

# ACT 164

THE SENATE  
TWENTY-SECOND LEGISLATURE, 2004  
STATE OF HAWAII

S.B. NO. 2210  
S.D. 2  
H.D. 1  
C.D. 1

## A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I.

2 SECTION 1. In 1961, Hawaii became the first state to pass  
3 a law enabling the creation of condominiums.

4 The 1961 "Horizontal Property Regime" law consisted of  
5 thirty-three sections covering a little more than three pages in  
6 the Revised Laws of Hawaii. Since that time, the law has been  
7 amended constantly. Presently, Hawaii's "Condominium Property  
8 Regime" law, chapter 514A, Hawaii Revised Statutes, consists of  
9 over one hundred sections taking up over fifty pages. As noted  
10 by the legislature in Act 213, Session Laws of Hawaii 2000,  
11 "[t]he present law is the result of numerous amendments enacted  
12 over the years made in a piecemeal fashion and with little  
13 regard to the law as a whole."

14 In 2000, the legislature recognized that "[Hawaii's]  
15 condominium property regimes law is unorganized, inconsistent,  
16 and obsolete in some areas, and micromanages condominium  
17 associations. The law is also overly regulatory, hinders  
18 development, and ignores technological changes and the present





1       SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4                               "CHAPTER

5                               CONDOMINIUMS

6                               PART I. GENERAL PROVISIONS

7       § -1 Short title. This chapter may be cited as the  
8 Condominium Property Act.

9       § -2 Applicability. Applicability of this chapter is  
10 governed by part II.

11       § -3 Definitions. As used in this chapter and in the  
12 declaration and bylaws, unless specifically provided otherwise  
13 or required by the context:

14       "Affiliate of a developer" means a person that directly or  
15 indirectly controls, is controlled by, or is under common  
16 control with, the developer.

17       "Association" means the unit owners' association organized  
18 under section -102.

19       "Board" or "board of directors" means the body, regardless  
20 of name, designated in the declaration or bylaws to act on  
21 behalf of the association.

22       "Commission" means the real estate commission of the State.



1 "Common elements" means:

2 (1) All portions of a condominium other than the units;  
3 and

4 (2) Any other interests in real estate for the benefit of  
5 unit owners that are subject to the declaration.

6 "Common expenses" means expenditures made by, or financial  
7 liabilities of, the association for operation of the property,  
8 and shall include any allocations to reserves.

9 "Common interest" means the percentage of undivided  
10 interest in the common elements appurtenant to each unit, as  
11 expressed in the declaration, and any specified percentage of  
12 the common interest means such percentage of the undivided  
13 interests in the aggregate.

14 "Common profits" means the balance of all income, rents,  
15 profits, and revenues from the common elements or other property  
16 owned by the association remaining after the deduction of the  
17 common expenses.

18 "Completion of construction" means the earliest of:

19 (1) The issuance of a certificate of occupancy for the  
20 unit;





(2) The date of completion for the project, or the phase of the project that includes the unit, as defined in section 507-43;

(3) The recordation of the "as built" amendment to the declaration that includes the unit;

(4) The issuance of the architect's certificate of substantial completion for the project, or the phase of the project that includes the unit; or

(5) The date the unit is completed so as to permit normal occupancy.

"Condominium" means real 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.

"Condominium map" means a map or plan of the building or buildings containing the information required by section -33.

"Converted" or "conversion" means the submission of a structure to a condominium property regime more than twelve months after the completion of construction; provided that structures used as sales offices or models for a project and



1 later submitted to a condominium property regime shall not be  
2 considered to be converted structures.

3 "Declaration" means any instrument, however denominated,  
4 that creates a condominium, including any amendments to the  
5 instrument.

6 "Developer" means a person who undertakes to develop a real  
7 estate condominium project, including a person who succeeds to  
8 the interest of the developer by acquiring a controlling  
9 interest in the developer or in the project.

10 "Development rights" means any right or combination of  
11 rights reserved by a developer in the declaration to:

- 12 (1) Add real estate to a condominium;
- 13 (2) Create units, common elements, or limited common  
14 elements within a condominium;
- 15 (3) Subdivide units, combine units, or convert units into  
16 common elements;
- 17 (4) Withdraw real estate from a condominium;
- 18 (5) Merge projects or increments of a project; or
- 19 (6) Otherwise alter the condominium.

20 "Limited common element" means a portion of the common  
21 elements designated by the declaration or by operation of



1 section -35 for the exclusive use of one or more but fewer  
2 than all of the units.

3 "Majority" or "majority of unit owners" means the owners of  
4 units to which are appurtenant more than fifty per cent of the  
5 common interests. Any specified percentage of the unit owners  
6 means the owners of units to which are appurtenant such  
7 percentage of the common interest.

8 "Managing agent" means any person retained, as an  
9 independent contractor, for the purpose of managing the  
10 operation of the property.

11 "Master deed" or "master lease" means any deed or lease  
12 showing the extent of the interest of the person submitting the  
13 property to the condominium property regime.

14 "Material change" means any change that directly,  
15 substantially, and adversely affects the use or value of:

- 16 (1) A purchaser's unit or appurtenant limited common  
17 elements; or  
18 (2) Those amenities of the project available for the  
19 purchaser's use.

20 "Material fact" means any fact, defect, or condition, past  
21 or present, that, to a reasonable person, would be expected to



1 measurably affect the value of the project, unit, or property  
2 being offered or proposed to be offered for sale.

3 "Operation of the property" means the administration,  
4 fiscal management, and physical operation of the property, and  
5 includes the maintenance, repair, and replacement of, and the  
6 making of any additions and improvements to, the common  
7 elements.

8 "Person" means an individual, firm, corporation,  
9 partnership, association, trust, or other legal entity, or any  
10 combination thereof.

11 "Pertinent change" means, as determined by the commission,  
12 a change not previously disclosed in the most recent public  
13 report that renders the information contained in the public  
14 report or in any disclosure statement inaccurate, including, but  
15 not limited to:

- 16 (1) The size, construction materials, location, or  
17 permitted use of a unit or its appurtenant limited  
18 common element;
- 19 (2) The size, use, location, or construction materials of  
20 the common elements of the project; or
- 21 (3) The common interest appurtenant to the unit.

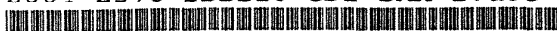
1 A pertinent change does not necessarily constitute a material  
2 change.

3 "Project" means a real estate condominium project; a plan  
4 or project whereby a condominium of two or more units located  
5 within the condominium property regime are created.

6 "Property" means the land, whether or not contiguous and  
7 including more than one parcel of land, but located within the  
8 same vicinity, the building or buildings, all improvements and  
9 all structures thereon, and all easements, rights, and  
10 appurtenances intended for use in connection with the  
11 condominium, which have been or are intended to be submitted to  
12 the regime established by this chapter. "Property" includes  
13 parcels with or without upper or lower boundaries, and spaces  
14 that may be filled with air or water.

15 "Record", "recordation", "recorded", or "recording" means  
16 to record in the bureau of conveyances in accordance with  
17 chapter 502, or to register in the land court in accordance with  
18 chapter 501.

19 "Resident manager" means any person retained as an employee  
20 by the association to manage, on-site, the operation of the  
21 property.



1 "Time share unit" means the actual and promised  
2 accommodations, and related facilities, that are the subject of  
3 a time share plan as defined in chapter 514E.

4 "Unit" means a physical or spatial portion of the  
5 condominium designated for separate ownership or occupancy, the  
6 boundaries of which are described in the declaration or pursuant  
7 to section -35, with an exit to a public road or to a common  
8 element leading to a public road.

9 "Unit owner" means the person owning, or the persons owning  
10 jointly or in common, a unit and its appurtenant common  
11 interest; provided that to such extent and for such purposes as  
12 provided by recorded lease, including the exercise of voting  
13 rights, a lessee of a unit shall be deemed to be the unit owner.

14 § -4 Separate titles and taxation. (a) Each unit that  
15 has been created, together with its appurtenant interest in the  
16 common elements, constitutes, for all purposes, a separate  
17 parcel of real estate.

18 (b) If there is any unit owner other than a developer,  
19 each unit shall be separately taxed and assessed, and no  
20 separate tax or assessment may be rendered against any common  
21 elements. The laws relating to home exemptions from state  
22 property taxes are applicable to individual units, which shall

1 have the benefit of home exemption in those cases where the  
2 owner of a single-family dwelling would qualify. Property taxes  
3 assessed by the State or any county shall be assessed and  
4 collected on the individual units and not on the property as a  
5 whole. Without limitation of the foregoing, each unit and its  
6 appurtenant common interest shall be deemed to be a "parcel" and  
7 shall be subject to separate assessment and taxation for all  
8 types of taxes authorized by law, including, but not limited to,  
9 special assessments.

10 (c) If there is no unit owner other than a developer, the  
11 real estate comprising the condominium may be taxed and assessed  
12 in any manner provided by law.

13 § -5 Conformance with county land use laws. Any  
14 condominium property regime established under this chapter shall  
15 conform to the existing underlying county zoning for the  
16 property and all applicable county permitting requirements  
17 adopted by the county in which the property is located,  
18 including any supplemental rules adopted by the county, pursuant  
19 to section -6, to ensure the conformance of condominium  
20 property regimes to the purposes and provisions of county zoning  
21 and development ordinances and chapter 205. In the case of a  
22 property which includes one or more existing structures being



1 converted to condominium status, the condominium property regime  
2 shall comply with section -32(a)(13) or -84(a).

3       § -6 Supplemental county rules governing a condominium  
4 property regime. Whenever any county deems it proper, the  
5 county may adopt supplemental rules governing condominium  
6 property regimes established under this chapter in order to  
7 implement this program; provided that any of the supplemental  
8 rules adopted shall not conflict with this chapter or with any  
9 of the rules adopted by the commission to implement this  
10 chapter.

11       § -7 Construction against implicit repeal. This chapter  
12 being a general act intended as a unified coverage of its  
13 subject matter, no part of it shall be construed to be impliedly  
14 repealed by subsequent legislation if that construction can  
15 reasonably be avoided.

16       § -8 Severability. If any provision of this chapter or  
17 the application thereof to any person or circumstances is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of this chapter which can be given effect without  
20 the invalid provisions or applications, and to this end the  
21 provisions of this chapter are severable.



1           §   -9   Obligation of good faith. Every contract or duty  
2 governed by this chapter imposes an obligation of good faith in  
3 its performance or enforcement.

4           §   -10 Remedies to be liberally administered. (a) The  
5 remedies provided by this chapter shall be liberally  
6 administered to the end that the aggrieved party is put in as  
7 good a position as if the other party had fully performed.  
8 Consequential, special, or punitive damages may not be awarded,  
9 however, except as specifically provided in this chapter or by  
10 other rule of law.

11           (b) Any deed, declaration, bylaw, or condominium map shall  
12 be liberally construed to facilitate the operation of the  
13 condominium property regime.

14           (c) Any right or obligation declared by this chapter is  
15 enforceable by judicial proceeding.

16                               PART II. APPLICABILITY

17           §   -21 Applicability to new condominiums. This chapter  
18 applies to all condominiums created within this State after the  
19 effective date of this chapter. The provisions of chapter 514A  
20 do not apply to condominiums created after the effective date of  
21 this chapter. Amendments to this chapter apply to all  
22 condominiums created after the effective date of this chapter or



1 subjected to this chapter, regardless of when the amendment is  
2 adopted.

3       § -22 Applicability to preexisting condominiums.

4 Sections -4, -5, -46, -72, and part VI, and section  
5 -3 to the extent definitions are necessary in construing any  
6 of those provisions, apply to all condominiums created in this  
7 State before the effective date of this chapter; but those  
8 sections apply only with respect to events and circumstances  
9 occurring after the effective date of this chapter and do not  
10 invalidate existing provisions of the declaration, bylaws,  
11 condominium map, or other constituent documents of those  
12 condominiums.

13       For purposes of interpreting this chapter, the terms  
14 "condominium property regime" and "horizontal property regime"  
15 shall be deemed to correspond to the term "condominium"; the  
16 term "apartment" shall be deemed to correspond to the term  
17 "unit"; the term "apartment owner" shall be deemed to correspond  
18 to the term "unit owner"; and the term "association of apartment  
19 owners" shall be deemed to correspond to the term "association".

20       § -23 Amendments to governing instruments. (a) The  
21 declaration, bylaws, condominium map, or other constituent  
22 documents of any condominium created before the effective date



1 of this chapter may be amended to achieve any result permitted  
2 by this chapter, regardless of what applicable law provided  
3 before the effective date of this chapter.

4 (b) An amendment to the declaration, bylaws, condominium  
5 map or other constituent documents authorized by this section  
6 shall be adopted in conformity with any procedures and  
7 requirements for amending the instruments specified by those  
8 instruments or, if there are none, in conformity with the  
9 amendment procedures of this chapter. If an amendment grants to  
10 any person any rights, powers, or privileges permitted by this  
11 chapter, all correlative obligations, liabilities, and  
12 restrictions in this chapter also apply to that person.

13 PART III. CREATION, ALTERATION, AND TERMINATION

14 OF CONDOMINIUMS (RESERVED)

15 PART IV. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS

16 (RESERVED)

17 PART V. PROTECTION OF CONDOMINIUM PURCHASERS (RESERVED)

18 PART VI. MANAGEMENT OF CONDOMINIUMS

19 A. POWERS, DUTIES, AND OTHER GENERAL PROVISIONS

20 § -101 Applicability; exceptions. (a) This part  
21 applies to all condominiums subject to this chapter, except as  
22 provided in subsection (b).



(b) If so provided in the declaration or bylaws, this part shall not apply to:

(1) Condominiums in which all units are restricted to nonresidential uses; or

(2) Condominiums, not subject to any continuing development rights, containing no more than five units;

provided that section -132 shall not be subject to these exceptions.

§ -102 Association; organization and membership. (a)

The first meeting of the association shall be held not later than one hundred eighty days after recordation of the first unit conveyance; provided that forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year after recordation of the first unit conveyance, an annual meeting shall be called if ten per cent of the unit owners so request.

(b) The membership of the association shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all former unit owners entitled to distributions of proceeds under section -47, or their heirs, successors, or assigns.



§ -103 Association; registration. (a) Each project or association having more than five units shall:

(1) Register with the commission through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on June 30 of each odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any project or association that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and be subject to initial registration requirements. Any new project or association shall register within thirty days of the association's first meeting. If the association has not held its first meeting and it is at least one year after the recordation of the purchase of the first unit in the project, the developer or developer's affiliate or the managing agent shall register on

1           behalf of the association and shall comply with this  
2           section, except for the fidelity bond requirement for  
3           associations required by section     -143(a)(3). The  
4           public information required to be submitted on any  
5           completed application form shall include but not be  
6           limited to evidence of and information on fidelity  
7           bond coverage, names and positions of the officers of  
8           the association, the name of the association's  
9           managing agent, if any, the street and the postal  
10          address of the condominium, and the name and current  
11          mailing address of a designated officer of the  
12          association where the officer can be contacted  
13          directly;

14        (2) Pay a nonrefundable application fee and, upon  
15          approval, an initial registration fee, a  
16          reregistration fee upon reregistration and the  
17          condominium education trust fund fee, as provided in  
18          rules adopted by the director of commerce and consumer  
19          affairs pursuant to chapter 91;

20        (3) Register or reregister and pay the required fees by  
21          the due date. Failure to register or reregister or  
22          pay the required fees by the due date shall result in



1 declaration and bylaws, the association, even if unincorporated,  
2 may:

3 (1) Adopt and amend the declaration, bylaws, and rules and  
4 regulations;

5 (2) Adopt and amend budgets for revenues, expenditures,  
6 and reserves and collect assessments for common  
7 expenses from unit owners, subject to section -148;

8 (3) Hire and discharge managing agents and other  
9 independent contractors, agents, and employees;

10 (4) Institute, defend, or intervene in litigation or  
11 administrative proceedings in its own name on behalf  
12 of itself or two or more unit owners on matters  
13 affecting the condominium. For the purposes of  
14 actions under chapter 480, associations shall be  
15 deemed to be "consumers";

16 (5) Make contracts and incur liabilities;

17 (6) Regulate the use, maintenance, repair, replacement,  
18 and modification of common elements;

19 (7) Cause additional improvements to be made as a part of  
20 the common elements;

21 (8) Acquire, hold, encumber, and convey in its own name  
22 any right, title, or interest to real or personal



1 property; provided that designation of additional  
2 areas to be common elements or subject to common  
3 expenses after the initial filing of the declaration  
4 or bylaws shall require the approval of at least  
5 sixty-seven per cent of the unit owners; provided  
6 further that if the developer discloses to the initial  
7 buyer in writing that additional areas will be  
8 designated as common elements whether pursuant to an  
9 incremental or phased project or otherwise, this  
10 requirement shall not apply as to those additional  
11 areas; and provided further that this paragraph shall  
12 not apply to the purchase of a unit for a resident  
13 manager;

14 (9) Subject to section -38, grant easements, leases,  
15 licenses, and concessions through or over the common  
16 elements and permit encroachments on the common  
17 elements;

18 (10) Impose and receive any payments, fees, or charges for  
19 the use, rental, or operation of the common elements,  
20 other than limited common elements described in  
21 section -35(2) and (4), and for services provided  
22 to unit owners;

- 1 (11) Impose charges and penalties, including late fees and  
2 interest, for late payment of assessments and, after  
3 notice and an opportunity to be heard, levy reasonable  
4 fines for violations of the declaration, bylaws,  
5 rules, and regulations of the association, either in  
6 accordance with the bylaws or, for condominiums  
7 created after May 17, 1983, if the bylaws are silent,  
8 pursuant to a resolution adopted by the board and  
9 approved by sixty-seven per cent of all unit owners at  
10 an annual meeting of the association or by the written  
11 consent of sixty-seven per cent of all unit owners;  
12 (12) Impose reasonable charges for the preparation and  
13 recordation of amendments to the declaration,  
14 documents requested for resale of units, or statements  
15 of unpaid assessments;  
16 (13) Provide for cumulative voting;  
17 (14) Provide for the indemnification of its officers,  
18 board, committee members, and agents, and maintain  
19 directors' and officers' liability insurance;  
20 (15) Assign its right to future income, including the right  
21 to receive common expense assessments, but only to the  
22 extent section -105(e) expressly so provides;

1       (16)   Exercise any other powers conferred by the declaration  
2           or bylaws;

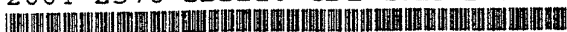
3       (17)   Exercise all other powers that may be exercised in  
4           this State by legal entities of the same type as the  
5           association, except to the extent inconsistent with  
6           this chapter;

7       (18)   Exercise any other powers necessary and proper for the  
8           governance and operation of the association; and

9       (19)   By regulation, subject to sections     -146,     -161,  
10           and     -162, require that disputes between the board  
11           and unit owners or between two or more unit owners  
12           regarding the condominium be submitted to nonbinding  
13           alternative dispute resolution in the manner described  
14           in the regulation as a prerequisite to commencement of  
15           a judicial proceeding.

16       (b)   If a tenant of a unit owner violates the declaration,  
17   bylaws, or rules and regulations of the association, in addition  
18   to exercising any of its powers against the unit owner, the  
19   association may:

20       (1)   Exercise directly against the tenant the powers  
21           described in subsection (a)(11);



1           (2) After giving notice to the tenant and the unit owner  
2           and an opportunity to be heard, levy reasonable fines  
3           against the tenant for the violation, provided that a  
4           unit owner shall be responsible for the conduct of the  
5           owner's tenant and for any fines levied against the  
6           tenant or any legal fees incurred in enforcing the  
7           declaration, bylaws, or rules and regulations of the  
8           association against the tenant; and

9           (3) Enforce any other rights against the tenant for the  
10          violation which the unit owner as landlord could  
11          lawfully have exercised under the lease, including  
12          eviction, or which the association could lawfully have  
13          exercised directly against the unit owner, or both.

14          (c) The rights granted under subsection (b) (3) may only be  
15          exercised if the tenant or unit owner fails to cure the  
16          violation within ten days after the association notifies the  
17          tenant and unit owner of that violation; provided that no notice  
18          shall be required when the breach by the tenant causes or  
19          threatens to cause damage to any person or constitutes a  
20          violation of section 521-51(1) or 521-51(6).

21          (d) Unless a lease otherwise provides, this section does  
22          not:

(1) Affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) Permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations.

**§ -105 Association; limitations on powers.** (a) The declaration and bylaws may not impose limitations on the power of the association to deal with the developer which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(b) Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

(1) Prevent any use of a unit which violates the declaration or bylaws;

(2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or

(3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet



1           underwriting requirements of institutional lenders who  
2           regularly lend money secured by first mortgages on  
3           units in condominiums or regularly purchase those  
4           mortgages.

5   Otherwise, the association may not regulate any use of or  
6   behavior in units by means of the rules and regulations.

7           (c) No association shall deduct and apply portions of  
8   common expense payments received from a unit owner to unpaid  
9   late fees, legal fees, fines, and interest (other than amounts  
10   remitted by a unit in payment of late fees, legal fees, fines,  
11   and interest) unless the board adopts and distributes to all  
12   owners a policy stating that:

13           (1) Failure to pay late fees, legal fees, fines, and  
14           interest may result in the deduction of such late  
15           fees, legal fees, fines, and interest from future  
16           common expense payments, so long as a delinquency  
17           continues to exist; and

18           (2) Late fees may be imposed against any future common  
19           expense payment that is less than the full amount owed  
20           due to the deduction of unpaid late fees, legal fees,  
21           fines, and interest from the payment.

1 (d) No unit owner who requests legal or other information  
2 from the association, the board, the managing agent, or their  
3 employees or agents, shall be charged for the reasonable cost of  
4 providing the information unless the association notifies the  
5 unit owner that it intends to charge the unit owner for the  
6 reasonable cost. The association shall notify the unit owner in  
7 writing at least ten days prior to incurring the reasonable cost  
8 of providing the information, except that no prior notice shall  
9 be required to assess the reasonable cost of providing  
10 information on delinquent assessments or in connection with  
11 proceedings to enforce the law or the association's governing  
12 documents.

13 After being notified of the reasonable cost of providing  
14 the information, the unit owner may withdraw the request, in  
15 writing. A unit owner who withdraws a request for information  
16 shall not be charged for the reasonable cost of providing the  
17 information.

18 (e) Subject to any approval requirements and spending  
19 limits contained in the declaration or bylaws, the association  
20 may authorize the board to borrow money for the repair,  
21 replacement, maintenance, operation, or administration of the  
22 common elements and personal property of the project, or the





1 loyalty required of an officer or director of a corporation  
2 organized under chapter 414D.

3 (b) The board may not act on behalf of the association to  
4 amend the declaration or bylaws (sections -32(a)(11) and  
5 -108(b)(7)), to remove the condominium from the provisions of  
6 this chapter (section -47), or to elect members of the board  
7 or determine the qualifications, powers and duties, or terms of  
8 office of board members (subsection (e)); provided that nothing  
9 in this subsection shall be construed to prohibit board members  
10 from voting proxies (section -123) to elect members of the  
11 board; and provided further that the board may fill vacancies in  
12 its membership to serve until the next annual or special  
13 association meeting.

14 (c) Within thirty days after the adoption of any proposed  
15 budget for the condominium, the board shall make available a  
16 copy of the budget to all the unit owners and shall notify each  
17 unit owner that the unit owner may request a copy of the budget.

18 (d) The declaration may provide for a period of developer  
19 control of the association, during which a developer, or persons  
20 designated by the developer, may appoint and remove the officers  
21 and members of the board. Regardless of the period provided in



1 the declaration, a period of developer control terminates no  
2 later than the earlier of:

- 3 (1) Sixty days after conveyance of seventy-five per cent  
4 of the common interest appurtenant to units that may  
5 be created to unit owners other than a developer or  
6 affiliate of the developer;  
7 (2) Two years after the developer has ceased to offer  
8 units for sale in the ordinary course of business;  
9 (3) Two years after any right to add new units was last  
10 exercised; or  
11 (4) The day the developer, after giving written notice to  
12 unit owners, records an instrument voluntarily  
13 surrendering all rights to control activities of the  
14 association.

15 A developer may voluntarily surrender the right to appoint and  
16 remove officers and members of the board before termination of  
17 that period, but in that event the developer may require, for  
18 the duration of the period of developer control, that specified  
19 actions of the association or board, as described in a recorded  
20 instrument executed by the developer, be approved by the  
21 developer before they become effective.

1 (e) Not later than the termination of any period of  
2 developer control, the unit owners shall elect a board of at  
3 least three members; provided that condominiums created after  
4 May 17, 1984, with one hundred individual units, shall have an  
5 elected board of at least nine members unless at least  
6 sixty-seven per cent of all unit owners vote by mail ballot, or  
7 at a special or annual meeting, to reduce the number of  
8 directors; and provided further that condominiums with more than  
9 one hundred individual units where at least seventy-five per  
10 cent of the unit owners reside outside of the State may have an  
11 elected board of at least three members. The board shall elect  
12 the officers. Board members and officers shall take office upon  
13 election.

14 (f) At any regular or special meeting of the association,  
15 any member of the board may be removed and successors shall be  
16 elected for the remainder of the term to fill the vacancies thus  
17 created. The removal and replacement shall be in accordance  
18 with all applicable requirements and procedures in the bylaws  
19 for the removal and replacement of directors, including any  
20 provision relating to cumulative voting, and, if removal and  
21 replacement is to occur at a special meeting, section

22 -121(b) .



1           §   -107 Board; limitations. (a) Members of the board  
2 shall be unit owners or co-owners, vendees under an agreement of  
3 sale, a trustee or beneficiary of a trust which owns a unit, an  
4 officer of any corporate owner--including a limited liability  
5 corporation--of a unit, or a representative of any other legal  
6 entity which owns a unit. The partners in a general partnership  
7 and the general partners of a limited partnership or limited  
8 liability partnership shall be deemed to be the owners of a unit  
9 for the purpose of serving on the board. There shall not be  
10 more than one representative on the board from any one unit.

11           (b) No resident manager or employee of a condominium shall  
12 serve on its board.

13           (c) An owner shall not act as a director of an association  
14 and an employee of the managing agent retained by the  
15 association.

16           (d) Directors shall not expend association funds for their  
17 travel, directors' fees, and per diem, unless owners are  
18 informed and a majority approve of these expenses; provided  
19 that, with the approval of the board, directors may be  
20 reimbursed for actual expenditures incurred on behalf of the  
21 association. The minutes shall reflect in detail the items and  
22 amounts of the reimbursements.

1 (e) Associations at their own expense shall provide all  
2 board members with a current copy of the association's  
3 declaration, bylaws, house rules, and, annually, a copy of this  
4 chapter with amendments.

5 (f) The directors may expend association funds, which  
6 shall not be deemed to be compensation to the directors, to  
7 educate and train themselves in subject areas directly related  
8 to their duties and responsibilities as directors; provided that  
9 the approved annual operating budget shall include these  
10 expenses as separate line items. These expenses may include  
11 registration fees, books, videos, tapes, other educational  
12 materials, and economy travel expenses. Except for economy  
13 travel expenses within the State, all other travel expenses  
14 incurred under this subsection shall be subject to the  
15 requirements of subsection (d).

16 § -108 Bylaws. (a) A true copy of the bylaws shall be  
17 recorded in the same manner as the declaration. No amendment to  
18 the bylaws is valid unless the amendment is duly recorded.

19 (b) The bylaws shall provide for at least the following:

20 (1) The number of members of the board and the titles of  
21 the officers of the association;

- 1           (2) Election by the board of a president, treasurer,  
2           secretary, and any other officers of the association  
3           the bylaws specify;
- 4           (3) The qualifications, powers and duties, terms of  
5           office, and manner of electing and removing directors  
6           and officers and the filling of vacancies;
- 7           (4) Designation of the powers the board or officers may  
8           delegate to other persons or to a managing agent;
- 9           (5) Designation of the officers who may prepare, execute,  
10          certify, and record amendments to the declaration on  
11          behalf of the association;
- 12          (6) The compensation, if any, of the directors;
- 13          (7) Subject to subsection (d), a method for amending the  
14          bylaws; and
- 15          (8) The percentage, consistent with this chapter, that is  
16          required to adopt decisions binding on all unit  
17          owners; provided that votes allocated to lobby areas,  
18          swimming pools, recreation areas, saunas, storage  
19          areas, hallways, trash chutes, laundry chutes, and  
20          other similar common areas not located inside units  
21          shall not be cast at any association meeting,  
22          regardless of their designation in the declaration.

1 (c) The bylaws may provide for staggering the terms of  
2 directors by dividing the total number of directors into groups.  
3 The terms of office of the several groups need not be uniform.

4 (d) Subject to the provisions of the declaration, the  
5 bylaws may provide for any other matters the association deems  
6 necessary and appropriate.

7 (e) The bylaws may be amended at any time by the vote or  
8 written consent of at least sixty-seven per cent of all unit  
9 owners. Any proposed bylaws together with the detailed  
10 rationale for the proposal may be submitted by the board or by a  
11 volunteer unit owners group. If submitted by that group, the  
12 proposal shall be accompanied by a petition signed by not less  
13 than twenty-five per cent of the unit owners as shown in the  
14 association's record of ownership. The proposed bylaws,  
15 rationale, and ballots for voting on any proposed bylaw shall be  
16 mailed by the board to the owners at the expense of the  
17 association for vote or written consent without change within  
18 thirty days of the receipt of the petition by the board. The  
19 vote or written consent, to be valid, must be obtained within  
20 three hundred sixty-five days after mailing for a proposed bylaw  
21 submitted by either the board or a volunteer unit owners group.  
22 If the bylaw is duly adopted, the board shall cause the bylaw

1 amendment to be recorded. The volunteer unit owners group shall  
2 be precluded from submitting a petition for a proposed bylaw  
3 that is substantially similar to that which has been previously  
4 mailed to the owners within three hundred sixty-five days after  
5 the original petition was submitted to the board.

6 This subsection shall not preclude any unit owner or  
7 volunteer unit owners group from proposing any bylaw amendment  
8 at any annual association meeting.

9 § -109 Restatement of declaration and bylaws. (a)

10 Notwithstanding any other provision of this chapter or of any  
11 other statute or instrument, an association at any time may  
12 restate the declaration or bylaws of the association to set  
13 forth all amendments thereto by a resolution adopted by the  
14 board.

15 (b) Subject to section -23, an association at any time  
16 may restate the declaration or bylaws of the association to  
17 amend the declaration or bylaws as may be required in order to  
18 conform with the provisions of this chapter or of any other  
19 statute, ordinance, or rule enacted by any governmental  
20 authority, by a resolution adopted by the board. The restated  
21 declaration or bylaws shall be as fully effective for all



1 purposes as if adopted by a vote or written consent of the unit  
2 owners.

3 Any declaration or bylaws restated pursuant to this  
4 subsection shall:

5 (1) Identify each portion so restated;

6           (2)    Contain a statement that those portions have been  
7                restated solely for purposes of information and  
8                convenience;

9           (3) Identify the statute, ordinance, or rule implemented  
10           by the amendment; and

11           (4)    Contain a statement that, in the event of any  
12                    conflict, the restated declaration or bylaws shall be  
13                    subordinate to the cited statute, ordinance, or rule.

14           (c) Upon the adoption of a resolution pursuant to  
15 subsection (a) or (b), the restated declaration or bylaws shall  
16 set forth all of the operative provisions of the declaration or  
17 bylaws, as amended, together with a statement that the restated  
18 declaration or bylaws correctly sets forth without change the  
19 corresponding provisions of the declaration or bylaws, as  
20 amended, and that the restated declaration or bylaws supersede  
21 the original declaration or bylaws and all prior amendments  
22 thereto.

1 (d) The restated declaration or bylaws must be recorded  
2 and, upon recordation, shall supersede the original declaration  
3 or bylaws and all prior amendments thereto. In the event of any  
4 conflict, the restated declaration or bylaws shall be  
5 subordinate to the original declaration or bylaws and all prior  
6 amendments thereto.

7 § -110 Bylaws amendment permitted; mixed use property;  
8 representation on board. (a) The bylaws of an association may  
9 be amended to provide that the composition of the board reflect  
10 the proportionate number of units for a particular use, as set  
11 forth in the declaration. For example, an association may  
12 provide that for a nine-member board where two-thirds of the  
13 units are for residential use and one-third is for  
14 nonresidential use, sixty-six and two-thirds per cent of the  
15 nine-member board, or six members, shall be owners of  
16 residential use units and thirty-three and one-third per cent,  
17 or three members, shall be owners of nonresidential use units.

18 (b) Any proposed bylaw amendment to modify the composition  
19 of the board in accordance with subsection (a) may be initiated  
20 by:

21 (1) A majority vote of the board; or



(f) As permitted in the declaration or bylaws, the vote of a nonresidential unit owner shall be cast and counted only for the nonresidential seats available on the board and the vote of

1 a residential unit owner shall be cast and counted only for the  
2 residential seats available on the board.

3 (g) No petition for a bylaw amendment pursuant to  
4 subsection (b)(2) to modify the composition of the board shall  
5 be distributed to the unit owners within one year of the  
6 distribution of a prior petition to modify the composition of  
7 the board pursuant to subsection (b)(2).

8 (h) This section shall not preclude the removal and  
9 replacement of any one or more members of the board pursuant to  
10 section -106(f). Any removal and replacement shall not  
11 affect the proportionate composition of the board as prescribed  
12 in the bylaws as amended pursuant to this section.

13 § -111 Judicial power to excuse compliance with  
14 requirements of declaration or bylaws. (a) The circuit court  
15 of the judicial circuit in which a condominium is located may  
16 excuse compliance with any of the following provisions in a  
17 declaration or bylaws if it finds that the provision  
18 unreasonably interferes with the association's ability to manage  
19 the common property, administer the condominium property regime,  
20 or carry out any other function set forth in the declaration or  
21 bylaws, and that compliance is not necessary to protect the

1 legitimate interests of the members or lenders holding security  
2 interests:

3 (1) A provision limiting the amount of any assessment that  
4 can be levied against individually owned property;

5 (2) A provision requiring that an amendment to the  
6 declaration or bylaws be approved by lenders;

7 (3) A provision requiring approval of at least sixty-seven  
8 per cent of the common interest to adopt an amendment  
9 pursuant to section -32(a)(11) or section

10 -108(e); provided that the amendment does not:

11 (A) Prohibit or materially restrict the use or  
12 occupancy of, or behavior within, individually  
13 owned units;

14 (B) Change the basis for allocating voting rights or  
15 assessments among unit owners; or

16 (C) Apply to less than all of the unit owners;

17 (4) A requirement that an amendment to the declaration be  
18 signed by unit owners; or

19 (5) A quorum requirement for meetings of unit owners.

20 (b) The board, on behalf of the association, shall by  
21 certified mail provide all unit owners with notice of the date,

1 time, and place of any court hearing to be held pursuant to this  
2 section.

3 § -112 Condominium community mutual obligations. (a)  
4 All unit owners, tenants of owners, employees of owners and  
5 tenants, or any other persons that may in any manner use  
6 property or any part thereof submitted to this chapter are  
7 subject to this chapter and to the declaration and bylaws of the  
8 association adopted pursuant to this chapter.

9 (b) All agreements, decisions, and determinations lawfully  
10 made by the association in accordance with the voting  
11 percentages established in this chapter, the declaration, or the  
12 bylaws are binding on all unit owners.

13 (c) Each unit owner, tenants and employees of an owner,  
14 and other persons using the property shall comply strictly with  
15 the covenants, conditions, and restrictions set forth in the  
16 declaration, the bylaws, and the house rules adopted pursuant  
17 thereto. Failure to comply with any of the same shall be  
18 grounds for an action to recover sums due, for damages or  
19 injunctive relief, or both, maintainable by the managing agent,  
20 resident manager, or board on behalf of the association or, in a  
21 proper case, by an aggrieved unit owner.

22 B. GOVERNANCE - ELECTIONS AND MEETINGS

1           §   -121 Association meetings. (a) A meeting of the  
2 association shall be held at least once each year.

3           (b) Special meetings of the association may be called by  
4 the president, a majority of the board, or by a petition to the  
5 secretary or managing agent signed by not less than twenty-five  
6 per cent of the unit owners as shown in the association's record  
7 of ownership; provided that if the secretary or managing agent  
8 fails to send out the notices for the special meeting within  
9 fourteen days of receipt of the petition, the petitioners shall  
10 have the authority to set the time, date, and place for the  
11 special meeting and to send out the notices and proxies for the  
12 special meeting in accordance with the requirements of the  
13 bylaws and of this part.

14           (c) Not less than fourteen days in advance of any meeting,  
15 the secretary or other officer specified in the bylaws shall  
16 cause notice to be:

17           (1) Hand-delivered;

18           (2) Sent prepaid by United States mail to the mailing  
19 address of each unit or to any other mailing address  
20 designated in writing by the unit owner; or

(3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

(d) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. If so provided in the declaration or bylaws, meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion.

(e) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State.



1           §   -122   Association meetings; minutes.   (a)   Minutes of  
2   meetings of the association shall be approved at the next  
3   succeeding regular meeting or by the board, within sixty days  
4   after the meeting, if authorized by the owners at an annual  
5   meeting.   If approved by the board, owners shall be given a copy  
6   of the approved minutes or notified of the availability of the  
7   minutes within thirty days after approval.

8           (b)   Minutes of all meetings of the association shall be  
9   available within seven calendar days after approval, and  
10   unapproved final drafts of the minutes of a meeting shall be  
11   available within sixty days after the meeting.

12          (c)   An owner shall be allowed to offer corrections to the  
13   minutes at an association meeting.

14          §   -123   Association meetings; voting; proxies.   (a)   If  
15   only one of several owners of a unit is present at a meeting of  
16   the association, that owner is entitled to cast all the votes  
17   allocated to that unit.   If more than one of the owners is  
18   present, the votes allocated to that unit may be cast only in  
19   accordance with the agreement of a majority in interest of the  
20   owners, unless the declaration expressly provides otherwise.  
21   There is majority agreement if any one of the owners casts the  
22   votes allocated to that unit without protest being made by any



1 of the other owners of the unit to the person presiding over the  
2 meeting before the polls are closed.

3 (b) Votes allocated to a unit may be cast pursuant to a  
4 proxy duly executed by a unit owner. A unit owner may vote by  
5 mail or electronic transmission through a duly executed directed  
6 proxy. If a unit is owned by more than one person, each owner  
7 of the unit may vote or register protest to the casting of votes  
8 by the other owners of the unit through a duly executed proxy.  
9 A unit owner may revoke a proxy given pursuant to this section  
10 only by actual notice of revocation to the secretary of the  
11 association or the managing agent. A proxy is void if it  
12 purports to be revocable without notice.

13 (c) No votes allocated to a unit owned by the association  
14 may be cast for the election or reelection of directors.

15 (d) A proxy, to be valid, shall:

16 (1) Be delivered to the secretary of the association or  
17 the managing agent, if any, no later than 4:30 p.m. on  
18 the second business day prior to the date of the  
19 meeting to which it pertains;

20 (2) Contain at least the name of the association, the date  
21 of the meeting of the association, the printed names  
22 and signatures of the persons giving the proxy, the



1 unit numbers for which the proxy is given, the names  
2 of persons to whom the proxy is given, and the date  
3 that the proxy is given; and

4 (3) If it is a standard proxy form authorized by the  
5 association, contain boxes wherein the owner has  
6 indicated that the proxy is given:

7 (A) For quorum purposes only;

8 (B) To the individual whose name is printed on a line  
9 next to this box;

10 (C) To the board as a whole and that the vote is to  
11 be made on the basis of the preference of the  
12 majority of the directors present at the meeting;  
13 or

14 (D) To those directors present at the meeting with  
15 the vote to be shared with each director  
16 receiving an equal percentage.

17 The proxy form shall also contain a box wherein the  
18 owner may indicate that the owner wishes to obtain a  
19 copy of the annual audit report required by section  
20 -150.

21 (e) A proxy shall only be valid for the meeting to which  
22 the proxy pertains and its adjournments, may designate any



1 person as proxy, and may be limited as the unit owner desires  
2 and indicates; provided that no proxy shall be irrevocable  
3 unless coupled with a financial interest in the unit.

4 (f) A copy, facsimile telecommunication, or other reliable  
5 reproduction of a proxy may be used in lieu of the original  
6 proxy for any and all purposes for which the original proxy  
7 could be used; provided that any copy, facsimile  
8 telecommunication, or other reproduction shall be a complete  
9 reproduction of the entire original proxy.

(g) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

13 (h) With respect to the use of association funds to  
14 distribute proxies:

(1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection (d)(3), shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the board receives within seven days of the posted notice a request by any owner for use of association

1 funds to solicit proxies accompanied by a statement,  
2 the board shall mail to all owners either:

3 (A) A proxy form containing the names of all owners  
4 who have requested the use of association funds  
5 for soliciting proxies accompanied by their  
6 statements; or

7 (B) A proxy form containing no names, but accompanied  
8 by a list of names of all owners who have  
9 requested the use of association funds for  
10 soliciting proxies and their statements.

11 The statement, which shall be limited to black text on  
12 white paper, shall not exceed one single-sided  
13 8-1/2" x 11" page, indicating the owner's  
14 qualifications to serve on the board or reasons for  
15 wanting to receive proxies; and

16 (2) A board or member of the board may use association  
17 funds to solicit proxies as part of the distribution  
18 of proxies. If a member of the board, as an  
19 individual, seeks to solicit proxies using association  
20 funds, the board member shall proceed as a unit owner  
21 under paragraph (1).



1 (i) No managing agent or resident manager, or their  
2 employees, shall solicit, for use by the managing agent or  
3 resident manager, any proxies from any unit owner of the  
4 association that retains the managing agent or employs the  
5 resident manager, nor shall the managing agent or resident  
6 manager cast any proxy vote at any association meeting except  
7 for the purpose of establishing a quorum.

8 (j) No board shall adopt any rule prohibiting the  
9 solicitation of proxies or distribution of materials relating to  
10 association matters on the common elements by unit owners;  
11 provided that a board may adopt rules regulating reasonable  
12 time, place, and manner of the solicitations or distributions,  
13 or both.

14 § -124 Association meetings; purchaser's right to vote.  
15 The purchaser of a unit pursuant to a recorded agreement of sale  
16 shall have all the rights of a unit owner, including the right  
17 to vote; provided that the seller may retain the right to vote  
18 on matters substantially affecting the seller's security  
19 interest in the unit, including but not limited to, the right to  
20 vote on:

21 (1) Any partition of all or part of the project;



- (2) The nature and amount of any insurance covering the project and the disposition of any proceeds thereof;
- (3) The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith;
- (4) The payment of any amount in excess of insurance or condemnation proceeds;
- (5) The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project;
- (6) The special assessment of any expenses;
- (7) The acquisition of any unit in the project;
- (8) Any amendment to the declaration or bylaws;
- (9) Any removal of the project from the provisions of this chapter; and
- (10) Any other matter that would substantially affect the security interest of the seller.

§ -125 Board meetings. (a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board may participate in any deliberation or discussion, other



1 than executive sessions, unless a majority of a quorum of the  
2 board votes otherwise.

3 (b) The board, with the approval of a majority of a quorum  
4 of its members, may adjourn a meeting and reconvene in executive  
5 session to discuss and vote upon matters:

6 (1) Concerning personnel;

7 (2) Concerning litigation in which the association is or  
8 may become involved;

9 (3) Necessary to protect the attorney-client privilege of  
10 the association; or

11 (4) Necessary to protect the interests of the association  
12 while negotiating contracts, leases, and other  
13 commercial transactions.

14 The general nature of any business to be considered in executive  
15 session shall first be announced in open session.

16 (c) All board meetings shall be conducted in accordance  
17 with the most recent edition of Robert's Rules of Order Newly  
18 Revised. Unless otherwise provided in the declaration or  
19 bylaws, a board may permit any meeting to be conducted by any  
20 means of communication through which all directors participating  
21 may simultaneously hear each other during the meeting. A  
22 director participating in a meeting by this means is deemed to





1 be present in person at the meeting. If permitted by the board,  
2 any unit owner may participate in a meeting conducted by a means  
3 of communication through which all participants may  
4 simultaneously hear each other during the meeting, provided that  
5 the board may require that the unit owner pay for the costs  
6 associated with the participation.

7 (d) The board shall meet at least once a year. Notice of  
8 all board meetings shall be posted by the managing agent,  
9 resident manager, or a member of the board, in prominent  
10 locations within the project seventy-two hours prior to the  
11 meeting or simultaneously with notice to the board.

12 (e) A director shall not vote by proxy at board meetings.

13 (f) A director shall not vote at any board meeting on any  
14 issue in which the director has a conflict of interest. A  
15 director who has a conflict of interest on any issue before the  
16 board shall disclose the nature of the conflict of interest  
17 prior to a vote on that issue at the board meeting, and the  
18 minutes of the meeting shall record the fact that a disclosure  
19 was made.

20 "Conflict of interest", as used in this subsection, means  
21 an issue in which a director has a direct personal or pecuniary  
22 interest not common to other members of the association.

1       §   -126 Board meetings; minutes. (a) Minutes of  
2 meetings of the board shall include the recorded vote of each  
3 board member on all motions except motions voted on in executive  
4 session.

5       (b) Minutes of meetings of the board shall be approved no  
6 later than the second succeeding regular meeting.

7       (c) Minutes of all meetings of the board shall be  
8 available within seven calendar days after approval, and  
9 unapproved final drafts of the minutes of a meeting shall be  
10 available within sixty days after the meeting; provided that the  
11 minutes of any executive session may be withheld if their  
12 publication would defeat the lawful purpose of the executive  
13 session.

14                                   C. OPERATIONS

15       §   -131 Operation of the property. The operation of the  
16 property shall be governed by this chapter and the declaration  
17 and bylaws.

18       §   -132 Managing agents. (a) Every managing agent  
19 shall:

20       (1) Be a:

21               (A) Licensed real estate broker in compliance with  
22               chapter 467 and the rules of the commission.

1 With respect to any requirement for a corporate  
2 managing agent in any declaration or bylaws  
3 recorded before the effective date of this  
4 chapter, any managing agent organized as a  
5 limited liability company shall be deemed to be  
6 organized as a corporation for the purposes of  
7 this paragraph, unless the declaration or bylaws  
8 are expressly amended after the effective date of  
9 this chapter to require that the managing agent  
10 be organized as a corporation and not as a  
11 limited liability company; or

12 (B) Corporation authorized to do business under  
13 article 8 of chapter 412;

14 (2) Register with the commission prior to conducting  
15 managing agent activity through approval of a  
16 completed registration application, payment of fees,  
17 and submission of any other additional information set  
18 forth by the commission. The registration shall be  
19 for a biennial period with termination on December 31  
20 of an even-numbered year. The commission shall  
21 prescribe a deadline date prior to the termination  
22 date for the submission of a completed reregistration



1 application, payment of fees, and any other additional  
2 information set forth by the commission. Any managing  
3 agent who has not met the submission requirements by  
4 the deadline date shall be considered a new applicant  
5 for registration and subject to initial registration  
6 requirements. The information required to be  
7 submitted with any application shall include the name,  
8 business address, phone number, and names of  
9 associations managed;

- 10 (3) Obtain and keep current a fidelity bond in an amount  
11 equal to \$500 multiplied by the aggregate number of  
12 units of the association managed by the managing  
13 agent; provided that the amount of the fidelity bond  
14 shall not be less than \$20,000 nor greater than  
15 \$500,000. Upon request by the commission, the  
16 managing agent shall provide evidence of a current  
17 fidelity bond or a certification statement from an  
18 insurance company authorized by the insurance division  
19 of the department of commerce and consumer affairs  
20 certifying that the fidelity bond is in effect and  
21 meets the requirements of this section and the rules  
22 adopted by the commission. The managing agent shall

1 permit only employees covered by the fidelity bond to  
2 handle or have custody or control of any association  
3 funds, except any principals of the managing agent  
4 that cannot be covered by the fidelity bond. The  
5 fidelity bond shall protect the managing agent against  
6 the loss of any association's moneys, securities, or  
7 other properties caused by the fraudulent or dishonest  
8 acts of employees of the managing agent. Failure to  
9 obtain or maintain a fidelity bond in compliance with  
10 this chapter and the rules adopted pursuant thereto,  
11 including failure to provide evidence of the fidelity  
12 bond coverage in a timely manner to the commission,  
13 shall result in nonregistration or the automatic  
14 termination of the registration, unless an approved  
15 exemption or a bond alternative is presently  
16 maintained. A managing agent who is unable to obtain  
17 a fidelity bond may seek an exemption from the  
18 fidelity bond requirement from the commission;

- 19 (4) Act promptly and diligently to recover from the  
20 fidelity bond, if the fraud or dishonesty of the  
21 managing agent's employees causes a loss to an  
22 association, and apply the fidelity bond proceeds, if

1 any, to reduce the association's loss. If more than  
2 one association suffers a loss, the managing agent  
3 shall divide the proceeds among the associations in  
4 proportion to each association's loss. An association  
5 may request a court order requiring the managing agent  
6 to act promptly and diligently to recover from the  
7 fidelity bond. If an association cannot recover its  
8 loss from the fidelity bond proceeds of the managing  
9 agent, the association may recover by court order from  
10 the real estate recovery fund established under  
11 section 467-16, provided that:

- 12 (A) The loss is caused by the fraud,  
13 misrepresentation, or deceit of the managing  
14 agent or its employees;
- 15 (B) The managing agent is a licensed real estate  
16 broker; and
- 17 (C) The association fulfills the requirements of  
18 sections 467-16 and 467-18 and any applicable  
19 rules of the commission;

- 20 (5) Pay a nonrefundable application fee and, upon  
21 approval, an initial registration fee, and  
22 subsequently pay a reregistration fee, as prescribed

1 by rules adopted by the director of commerce and  
2 consumer affairs pursuant to chapter 91. A compliance  
3 resolution fee shall also be paid pursuant to section  
4 26-9(o) and the rules adopted pursuant thereto; and

5 (6) Report immediately in writing to the commission any  
6 changes to the information contained on the  
7 registration application or any other documents  
8 provided for registration. Failure to do so may  
9 result in termination of registration and subject the  
10 managing agent to initial registration requirements.

11 (b) The commission may deny any registration or  
12 reregistration application or terminate a registration without  
13 hearing if the fidelity bond and supporting documents fail to  
14 meet the requirements of this chapter and the rules adopted  
15 pursuant thereto.

16 (c) Every managing agent shall be considered a fiduciary  
17 with respect to any property managed by that managing agent.

18 (d) The registration requirements of this section shall  
19 not apply to active real estate brokers in compliance with and  
20 licensed under chapter 467.

21 (e) If a managing agent receives a request from the  
22 commission to distribute any commission-generated information,



1 printed material, or documents to the association, its board, or  
2 unit owners, the managing agent shall make the distribution  
3 within a reasonable period of time after receiving the request.  
4 The requirements of this subsection apply to all managing  
5 agents, including unregistered managing agents.

6       §   -133   Association employees; background check;  
7 prohibition. (a) The board, managing agent, or resident  
8 manager, upon the written authorization of an applicant for  
9 employment as a security guard or resident manager or for a  
10 position that would allow the employee access to the keys of or  
11 entry into the units in the condominium or access to association  
12 funds, may conduct a background check on the applicant or direct  
13 another responsible party to conduct the check. Before  
14 initiating or requesting a check, the board, managing agent, or  
15 resident manager shall first certify that the signature on the  
16 authorization is authentic and that the person is an applicant  
17 for such employment. The background check, at a minimum, shall  
18 require the applicant to disclose whether the applicant has been  
19 convicted in any jurisdiction of a crime which would tend to  
20 indicate that the applicant may be unsuited for employment as an  
21 association employee with access to association funds or the





1 keys of or entry into the units in the condominium, and the  
2 judgment of conviction has not been vacated.

3 For purposes of this section, the criminal history  
4 disclosure made by the applicant may be verified by the board,  
5 managing agent, resident manager, or other responsible party, if  
6 so directed by the board, managing agent, or resident manager,  
7 by means of information obtained through the Hawaii criminal  
8 justice data center. The applicant shall provide the Hawaii  
9 criminal justice data center with personal identifying  
10 information, which shall include, but not be limited to, the  
11 applicant's name, social security number, date of birth, and  
12 gender. This information shall be used only for the purpose of  
13 conducting the criminal history record check authorized by this  
14 section. Failure of an association, managing agent, or resident  
15 manager to conduct or verify or cause to have conducted or  
16 verified a background check shall not alone give rise to any  
17 private cause of action against an association, managing agent,  
18 or resident manager for acts and omissions of the employee  
19 hired.

20 (b) An association's employees shall not engage in selling  
21 or renting units in the condominium in which they are employed,



1 except association-owned units, unless such activity is approved  
2 by sixty-seven per cent of the unit owners.

3       § -134 Management and contracts; developer, managing  
4 agent, and association. (a) Any developer or affiliate of the  
5 developer or a managing agent, who manages the operation of the  
6 property from the date of recordation of the first unit  
7 conveyance until the organization of the association, shall  
8 comply with the requirements of sections -72, -103, and  
9 -149.

10       (b) The developer or affiliate of the developer, board,  
11 and managing agent shall ensure that there is a written contract  
12 for managing the operation of the property, expressing the  
13 agreements of all parties including, but not limited to,  
14 financial and accounting obligations, services provided, and any  
15 compensation arrangements, including any subsequent amendments.  
16 Copies of the executed contract and any amendments shall be  
17 provided to all parties to the contract. Prior to the  
18 organization of the association, any unit owner may request to  
19 inspect as well as receive a copy of the management contract  
20 from the entity that manages the operation of the property.



1           §   -135 Termination of contracts and leases of developer.

2   (a) If entered into before the board elected by the unit owners  
3 pursuant to section   -106(e) takes office:

4           (1) Any management contract, employment contract, or lease  
5 of recreational or parking areas or facilities;

6           (2) Any other contract or lease between the association  
7 and a developer or an affiliate of a developer; or

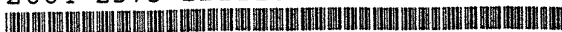
8           (3) Any contract or lease that is not bona fide or was  
9 unconscionable to the unit owners at the time entered  
10 into under the circumstances then prevailing;

11 may be terminated without penalty by the association within a  
12 period of one hundred eighty days after the board elected by the  
13 unit owners pursuant to section   -106(e) takes office, upon  
14 not less than ninety days notice to the other party.

15       (b) This section does not apply to:

16           (1) Any lease or other agreement the termination of which  
17 would terminate the condominium or reduce its size,  
18 unless the real estate subject to that lease was  
19 included in the condominium for the purpose of  
20 avoiding the right of the association to terminate a  
21 lease under this section; or

22           (2) A proprietary lease.



1       §   -136   Transfer of developer rights. (a) A developer  
2 right created or reserved under this chapter may be transferred  
3 only by a recorded instrument evidencing the transfer. The  
4 instrument is not effective unless executed by the transferee.

5       (b) Upon transfer of any developer right, the liability of  
6 a transferor developer is as follows:

7       (1) A transferor is not relieved of any obligation or  
8 liability arising before the transfer, and remains  
9 liable for warranty obligations imposed upon the  
10 transferor by this chapter, if any. Lack of privity  
11 does not deprive any unit owner of standing to  
12 maintain an action to enforce any obligation of the  
13 transferor;

14       (2) If a successor to any developer right is an affiliate  
15 of a developer, the transferor is jointly and  
16 severally liable with the successor for any  
17 obligations or liabilities of the successor relating  
18 to the condominium;

19       (3) If a transferor retains any developer rights, but  
20 transfers other developer rights to a successor who is  
21 not an affiliate of the developer, the transferor is  
22 liable for any obligations or liabilities imposed on a

1 developer by this chapter or by the declaration  
2 relating to the retained developer rights and arising  
3 after the transfer; and

4 (4) A transferor has no liability for any act or omission  
5 or any breach of a contractual or warranty obligation  
6 arising from the exercise of a developer right by a  
7 successor developer who is not an affiliate of the  
8 transferor.

9 (c) Unless otherwise provided in a mortgage instrument or  
10 other agreement creating a security interest, in case of  
11 foreclosure of a security interest, sale by a trustee under an  
12 agreement creating a security interest, tax sale, judicial sale,  
13 or sale under bankruptcy code or receivership proceedings, of  
14 any units owned by a developer or real estate in a condominium  
15 subject to development rights, a person acquiring title to all  
16 the property being foreclosed or sold, but only upon request,  
17 succeeds to all developer rights related to that property held  
18 by that developer. The judgment or instrument conveying title  
19 must provide for the transfer of only the developer rights  
20 requested.

21 (d) Upon foreclosure of a security interest, sale by a  
22 trustee under an agreement creating a security interest, tax



1 sale, judicial sale, or sale under bankruptcy code or  
2 receivership proceedings, of all interests in a condominium  
3 owned by a developer:

4           (1) The developer ceases to have any developer rights; and

5 (2) The period of developer control under section

6 -106(d) terminates unless the judgment or

7 instrument conveying title provides for transfer of

8 all developer rights held by that developer to a

9 successor developer.

10 (e) The liabilities and obligations of a person who

11 succeeds to developer rights are as follows:

12 (1) A successor to any developer right who is an affiliate

13 of a developer is subject to all obligations and

14 liabilities imposed on the transferor by this chapter

15 or by the declaration;

16 (2) A successor to any developer right, other than a

17 successor described in paragraph (3) or (4) or a

18           successor who is an affiliate of a developer, is

19 subject to the obligations and liabilities imposed by

20           this chapter or the declaration:

21 (A) On a developer which relate to the successor's

22 exercise or nonexercise of developer rights; or



(B) On the transferor, other than:

(i) Misrepresentations by any previous  
developer;

(ii) Warranty obligations on improvements made by  
any previous developer, or made before the  
condominium was created;

(iii) Breach of any fiduciary obligation by any  
previous developer or the developer's  
appointees to the board; or

(iv) Any liability or obligation imposed on the  
transferor as a result of the transferor's  
acts or omissions after the transfer;

(3) A successor to only a right reserved in the  
declaration to maintain models, sales offices, and  
signs, and who may not exercise any other developer  
right, is not subject to any liability or obligation  
as a developer, except the obligation to provide a  
public report, any liability arising as a result  
thereof, and the obligations under part IV; and

(4) A successor to all developer rights held by a  
transferor who succeeded to those rights pursuant to a  
deed or other instrument of conveyance in lieu of



foreclosure or a judgment or instrument conveying title under subsection (c), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all developer rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the board in accordance with section -106(d) for the duration of any period of developer control, and any attempted exercise of those rights is void. So long as a successor developer may not exercise developer rights under this subsection, the successor developer is not subject to any liability or obligation as a developer other than liability for the developer's acts and omissions under section -106(d).

(f) Nothing in this section subjects any successor to a developer right to any claims against or other obligations of a



1 transferor developer, other than claims and obligations arising  
2 under this chapter or the declaration.

3       § -137 Upkeep of condominium. (a) Except to the extent  
4 provided by the declaration or bylaws, the association is  
5 responsible for the operation of the property, and each unit  
6 owner is responsible for maintenance, repair, and replacement of  
7 the owner's unit. Each unit owner shall afford to the  
8 association and the other unit owners, and to their agents or  
9 employees, during reasonable hours, access through the owner's  
10 unit reasonably necessary for those purposes. If damage is  
11 inflicted on the common elements or on any unit through which  
12 access is taken, the unit owner responsible for the damage, or  
13 the association, if it is responsible, is liable for the prompt  
14 repair thereof; provided that the association shall not be  
15 responsible to pay the costs of removing any finished surfaces  
16 or other barriers that impede its ability to maintain and repair  
17 the common elements.

18       (b) The association shall have the irrevocable right, to  
19 be exercised by the board, to have access to each unit at any  
20 time as may be necessary for making emergency repairs to prevent  
21 damage to the common elements or to another unit or units.



1           §    -138   Upkeep of condominium; high-risk components.   (a)

2   The board, after notice to all unit owners and an opportunity  
3   for owner comment, may determine that certain portions of the  
4   units, or certain objects or appliances within the units such as  
5   washing machine hoses and water heaters, pose a particular risk  
6   of damage to other units or the common elements if they are not  
7   properly inspected, maintained, repaired, or replaced by owners.  
8   Those items determined by the board to pose a particular risk  
9   are "high-risk components" for the purposes of this section.

10           (b)   With regard to items designated as high-risk  
11   components, the board may require any or all of the following:

12           (1)   Inspection:

13                   (A)   At specified intervals; or

14                   (B)   Upon replacement or repair by the association or  
15                           by inspectors designated by the association;

16           (2)   Replacement or repair at specified intervals whether  
17                   or not the component is deteriorated or defective; and

18           (3)   Replacement or repair:

19                   (A)   Meeting particular standards or specifications  
20                           established by the board;

21                   (B)   Including additional components or installations  
22                           specified by the board; or

1           (C) Using contractors with specific licensing,  
2                   training, or certification approved by the board.

3           (c) The imposition of requirements by the board under  
4 subsection (b) shall not relieve unit owners of obligations  
5 regarding high-risk components as set forth in the declaration  
6 or bylaws including, without limitation, the obligation to  
7 maintain, repair, and replace the components.

8           (d) If a unit owner fails to follow requirements imposed  
9 by the board pursuant to this section, the association, after  
10 reasonable notice, shall enter the unit to perform the  
11 requirements with regard to such high-risk components at the  
12 sole cost and expense of the unit owner, which costs and  
13 expenses shall be a lien on the unit as provided in section  
14 -146. Nothing in this section shall be deemed to limit the  
15 remedies of the association for damages, or injunctive relief,  
16 or both.

17       § -139 Upkeep of condominium; disposition of unclaimed  
18 possessions. (a) When personalty in or on the common elements  
19 of a project has been abandoned, the board may sell the  
20 personalty in a commercially reasonable manner, store the  
21 personalty at the expense of its owner, donate the personalty to  
22 a charitable organization, or otherwise dispose of the

1   personalty in its sole discretion; provided that no sale,  
2   storage, or donation shall occur until sixty days after the  
3   board complies with the following:

4       (1)   The board notifies the owner in writing of:

5           (A)   The identity and location of the personalty; and

6           (B)   The board's intent to so sell, store, donate, or  
7               dispose of the personalty.

8       Notification shall be by certified mail, return  
9       receipt requested, to the owner's address as shown by  
10      the records of the association or to an address  
11      designated by the owner for the purpose of  
12      notification or, if neither of these is available, to  
13      the owner's last known address, if any; or

14      (2)   If the identity or address of the owner is unknown,  
15      the board shall first advertise the sale, donation, or  
16      disposition at least once in a daily paper of general  
17      circulation within the circuit in which the personalty  
18      is located.

19      (b)   The proceeds of any sale or disposition of personalty  
20      under subsection (a), after deduction of any accrued costs of  
21      mailing, advertising, storage, and sale, shall be held for the

1 owner for thirty days. Any proceeds not claimed within this  
2 period shall become the property of the association.

3 § -140 Additions to and alterations of condominium. (a)

4 No unit owner shall do any work that may jeopardize the  
5 soundness or safety of the property, reduce the value thereof,  
6 or impair any easement, as reasonably determined by the board.

7 (b) Subject to the provisions of the declaration, no unit  
8 owner may make or allow any material addition or alteration, or  
9 excavate an additional basement or cellar, without first  
10 obtaining the written consent of sixty-seven per cent of the  
11 unit owners, the consent of all unit owners whose units or  
12 appurtenant limited common elements are directly affected, and  
13 the approval of the board, which shall not unreasonably withhold  
14 such approval. The declaration may limit the board's ability to  
15 approve or condition a proposed addition or alteration; provided  
16 that the board shall always have the right to disapprove a  
17 proposed addition or alteration that the board reasonably  
18 determines could jeopardize the soundness or safety of the  
19 property, impair any easement, or interfere with or deprive any  
20 nonconsenting owner of the use or enjoyment of any part of the  
21 property.

1 (c) Subject to the provisions of the declaration,  
2 nonmaterial additions to or alterations of the common elements  
3 or units, including, without limitation, the installation of  
4 solar energy devices, or additions to or alterations of a unit  
5 made within the unit or within a limited common element  
6 appurtenant to and for the exclusive use of the unit, shall  
7 require approval only by the board, which shall not unreasonably  
8 withhold such approval, and such percentage, number, or group of  
9 unit owners as may be required by the declaration or bylaws.

10 "Nonmaterial additions and alterations", as used in this  
11 subsection, means an addition to or alteration of the common  
12 elements or a unit that does not jeopardize the soundness or  
13 safety of the property, reduce the value thereof, impair any  
14 easement, detract from the appearance of the project, interfere  
15 with or deprive any nonconsenting owner of the use or enjoyment  
16 of any part of property, or directly affect any nonconsenting  
17 owner.

18 "Solar energy device", for purposes of this subsection,  
19 means any new identifiable facility, equipment, apparatus, or  
20 the like which makes use of solar energy for heating, cooling,  
21 or reducing the use of other types of energy dependent upon  
22 fossil fuel for its generation; provided that if the equipment

1 sold cannot be used as a solar device without its incorporation  
2 with other equipment, it shall be installed in place and be  
3 ready to be made operational in order to qualify as a "solar  
4 energy device".

5 (d) Notwithstanding any other provisions to the contrary  
6 in this chapter or in any declaration or bylaws:

7 (1) Regarding the installment of telecommunications  
8 equipment:

9 (A) The board shall have the authority to install or  
10 cause the installation of antennas, conduits,  
11 chases, cables, wires, and other television  
12 signal distribution and telecommunications  
13 equipment upon the common elements of the  
14 project; provided that the same shall not be  
15 installed upon any limited common element without  
16 the consent of the owner or owners of the unit or  
17 units for the use of which the limited common  
18 element is reserved; and

19 (B) The installation of antennas, conduits, chases,  
20 cables, wires, and other television signal  
21 distribution and telecommunications equipment  
22 upon the common elements by the board shall not

1 be deemed to alter, impair, or diminish the  
2 common interest, common elements, and easements  
3 appurtenant to each unit, or to be a structural  
4 alteration or addition to any building  
5 constituting a material change in the plans of  
6 the project filed in accordance with sections  
7 -33 and -34; provided that no such  
8 installation shall directly affect any  
9 nonconsenting unit owner; and

10 (2) Regarding the abandonment of telecommunications  
11 equipment:

12 (A) The board shall be authorized to abandon or  
13 change the use of any television signal  
14 distribution and telecommunications equipment due  
15 to technological or economic obsolescence or to  
16 provide an equivalent function by different means  
17 or methods; and

18 (B) The abandonment or change of use of any  
19 television signal distribution or  
20 telecommunications equipment by the board due to  
21 technological or economic obsolescence or to  
22 provide an equivalent function by different means



1 or methods shall not be deemed to alter, impair,  
2 or diminish the common interest, common elements,  
3 and easements appurtenant to each unit or to be a  
4 structural alteration or addition to any building  
5 constituting a material change in the plans of  
6 the project filed in accordance with sections  
7 -33 and -34.

8 As used in this subsection:

9 "Directly affect" means the installation of television  
10 signal distribution and telecommunications equipment in a manner  
11 which would specially, personally, and adversely affect a unit  
12 owner in a manner not common to the unit owners as a whole.

13 "Television signal distribution" and "telecommunications  
14 equipment" shall be construed in their broadest possible senses  
15 in order to encompass all present and future forms of  
16 communications technology.

17 § -141 Tort and contract liability; tolling of  
18 limitation period. (a) A unit owner is not liable, solely by  
19 reason of being a unit owner, for any injury or damage arising  
20 out of the condition or use of the common elements. Neither the  
21 association nor any unit owner except the developer is liable  
22 for that developer's torts in connection with any part of the

1 condominium that that developer has the responsibility to  
2 maintain.

3 (b) An action alleging a wrong done by the association,  
4 including an action arising out of the condition or use of the  
5 common elements, may be maintained only against the association  
6 and not against any unit owner. If the wrong occurred during  
7 any period of developer control and the association gives the  
8 developer reasonable notice of and an opportunity to defend  
9 against the action, the developer who then controlled the  
10 association is liable to the association or to any unit owner  
11 for:

- 12 (1) All tort losses not covered by insurance suffered by  
13 the association or that unit owner; and  
14 (2) All costs that the association would not have incurred  
15 but for a breach of contract or other wrongful act or  
16 omission, as the same may be established through  
17 adjudication.

18 Whenever the developer is liable to the association under this  
19 section, the developer is also liable for all expenses of  
20 litigation, including reasonable attorneys' fees, incurred by  
21 the association.

1 (c) Any statute of limitation affecting the association's  
2 right of action against a developer under this chapter is tolled  
3 until the period of developer control terminates. A unit owner  
4 is not precluded from maintaining an action contemplated by this  
5 section because the unit owner is a unit owner or a member or  
6 officer of the association. Liens resulting from judgments  
7 against the association are governed by section -147.

8 § -142 Aging in place; limitation on liability. (a)

9 The association, its directors, unit owners, and their agents  
10 and tenants, acting through the board, shall not have any legal  
11 responsibility or legal liability, with respect to any actions  
12 and recommendations the board takes on any report, observation,  
13 or complaint made, or with respect to any recommendation or  
14 referral given, which relates to an elderly unit owner who, may  
15 require services and assistance to maintain independent living  
16 in the unit in which the elderly unit owner resides so that the  
17 elderly unit owner will not pose any harm to self or to others,  
18 and will not be disruptive to the condominium community because  
19 of the following problems of aging and aging in place:

20 (1) The inability to clean and maintain an independent

21 unit;

22 (2) Mental confusion;



1 (3) Abusing others;

2 (4) Inability to care for oneself;

3 (5) Inability to arrange for home care;

4 (6) Loneliness and neglect; or

5 (7) Inappropriate requests of others for assistance.

6 For purposes of this section, "elderly" means age sixty-two and  
7 older.

8 (b) Upon a report, observation, or complaint relating to  
9 an elderly unit owner aging or aging in place which notes a  
10 problem similar in nature to the problems enumerated in  
11 subsection (a), the board, in good faith, and without legal  
12 responsibility or liability, may request a functional assessment  
13 regarding the condition of an elderly unit owner as well as  
14 recommendations for the services which the elderly unit owner  
15 may require to maintain a level of independence that enables the  
16 owner to avoid any harm to self or to others, and to avoid  
17 disruption to the condominium community. The board, upon  
18 request or unilaterally, and without legal responsibility or  
19 liability, may recommend available services to an elderly unit  
20 owner which might enable the elderly unit owner to maintain a  
21 level of independent living with assistance, enabling in turn,

1 the elderly unit owner to avoid any harm to self or others, and  
2 to avoid disruption to the condominium community.

3 (c) There is no affirmative duty on the part of the  
4 association, its board, the unit owners, or their agents or  
5 tenants to request or require an assessment and recommendations  
6 with respect to an elderly unit owner when the elderly unit  
7 owner may be experiencing the problems related to aging and  
8 aging in place enumerated in subsection (a). The association,  
9 its board, unit owners, and their agents and tenants shall not  
10 be legally responsible or liable for not requesting or declining  
11 to request a functional assessment of, and recommendations for,  
12 an elderly unit owner regarding problems relating to aging and  
13 aging in place.

14 (d) If an elderly unit owner ignores or rejects a request  
15 for or the results from an assessment and recommendations, the  
16 association, with no liability for cross-claims or  
17 counterclaims, may file appropriate information, pleadings,  
18 notices, or the like, with appropriate agencies or courts to  
19 seek an appropriate resolution for the condominium community and  
20 for the elderly unit owner.



1 (e) Costs and fees for assessments, recommendations, and  
2 actions contemplated in this section shall be as set forth in  
3 the declaration or bylaws.

4 (f) This section shall not be applicable to any  
5 condominium that seeks to become licensed as an assisted living  
6 facility pursuant to chapter 90, title 11, Hawaii Administrative  
7 Rules, as amended.

8 § -143 Insurance. (a) Unless otherwise provided in the  
9 declaration or bylaws, and to the extent reasonably available,  
10 the association shall purchase and at all times maintain the  
11 following:

12 (1) Property insurance:

13 (A) On the common elements;

14 (B) Providing coverage for special form causes of  
15 loss; and

16 (C) In a total amount of not less than the full  
17 insurable replacement cost of the insured  
18 property, less deductibles, but including  
19 coverage for the increased costs of construction  
20 due to building code requirements, at the time  
21 the insurance is purchased and at each renewal  
22 date;



(2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the board, insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer shall be included as an additional insured in its capacity as a unit owner, managing agent or resident manager, board member, or officer. The unit owners shall be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(3) A fidelity bond, as follows:

(A) An association with more than five dwelling units shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds

1 of the association, in an amount equal to \$500  
2 multiplied by the number of units; provided that  
3 the amount of the fidelity bond required by this  
4 paragraph shall not be less than \$20,000 nor  
5 greater than \$200,000;

6 (B) All management companies that are responsible for  
7 the funds held or administered by the association  
8 shall be covered by a fidelity bond as provided  
9 in section -132(a)(3). The association shall  
10 have standing to make a loss claim against the  
11 bond of the managing agent as a party covered  
12 under the bond; and

13 (C) The board shall obtain directors and officers  
14 liability coverage at a level deemed reasonable  
15 by the board, if not otherwise established by the  
16 declaration or bylaws. Directors and officers  
17 liability coverage shall extend to all contracts  
18 and other actions taken by the board in their  
19 official capacity as directors and officers, but  
20 shall exclude actions for which the directors are  
21 not entitled to indemnification under chapter  
22 414D or the declaration and bylaws.



1 (b) If a building contains attached units, the insurance  
2 maintained under subsection (a)(1), to the extent reasonably  
3 available, shall include the units, the limited common elements,  
4 except as otherwise determined by the board, and the common  
5 elements. The insurance need not cover improvements and  
6 betterments to the units installed by unit owners, but if  
7 improvements and betterments are covered, any increased cost may  
8 be assessed by the association against the units affected.

9 For the purposes of this section, "improvements and  
10 betterments" means all decorating, fixtures, and furnishings  
11 installed or added to and located within the boundaries of the  
12 unit, including electrical fixtures, appliances, air  
13 conditioning and heating equipment, water heaters, or built-in  
14 cabinets installed by unit owners.

15 (c) If a project contains detached units, then  
16 notwithstanding the requirement that associations obtain the  
17 requisite coverage, the insurance to be maintained under  
18 subsection (a)(1) may be obtained separately for each unit by  
19 the unit owners; provided that the requirements of subsection  
20 (a)(1) shall be met; and provided further that evidence of such  
21 insurance coverage shall be delivered annually to the

1 association. In such event, the association shall be named as  
2 an additional insured.

3 (d) The board, in the case of a claim for damage to a unit  
4 or the common elements, may:

5 (1) Pay the deductible amount as a common expense;

6 (2) After notice and an opportunity for a hearing, assess  
7 the deductible amount against the owners who caused  
8 the damage or from whose units the damage or cause of  
9 loss originated; or

10 (3) Require the unit owners of the units affected to pay  
11 the deductible amount.

12 (e) The declaration or bylaws may require the association  
13 to carry any other insurance, including workers' compensation,  
14 employment practices, environmental hazards, and equipment  
15 breakdown, that the board considers appropriate to protect the  
16 association, the unit owners, or officers, directors, or agents  
17 of the association. Flood insurance shall also be maintained if  
18 the property is located in a special flood hazard area as  
19 delineated on flood maps issued by the Federal Emergency  
20 Management Agency. The flood insurance policy shall comply with  
21 the requirements of the National Flood Insurance Program and the  
22 Federal Insurance Administration.



1 (f) Insurance policies carried pursuant to subsections (a)  
2 and (b) shall include each of the following provisions:

3 (1) Each unit owner and secured party is an insured person  
4 under the policy with respect to liability arising out  
5 of the unit owner's interest in the common elements or  
6 membership in the association;

7 (2) The insurer waives its right to subrogation under the  
8 policy against any unit owner of the condominium or  
9 members of the unit owner's household and against the  
10 association and members of the board; and

11 (3) The unit owner waives the unit owner's right to  
12 subrogation under the association policy against the  
13 association and the board.

14 (g) If at the time of a loss under the policy there is  
15 other insurance in the name of a unit owner covering the same  
16 property covered by the policy, the association's policy shall  
17 be the primary insurance.

18 (h) Any loss covered by the property policy under  
19 subsection (a) (1) shall be adjusted by and with the association.  
20 The insurance proceeds for that loss shall be payable to the  
21 association, or to an insurance trustee designated by the  
22 association for that purpose. The insurance trustee or the

1 association shall hold any insurance proceeds in trust for unit  
2 owners and secured parties as their interests may appear. The  
3 proceeds shall be disbursed first for the repair or restoration  
4 of the damaged common elements, the bare walls, ceilings, and  
5 floors of the units, and then to any improvements and  
6 betterments the association may insure. Unit owners shall not  
7 be entitled to receive any portion of the proceeds unless there  
8 is a surplus of proceeds after the common elements and units  
9 have been completely repaired or restored or the association has  
10 been terminated as trustee.

11 (i) The board, under the declaration or bylaws, may  
12 require unit owners to obtain reasonable levels of insurance  
13 covering their personal liability and compensatory but not  
14 consequential damages to another unit caused by the negligence  
15 of the owner or the owner's guests, tenants, or invitees, or  
16 regardless of any negligence originating from the unit. The  
17 personal liability of a unit owner shall include the deductible  
18 of the owner whose unit was damaged, any damage not covered by  
19 insurance required by this subsection, as well as the  
20 decorating, painting, wall and floor coverings, trim,  
21 appliances, equipment, and other furnishings.

1        If the unit owner does not purchase or produce evidence of  
2        insurance requested by the board, the directors may, in good  
3        faith, purchase the insurance coverage and charge the reasonable  
4        premium cost back to the unit owner. In no event is the board  
5        liable to any person either with regard to its decision not to  
6        purchase the insurance, or with regard to the timing of its  
7        purchase of the insurance or the amounts or types of coverages  
8        obtained.

9        (j) Contractors and vendors, except public utilities doing  
10       business with an association, shall provide certificates of  
11       insurance naming the association, its board, and its managing  
12       agent as additional insured parties.

13       (k) The provisions of this section may be varied or waived  
14       in the case of a condominium community in which all units are  
15       restricted to nonresidential use.

16       (l) Any insurer defending a liability claim against an  
17       association shall notify the association of the terms of the  
18       settlement no less than ten days before settling the claim. The  
19       association may not veto the settlement unless otherwise  
20       provided by contract or statute.

21       §    -144 Association fiscal matters; assessments for  
22       common expenses. (a) Except as provided in section    -41,

1 until the association makes a common expense assessment, the  
2 developer shall pay all common expenses. After an assessment  
3 has been made by the association, assessments shall be made at  
4 least annually, based on a budget adopted and distributed or  
5 made available to unit owners at least annually by the board.

6 (b) Except for assessments under subsections (c), (d), and  
7 (e), all common expenses shall be assessed against all the units  
8 in accordance with the allocations under section -41. Any  
9 past due common expense assessment or installment thereof shall  
10 bear interest at the rate established by the association,  
11 provided that the rate shall not exceed eighteen per cent per  
12 year.

13 (c) Assessments to pay a judgment against the association  
14 under section -147(a) may be made only against the units in  
15 the condominium at the time the judgment was entered, in  
16 proportion to their common expense allocations under section  
17 -41.

18 (d) If any common expense is caused by the misconduct of  
19 any unit owner, the association may assess that expense  
20 exclusively against such owner's unit.

21 (e) If common expense liabilities are reallocated, common  
22 expense assessments and any installment thereof not yet due

(f) In the case of a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantor or grantee is, however, entitled to a statement from the board, either directly or through its managing agent or resident manager, setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty-day period immediately preceding the date of such statement, the grantee is not liable for, nor is the unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

(g) No unit owner may exempt the unit owner from liability for the unit owner's contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit owner's unit. Subject to such terms

1 and conditions as may be specified in the bylaws, any unit  
2 owner, by conveying the unit owner's unit and common interest to  
3 the board on behalf of all other unit owners, may exempt the  
4 unit owner's self from common expenses thereafter accruing.

5 (h) The board, either directly or through its managing  
6 agent or resident manager, shall notify the unit owners in  
7 writing of maintenance fee increases at least thirty days prior  
8 to such an increase.

9 § -145 Association fiscal matters; collection of unpaid  
10 assessments from tenants. (a) If the owner of a unit rents or  
11 leases the unit and is in default for thirty days or more in the  
12 payment of the unit's share of the common expenses, the board,  
13 for as long as the default continues, may demand in writing and  
14 receive each month from any tenant occupying the unit, an amount  
15 sufficient to pay all sums due from the unit owner to the  
16 association, including interest, if any, but the amount shall  
17 not exceed the tenant's rent due each month. The tenant's  
18 payment under this section shall discharge that amount of  
19 payment from the tenant's rent obligation, and any contractual  
20 provision to the contrary shall be void as a matter of law.





1           (3) The tenant is served with a court order directing  
2           payment to a third party.

3           (f) In the event of any conflict between this section and  
4 any provision of chapter 521, the conflict shall be resolved in  
5 favor of this section; provided that if the tenant is entitled  
6 to an offset of rent under chapter 521, the tenant may deduct  
7 the offset from the amount due to the association, up to the  
8 limits stated in chapter 521. Nothing herein precludes the unit  
9 owner or tenant from seeking equitable relief from a court of  
10 competent jurisdiction or seeking a judicial determination of  
11 the amount owed.

12          (g) Before the board may take the actions permitted under  
13 subsection (a), the board shall adopt a written policy providing  
14 for the actions and have the policy approved by a majority vote  
15 of the unit owners at an annual or special meeting of the  
16 association or by the written consent of a majority of the unit  
17 owners.

18          § -146 Association fiscal matters; lien for assessments.

19          (a) All sums assessed by the association but unpaid for the  
20 share of the common expenses chargeable to any unit shall  
21 constitute a lien on the unit with priority over all other  
22 liens, except:

1           (1)   Liens for taxes and assessments lawfully imposed by  
2                   governmental authority against the unit; and

3           (2)   All sums unpaid on any mortgage of record that was  
4                   recorded prior to the recordation of a notice of a  
5                   lien by the association, and costs and expenses  
6                   including attorneys' fees provided in such mortgages.

7   The lien of the association may be foreclosed by action or by  
8   nonjudicial or power of sale foreclosure procedures set forth in  
9   chapter 667, by the managing agent or board, acting on behalf of  
10   the association, in like manner as a mortgage of real property.  
11   In any such foreclosure, the unit owner shall be required to pay  
12   a reasonable rental for the unit, if so provided in the bylaws,  
13   and the plaintiff in the foreclosure shall be entitled to the  
14   appointment of a receiver to collect the rental owed.   The  
15   managing agent or board, acting on behalf of the association,  
16   unless prohibited by the declaration, may bid on the unit at  
17   foreclosure sale, and acquire and hold, lease, mortgage, and  
18   convey the unit.   Action to recover a money judgment for unpaid  
19   common expenses shall be maintainable without foreclosing or  
20   waiving the lien securing the unpaid common expenses owed.

21           (b)   Except as provided in subsection (g), when the  
22   mortgagee of a mortgage of record or other purchaser of a unit

1 obtains title to the unit as a result of foreclosure of the  
2 mortgage, the acquirer of title and the acquirer's successors  
3 and assigns shall not be liable for the share of the common  
4 expenses or assessments by the association chargeable to the  
5 unit which became due prior to the acquisition of title to the  
6 unit by the acquirer. The unpaid share of common expenses or  
7 assessments shall be deemed to be common expenses collectible  
8 from all of the unit owners, including the acquirer and the  
9 acquirer's successors and assigns. The mortgagee of record or  
10 other purchaser of the unit shall be deemed to acquire title and  
11 shall be required to pay the unit's share of common expenses and  
12 assessments beginning:

- 13 (1) Thirty-six days after the order confirming the sale to  
14 the purchaser has been filed with the court;  
15 (2) Sixty days after the hearing at which the court grants  
16 the motion to confirm the sale to the purchaser;  
17 (3) Thirty days after the public sale in a nonjudicial  
18 power of sale foreclosure pursuant to section 667-5;  
19 or  
20 (4) Upon the recording of the instrument of conveyance;  
21 whichever occurs first; provided that the mortgagee of record or  
22 other purchaser of the unit shall not be deemed to acquire title

1 under paragraph (1), (2), or (3), if transfer of title is  
2 delayed past the thirty-six days specified in paragraph (1), the  
3 sixty days specified in paragraph (2), or the thirty days  
4 specified in paragraph (3), when a person who appears at the  
5 hearing on the motion or a party to the foreclosure action  
6 requests reconsideration of the motion or order to confirm sale,  
7 objects to the form of the proposed order to confirm sale,  
8 appeals the decision of the court to grant the motion to confirm  
9 sale, or the debtor or mortgagor declares bankruptcy or is  
10 involuntarily placed into bankruptcy. In any such case, the  
11 mortgagee of record or other purchaser of the unit shall be  
12 deemed to acquire title upon recordation of the instrument of  
13 conveyance.

14 (c) No unit owner shall withhold any assessment claimed by  
15 the association. A unit owner who disputes the amount of an  
16 assessment may request a written statement clearly indicating:

- 17 (1) The amount of common expenses included in the  
18 assessment, including the due date of each amount  
19 claimed;
- 20 (2) The amount of any penalty, late fee, lien filing fee,  
21 and any other charge included in the assessment;

(3) The amount of attorneys' fees and costs, if any,  
included in the assessment;

(4) That under Hawaii law, a unit owner has no right to  
withhold assessments for any reason;

(5) That a unit owner has a right to demand mediation or  
arbitration to resolve disputes about the amount or  
validity of an association's assessment, provided the  
unit owner immediately pays the assessment in full and  
keeps assessments current; and

(6) That payment in full of the assessment does not  
prevent the owner from contesting the assessment or  
receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to  
the protection of all fair debt collection procedures mandated  
under federal and state law.

(d) A unit owner who pays an association the full amount  
claimed by the association may file in small claims court or  
require the association to mediate to resolve any disputes  
concerning the amount or validity of the association's claim.

If the unit owner and the association are unable to resolve the  
dispute through mediation, either party may file for arbitration  
under section -162; provided that a unit owner may only file



1 for arbitration if all amounts claimed by the association are  
2 paid in full on or before the date of filing. If the unit owner  
3 fails to keep all association assessments current during the  
4 arbitration, the association may ask the arbitrator to  
5 temporarily suspend the arbitration proceedings. If the unit  
6 owner pays all association assessments within thirty days of the  
7 date of suspension, the unit owner may ask the arbitrator to  
8 recommence the arbitration proceedings. If the owner fails to  
9 pay all association assessments by the end of the thirty-day  
10 period, the association may ask the arbitrator to dismiss the  
11 arbitration proceedings. The unit owner shall be entitled to a  
12 refund of any amounts paid to the association which are not  
13 owed.

14 (e) In conjunction with or as an alternative to  
15 foreclosure proceedings under subsection (a), where a unit is  
16 owner-occupied, the association may authorize its managing agent  
17 or board to, after sixty days' written notice to the unit owner  
18 and to the unit's first mortgagee of the nonpayment of the  
19 unit's share of the common expenses, terminate the delinquent  
20 unit's access to the common elements and cease supplying a  
21 delinquent unit with any and all services normally supplied or  
22 paid for by the association. Any terminated services and

1 privileges shall be restored upon payment of all delinquent  
2 assessments but need not be restored until payment in full is  
3 received.

4 (f) Before the board or managing agent may take the  
5 actions permitted under subsection (e), the board shall adopt a  
6 written policy providing for such actions and have the policy  
7 approved by a majority vote of the unit owners at an annual or  
8 special meeting of the association or by the written consent of  
9 a majority of the unit owners.

10 (g) Subject to this subsection, and subsections (h) and  
11 (i), the board may specially assess the amount of the unpaid  
12 regular monthly common assessments for common expenses against a  
13 person who, in a judicial or nonjudicial power of sale  
14 foreclosure, purchases a delinquent unit; provided that:

15 (1) A purchaser who holds a mortgage on a delinquent unit  
16 that was recorded prior to the filing of a notice of  
17 lien by the association and who acquires the  
18 delinquent unit through a judicial or nonjudicial  
19 foreclosure proceeding, including purchasing the  
20 delinquent unit at a foreclosure auction, shall not be  
21 obligated to make, nor be liable for, payment of the



1 special assessment as provided for under this  
2 subsection; and

3 (2) A person who subsequently purchases the delinquent  
4 unit from the mortgagee referred to in paragraph (1)  
5 shall be obligated to make, and shall be liable for,  
6 payment of the special assessment provided for under  
7 this subsection; and provided further that the  
8 mortgagee or subsequent purchaser may require the  
9 association to provide at no charge a notice of the  
10 association's intent to claim lien against the  
11 delinquent unit for the amount of the special  
12 assessment, prior to the subsequent purchaser's  
13 acquisition of title to the delinquent unit. The  
14 notice shall state the amount of the special  
15 assessment, how that amount was calculated, and the  
16 legal description of the unit.

17 (h) The amount of the special assessment assessed under  
18 subsection (g) shall not exceed the total amount of unpaid  
19 regular monthly common assessments that were assessed during the  
20 six months immediately preceding the completion of the judicial  
21 or nonjudicial power of sale foreclosure. In no event shall the  
22 amount of the special assessment exceed the sum of \$1,800.

1 (i) For purposes of subsections (g) and (h), the following  
2 definitions shall apply, unless the context requires otherwise:

3 "Completion" means:

4 (1) In a nonjudicial power of sale foreclosure, when the  
5 affidavit required under section 667-5 is filed; and

6 (2) In a judicial foreclosure, when a purchaser is deemed  
7 to acquire title pursuant to subsection (b).

8 "Regular monthly common assessments" does not include:

9 (1) Any other special assessment, except for a special  
10 assessment imposed on all units as part of a budget  
11 adopted pursuant to section -148;

12 (2) Late charges, fines, or penalties;

13 (3) Interest assessed by the association;

14 (4) Any lien arising out of the assessment; or

15 (5) Any fees or costs related to the collection or  
16 enforcement of the assessment, including attorneys'  
17 fees and court costs.

18 (j) The cost of a release of any lien filed pursuant to  
19 this section shall be paid by the party requesting the release.

20 § -147 Association fiscal matters; other liens affecting  
21 the condominium. (a) Except as provided in subsection (b), a  
22 judgment for money against the association, if recorded, is not

1 a lien on the common elements, but is a lien in favor of the  
2 judgment lienholder against the common expense funds of the  
3 association. No other property of a unit owner is subject to  
4 the claims of creditors of the association.

5 (b) Whether perfected before or after the creation of the  
6 condominium, if a lien, other than a mortgage (including a  
7 judgment lien or lien attributable to work performed or  
8 materials supplied before creation of the condominium), becomes  
9 effective against two or more units, the unit owner of an  
10 affected unit may pay to the lienholder the amount of the lien  
11 attributable to the owner's unit, and the lienholder, upon  
12 receipt of payment, shall promptly deliver a release of the lien  
13 covering that unit. The amount of the payment shall be  
14 proportionate to the ratio which that unit owner's common  
15 expense liability bears to the common expense liabilities of all  
16 unit owners whose units are subject to the lien. After payment,  
17 the association may not assess or have a lien against that unit  
18 owner's unit for any portion of the common expenses incurred in  
19 connection with that lien.

20 (c) A judgment against the association shall be indexed in  
21 the name of the condominium and the association and, when so  
22 indexed, is notice of the lien against the units.

§ -148 Association fiscal matters; budgets and reserves.

(a) The budget required under section -144(a) shall include at least the following:

(1) The estimated revenues and operating expenses of the association;

(2) Information as to whether the budget has been prepared on a cash or accrual basis;

(3) The total replacement reserves of the association as of the date of the budget;

(4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;

(5) A general explanation of how the estimated replacement reserves are computed;

(6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and

(7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves

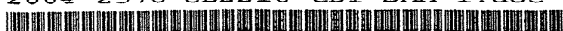
1 amount determined by the reserve study pursuant to  
2 paragraph (4).

3 (b) The association shall assess the unit owners to either  
4 fund a minimum of fifty per cent of the estimated replacement  
5 reserves or fund one hundred per cent of the estimated  
6 replacement reserves when using a cash flow plan; provided that  
7 a new association need not collect estimated replacement  
8 reserves until the fiscal year which begins after the  
9 association's first annual meeting. For each fiscal year, the  
10 association shall collect the amount assessed to fund the  
11 estimated replacement for that fiscal year reserves, as  
12 determined by the association's plan.

13 (c) The association shall compute the estimated  
14 replacement reserves by a formula that is based on the estimated  
15 life and the estimated capital expenditure or major maintenance  
16 required for each part of the property. The estimated  
17 replacement reserves shall include:

18 (1) Adjustments for revenues which will be received and  
19 expenditures which will be made before the beginning  
20 of the fiscal year to which the budget relates; and

21 (2) Separate, designated reserves for each part of the  
22 property for which capital expenditures or major



1 maintenance will exceed \$10,000. Parts of the  
2 property for which capital expenditures or major  
3 maintenance will not exceed \$10,000 may be aggregated  
4 in a single designated reserve.

5 (d) No association or unit owner, director, officer,  
6 managing agent, or employee of an association who makes a good  
7 faith effort to calculate the estimated replacement reserves for  
8 an association shall be liable if the estimate subsequently  
9 proves incorrect.

10 (e) Except in emergency situations or with the approval of  
11 a majority of the unit owners, a board may not exceed its total  
12 adopted annual operating budget by more than twenty per cent  
13 during the fiscal year to which the budget relates. Before  
14 imposing or collecting an assessment under this subsection that  
15 has not been approved by a majority of the unit owners, the  
16 board shall adopt a resolution containing written findings as to  
17 the necessity of the extraordinary expense involved and why the  
18 expense was not or could not have been reasonably foreseen in  
19 the budgeting process, and the resolution shall be distributed  
20 to the members with the notice of assessment.

21 (f) The requirements of this section shall override any  
22 requirements in an association's declaration, bylaws, or any

1 other association documents relating to preparation of budgets,  
2 calculation of reserve requirements, assessment and funding of  
3 reserves, and expenditures from reserves with the exception of:

- 4 (1) Any requirements in an association's declaration,  
5 bylaws, or any other association documents which  
6 require the association to collect more than fifty per  
7 cent of reserve requirements; or
- 8 (2) Any provisions relating to upgrading the common  
9 elements, such as additions, improvements, and  
10 alterations to the common elements.

11 (g) Subject to the procedures of section -157 and any  
12 rules adopted by the commission, any unit owner whose  
13 association board fails to comply with this section may enforce  
14 compliance by the board. In any proceeding to enforce  
15 compliance, a board that has not prepared an annual operating  
16 budget and reserve study shall have the burden of proving it has  
17 complied with this section.

18 (h) As used in this section:

19 "Capital expenditure" means an expense that results from  
20 the purchase or replacement of an asset whose life is greater  
21 than one year, or the addition of an asset that extends the life  
22 of an existing asset for a period greater than one year.

1 "Cash flow plan" means a minimum twenty-year projection of  
2 an association's future income and expense requirements to fund  
3 fully its replacement reserves requirements each year during  
4 that twenty-year period, except in an emergency; provided that  
5 it does not include a projection of special assessments or loans  
6 during that twenty-year period, except in an emergency.

7 "Emergency situation" means any extraordinary expenses:

8 (1) Required by an order of a court;

9 (2) Necessary to repair or maintain any part of the  
10 property for which the association is responsible  
11 where a threat to personal safety on the property is  
12 discovered;

13 (3) Necessary to repair any part of the property for which  
14 the association is responsible that could not have  
15 been reasonably foreseen by the board in preparing and  
16 distributing the annual operating budget;

17 (4) Necessary to respond to any legal or administrative  
18 proceeding brought against the association that could  
19 not have been reasonably foreseen by the board in  
20 preparing and distributing the annual operating  
21 budget; or



1           (5) Necessary for the association to obtain adequate  
2           insurance for the property which the association must  
3           insure.

4           "Major maintenance" means an expenditure for maintenance or  
5           repair that will result in extending the life of an asset for a  
6           period greater than one year.

7           "Replacement reserves" means funds for the upkeep, repair,  
8           or replacement of those parts of the property, including but not  
9           limited to roofs, walls, decks, paving, and equipment, that the  
10          association is obligated to maintain.

11          §   -149   Association fiscal matters; handling and  
12          disbursement of funds. (a) The funds in the general operating  
13          account of the association shall not be commingled with funds of  
14          other activities such as lease rent collections and rental  
15          operations, nor shall a managing agent commingle any association  
16          funds with the managing agent's own funds.

17          (b) For purposes of subsection (a), lease rent collections  
18          and rental operations shall not include the rental or leasing of  
19          common elements that is conducted on behalf of the association  
20          or the collection of ground lease rents from individual unit  
21          owners of a project and the payment of such ground lease rents  
22          to the ground lessor if:





(2) Held by a corporation authorized to do business under article 8 of chapter 412;

(3) Held by the United States Treasury; or

(4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation; provided that deposits and certificates of deposit shall not be purchased through a securities broker.

(d) All funds collected by an association, or by a managing agent for any association, shall be invested only in:

(1) Deposits, investment certificates, savings accounts, and certificates of deposit, of an institution as defined in subsection (c)(1);

(2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless

1 approved otherwise by a majority vote of the unit  
2 owners at an annual or special meeting of the  
3 association or by written consent of a majority of the  
4 unit owners; or

5 (3) Mutual funds comprised solely of investments in the  
6 obligations of the United States government, the State  
7 of Hawaii, or their respective agencies; provided that  
8 those obligations shall have stated maturity dates no  
9 more than ten years after the purchase date unless  
10 approved otherwise by a majority vote of the unit  
11 owners at an annual or special meeting of the  
12 association or by written consent of a majority of the  
13 unit owners;

14 provided that before any investment longer than one year is made  
15 by an association, the board must approve the action; and  
16 provided further that the board must clearly disclose to owners  
17 all investments longer than one year at each year's association  
18 annual meeting.

19 Records of the deposits and disbursements shall be  
20 disclosed to the commission upon request. All funds collected  
21 by an association shall only be disbursed by employees of the  
22 association under the supervision of the association's board.

1 All funds collected by a managing agent from an association  
2 shall be held in a client trust fund account and shall be  
3 disbursed only by the managing agent or the managing agent's  
4 employees under the supervision of the association's board.

5 (e) A managing agent or board shall not, by oral  
6 instructions over the telephone, transfer association funds  
7 between accounts, including but not limited to the general  
8 operating account and reserve fund account.

9 (f) A managing agent shall keep and disburse funds  
10 collected on behalf of the condominium owners in strict  
11 compliance with any agreement made with the condominium owners,  
12 chapter 467, the rules of the commission, and all other  
13 applicable laws.

14 (g) Any person who embezzles or knowingly misapplies  
15 association funds received by a managing agent or association  
16 shall be guilty of a class C felony.

17 § -150 Association fiscal matters; audits, audited  
18 financial statement. (a) The association shall require an  
19 annual audit of the association financial accounts and no less  
20 than one annual unannounced verification of the association's  
21 cash balance by a public accountant; provided that if the  
22 association is comprised of less than twenty units, the annual

1 audit and the annual unannounced cash balance verification may  
2 be waived by a majority vote of all unit owners taken at an  
3 association meeting.

4 (b) The board shall make available a copy of the annual  
5 audit to each unit owner at least thirty days prior to the  
6 annual meeting which follows the end of the fiscal year. The  
7 board shall not be required to submit a copy of the annual audit  
8 report to an owner if the proxy form issued pursuant to section  
9 -123(d) is not marked to indicate that the owner wishes to  
10 obtain a copy of the report. If the annual audit has not been  
11 completed by that date, the board shall make available:

12 (1) An unaudited year end financial statement for the  
13 fiscal year to each unit owner at least thirty days  
14 prior to the annual meeting; and

15 (2) The annual audit to all owners at the annual meeting,  
16 or as soon as the audit is completed, but not later  
17 than six months after the annual meeting.

18 (c) If the association's fiscal year ends less than two  
19 months prior to the convening of the annual meeting, the year-  
20 to-date unaudited financial statement may cover the period from  
21 the beginning of the association's fiscal year to the end of the



1 month preceding the date on which notice of the annual meeting  
2 is mailed.

3       §   -151 Association fiscal matters; lease rent  
4 renegotiation. (a) Notwithstanding any provision in the  
5 declaration or bylaws, any lease or sublease of the real estate  
6 or of a unit, or of an undivided interest in the real estate to  
7 a unit owner, whenever any lease or sublease of the real estate,  
8 a unit, or an undivided interest in the real estate to a unit  
9 owner provides for the periodic renegotiation of lease rent  
10 thereunder, the association shall represent the unit owners in  
11 all negotiations and proceedings, including but not limited to  
12 appraisal or arbitration, for the determination of lease rent;  
13 provided that the association's representation in the  
14 renegotiation of lease rent shall be on behalf of at least two  
15 lessees. All costs and expenses incurred in such representation  
16 shall be a common expense of the association.

17       (b) Notwithstanding subsection (a), if some, but not all  
18 of the unit owners have already purchased the leased fee  
19 interest appurtenant to their units at the time of  
20 renegotiation, all costs and expenses of the renegotiation shall  
21 be assessed to the remaining lessees in the same proportion that  
22 the common interest appurtenant to each lessee's unit bears to

1 the common interest appurtenant to all lessees' units. The  
2 unpaid amount of this assessment shall constitute a lien upon  
3 the lessee's unit, which may be collected in accordance with  
4 section -146 in the same manner as an unpaid common expense.

5 (c) In any project where the association is a lessor or  
6 sublessor, the association shall fulfill its obligations under  
7 this section by appointing independent counsel to represent the  
8 lessees in the negotiations and proceedings related to the rent  
9 renegotiation. The lessees' counsel shall act on behalf of the  
10 lessees in accordance with the vote or written consent of a  
11 majority of the lessees casting ballots or submitting written  
12 consents as determined by the ratio that the common interest  
13 appurtenant to each lessee's unit bears to the total common  
14 interest appurtenant to the units of participating lessees.  
15 Nothing in this subsection shall be interpreted to preclude the  
16 lessees from making a decision (by the vote or written consent  
17 of a majority of the lessees as described above) to retain other  
18 counsel or additional professional advisors as may be reasonably  
19 necessary or appropriate to complete the negotiations and  
20 proceedings. In the event of a deadlock among the lessees or  
21 other inability to proceed with the rent renegotiation on behalf  
22 of the lessees, the lessees' counsel may apply to the circuit





1 document, all public reports and any amendments thereto, shall  
2 be kept at the managing agent's office.

3 (b) The managing agent or board shall keep detailed,  
4 accurate records in chronological order, of the receipts and  
5 expenditures affecting the common elements, specifying and  
6 itemizing the maintenance and repair expenses of the common  
7 elements and any other expenses incurred. The managing agent or  
8 board shall also keep monthly statements indicating the total  
9 current delinquent dollar amount of any unpaid assessments for  
10 common expenses.

11 (c) Subject to section -152, all records and the  
12 vouchers authorizing the payments and statements shall be kept  
13 and maintained at the address of the project, or elsewhere  
14 within the State as determined by the board.

15 (d) The developer or affiliate of the developer, board,  
16 and managing agent shall ensure that there is a written contract  
17 for managing the operation of the property, expressing the  
18 agreements of all parties including but not limited to financial  
19 and accounting obligations, services provided, and any  
20 compensation arrangements, including any subsequent amendments.  
21 Copies of the executed contract and any amendments shall be  
22 provided to all parties to the contract.

1 (e) The managing agent or resident manager or board shall  
2 keep an accurate and current list of members of the association  
3 and their current addresses, and the names and addresses of the  
4 vendees under an agreement of sale, if any. The list shall be  
5 maintained at a place designated by the board, and a copy shall  
6 be available, at cost, to any member of the association as  
7 provided in the declaration or bylaws or rules and regulations  
8 or, in any case, to any member who furnishes to the managing  
9 agent or resident manager or the board a duly executed and  
10 acknowledged affidavit stating that the list:

11 (1) Will be used by such owner personally and only for the  
12 purpose of soliciting votes or proxies, or for  
13 providing information to other owners with respect to  
14 association matters; and

15 (2) Shall not be used by the owner or furnished to anyone  
16 else for any other purpose.

17 A board may prohibit commercial solicitations.

18 § -154 Association records; availability; disposal;  
19 prohibitions. (a) The association's most current financial  
20 statement and minutes of the board's meetings, once approved,  
21 shall be provided to any interested unit owner at no cost or on

1 twenty-four hour loan, at a convenient location designated by  
2 the board.

3 (b) Minutes of meetings of the board and the association  
4 for the current and prior year shall be available for  
5 examination by unit owners at convenient hours at a place  
6 designated by the board. A copy of meeting minutes shall be  
7 provided to any owner upon the owner's request provided that the  
8 owner pays a reasonable fee for duplication and postage.

9 (c) Financial statements, general ledgers, the accounts  
10 receivable ledger, accounts payable ledgers, check ledgers,  
11 insurance policies, contracts, and invoices of the association  
12 for the current and prior year and delinquencies of ninety days  
13 or more shall be available for examination by unit owners at  
14 convenient hours at a place designated by the board; provided  
15 that:

16 (1) The board may require owners to furnish to the  
17 association a duly executed and acknowledged affidavit  
18 stating that the information is requested in good  
19 faith for the protection of the interests of the  
20 association or its members or both; and

21 (2) Owners shall pay for administrative costs in excess of  
22 eight hours per year.

1 Copies of these items shall be provided to any owner upon  
2 the owner's request, provided that the owner pays a reasonable  
3 fee for duplicating, postage, stationery, and other  
4 administrative costs associated with handling the request.

5 (d) After any association meeting, and not earlier, unit  
6 owners shall be permitted to examine proxies, tally sheets,  
7 ballots, owners' check-in lists, and the certificate of  
8 election; provided that:

9 (1) Owners shall make a request to examine the documents  
10 within thirty days after the association meeting;

11 (2) The board may require owners to furnish to the  
12 association a duly executed and acknowledged affidavit  
13 stating that the information is requested in good  
14 faith for the protection of the interest of the  
15 association or its members or both; and

16 (3) Owners shall pay for administrative costs in excess of  
17 eight hours per year.

18 If there are no requests to examine proxies and ballots,  
19 the documents may be destroyed thirty days after the association  
20 meeting. If there are requests to examine proxies and ballots,  
21 the documents shall be kept for an additional sixty days, after  
22 which they may be destroyed. Copies of tally sheets, owners'

1 check-in lists, and the certificates of election from the most  
2 recent association meeting shall be provided to any owner upon  
3 the owner's request, provided that the owner pays a reasonable  
4 fee for duplicating, postage, stationery, and other  
5 administrative costs associated with handling the request.

6 (e) The managing agent shall provide copies of association  
7 records maintained pursuant to this section and sections -152  
8 and -153 to owners, prospective purchasers and their  
9 prospective agents during normal business hours, upon payment to  
10 the managing agent of a reasonable charge to defray any  
11 administrative or duplicating costs. If the project is not  
12 managed by a managing agent, the foregoing requirements shall be  
13 undertaken by a person or entity, if any, employed by the  
14 association, to whom this function is delegated.

(f) Prior to the organization of the association, any unit owner shall be entitled to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.

(g) Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.

1 (h) An association may comply with this part by making  
2 information available to unit owners, at the option of each unit  
3 owner, and at no cost, for downloading the information through  
4 an Internet site.

5 (i) A managing agent retained by one or more associations  
6 may dispose of the records of any association which are more  
7 than five years old, except for tax records, which shall be kept  
8 for seven years, without liability if the managing agent first  
9 provides the board of the association affected with written  
10 notice of the managing agent's intent to dispose of the records  
11 if not retrieved by the board within sixty days, which notice  
12 shall include an itemized list of the records proposed to be  
13 disposed.

14 (j) No person shall knowingly make any false certificate,  
15 entry, or memorandum upon any of the books or records of any  
16 managing agent or association. No person shall knowingly alter,  
17 destroy, mutilate, or conceal any books or records of a managing  
18 agent or association.

19 § -155 Association as trustee. With respect to a third  
20 person dealing with the association in the association's  
21 capacity as a trustee, the existence of trust powers and their  
22 proper exercise by the association may be assumed without



1 inquiry. A third person shall not be bound to inquire whether  
2 the association has power to act as trustee or is properly  
3 exercising trust powers. A third person, without actual  
4 knowledge that the association is exceeding or improperly  
5 exercising its powers, shall be fully protected in dealing with  
6 the association as if it possessed and properly exercised the  
7 powers it purports to exercise. A third person shall not be  
8 bound to assure the proper application of trust assets paid or  
9 delivered to the association in its capacity as trustee.

10           §     -156   Pets.   (a)   Any unit owner who keeps a pet in the  
11 owner's unit pursuant to a provision in the bylaws which allows  
12 owners to keep pets or in the absence of any provision in the  
13 bylaws to the contrary, upon the death of the animal, may  
14 replace the animal with another and continue to do so for as  
15 long as the owner continues to reside in the owner's unit or  
16 another unit subject to the same bylaws.

(b) Any unit owner who is keeping a pet pursuant to subsection (a), as of the effective date of an amendment to the bylaws which prohibits owners from keeping pets in their units, shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a).



(d) Whenever the bylaws do not prohibit unit owners from keeping animals as pets in their units, the bylaws shall not prohibit the tenants of the unit owners from keeping pets in the units rented or leased from the owners; provided that:

13           (2) A tenant keeps only those types of pets that may be  
14           kept by unit owners.

(e) Any amendments to the bylaws that provide for exceptions to pet restrictions or prohibitions for preexisting circumstances shall apply equally to unit owners and tenants.

(f) Nothing in this section shall prevent an association from immediately acting to remove vicious animals to protect persons or property.

§ -157 Attorneys' fees, delinquent assessments, and expenses of enforcement. (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

(1) Collecting any delinquent assessments against any owner's unit;

(2) Foreclosing any lien thereon; or

(3) Enforcing any provision of the declaration, bylaws, house rules, and this chapter, or the rules of the real estate commission;

against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to such person or persons by the association.

(b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board to enforce any provision of the declaration,

1 bylaws, house rules, or this chapter, then all reasonable and  
2 necessary expenses, costs, and attorneys' fees incurred by an  
3 owner shall be awarded to such owner; provided that no such  
4 award shall be made in any derivative action unless:

5 (1) The owner first shall have demanded and allowed  
6 reasonable time for the board to pursue such  
7 enforcement; or

8 (2) The owner demonstrates to the satisfaction of the  
9 court that a demand for enforcement made to the board  
10 would have been fruitless.

11 If any claim by an owner is not substantiated in any court  
12 action against an association, any of its officers or directors,  
13 or its board to enforce any provision of the declaration,  
14 bylaws, house rules, or this chapter, then all reasonable and  
15 necessary expenses, costs, and attorneys' fees incurred by an  
16 association shall be awarded to the association, unless before  
17 filing the action in court the owner has first submitted the  
18 claim to mediation, or to arbitration under subpart D, and made  
19 a good faith effort to resolve the dispute under any of those  
20 procedures.

21 D. ALTERNATIVE DISPUTE RESOLUTION

1       §   -161 Mediation. (a) At the request of any party to a  
2 dispute concerning or involving one or more unit owners and an  
3 association, its board, managing agent, or one or more other  
4 unit owners relating to the interpretation, application, or  
5 enforcement of this chapter or the association's declaration,  
6 bylaws, or house rules, the parties to the dispute shall be  
7 required to participate in mediation. Each party shall be  
8 wholly responsible for its own costs of participating in  
9 mediation, unless both parties agree that one party shall pay  
10 all or a specified portion of the mediation costs. If a party  
11 refuses to participate in the mediation of a particular dispute,  
12 a court may take this refusal into consideration when awarding  
13 expenses, costs, and attorneys' fees.

14       (b) Nothing in subsection (a) shall be interpreted to  
15 mandate the mediation of any dispute involving:

- 16       (1) Actions seeking equitable relief involving threatened  
17           property damage or the health or safety of association  
18           members or any other person;
- 19       (2) Actions to collect assessments;
- 20       (3) Personal injury claims; or
- 21       (4) Actions against an association, a board, or one or  
22           more directors, officers, agents, employees, or other

1 persons for amounts in excess of \$2,500 if insurance  
2 coverage under a policy of insurance procured by the  
3 association or its board would be unavailable for  
4 defense or judgment because mediation was pursued.

5 (c) If any mediation under this section is not completed  
6 within two months from commencement, no further mediation shall  
7 be required unless agreed to by the parties.

8 § -162 Arbitration. (a) At the request of any party,  
9 any dispute concerning or involving one or more unit owners and  
10 an association, its board, managing agent, or one or more other  
11 unit owners relating to the interpretation, application, or  
12 enforcement of this chapter or the association's declaration,  
13 bylaws, or house rules adopted in accordance with its bylaws  
14 shall be submitted to arbitration. The arbitration shall be  
15 conducted, unless otherwise agreed by the parties, in accordance  
16 with the rules adopted by the commission and of chapter 658A;  
17 provided that the rules of the arbitration service conducting  
18 the arbitration shall be used until the commission adopts its  
19 rules; provided further that where any arbitration rule  
20 conflicts with chapter 658A, chapter 658A shall prevail; and  
21 provided further that notwithstanding any rule to the contrary,  
22 the arbitrator shall conduct the proceedings in a manner which

1 affords substantial justice to all parties. The arbitrator  
2 shall be bound by rules of substantive law and shall not be  
3 bound by rules of evidence, whether or not set out by statute,  
4 except for provisions relating to privileged communications.  
5 The arbitrator shall permit discovery as provided for in the  
6 Hawaii rules of civil procedure; provided that the arbitrator  
7 may restrict the scope of such discovery for good cause to avoid  
8 excessive delay and costs to the parties or the arbitrator may  
9 refer any matter involving discovery to the circuit court for  
10 disposition in accordance with the Hawaii rules of civil  
11 procedure then in effect.

12 (b) Nothing in subsection (a) shall be interpreted to  
13 mandate the arbitration of any dispute involving:

- 14 (1) The real estate commission;  
15 (2) The mortgagee of a mortgage of record;  
16 (3) The developer, general contractor, subcontractors, or  
17 design professionals for the project; provided that  
18 when any person exempted by this paragraph is also a  
19 unit owner, a director, or managing agent, such person  
20 in those capacities, shall be subject to the  
21 provisions of subsection (a);

(4) Actions seeking equitable relief involving threatened property damage or the health or safety of unit owners or any other person;

(5) Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section -146 shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment;

(6) Personal injury claims;

(7) Actions for amounts in excess of \$2,500 against an association, a board, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association or its board would be unavailable because action by arbitration was pursued; or

(8) Any other cases which are determined, as provided in subsection (c), to be unsuitable for disposition by arbitration.

(c) At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to

1 the circuit court in the judicial circuit in which the  
2 condominium is located for a determination that the subject  
3 matter of the dispute is unsuitable for disposition by  
4 arbitration.

5 In determining whether the subject matter of a dispute is  
6 unsuitable for disposition by arbitration, a court may consider:

- 7 (1) The magnitude of the potential award, or any issue of  
8 broad public concern raised by the subject matter  
9 underlying the dispute;
- 10 (2) Problems referred to the court where court regulated  
11 discovery is necessary;
- 12 (3) The fact that the matter in dispute is a reasonable or  
13 necessary issue to be resolved in pending litigation  
14 and involves other matters not covered by or related  
15 to this chapter;
- 16 (4) The fact that the matter to be arbitrated is only part  
17 of a dispute involving other parties or issues which  
18 are not subject to arbitration under this section; and
- 19 (5) Any matters of dispute where disposition by  
20 arbitration, in the absence of complete judicial  
21 review, would not afford substantial justice to one or  
22 more of the parties.



1 Any such application to the circuit court shall be made and  
2 heard in a summary manner and in accordance with procedures for  
3 the making and hearing of motions. The prevailing party shall  
4 be awarded its attorneys' fees and costs in an amount not to  
5 exceed \$200.

6 (d) In the event of a dispute as to whether a claim shall  
7 be excluded from mandatory arbitration under subsection (b)(7),  
8 any party to an arbitration may file a complaint for declaratory  
9 relief against the involved insurer or insurers for a  
10 determination of whether insurance coverage is unavailable due  
11 to the pursuit of action by arbitration. The complaint shall be  
12 filed with the circuit court in the judicial circuit in which  
13 the condominium is located. The insurer or insurers shall file  
14 an answer to the complaint within twenty days of the date of  
15 service of the complaint and the issue shall be disposed of by  
16 the circuit court at a hearing to be held at the earliest  
17 available date; provided that the hearing shall not be held  
18 within twenty days from the date of service of the complaint  
19 upon the insurer or insurers.

20 (e) Notwithstanding any provision in this chapter to the  
21 contrary, the declaration, or the bylaws, the award of any  
22 costs, expenses, and legal fees by the arbitrator shall be in

1 the sole discretion of the arbitrator and the determination of  
2 costs, expenses, and legal fees shall be binding upon all  
3 parties.

4 (f) The award of the arbitrator shall be in writing and  
5 acknowledged or proved in like manner as a deed for the  
6 conveyance of real estate, and shall be served by the arbitrator  
7 on each of the parties to the arbitration, personally or by  
8 registered or certified mail. At any time within one year after  
9 the award is made and served, any party to the arbitration may  
10 apply to the circuit court of the judicial circuit in which the  
11 condominium is located for an order confirming the award. The  
12 court shall grant the order confirming the award pursuant to  
13 section 658A-22, unless the award is vacated, modified, or  
14 corrected, as provided in sections 658A-20, 658A-23, and  
15 658A-24, or a trial de novo is demanded under subsection (h), or  
16 the award is successfully appealed under subsection (h). The  
17 record shall be filed with the motion to confirm award, and  
18 notice of the motion shall be served upon each other party or  
19 their respective attorneys in the manner required for service of  
20 notice of a motion.

21 (g) Findings of fact and conclusions of law, as requested  
22 by any party prior to the arbitration hearing, shall be promptly

1 provided to the requesting party upon payment of the reasonable  
2 cost thereof.

3           (h) Any party to an arbitration under this section may  
4   apply to vacate, modify, or correct the arbitration award for  
5   the grounds set out in chapter 658A. All reasonable costs,  
6   expenses, and attorneys' fees on appeal shall be charged to the  
7   nonprevailing party.

8           §     -163 Trial de novo and appeal. (a) The submission of  
9 any dispute to an arbitration under section     -162 shall in no  
10 way limit or abridge the right of any party to a trial de novo.

(b) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ten days after service of the arbitration award upon all parties and the trial de novo shall be filed in circuit court within thirty days of the written demand. Failure to meet these deadlines shall preclude a party from demanding a trial de novo.

17 (c) The award of arbitration shall not be made known to  
18 the trier of fact at a trial de novo.

(d) In any trial de novo demanded under this section, if the party demanding a trial de novo does not prevail at trial, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial.

1 When there is more than one party on one or both sides of an  
2 action, or more than one issue in dispute, the court shall  
3 allocate its award of costs, expenses, and attorneys' fees among  
4 the prevailing parties and tax such fees against those  
5 nonprevailing parties who demanded a trial de novo in accordance  
6 with the principles of equity."

7 SECTION 3. Section 521-3, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "[+]§521-3[+] Supplementary general principles of law,  
10 other laws, applicable. (a) Unless displaced by the particular  
11 provisions of this chapter, the principles of law and equity,  
12 including the law relative to capacity to contract, principal  
13 and agent, real property, public health, safety and fire  
14 prevention, estoppel, fraud, misrepresentation, duress,  
15 coercion, mistake, bankruptcy, or other validating or  
16 invalidating cause supplement its provisions.

17 (b) Every legal right, remedy, and obligation arising out  
18 of a rental agreement not provided for in this chapter shall be  
19 regulated and determined under chapter 666, and in the case of  
20 conflict between any provision of this chapter and a provision  
21 of chapter 666, this chapter shall control.



1 plumbers, elevator mechanics licensing board, board of  
2 professional engineers, architects, surveyors, and landscape  
3 architects, board of massage therapy, board of medical  
4 examiners, motor vehicle industry licensing board, motor vehicle  
5 repair industry board, board of examiners in naturopathy, board  
6 of nursing, board of examiners in optometry, pest control board,  
7 board of pharmacy, board of physical therapy, board of  
8 psychology, board of private detectives and guards, real estate  
9 commission, board of veterinary examiners, board of speech  
10 pathology and audiology, and any board, commission, program, or  
11 entity created pursuant to or specified by statute in  
12 furtherance of the purpose of this section including but not  
13 limited to section 26H-4, or chapters 484, ~~[514A,]~~ \_\_\_\_\_, and  
14 514E shall be placed within the department of commerce and  
15 consumer affairs for administrative purposes."

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

18 "(o) Every person licensed under any chapter within the  
19 jurisdiction of the department of commerce and consumer affairs  
20 and every person licensed subject to chapter 485 or registered  
21 under chapter 467B shall pay upon issuance of a license, permit,  
22 certificate, or registration a fee and a subsequent annual fee

1 to be determined by the director and adjusted from time to time  
2 to ensure that the proceeds, together with all other fines,  
3 income, and penalties collected under this section, do not  
4 surpass the annual operating costs of conducting compliance  
5 resolution activities required under this section. The fees may  
6 be collected biennially or pursuant to rules adopted under  
7 chapter 91, and shall be deposited into the special fund  
8 established under this subsection. Every filing pursuant to  
9 chapter 514E or section 485-6(15) shall be assessed, upon  
10 initial filing and at each renewal period in which a renewal is  
11 required, a fee that shall be prescribed by rules adopted under  
12 chapter 91, and that shall be deposited into the special fund  
13 established under this subsection. Any unpaid fee shall be paid  
14 by the licensed person, upon application for renewal,  
15 restoration, reactivation, or reinstatement of a license, and by  
16 the person responsible for the renewal, restoration,  
17 reactivation, or reinstatement of a license, upon the  
18 application for renewal, restoration, reactivation, or  
19 reinstatement of the license. If the fees are not paid, the  
20 director may deny renewal, restoration, reactivation, or  
21 reinstatement of the license. The director may establish,

1 increase, decrease, or repeal the fees when necessary pursuant  
2 to rules adopted under chapter 91.

3       There is created in the state treasury a special fund to be  
4 known as the compliance resolution fund to be expended by the  
5 director's designated representatives as provided by this  
6 subsection. Notwithstanding any law to the contrary, all  
7 revenues, fees, and fines collected by the department shall be  
8 deposited into the compliance resolution fund. Unencumbered  
9 balances existing on June 30, 1999, in the cable television fund  
10 under chapter 440G, the division of consumer advocacy fund under  
11 chapter 269, the financial institution examiners' revolving  
12 fund, section 412:2-109, the special handling fund, section  
13 414-13, and unencumbered balances existing on June 30, 2002, in  
14 the insurance regulation fund, section 431:2-215, shall be  
15 deposited into the compliance resolution fund. This provision  
16 shall not apply to the drivers education fund underwriters fee,  
17 section 431:10C-115, insurance premium taxes and revenues,  
18 revenues of the workers' compensation special compensation fund,  
19 section 386-151, the captive insurance administrative fund,  
20 section 431:19-101.8, the insurance commissioner's education and  
21 training fund, section 431:2-214, the medical malpractice  
22 patients' compensation fund as administered under section 5 of



1 Act 232, Session Laws of Hawaii 1984, and fees collected for  
2 deposit in the office of consumer protection restitution fund,  
3 section 487-14, the real estate appraisers fund, section 466K-1,  
4 the real estate recovery fund, section 467-16, the real estate  
5 education fund, section 467-19, the contractors recovery fund,  
6 section 444-26, the contractors education fund, section 444-29,  
7 and the condominium [management] education trust fund, section  
8 [~~514A-131.~~] \_\_\_\_-71. Any law to the contrary notwithstanding,  
9 the director may use the moneys in the fund to employ, without  
10 regard to chapter 76, hearings officers, investigators,  
11 attorneys, accountants, and other necessary personnel to  
12 implement this subsection. Any law to the contrary  
13 notwithstanding, the moneys in the fund shall be used to fund  
14 the operations of the department. The moneys in the fund may be  
15 used to train personnel as the director deems necessary and for  
16 any other activity related to compliance resolution.

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

20 (1) Any licensee or applicant under any chapter subject to  
21 the jurisdiction of the department of commerce and  
22 consumer affairs has complied with that chapter;

(2) Any person subject to chapter 485 has complied with that chapter;

(3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);

(4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or

(5) Any person subject to chapter 467B has complied with that chapter;

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

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

SECTION 6. Section 237-16.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section:



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

6 "Lessee" means one who holds real property under lease, and  
7 includes a sublessee.

8 "Lessor" means one who conveys real property by lease, and  
9 includes a sublessor.

10 "Real property or space" means the area actually rented and  
11 used by the lessee, and includes common elements as defined in  
12 section [~~514A-3-~~] -3.

13 "Sublease" includes the rental of real property which is  
14 held under a lease and is made in a written document by which  
15 one conveys real property for a specified term and for a  
16 specified consideration. Sublease includes the written  
17 extension or renegotiation of a sublease and any holdover  
18 tenancy under the written sublease.

19 "Sublessee" means one who holds real property under a  
20 sublease.

21 "Sublessor" means one who conveys real property by  
22 sublease."

1       SECTION 7. Section 237-24.3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "§237-24.3 Additional amounts not taxable. In addition to  
4 the amounts not taxable under section 237-24, this chapter shall  
5 not apply to:

6       (1) Amounts received from the loading, transportation, and  
7 unloading of agricultural commodities shipped for a  
8 producer or produce dealer on one island of this State  
9 to a person, firm, or organization on another island  
10 of this State. The terms "agricultural commodity",  
11 "producer", and "produce dealer" shall be defined in  
12 the same manner as they are defined in section 147-1;  
13 provided that agricultural commodities need not have  
14 been produced in the State;

15       (2) Amounts received from sales of:

16       (A) Intoxicating liquor as the term "liquor" is  
17 defined in chapter 244D;

18       (B) Cigarettes and tobacco products as defined in  
19 chapter 245; and

20       (C) Agricultural, meat, or fish products;

21 to any person or common carrier in interstate or  
22 foreign commerce, or both, whether ocean-going or air,

(3) Amounts received by the manager or board of directors  
of:

(B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor thereto and existing pursuant to covenants running with the land,

(4) Amounts received or accrued from:

(B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and

1 (C) The transportation of pilots or governmental  
2 officials to ships, barges, or vessels offshore;  
3 rigging gear; checking freight and similar  
4 services; standby charges; and use of moorings  
5 and running mooring lines;

6 (5) Amounts received by an employee benefit plan by way of  
7 contributions, dividends, interest, and other income;  
8 and amounts received by a nonprofit organization or  
9 office, as payments for costs and expenses incurred  
10 for the administration of an employee benefit plan;  
11 provided that this exemption shall not apply to any  
12 gross rental income or gross rental proceeds received  
13 after June 30, 1994, as income from investments in  
14 real property in this State; and provided further that  
15 gross rental income or gross rental proceeds from  
16 investments in real property received by an employee  
17 benefit plan after June 30, 1994, under written  
18 contracts executed prior to July 1, 1994, shall not be  
19 taxed until the contracts are renegotiated, renewed,  
20 or extended, or until after December 31, 1998,  
21 whichever is earlier. For the purposes of this  
22 paragraph, "employee benefit plan" means any plan as

1 defined in section 1002(3) of title 29 of the United  
2 States Code, as amended;

3 (6) Amounts received for purchases made with United States  
4 Department of Agriculture food coupons under the  
5 federal food stamp program, and amounts received for  
6 purchases made with United States Department of  
7 Agriculture food vouchers under the Special  
8 Supplemental Foods Program for Women, Infants and  
9 Children;

10 (7) Amounts received by a hospital, infirmary, medical  
11 clinic, health care facility, pharmacy, or a  
12 practitioner licensed to administer the drug to an  
13 individual for selling prescription drugs or  
14 prosthetic devices to an individual; provided that  
15 this paragraph shall not apply to any amounts received  
16 for services provided in selling prescription drugs or  
17 prosthetic devices. As used in this paragraph:

18 (A) "Prescription drugs" are those drugs defined  
19 under section 328-1 and dispensed by filling or  
20 refilling a written or oral prescription by a  
21 practitioner licensed under law to administer the  
22 drug and sold by a licensed pharmacist under

1 section 328-16 or practitioners licensed to  
2 administer drugs; and

3 (B) "Prosthetic device" means any artificial device  
4 or appliance, instrument, apparatus, or  
5 contrivance, including their components, parts,  
6 accessories, and replacements thereof, used to  
7 replace a missing or surgically removed part of  
8 the human body, which is prescribed by a licensed  
9 practitioner of medicine, osteopathy, or podiatry  
10 and which is sold by the practitioner or which is  
11 dispensed and sold by a dealer of prosthetic  
12 devices; provided that "prosthetic device" shall  
13 not mean any auditory, ophthalmic, dental, or  
14 ocular device or appliance, instrument,  
15 apparatus, or contrivance;

16 (8) Taxes on transient accommodations imposed by chapter  
17 237D and passed on and collected by operators holding  
18 certificates of registration under that chapter;

19 (9) Amounts received as dues by an unincorporated  
20 merchants association from its membership for  
21 advertising media, promotional, and advertising costs  
22 for the promotion of the association for the benefit



1 of its members as a whole and not for the benefit of  
2 an individual member or group of members less than the  
3 entire membership;

4 (10) Amounts received by a labor organization for real  
5 property leased to:

6 (A) A labor organization; or

7 (B) A trust fund established by a labor organization  
8 for the benefit of its members, families, and  
9 dependents for medical or hospital care, pensions  
10 on retirement or death of employees,  
11 apprenticeship and training, and other membership  
12 service programs.

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

17 (11) Amounts received from foreign diplomats and consular  
18 officials who are holding cards issued or authorized  
19 by the United States Department of State granting them  
20 an exemption from state taxes; and

21 (12) Amounts received as rent for the rental or leasing of  
22 aircraft or aircraft engines used by the lessees or

renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102."

SECTION 8. Section 237D-1, Hawaii Revised Statutes, is amended by amending the definitions of "lease", "let", or "rental" and "transient accommodations" to read as follows:

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

"Transient accommodations" mean the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient for less than one hundred eighty consecutive days for each letting by a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter [514A.7],

1 cooperative apartment, or rooming house that provides living  
2 quarters, sleeping, or housekeeping accommodations, or other  
3 place in which lodgings are regularly furnished to transients  
4 for consideration."

SECTION 9. Section 302A-1312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

7           "(a) The department of accounting and general services, in  
8 consultation with the department of education, shall prepare a  
9 six-year program and financial plan for school repair and  
10 maintenance which shall be:

11 (1) Based on:

12 (A) Estimated preventive and scheduled maintenance  
13 costs;

14 (B) Budgeted recurring maintenance;

15 (C) Health and safety requirements; and

16 (D) Legal mandates;

17           (2)   Insofar as is practical, prepared in accordance with  
18           the principles and procedures contained in section

19 [514A-83.6;] -148; and

20           (3) Submitted initially to the legislature not less than  
21           thirty days prior to the convening of the 2002 regular  
22           session, with annual funding requirements for the

1 physical plant operations and maintenance account  
2 submitted not less than thirty days prior to the  
3 convening of the 2002 regular session and each regular  
4 session thereafter;  
5 provided that the governor may incorporate the six-year program  
6 and financial plan required by this subsection into the six-year  
7 program and financial plan required by section 37-69, if the  
8 plan required by this subsection is incorporated without  
9 reductions or restrictions."

10           SECTION 10. Section 378-2.5, Hawaii Revised Statutes, is  
11 amended by amending subsection (d) to read as follows:

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

- 1       (1)   The State or any of its branches, political  
2           subdivisions, or agencies pursuant to section 831-3.1  
3           and section 78-2.7;
- 4       (2)   The department of education pursuant to section  
5           302A-601.5;
- 6       (3)   The department of health with respect to employees,  
7           providers, or subcontractors in positions that place  
8           them in direct contact with clients when providing  
9           non-witnessed direct mental health services on behalf  
10          of the child and adolescent mental health division  
11          pursuant to section 321-171.5;
- 12      (4)   The judiciary pursuant to section 571-34;
- 13      (5)   The counties pursuant to section 846-2.7;
- 14      (6)   Armed security services pursuant to section 261-17(b);
- 15      (7)   Providers of a developmental disabilities domiciliary  
16          home pursuant to section 333F-22;
- 17      (8)   Private schools pursuant to section 378-3(8) and  
18          section 302C-1;
- 19      (9)   Financial institutions in which deposits are insured  
20          by a federal agency having jurisdiction over the  
21          financial institution pursuant to section 378-3(9);

1 (10) Detective agencies and security guard agencies  
2 pursuant to sections 463-6(b) and 463-8(b);  
3 (11) Employers in the business of insurance pursuant to  
4 section 431:2-201.3;  
5 (12) Employers of individuals or supervisors of individuals  
6 responsible for screening passengers or property under  
7 49 U.S.C. §44901 or individuals with unescorted access  
8 to an aircraft of an air carrier or foreign carrier or  
9 in a secured area of an airport in the United States  
10 pursuant to 49 U.S.C. §44936(a);  
11 (13) The department of human services pursuant to section  
12 352-5.5;  
13 (14) The public library system pursuant to section  
14 302A-601.5;  
15 (15) The department of public safety pursuant to section  
16 353C-5;  
17 (16) The board of directors of a cooperative housing  
18 corporation or the manager of a cooperative housing  
19 project pursuant to section 421I-12; and  
20 (17) The board of directors of an association of apartment  
21 owners, or the manager of a condominium project  
22 pursuant to section ~~[514A-82.1.]~~ -133."

SECTION 11. Section 414D-311, Hawaii Revised Statutes, is amended to read as follows:

" [f] §414D-311 [f] Superseding chapters. In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, [514A,] \_\_\_\_\_, or 514E, the provisions of chapter 421J, [514A,] \_\_\_\_\_, or 514E shall supersede and control the provisions of this chapter."

SECTION 12. Section 421I-9, Hawaii Revised Statutes, is amended to read as follows:

" [f] §421I-9 [f] Mediation and arbitration of disputes. At the request of any party, any dispute concerning or involving one or more shareholders and a corporation, its board of directors, managing agent, resident manager, or one or more other shareholders relating to the interpretation, application, or enforcement of this chapter or the corporation's articles of incorporation, bylaws, or rules adopted in accordance with its bylaws shall be submitted first to mediation. When all reasonable efforts for mediation have been made and the dispute is not settled either in conference between the parties or through mediation, the dispute shall be submitted to arbitration in the same manner and subject to the same requirements, to the

1 extent practicable, which now apply to condominium property  
2 regimes under ~~[part VII of chapter 514A.]~~ section -162."

3 SECTION 13. Section 467-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "hotel" to read as  
5 follows:

6 "Hotel" includes a structure or structures used primarily  
7 for the business of providing transient lodging for periods of  
8 less than thirty days and which furnishes customary hotel  
9 services including, but not limited to, front desk, restaurant,  
10 daily maid and linen service, bell service, or telephone  
11 switchboard; provided that for the purposes of this chapter,  
12 apartments in a project as defined by section ~~[514A-3]~~ -3  
13 that provide customary hotel services shall be excluded from the  
14 definition of hotel. The definition of hotel as set forth in  
15 this section shall be in addition to and supplement the  
16 definition of "hotel" as set forth in the various county  
17 ordinances."

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

20 "§467-14 Revocation, suspension, and fine. In addition to  
21 any other actions authorized by law, the commission may revoke  
22 any license issued under this chapter, suspend the right of the



1 licensee to use the license, fine any person holding a license,  
2 registration, or certificate issued under this chapter, or  
3 terminate any registration or certificate issued under this  
4 chapter, for any cause authorized by law, including but not  
5 limited to the following:

- 6 (1) Making any misrepresentation concerning any real  
7 estate transaction;
- 8 (2) Making any false promises concerning any real estate  
9 transaction of a character likely to mislead another;
- 10 (3) Pursuing a continued and flagrant course of  
11 misrepresentation, or making of false promises through  
12 advertising or otherwise;
- 13 (4) Without first having obtained the written consent to  
14 do so of both parties involved in any real estate  
15 transaction, acting for both the parties in connection  
16 with the transaction, or collecting or attempting to  
17 collect commissions or other compensation for the  
18 licensee's services from both of the parties;
- 19 (5) When the licensee, being a real estate salesperson,  
20 accepts any commission or other compensation for the  
21 performance of any of the acts enumerated in the  
22 definition set forth in section 467-1 of real estate

1 salesperson from any person other than the real estate  
2 salesperson's employer or the real estate broker with  
3 whom the real estate salesperson associates or, being  
4 a real estate broker or salesperson, compensates one  
5 not licensed under this chapter to perform any such  
6 act;

7 (6) When the licensee, being a real estate salesperson,  
8 acts or attempts to act as a real estate broker or  
9 represents, or attempts to represent, any real estate  
10 broker other than the real estate salesperson's  
11 employer or the real estate broker with whom the real  
12 estate salesperson is associated;

13 (7) Failing, within a reasonable time, to account for any  
14 moneys belonging to others which may be in the  
15 possession or under the control of the licensee;

16 (8) Any other conduct constituting fraudulent or dishonest  
17 dealings;

18 (9) When the licensee, being a partnership, permits any  
19 member of the partnership who does not hold a real  
20 estate broker's license to actively participate in the  
21 real estate brokerage business thereof or permits any  
22 employee thereof who does not hold a real estate

- 1 salesperson's license to act as a real estate  
2 salesperson therefor;
- 3 (10) When the licensee, being a corporation, permits any  
4 officer or employee of the corporation who does not  
5 hold a real estate broker's license to have the direct  
6 management of the real estate brokerage business  
7 thereof or permits any officer or employee thereof who  
8 does not hold a real estate salesperson's license to  
9 act as a real estate salesperson therefor;
- 10 (11) When the licensee, being a real estate salesperson,  
11 fails to file with the commission a written statement  
12 setting forth the name of the real estate broker by  
13 whom the licensee is employed or with whom the  
14 licensee is associated;
- 15 (12) When the licensee fails to obtain on the contract  
16 between the parties to the real estate transaction  
17 confirmation of who the real estate broker represents;
- 18 (13) Violating this chapter; chapter 484, ~~[514A,]~~ \_\_\_\_\_,  
19 514E, or 515; section 516-71; or the rules adopted  
20 pursuant thereto;
- 21 (14) Splitting fees with or otherwise compensating others  
22 not licensed hereunder for referring business;



provided that notwithstanding paragraph (5), a real estate broker may pay a commission to:

(A) A licensed real estate broker of another state, territory, or possession of the United States if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid;

(B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid; or

(C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any person, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;



1       (20) Failure to maintain a reputation for or record of  
2               competency, honesty, truthfulness, financial  
3               integrity, and fair dealing.

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

7       SECTION 15. Section 467-30, Hawaii Revised Statutes, is  
8   amended by amending subsection (a) to read as follows:

9       "(a) As used in this section, "condominium hotel" includes  
10   those apartments in a project as defined in section [514A-3]  
11   \_\_\_\_-3 and subject to chapter [514A-7] \_\_\_\_\_, which are used to  
12   provide transient lodging for periods of less than thirty days."

13       SECTION 16. Section 484-3, Hawaii Revised Statutes, is  
14   amended by amending subsection (a) to read as follows:

15       "(a) Unless the method of disposition is adopted for the  
16   purpose of evasion of this chapter, or unless the subdivider  
17   files in writing with the director that this chapter shall apply  
18   to the subdivider's subdivision, this chapter shall not apply to  
19   offers or dispositions of an interest in land:

20       (1) By a purchaser of subdivided lands for the purchaser's  
21       own account in a single or isolated transaction;

- 1 (2) If fewer than twenty separate lots, parcels, units, or  
2 interests in subdivided lands are offered by a person  
3 in a period of twelve months;  
4 (3) On which there is a residential, commercial, or  
5 industrial building, or as to which there is a legal  
6 obligation on the part of the seller to construct a  
7 building on the land within two years from the date of  
8 disposition; provided that the obligation to construct  
9 shall not be, directly or indirectly, transferred to  
10 or otherwise imposed upon the purchaser;  
11 (4) To persons who are engaged in, and are duly licensed  
12 to engage in, the business of construction of  
13 buildings for resale, or to persons who acquire an  
14 interest in subdivided lands for the purpose of  
15 engaging, and do engage in, and are duly licensed to  
16 engage in, the business of construction of buildings  
17 for resale;  
18 (5) Pursuant to court order;  
19 (6) By any government or government agency;  
20 (7) As cemetery lots or interests; or  
21 (8) Registered as a condominium property regime pursuant  
22 to chapter [514A-] \_\_\_\_\_."

1       SECTION 17. Section 485-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "§485-6 Exempt transactions. The following transactions  
4 shall be exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

5       (1) Any isolated nonissuer transaction, whether effected  
6 through a dealer or not;

7       (2) Any nonissuer transaction in an outstanding security  
8 if the manual of Hawaiian securities or any other  
9 recognized securities manual contains the names of the  
10 issuer's officers and directors, a balance sheet of  
11 the issuer as of a date within eighteen months, and a  
12 profit and loss statement for either the fiscal year  
13 preceding that date or the most recent year of  
14 operations, or the security has a fixed maturity or a  
15 fixed interest or dividend provision and there has  
16 been no default during the current fiscal year or  
17 within the three preceding fiscal years (or during the  
18 existence of the issuer and any predecessors if less  
19 than three years) in the payment of principal,  
20 interest, or dividends on the security;



- 1           (3) Any nonissuer transaction effected by or through a  
2           registered dealer pursuant to an unsolicited order or  
3           offer to buy;
- 4           (4) Any transaction between the issuer or other person on  
5           whose behalf the offering is made and an underwriter,  
6           or among underwriters;
- 7           (5) Any transaction in a bond or other evidence of  
8           indebtedness secured by a real or chattel mortgage or  
9           deed of trust, or by an agreement for the sale of real  
10          estate or chattels, if the entire mortgage, deed of  
11          trust, or agreement, together with all the bonds or  
12          other evidences of indebtedness secured thereby, is  
13          offered and sold as a unit;
- 14          (6) Any transaction by a personal representative, sheriff,  
15          marshal, receiver, trustee in bankruptcy, guardian, or  
16          conservator;
- 17          (7) Any transaction executed by a bona fide pledgee  
18          without any purpose of evading this chapter;
- 19          (8) Any offer or sale to a bank, savings institution,  
20          trust company, insurance company, investment company  
21          as defined in the Investment Company Act of 1940,  
22          pension or profit-sharing trust, or other financial

institution or institutional buyer, or to a dealer,  
whether the purchaser is acting for itself or in some  
fiduciary capacity;

(9) Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:

(A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) during any twelve consecutive months;

(B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;

(C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and

(D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;

- 1       (10) Any offer or sale of a preorganization certificate or  
2       subscription for any security to be issued by any  
3       person if no commission or other remuneration is paid  
4       or given directly or indirectly for soliciting any  
5       prospective subscriber, and the number of subscribers  
6       does not exceed twenty-five;
- 7       (11) Any transaction pursuant to an offer to existing  
8       security holders of the issuer, including persons who  
9       at the time of the transaction are holders of  
10      convertible securities, nontransferable warrants, or  
11      transferable warrants exercisable within ninety days  
12      of their issuance, if no commission or other  
13      remuneration (other than a standby commission) is paid  
14      or given directly or indirectly for soliciting any  
15      security holder in the State;
- 16      (12) Any offer (but not a sale) of a security for which  
17      registration statements have been filed under both  
18      this chapter and the Securities Act of 1933, if no  
19      stop order or refusal order is in effect and no public  
20      proceeding or examination looking toward the order is  
21      pending under either this chapter or the Act;

1       (13) Any offer or sale by or through a real estate broker  
2           or real estate salesperson licensed under the laws of  
3           the State, of a security issued on or after July 1,  
4           1961, by a corporation organized under the laws of the  
5           State, the holder of which is entitled solely by  
6           reason of the holder's ownership thereof, to occupy  
7           for dwelling purposes, or to a lease which entitles  
8           the holder to occupy for dwelling purposes a house, or  
9           an apartment in a building, owned or leased by the  
10          corporation, subject, however, to section 485-7;

11       (14) Any offer or sale by or through a real estate broker  
12           or real estate salesperson licensed under the laws of  
13           the State of an apartment in a condominium project,  
14           and a rental management contract relating to the  
15           apartment, including an interest in a general or  
16           limited partnership formed for the purpose of managing  
17           the rental of apartments if the rental management  
18           contract or the interest in the general or limited  
19           partnership is offered at the same time as the  
20           apartment is offered. The words [~~"apartment",~~]  
21           "unit", "condominium", and "project" are defined as  
22           they are defined in section [~~514A-3,~~]       -3;

1       (15) Any transactions not involving a public offering  
2               within the meaning of section 4(2) of the Securities  
3               Act of 1933;

4       (16) (A) Any transactions involving the offer or sale of a  
5               security by an issuer to an accredited investor  
6               that meet the following requirements:

7               (i) The issuer reasonably believes that the sale  
8               is to persons who are accredited investors;

9               (ii) The issuer is not in the development stage,  
10              without specific business plan or purpose;

11              (iii) The issuer has not indicated that the  
12              issuer's business plan is to engage in a  
13              merger or acquisition with an unidentified  
14              company or companies, or other entity or  
15              person; and

16              (iv) The issuer reasonably believes that all  
17              purchasers are purchasing for investment  
18              purposes and not with the view to, or for  
19              sales in connection with, a distribution of  
20              the security. Any resale of a security sold  
21              in reliance on this exemption within twelve  
22              months of sale shall be presumed to be made

1 with a view to distribute and not to invest,  
2 except a resale pursuant to a registration  
3 statement effective under section 485-8, or  
4 to an accredited investor pursuant to an  
5 exemption available under chapter 485;

6 (B) The exemption under this paragraph shall not  
7 apply to an issuer if the issuer; any affiliated  
8 issuer; any beneficial owner of ten per cent or  
9 more of any class of the issuer's equity  
10 securities; any issuer's predecessor, director,  
11 officer, general partner, or promoter presently  
12 connected in any capacity with the issuer; and  
13 any underwriter or partner, director, or officer  
14 of the underwriter of the securities to be  
15 offered:

16 (i) Within the last five years has filed a  
17 registration statement that is the subject  
18 of a currently effective registration stop  
19 order entered by any state securities  
20 administrator or the United States  
21 Securities and Exchange Commission;

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(iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(C) Subparagraph (B) shall not apply if:

(i) The party subject to the disqualification is  
licensed or registered to conduct

1 securities-related business in the state in  
2 which the order, judgment, or decree  
3 creating the disqualification was entered  
4 against such party;

5 (ii) Before the first offer under this exemption,  
6 the commissioner, or the court or regulatory  
7 authority that entered the order, judgment,  
8 or decree waives the disqualifications; or

9 (iii) The issuer establishes that the issuer did  
10 not know and in the exercise of reasonable  
11 care, based on a factual inquiry, could not  
12 have known that a disqualification existed  
13 under this paragraph;

14 (D) An issuer claiming the exemption under this  
15 section, within fifteen days after the first sale  
16 in this State, shall file with the commissioner a  
17 notice of transaction, a consent to service of  
18 process, a copy of the general announcement as  
19 required by section 485-24.6, and a \$200 filing  
20 fee; and

21 (E) For the purposes of this paragraph, "accredited  
22 investor" shall have the same meaning as provided



- 1                   in 17 Code of Federal Regulations section  
2                   230.501(a);
- 3       (17) Any offer or sale of a security effected by a resident  
4           of Canada who is excluded from the definition of  
5           "dealer" under section 485-1(3)(E);
- 6       (18) Any transaction that is exempt or would be exempt  
7           under rule 701, 17 Code of Federal Regulations section  
8           230.701, promulgated under section 3(b) of the  
9           Securities Act of 1933;
- 10      (19) Any offer or sale of securities made in compliance  
11          with rules 501, 502, 503, 505, and 506 of  
12          Regulation D, 17 Code of Federal Regulations sections  
13          230.501, 230.502, 230.503, 230.505, 230.506, 230.507,  
14          and 230.508 under the Securities Act of 1933; and
- 15      (20) Any transaction that the commissioner may exempt,  
16          conditionally or unconditionally, by rules adopted in  
17          accordance with chapter 91 that:
- 18          (A) Furthers the objectives of compatibility with  
19              exemptions from securities registration  
20              authorized by the Securities Act of 1933 and  
21              uniformity among the states; or

1 (B) The commissioner finds that registration is not  
2 necessary or appropriate in the public interest  
3 for the protection of investors."

4 SECTION 18. Section 501-106, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

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

9 (1) In pursuance of any deed or other voluntary  
10 instrument;

11 (2) Upon the recording of a certificate of merger that  
12 merges two or more condominium projects as provided by  
13 section [~~514A-19,~~] -46;

14 (3) Upon the recording of an amendment to a declaration of  
15 condominium property regime which alters the  
16 percentage interest of the respective apartment owners  
17 in the common element;

18 (4) In cases expressly provided for in this chapter; or

19 (5) Upon the order of the court, for cause shown."

20 SECTION 19. Section 502C-1, Hawaii Revised Statutes, is  
21 amended by amending the definitions of "common elements" or

1 "common area", "declaration", and "townhouse" to read as  
2 follows:

3 "Common elements" or "common area" means:

4 (1) The same as "common elements" as defined in section  
5 ~~[514A-3,]~~ \_\_\_\_\_-3; and

6 (2) Real property within a planned community that is owned  
7 or leased by the association or is otherwise available  
8 for the use of its members or designated as common  
9 area in or pursuant to the declaration.

10 "Declaration" means:

11 (1) The instrument by which property is submitted to  
12 chapter ~~[514A,]~~ \_\_\_\_\_, as provided in that chapter, and  
13 such declaration as from time to time amended; and

14 (2) Any recorded instrument, however denominated, that  
15 imposes on an association maintenance or operational  
16 responsibilities for the common area and creates the  
17 authority in the association to impose on units, or on  
18 the owners or occupants of the units, any mandatory  
19 payment of money as a regular annual assessment or  
20 otherwise in connection with the provisions,  
21 maintenance, or services for the benefit of some or  
22 all of the units, the owners, or occupants of the



SECTION 21. Section 514E-1, Hawaii Revised Statutes, is amended by amending the definition of "blanket lien" to read as follows:

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

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority;
- (3) A lien for common expenses under chapter [514A] \_\_\_\_\_  
or a lien for similar expenses in favor of a  
homeowners or community association;

(4) An apartment lease or condominium conveyance document conveying a single condominium apartment or a lease of a single cooperative apartment; and

(5) Any lien for costs or trustee's fees charged by a trustee holding title to time share units pursuant to a trust created under section 514E-19."

SECTION 22. Section 514E-29, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

(1) Liens for taxes and assessments lawfully imposed by governmental authority against the time share interest;

(2) All sums unpaid on any mortgage of record encumbering the time share interest which was recorded prior to the recordation of a notice of a lien by the association; and

(3) For a time share interest subject to a condominium property regime, the lien of the association of apartment owners created pursuant to section ~~[514A-90-]~~ -146."

3        "[4] §516D-1[4]    Applicability.    This chapter applies to all  
4    lands on which are situated either residential condominium  
5    property regimes created under chapter [514A,] \_\_\_\_\_, or  
6    cooperative housing corporations, which are owned or held  
7    privately or by the State or by the counties, except Hawaiian  
8    home lands subject to Article XII of the State Constitution and  
9    lands owned or held by the federal government."

12       "§521-38 Tenants subject to rental agreement; notice of  
13 conversions. When a period of tenancy is pursuant to any rental  
14 agreement and where a landlord contemplates conversion to  
15 condominium property regime under chapter ~~[514A,]~~ \_\_\_\_\_, the  
16 landlord[+]

17       ~~(1)~~ ~~Shall~~ shall provide notice to the tenant at least one  
18       hundred twenty days in advance of the termination of  
19       the rental agreement [~~7~~ and  
20       ~~(2)~~ ~~Shall comply with the provisions relating to such~~  
21       ~~conversions provided in section 514A-105]."~~

1       SECTION 25. Section 521-71, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3       "(c) Before a landlord terminates a month-to-month tenancy  
4 where the landlord contemplates voluntary demolition of the  
5 dwelling units, conversion to a condominium property regime  
6 under chapter [514A,] \_\_\_\_\_, or changing the use of the building  
7 to transient vacation rentals, the landlord shall provide notice  
8 to the tenant at least one hundred twenty days in advance of the  
9 anticipated demolition or anticipated termination[, and shall  
10 ~~comply with the provisions relating to conversions provided in~~  
11 ~~section 514A 105, if applicable~~]. If notice is revoked or  
12 amended and reissued, the notice period shall begin from the  
13 date it was reissued or amended. Any notice provided, revoked,  
14 or amended and reissued shall be in writing. When the landlord  
15 provides notification of termination pursuant to this  
16 subsection, the tenant may vacate at any time within the one-  
17 hundred-twenty-day period between the notification and the  
18 termination date, but the tenant shall notify the landlord of  
19 the date the tenant will vacate the dwelling unit and shall pay  
20 a prorated rent for that period of occupation."

21       SECTION 26. Parts I, V, and VII of chapter 514A, Hawaii  
22 Revised Statutes, are repealed.



## PART III.

SECTION 27. The legislature finds that the existing procedures to resolve condominium association management disputes need improvement. The existing procedures to resolve disputes include the self-governance procedures within each association of apartment owners, mediation, arbitration, minimal government intervention, and actions through the courts. The legislature therefore finds that there is a need for an expeditious, less costly, uniform, and uncomplicated procedure to handle certain simple statutory issues. The purpose of this part is to initiate a two-year pilot program by the office of administrative hearings, department of commerce and consumer affairs, with partial funding by the condominium management education fund.

SECTION 28. Section 514A-121.5, Hawaii Revised Statutes, is amended to read as follows:

"§514A-121.5 Mediation[-]; condominium management dispute resolution; request for hearing; hearing. (a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, or involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15,

13        (b) If a dispute is not resolved by mediation as provided  
14        in subsection (a), in addition to any other legal remedies that  
15        may be available, any party that participated in the mediation  
16        may file a request for a hearing with the office of  
17        administrative hearings, department of commerce and consumer  
18        affairs as follows:

19       (1) The party requesting the hearing must be a board of  
20       directors of a duly registered association of  
21       apartment owners, or an apartment owner that is a

1 member of a duly registered association pursuant to  
2 section 514A-95.1;

3 (2) The request for hearing must be filed within thirty  
4 days from the final day of mediation;

5 (3) The request for hearing must name one or more parties  
6 that participated in the mediation as an adverse party  
7 and identify the statutory provisions in dispute; and

8 (4) No dispute arising out of section 514A-82(b)(1) to  
9 (13), section 514A-82.3, section 514A-82.5, section  
10 514A-82.6, section 514A-83.1(b), section 514A-83.4(c),  
11 or relating to the interpretation or application of  
12 any association of owners' declaration, bylaws, or  
13 house rules may be the subject of any request for  
14 hearing under this section.

15 (c) For purposes of the pilot program, the office of  
16 administrative hearing for the department of commerce and  
17 consumer affairs shall accept no more than thirty requests for  
18 hearing per fiscal year under this section.

19 (d) The party requesting the hearing shall pay a filing  
20 fee of \$25 to the department of commerce and consumer affairs,  
21 and the failure to do so shall result in the request for hearing  
22 being rejected for filing. All other parties shall file a

1 response, accompanied by a filing fee of \$25 to the department  
2 of commerce and consumer affairs, within twenty days of being  
3 served with the request for hearing.

4 (e) The hearings officers appointed by the director of  
5 commerce and consumer affairs pursuant to section 26-9(f) shall  
6 have jurisdiction to review any request for hearing filed under  
7 subsection (b). The hearings officers shall have the power to  
8 issue subpoenas, administer oaths, hear testimony, find facts,  
9 make conclusions of law, and issue written decisions that shall  
10 be final and conclusive, unless a party adversely affected by  
11 the decision files an appeal in the circuit court under section  
12 91-14.

13 (f) Chapter 16-201, Hawaii Administrative Rules, shall  
14 govern all proceedings brought under this section. The burden  
15 of proof, including the burden of producing the evidence and the  
16 burden of persuasion, shall be upon the party initiating the  
17 proceeding. Proof of a matter shall be by a preponderance of  
18 the evidence.

19 (g) Hearings to review and make determinations upon any  
20 requests for hearings filed under subsection (b) shall commence  
21 within sixty days following the receipt of the request for  
22 hearing. The hearing officer shall issue written findings of

1 fact, conclusions of law, and an order as expeditiously as  
2 practicable after the hearing has been concluded.

3 (h) Each party to the hearing shall bear the party's own  
4 costs, including attorney's fees, unless otherwise ordered by  
5 the hearing officer.

6 (i) Any party to a proceedings under this section who is  
7 aggrieved by a final decision of a hearings officer may apply  
8 for judicial review of that decision pursuant to section 91-14;  
9 provided that any party seeking judicial review pursuant to  
10 section 91-14 shall be responsible for the costs of preparing  
11 the record on appeal, including the cost of preparing the  
12 transcript of the hearing.

13 (j) The department of commerce and consumer affairs may  
14 adopt rules and forms, pursuant to chapter 91, to effectuate the  
15 purpose of this section and to implement its provisions."

16 SECTION 29. The director of commerce and consumer affairs  
17 shall prepare and submit to the legislature, twenty days prior  
18 to the convening of the 2005 and 2006 regular sessions, a report  
19 containing the director's evaluation of the operation and effect  
20 of the pilot program established by this part. The report shall  
21 include a summary of the requests for hearing brought under the  
22 pilot program, the disposition of such requests for hearing, an

1 appraisal of the effectiveness of the pilot program, and  
2 recommendations for changes, modifications or repeal of the  
3 pilot program or parts thereof with accompanying reasons and  
4 data.

5 SECTION 30. There is appropriated out of the condominium  
6 management education fund the sum of \$25,000, or so much thereof  
7 as may be necessary for fiscal year 2004-2005, to defray the  
8 operational expenses of this pilot program.

9 SECTION 31. The sum appropriated shall be expended by the  
10 department of commerce and consumer affairs for the purposes of  
11 this Act.

12 PART IV.

13 SECTION 32. There is appropriated out of the condominium  
14 management education fund the sum of \$150,000, or so much  
15 thereof as may be necessary for fiscal year 2004-2005, to  
16 conduct post-bill passage educational activities, including the  
17 continuation of one full-time temporary condominium specialist  
18 position in the department of commerce and consumer affairs  
19 (with the option of hiring a person as either an employee of the  
20 department or a consultant to the department), and other current  
21 expenses.



APPROVED BY THE  
GOVERNOR ON

JUL 02 2004



**Report Title:**

Condominium Law Recodification; Hearings; Appropriations

**Description:**

Repeals and recodifies condominium property regimes law.

Establishes condominium disputes hearings pilot program.

Appropriates funds for pilot program and post-bill enactment educational activities. (CD1)

