

CONDOMINIUM LAW RECODIFICATION

Hawaii Real Estate Commission

Statewide Public Hearings

September 2003



PRESENTATION OUTLINE



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- Why recodify HRS Chapter 514A?
- Why should we care?
- Basic Concepts
- Time Table

II. Evolution of Recodification

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- Preliminary Draft #2
- Public Hearing Discussion Draft

PRESENTATION OUTLINE (continued)



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“Overview” - Why Recodify?



Purpose of Recodification:

“[T]o update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law.”

~ Act 213, Session Laws of Hawaii (2000)

“Overview” - Why Should We Care?

- Prevalence of condominium ownership in Hawaii
- More efficient use of Hawaii’s limited land resources
- Hawaii’s housing stock and growth policies - “New development should pay its own way” (Private provision of “public” facilities and services)

“Overview” - Basic Concepts

- What is a “condominium?”

“[R]eal estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real Estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.”

Uniform Condominium Act (1980)

“Review” - Basic Concepts (continued)

- Condominium Property Regime Acts are essentially *land ownership, consumer protection, and community governance* laws. They are *enabling* Acts, allowing people to:
 - Build, sell, and buy condominiums
 - Protect purchasers through adequate disclosures
 - Manage the ongoing affairs of the condominium community

Time Table



- | | |
|----------------------|------------------------------------------------------------------------|
| Sept. - Oct.
2003 | Statewide Public Hearings
<i>(Kauai, Maui, Kona, Hilo, Oahu)</i> |
| Oct. - Nov.
2003 | Revise recodification text and/or
comments based on public hearings |
| Nov. - Dec.
2003 | Real Estate Commission approval
of recodification and final report |
| Dec. 2003 | Final report to Legislature |



HAZARDS

THERE IS AN ISLAND OF OPPORTUNITY IN THE MIDDLE OF EVERY DIFFICULTY.
MISS THAT, THOUGH, AND YOU'RE PRETTY MUCH DOOMED.

Evolution of Recodification



Draft #1	Based on Uniform Condominium Act and Uniform Common Interest Ownership Act
Prelim. Draft #2	Based on HRS Chapter 514A, Uniform laws, and other sources
Discussion Draft	Refinement of Preliminary Draft #2 incorporating additional input from stakeholders

Generally: Guiding Principles



- Enhance clarity of Condominium Property Act
- Recognize difficulty of “one-size fits all” approach to consumer protection and management provisions
- Commission should have jurisdiction only over provisions it will enforce

Generally: Guiding Principles (continued)

- Commission should require only information it will use or may find useful from a regulatory or consumer protection standpoint
- Problems should be fixed where they are created
- To extent practicable, standardize approval percentage requirements
- Recodification should not increase cost of government

General Provisions and Definitions

- Units and limited common elements precisely defined; common elements are everything else
- Specifically allow for air/water space condominiums (removes impetus for creating semi-fraudulent “tool shed” condominiums)
- Draw clear distinction between land *use* laws and land *ownership* provisions of condo law
- Support fair and efficient functioning of condominium communities by negating *Hiner v. Hoffman* (1999)

Development: Guiding Principles

- Adequate disclosure to prospective condominium purchasers is the foundation of consumer protection in the condominium law
- Involves more than disclosures for real property sales in non-condominium projects
- Risk to purchasers' funds should be correlated with the rights and obligations of developers

Sales/Disclosures



- Appropriate disclosure requirements
- Special types of projects (e.g., condominiums on agricultural land, assisted living units)
- Streamlining public report process (i.e., require one public report vs. preliminary, contingent final, and final public reports; supplemental public report for material changes)

Sales/Disclosures (continued)

- Right to cancel; Rescission rights
- Clarification of circumstances under which additional public reports should be required; implications
- Disclosure upon resale
- Repeal owner-occupant presale notice requirement

Developer Control Issues



- Appropriate level of developer control
- Timeframe for developer control (through sell-out?)
- Control of common areas
- Voting control
- Duty to association

Project Development

- Permit exchange of limited common elements besides parking stalls among unit owners
- Clarify when purchasers' funds may be released for construction of project
- Clarify when project common elements may undergo change in use
- Revise parking requirements (under HRS Chapter 514A, one stall per unit except in certain cases) to follow county law

Management: Association Functions



“Every [community association] has three functions - to serve as a business, a governance structure and a community.”

~ *Community Associations Factbook*
(1999)

Management: Philosophy



- Early history of community associations:
 - Business = *austerity*
 - Governance = *compliance*
 - Community = *conformity*
- New analogue as movement matured:
 - Community = *harmony*
 - Governance = *justice*
 - Business = *prudence*

~ *Community Associations Factbook (1999)*

Management: Guiding Principles



- **Minimal government involvement; i.e., self-governance** by the condominium community
- Recognize the difficulty of a “one size fits all” approach to management provisions
- Enhance clarity of Condominium Property Act

Management: (Self-) Governance



- Reorganize entire part for clarity
- Clarify powers, duties, and limitations of associations and boards
- Beef up conflict of interest provisions (board members, managing agents, rental agents)

Management: (Self-) Governance (continued)



- Allow judicial excuse of compliance with governing documents in certain situations
- Improve notice and proxy provisions
- Allow for good faith unintentional failure to comply with meeting and proxy requirements
- Improve executive session provisions

Management: Operations



- Accountability and competency of association managers (*SCR 62 - “Sunrise review” for possible licensing*)
- Termination of contracts and leases of developer
- Budgets and reserves (adequacy, flexibility, cash vs. accrual accounting)
- Handling and disbursements (deposits)

Management: Operations (continued)

- Improve insurance provisions
- Continue assessment liens' limited priority over mortgage liens (*Act 80, SLH 2003*)
- Access to records (definition, availability, location, retrieval, retention, etc.)
- Alternative dispute resolution - Allow any party to request mediation (not just owners or board)

Government Regulation: Guiding Principles

- Consumer protection through adequate disclosure to prospective purchasers; education of condominium community stakeholders
- Jurisdiction over only provisions it will enforce, requiring only information it will use or find useful from regulatory and consumer protection standpoint
- Fix problems where they are created

Government Regulation



- Clarify jurisdiction and roles of different government entities (state and county) in the development of condominiums
- Clarify jurisdiction and involvement of government (state or county) in the management of condominiums



PROBLEMS

NO MATTER HOW GREAT AND DESTRUCTIVE YOUR PROBLEMS MAY SEEM NOW,
REMEMBER, YOU'VE PROBABLY ONLY SEEN THE TIP OF THEM.

Our Request to You



- Identify your problems with Discussion Draft, along with provisions you like
- Study Recodification Drafts and information (available online at www.hawaii.gov/hirec/)
- Work through your organization to compile a list of problems and solutions



APATHY

IF WE DON'T TAKE CARE OF THE CUSTOMER,
MAYBE THEY'LL STOP BUGGING US.

Recodification Contact Information



- Write:
Mitchell Imanaka & Gordon Arakaki
DCCA - Real Estate Branch
250 South King Street, Room 702
Honolulu, HI 96813
- Call (*with voicemail*):
586-2735
- E-Mail:
Gordon.M.Arakaki@dcca.hawaii.gov

