

***Presentation of the Hawaii Real Estate  
Commission on Selected Provisions of Hawaii  
Revised Statutes, Chapter 514B***

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# Basis of the Condominium Law

- Basic philosophy of the condominium law is (1) minimal government involvement; (2) self-governance by the owners; and (3) majority rule

# How Chapter 514B Works

- A number of beneficial sections apply automatically to pre existing condominiums – those created before July 1, 2006, **unless three exceptions apply:**
- *You are dealing with an event or circumstance occurring **before** July 1, 2006;*
- *The law conflicts with an existing provision of one of the condominium documents (declaration or bylaws) in a way that invalidates a reserved right of a developer; or*
- *The law conflicts with an existing provision of one of the condominium documents that would be an “unreasonable impairment of a contract”.*

Otherwise, the section in Chapter 514B will apply. Alternatively, by the vote or written consent of a majority of the owners, an association can opt in to Chapter 514B.

# These Sections of chapter 514B Apply Automatically to All Condominiums. . .

- HRS § 514B-3 Definitions (to the extent necessary to the interpretation of the following sections)
- HRS § 514B-4 Separate titles and taxation
- HRS § 514B-5 Conformance with county land use laws
- HRS § 514B-35 Unit boundaries

## Automatically Applying Sections . . . *continued*

- HRS § 514B-41(c) Common profits and expenses (limited common elements)
- HRS § 514B-46 Merger of projects or increments
- HRS § 514B-72 Condominium education trust fund; payments by associations and developers
- Part VI Management of condominiums

# Some Provisions Not Automatically Applicable

- Provision establishing obligation of good faith for associations, directors and owners on obligations and duties imposed by HRS Chapter 514B - HRS § 514B-9

“Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.”

# Some Provisions Not Automatically Applicable, cont.

- Limitations on punitive damages – HRS § 514B-10

“The remedies provided by this chapter shall be liberally administered . . . Punitive damages may not be awarded . . . except as provided by [514B] or by other rule of law.”

# Some Provisions Not Automatically Applicable, cont.

- Reduces the approval requirement for amending the declaration to 67% - HRS § 514B-32 (11)

# Some Provisions Not Automatically Applicable, cont.

- HRS § 514B-38 (a) reduces the approval requirement for leases of the common elements to 67% (from 75% under 514A);
- (b) permits the Association to allow owners to have minimal exclusive use of the common elements without 100% owner approval;

# Some Provisions Not Automatically Applicable, cont.

- and (c) permits the Association to convert open spaces to other uses without 100% owner approval.
- HRS § 514B-47 includes specific instructions for what happens when a leasehold condominium is condemned.

# Opting-in to HRS Chapter 514B

Some of the provisions that do not automatically apply to existing condominiums can have a substantial benefit to those associations. For example, if you would like to eliminate punitive damages for your condominium association or reduce the approval requirement for declaration amendments from 75% to 67%, you must opt-in to HRS Chapter 514B.

## Opting-in, cont.

HRS § 514B-23 (often referred to as the “opt-in” provision) will allow you to amend your governing documents to conform to the provisions of HRS Chapter 514B with the approval of only a majority of the owners.

While an amendment will not be needed for those sections that automatically apply to existing condominiums (providing that one

## Opting-in, cont.

of the three exceptions noted above does not come into play), existing condominiums must adopt an amendment for the other provisions of HRS Chapter 514B to apply. Thus, with the approval of only a majority of the apartment owners, you can adopt amendments to the governing documents that will allow you to take advantage of HRS Chapter 514B sections that do not automatically apply to existing condominiums.

# How To Adopt HRS Chapter 514B

- Seek professional advice
  - Hawaii licensed attorneys versed in condominium matters
  - Managing agents
  - Others
- Obtain vote or written consent of a majority of the owners
- Amend declaration, bylaws, condominium map or other constituent documents (HRS § 514B-23)
- Record amendments to governing instruments

# To Further Study the Issue

- Review the similarities and differences between your governing documents and HRS Chapter 514B
- Use this handout with its summary comparisons of selected sections of HRS Chapters 514A and 514B (also available on the REB website) as a beginning study point
- Seek the professional services and opinion of a Hawaii licensed attorney familiar with the condominium law