.

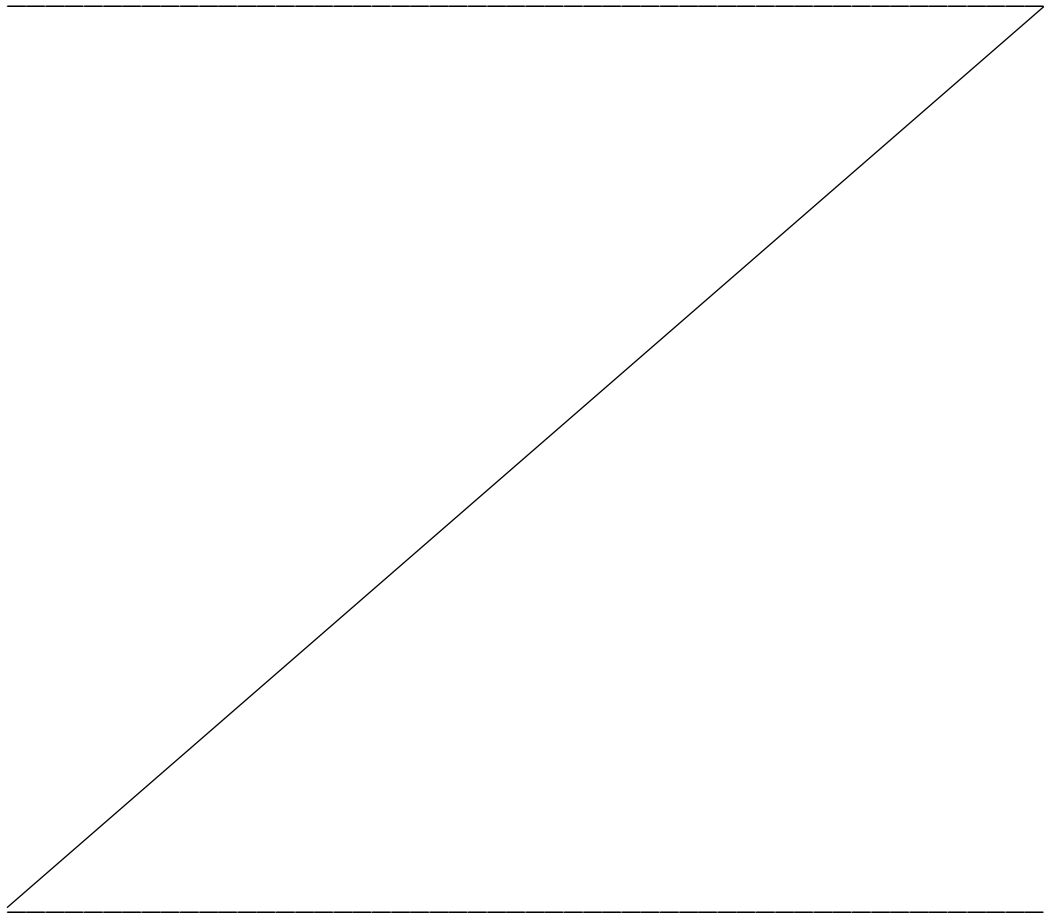
(d) As provided in section 514B-134(b), HRS, "services provided" include acknowledging receipt on behalf of the board any unit owner's complaint relating to the enforcement or alleged violation of the declaration, bylaws, or house rules, and the production of information, documents, and records in accordance with sections 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS. For these services, the written contract shall include agreements as to how, when, where, and to whom any unit owner's complaint or requests for information, documents, and records may be made, as well as where and to whom requests for mediation, arbitration, or appeal of a board decision may be directed. A written list and description of these services shall be updated annually and distributed to each unit owner. If an association is self-managed or has no managing agent, the board shall designate a member of the board to carry out the requirements of this subsection.

(e) Where a provision in chapter 467, HRS, conflicts with a provision of chapter 514B, HRS, regarding the conduct required of a managing agent, chapter 514B, HRS, controls. For example, section 467-1.6(b)(1), HRS, provides that the principal broker shall be responsible for the client trust accounts, disbursements from those accounts, and the brokerage firm's accounting practices. Section 514B-149(c)(2), HRS, provides that all funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the

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managing agent or the managing agent's employees under the supervision of the association's board. In this example, section 514B-149(c)(2), HRS, controls, and the managing agent's employees may disburse funds from the client trust account established for the association under the supervision of the principal broker and supervision of the association's board." [Eff] (Auth: HRS §514B-61) (Imp: HRS §§467-1.6(b)(1), 514B-149)

9. Chapter 16-119.8, Hawaii Administrative Rules, entitled "Condominiums - Association Registration", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.8

CONDOMINIUMS - ASSOCIATION REGISTRATION

| | |
|-------------|---|
| §16-119.8-1 | Registration of an association |
| §16-119.8-2 | Failure to provide evidence of fidelity bond |
| §16-119.8-3 | Fidelity bond; deductible |
| §16-119.8-4 | Fidelity bond exemption for an association |
| §16-119.8-5 | Fidelity bond exemption |
| §16-119.8-6 | Registration application |
| §16-119.8-7 | Availability of association's records, documents, and information |
| §16-119.8-8 | Deposit of association funds |

§16-119.8-1 Registration of an association. (a) Notwithstanding that an association has minimal or no expenses for maintenance of the common elements, and except as provided in subsection (c), each project or association having more than five units shall register with the commission and obtain a fidelity bond as required by section 514B-103, HRS, and chapters 16-119.1 through 16-119.8.

(b) An association shall register with the commission in the name as it appears on the recorded declaration of the condominium property regime. Any name change shall be evidenced by an amendment to the

declaration made pursuant to section 514B-32(a)(11), HRS, and where the association has incorporated, a document evidencing that the entity is properly registered with the business registration division of the department.

(c) If so provided in a project's declaration and bylaws, this section shall not apply to:

- (1) Condominiums in which all units are restricted to nonresidential uses; or
- (2) Condominiums that contain no more than five units and are not subject to any continuing development right.

(d) The board, developer or developer's affiliate, or managing agent on behalf of the association shall be responsible for registering and reregistering the association pursuant to section 514B-103, HRS, including maintaining the required fidelity bond, provided that the board or developer or developer's affiliate may delegate in writing the completion of the registration and reregistration to a managing agent. [Eff _____] (Auth: HRS §§514B-61, 514B-101) (Imp: HRS §§514B-103, 514B-143)

§16-119.8-2 Failure to provide evidence of fidelity bond. Failure to provide evidence to the commission of continuous fidelity bond coverage throughout an entire biennial registration period prior to the expiration of the fidelity bond shall result in the automatic termination of the association registration. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-103, 514B-143)

§16-119.8-3 Fidelity bond; deductible. (a) The fidelity bond shall:

- (1) Be issued by a company currently authorized by the State insurance division to issue insurance in this State;

- (2) Name the department as the certificate holder;
- (3) Provide coverage for association activity only;
- (4) Name only the association as the insured and exclude any other person, trade name, or business entity as the named insured, except as permitted in subsection (e);
- (5) Specify that it is a fidelity, employee dishonesty, or commercial crime bond and whether it is a blanket or name schedule type. If a name schedule type, list all persons handling or having control of funds received by the association, and provide notice to the commission of any changes to the name schedule on an amended name schedule within ten calendar days of the change;
- (6) Not contain a criminal conviction endorsement or rider which requires as a condition precedent to recover the prosecution or conviction of the employee;
- (7) State that it covers all officers, directors, employees, and managing agents of the association who handle, control, or have custody of association funds, and protect the association against fraudulent or dishonest acts by persons, including any managing agent, handling association funds;
- (8) Specify an expiration date or that it is continuous;
- (9) Specify whether the bond contains a deductible provision or a nondeductible provision; and
- (10) Provide other information as requested by the commission.

(b) Unless otherwise approved by the commission, the insurance company's proof of insurance shall certify that the required fidelity bond:

- (1) Is in effect and meets the requirements of sections 514B-103 and 514B-143(a)(3), HRS,

chapters 16-119.1 through 16-119.8, and
commission requirements; and

(2) Includes other information as requested by
the commission.

(c) The insurance certification shall be made on
a form approved by the commission and submitted to the
commission upon request.

(d) The board shall provide to each unit owner
notice of the amount of the deductible, if any, and
any changes in the fidelity bond coverage.

(e) An association may provide the required
fidelity bond loss coverage by being named as an
insured on another entity's insurance policy, provided
that the policy includes a loss coverage provision for
each covered registered association on a per
occurrence basis that is not limited by an aggregate
amount. [Eff _____] (Auth: HRS §514B-61)
(Imp: HRS §§514B-103(a)(1), 514B-143)

**§16-119.8-4 Fidelity bond exemption for an
association.** An association's fidelity bond exemption
expires at the end of a registration period. Any
reapplication for a fidelity bond exemption shall be
made at least thirty days prior to the commission's
deadline date for submission of a completed
reregistration application. An application for an
association's fidelity bond exemption shall be made on
a commission approved form. [Eff _____]
(Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-
143)

§16-119.8-5 Fidelity bond exemption. (a) An
association that is unable to obtain a fidelity bond
pursuant to section 514B-103(a)(1), HRS, may apply to
the commission for approval of a fidelity bond
exemption in accordance with that section and this
section.

(b) All the units in the association or project shall be:

- (1) Owned by a single individual or a single entity that is registered to do business in this State and in good standing with the State;
- (2) Restricted by the declaration or bylaws to non-residential use; or
- (3) Twenty or fewer units.

An association or project described in this subsection shall further satisfy all the following:

- (A) Certify to the commission that it has letters from three separate insurance carriers that issue such bonds, each dated no more than a hundred and eighty days before the exemption application date, confirming that the association is unable to obtain a fidelity bond;
- (B) Pass a resolution by its board certifying its inability to obtain a fidelity bond, intention to request an exemption from such requirement, and requiring that two persons sign all checks that exceed \$2,500 drawn on association accounts;
- (C) Is managed by a managing agent or a real estate broker who, except for a project described in paragraph (1), holds an active real estate license and is in good standing under the laws of the State;
- (D) Prohibit any one individual or entity from having sole control over association funds and records without the supervision of at least one other association owner, director, or officer, except for a project described in paragraph (1);
- (E) Keep separate operating and reserve accounts and books with two signatures required for any withdrawals from the reserve account; and

(F) Certify to the commission that the board promptly, diligently, and regularly reviews all association fund account statements.

(c) An association or project containing six or more, but fewer than fourteen units which has either reserves of \$10,000 or less and an annual budget of \$15,000 or less or an annual budget of \$25,000 or less shall meet at least two of the following conditions:

- (1) The requirements of subparagraph (b) (2) (C);
- (2) The requirements of subparagraph (b) (2) (E);
- (3) Has an operating account that requires two signatures for checks more than \$500;
- (4) Conducts an annual audit of association funds and accounts;
- (5) Uses automatic bill payment with a financial institution for utility charges and regularly recurring expenses of the association;
- (6) Conducts board review of the account statement from the project's managing agent or financial institution; or
- (7) Is restricted by its declaration or bylaws to non-residential use for all units in the project.

(d) An association or project containing more than thirteen, but twenty or fewer units which has reserves of \$20,000 or less and an annual budget of \$30,000 or less or has an annual budget of \$50,000 or less shall meet at least three of the following conditions:

- (1) The requirements of subparagraph (b) (2) (C);
- (2) The requirements of subparagraph (b) (2) (E);
- (3) Has an operating account that requires two signatures for checks more than \$1,000;
- (4) Conducts an annual audit of association funds and accounts;
- (5) Uses automatic bill payment with a financial institution for utility charges and regularly recurring expenses of the association;

- (6) Conducts board review of the account statement from the project's managing agent or financial institution; or
- (7) Is restricted by its declaration or bylaws to non-residential use for all units in the project.

(e) Any application for an exemption from the requirement to obtain a fidelity bond shall be submitted to the commission on a form prescribed by the commission, together with a nonrefundable application fee in an amount set forth in section 16-53-16.8. Any association that is granted an exemption shall immediately report to the commission in writing any changes that affect the project's eligibility for such exemption under this section.

(f) At registration or reregistration, the commission may approve a request for a fidelity bond exemption upon payment of a nonrefundable fee and the association's certification that it has complied with the commission's requirements for the specific exemption requested. [Eff _____] (Auth: HRS §514B-61) (Imp: HRS §§514B-101, 514B-103, 514B-143)

§16-119.8-6 Registration application. (a) A completed association registration and reregistration application includes, in addition to the requirements set forth in chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and of the commission, an application signed by an authorized officer of the association, accompanied by payment of the correct fee amount and any applicable penalties, documentation of current evidence of a fidelity bond, and any other documents and information required by the commission.

(b) Upon a unit owner's request, the association board shall make available the file copy of the registration and reregistration application, if any, filed with the commission. The unit owner shall pay all reasonable fees for duplication, postage, and other administrative costs incurred by the board

relating to handling the request in accordance with section 514B-154(j), HRS.

(c) The commission may terminate a project or association registration when any changes to the association's registration information remain unreported to the commission for thirty days or more. Any termination shall subject the association to section 514B-103(b), HRS, including the loss of standing to maintain any action or proceeding in the courts of this State for the collection of any past due assessments for common expenses.

[Eff] (Auth: HRS §514B-61) (Imp: HRS §§514B-101, 514B-103, 514B-154(j))

§16-119.8-7 Availability of association's records, documents, and information. (a) Biennially, each project or association with more than five units shall attach a copy of the following to its association registration and reregistration application:

- (1) A one to two-page written summary of where, when, and how the records, information, and documents required by sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, shall be made available to unit owners and of any costs subject to sections 514B-105(d) and 514B-154(j), HRS, of making the records, information, and documents available; and
- (2) The date the written summary required by paragraph (1) was last distributed to unit owners.

(b) The summary required by subsection (a) shall include the information required by subsection (a) and the following:

- (1) The name and address of a person or entity to whom a unit owner may direct a request for the records, information, and documents. A unit owner may use any type of writing to

make the request, including an association approved form;

- (2) The number of days no later than thirty days as specified by section 514B-154.4(c), HRS, after receipt of a request within which the board, managing agent, if any, or the association's representative shall make the requested records, information, and documents available for examination or copying;
- (3) The specific location and time where the requested records, information, and documents shall be made available for examination or copying. Where not specifically provided by chapter 514B, HRS, the designated location shall be convenient for both the unit owner and the association. The requested records, information, and documents may also be made available electronically as provided by chapter 489E, HRS;
- (4) The cost, subject to section 514B-105(d), HRS, if any, including the costs prescribed by sections 514B-153, 514B-154, and 514B-154.5, HRS, or costs allowed by law; and
- (5) Any other records, information, and documents as the commission may request to be provided on the association's registration application.

(c) Unless making the records, information, and documents of subsections (a) and (b) available to unit owners is prohibited or limited by a state or federal law, a board or managing agent shall:

- (1) Make every good faith effort to provide the requested records, information, and documents;
- (2) Redact any information the disclosure of which would clearly be an unwarranted invasion of privacy or violates any other state or federal law or regulation;
- (3) Where not an unwarranted invasion of privacy or prohibited by any state or federal law or

rule, make the remaining records, information, and documents available to the unit owner in accordance with sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8; and

- (4) Cite the specific authority for any non-disclosure; for example, the specific state or federal law or regulation or provision of the declaration or bylaws for any refusal to disclose.

(d) The commission may prescribe a form for submitting the information required by subsections (a) and (b).

(e) A management contract made pursuant to section 514B-134(b), HRS, shall include provisions describing:

- (1) A managing agent's duties and responsibilities relating to making available records, information, and documents as provided in sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8. Where there is no managing agent contracted and authorized to make available the records, information, and documents in accordance with sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8, the board shall designate a person or entity to undertake such duties and responsibilities;
- (2) Where the managing agent has contracted with the association for such services, procedures for receiving on behalf of the association any unit owner's complaint regarding the availability of records, information, and documents and information regarding alternative dispute resolution; and

- (3) Any other provision required by section 514B-134, HRS, or the commission.

(f) A managing agent, board, board member, or association representative that fails to make records, information, and documents available for examination or copying as provided by sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8, is subject to the criminal and civil penalties of section 514B-69, HRS, and the commission's investigatory, cease and desist, and injunctive powers as provided in sections 514B-65, 514B-66, and 514B-68, HRS. [Eff]
(Auth: HRS §514B-61) (Imp: HRS §§514B-103, 514B-106(c), 514B-122, 514B-134, 514B-144(a), 514B-148, 514B-150, 514B-152, 514B-153, 514B-154, 514B-154.5)

§16-119.8-8 Deposit of association funds. As used in section 514B-149, HRS, the term "located in the State" shall mean that the financial institution:

- (1) Is currently registered with the department's business registration and financial institution divisions, in good standing, and authorized to do business in this State; and
- (2) Has an office in this State that is managed and operated by employees who are physically located at the office site." [Eff] (Auth: HRS §§514B-61, 514B-101) (Imp: HRS §514B-149)

10. The repeal of chapter 16-107 and the adoption of chapters 16-119.1, 16-119.2, 16-119.3, 16-119.4, 16-119.5, 16-119.6, 16-119.7, and 16-119.8, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on M DD, YYYY, and filed with the Office of the Lieutenant Governor.

NADINE Y. ANDO
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

Deputy Attorney General