

	<b>Part II. Creation, Alteration, and Termination of Condominiums (Recodification Public Hearing Discussion Draft)</b>	<b><u>Notes</u></b>
	<p align="center"><b>BRRAC's [Real Estate Commission's] Prefatory Comment to Part II</b></p> <p>[This prefatory comment should also be incorporated as a "purpose" subsection in draft legislation that will eventually be part of the session laws text (but not part of HRS).]</p> <p><b>Guiding Principles:</b></p> <ol style="list-style-type: none"> <li>1. The recodified condominium law should enhance clarity of Condominium Property Act.</li> </ol> <p>We should consolidate or group together provisions on a single issue (e.g., voting rights and responsibilities). To that end, we should minimize the statutory requirements for condominium governing documents while incorporating certain provisions currently in HRS §514A-11, et seq., in more appropriate statutory sections.</p> <ol style="list-style-type: none"> <li>2. The recodified condominium law should not result in an increase in the cost of government.</li> </ol>	
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	<b>PART II. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS</b>	
	<p><b>§ ____: 2-1. Creation.</b> [Source: <b>HRS §§514A-11, 514A-20</b>; <i>modified</i>.] (a) To create a condominium, all of the owners of the fee simple interest in land must execute a declaration submitting the land to the condominium and record the declaration in the bureau of conveyances or, if title to the land is registered pursuant to chapter 501, in the land court.</p> <p>(b) The condominium shall be subject to any right, title or interest existing when the declaration is recorded if the person who owns such right, title or interest does not execute or join in the declaration or otherwise subordinate <u>such right, title or interest</u>. A person with any other right, title or interest in the land may subordinate that person's interest to the condominium by executing the declaration or executing and recording a document joining in or subordinating to the declaration.</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. HRS §§514A-11 and 514A-20 are the sources of this section.</li> </ol>	
	<p><b>§ ____: 2-2. Contents of Declaration.</b> [Source: <b>HRS §514A-11</b>; <i>modified</i>.] (a) A declaration must describe the following:</p>	

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	<p>(1) The land submitted to the condominium;</p> <p>(2) The number of the condominium map filed concurrently with the declaration;</p> <p>(3) The number of units in the condominium;</p> <p>(4) The unit number <u>of each unit</u> and common interest <del>of</del> <u>appurtenant to</u> each unit;</p> <p>(5) The number of buildings in the condominium, and the number of stories and units in each building;</p> <p>(6) The permitted and prohibited uses of each unit;</p> <p>(7) To the extent not shown on the condominium map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, spatial coordinates;</p> <p>(8) The condominium's common elements;</p> <p>(9) The condominium's limited common elements, if any, and the unit or units to which each limited common element's use is reserved;</p> <p>(10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium if it is damaged or destroyed;</p> <p>(11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations <del>[made pursuant to]</del> <u>set forth in</u> paragraph (12) below, the approval of the owners <u>of at least sixty-seven percent</u> of the common interest shall be required for all amendments to the declaration; <u>and</u></p> <p>(12) Any rights that the developer or others reserve regarding the condominium, including, without limitation, any reservations to merge or annex additional land or units to the condominium, to withdraw land from the condominium, and any reservations to modify the declaration or condominium map. An amendment to the declaration <del>[that is]</del> <u>made pursuant to the exercise of those reserved rights [requires]</u> <u>shall require</u> only the consent or approval, <u>if any</u>, specified in the reservation.</p> <p>(b) The declaration may contain any additional provisions that are <u>not inconsistent</u> with this chapter.</p>	
	<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-11 is the source of this section.</p> <p>2. In 1982, the Legislature lowered the approval percentage required to amend condominium bylaws from 75% to 65% and established a 75% approval percentage for amending declarations. FannieMae Section 601.03 requires at least 67% approval to make "amendments of a material nature" to project documents. Among the "material amendments" listed are:</p> <ul style="list-style-type: none"> <li>? Voting rights;</li> <li>? Increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;</li> <li>? Reductions in reserves for maintenance, repair, and replacement of common elements;</li> <li>? Responsibility for maintenance and repairs;</li> <li>? Reallocation of interests in the general or limited common elements, or rights to their use;</li> <li>? Redefinition of any unit boundaries;</li> <li>? Convertibility of units into common elements or vice versa;</li> <li>? Expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;</li> <li>? Hazard or fidelity insurance requirements;</li> <li>? Imposition of any restrictions on the leasing of units;</li> <li>? Imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;</li> </ul>	

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	<p>? A decision by the owners' association of a project that consists of 50 or more units to establish self-management if professional management had been required previously by the project documents or by an eligible mortgage holder;</p> <p>? Restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or</p> <p>? Any provisions that expressly benefit mortgage holders, insurers, or guarantors.</p> <p>The BRRAC [Commission] recommends using 67% as the base percentage for amending condominium governing documents (i.e., declaration, bylaws, and condominium map). (There are some exceptions, of course; e.g., in §___: 2-17, 80% to remove from the provisions of this chapter.)</p> <p>3. <i>Compare</i>, more detailed approaches to amending the declaration in UCA/UCIOA §2-117 and Restatement of the Law, Third, Property (Servitudes) §6.10.</p>	
	<p><b>§ ___: 2-3. Condominium Map.</b> [Source: <b>HRS §514A-12; partial.</b>] (a) A condominium map shall be recorded with the declaration. The condominium map must show the following:</p> <p>(1) A site plan for the condominium, showing the location and layout of all buildings included in the condominium;</p> <p>(2) Elevations and floor plans of all buildings in the condominium;</p> <p>(3) The layout, location, boundaries, unit numbers, and dimensions of the units;</p> <p>(4) <del>[A] To the extent that there is parking in the condominium, a parking plan for the condominium, showing the location, layout and stall numbers of all parking stalls included in the condominium; and</del></p> <p>(5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information, if any, of the limited common elements.</p> <p>(b) The condominium map may show any additional information that is <u>not</u> inconsistent with this chapter.</p>	
	<p><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-12 is the source of this section.</p>	
	<p><b>§ ___: 2-4. Same; Certification of Architect, Engineer, or Surveyor.</b> [Source: <b>HRS §514A-12; partial, modified.</b>] The condominium map must bear the statement of a licensed architect, engineer, or <u>surveyor</u> certifying that the condominium map is an accurate copy of portions of the plans of the condominium's building or buildings filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium is located. If the buildings or buildings have been built at the time the condominium map is recorded, the certification must also state that, to the best of the architect's, engineer's, or <u>surveyor's</u> knowledge, the condominium map depicts the layout, location, dimensions and numbers of the units substantially as built. If the building or buildings have not been built at the time the condominium map is recorded, within thirty days from the date of completion of the building or buildings, as "date of completion" is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever is earlier, the developer shall execute and record an amendment to the declaration accompanied by a certification of a licensed architect, engineer, or <u>surveyor</u> certifying that the condominium map previously recorded, as amended by the revised pages filed with such amendment, if any, fully and accurately depicts the layout, location, dimensions and numbers of the units substantially as built.</p>	
	<p><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-12 is the source of this section.</p> <p>2. Certifications by licensed surveyors have been added consistent with the Commission's informal non-binding decision on this issue.</p> <p>3. Although UCA, UCIOA, and even HRS Chapter 514A (in some places) use the term "registered" or "professional" engineer, surveyor, or architect, the proper term for Hawaii's level of regulation is "licensed." <i>See</i>, HRS</p>	

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	<p><b>§ ____: 2-5. Unit Boundaries.</b> [Source: <b>UCA/UCIOA §2-102.</b>] Except as provided by the declaration:</p> <p>(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings, <u>if not a part of the unit</u>, are a part of the common elements.</p> <p>(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, <u>if not part of the unit</u>, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.</p> <p>(3) Subject to paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.</p> <p>(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, <u>if not part of the unit</u>, are limited common elements allocated exclusively to that unit.</p>	
	<p><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. UCA/UCIOA §2-102 is the source of this section.</p> <p>2. The official comments to §2-102 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. As noted in UCIOA Comment #1: "It is important for title purposes, for purposes of defining maintenance responsibilities, and other reasons to have a clear guide as to precisely which parts of a condominium constitute the units and which parts constitute the common elements. This section fills the gap left when the declaration merely defines unit boundaries in terms of floor, ceilings, and perimeter walls."</p>	
	<p><b>§ ____: 2-6. Leasehold Units.</b> [Source: <b>HRS §514A-13(g); modified.</b>] An undivided interest in the land that is subject to a condominium equal to a unit's common interest may be leased to the unit owner, and the unit and its common interest in the common elements exclusive of the land may be conveyed to the unit owner. The conveyance of the unit with an accompanying lease of an interest in the land shall not constitute a division or partition of the common elements, or a separation of the common interest from its unit. Where a deed of a unit is accompanied by a lease of an interest in the land, the deed shall not be construed as conveying title to the land included in the common elements.</p>	
	<p><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-13(g) is the source of this section.</p>	
	<p><b>§ ____: 2-7. Common Interest.</b> [Source: <b>HRS §514A-13(a), (b), and (c).</b>] Each unit shall have the common interest percentage it is assigned in the declaration. Except as provided in sections ____: 2-2(12) and ____: 2-16, <u>and except as provided in the declaration</u>, a unit's common interest percentage shall be permanent and remain undivided, and may not be altered or partitioned without the consent of the owner of the unit and the owner's mortgagee, expressed in a duly executed and recorded declaration amendment<del>[-except as provided in the declaration]</del>. The common interest shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned or described in the conveyance or other instrument.</p>	
	<p><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-13(a), (b), and (c) are the sources of this section.</p>	
	<p><b>§ ____: 2-8. Common Elements.</b> [Source: <b>HRS §514A-13(d); modified.</b>] Each unit owner may use the common elements in accordance with the purposes permitted under the declaration, subject to:</p>	

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	<p>(1) The rights of other unit owners to use the common elements.</p> <p>(2) Any owner's exclusive right to use of the limited common elements as provided in the declaration.</p> <p>(3) The power of the owners to amend the declaration to change the permitted uses of the common elements or to designate any portion of the common elements as a limited common element.</p> <p>(4) Any rights reserved in the declaration to amend the declaration to change the permitted uses <u>or character</u> of the common elements.</p> <p>(5) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are not actually used by any of the unit owners for a purpose permitted in the declaration. Unless the lease [if] <u>is</u> approved by the owners of <u>at least</u> sixty-seven percent of the common interest, any such lease shall have a term of no more than five years and may be terminated by the board or the lessee on <u>no less than</u> sixty days <u>prior</u> written notice.</p> <p>(6) The right of the board of directors to lease or otherwise use for the benefit of the association those common elements that the board determines are actually used by one or more unit owners for a purpose permitted in the declaration. Any such lease or use must be approved by the owners of <u>at least</u> sixty-seven percent of the common interest, including the unit owners that the board <del>[determined]</del> <u>determines</u> actually use the common elements and such <del>[owner's mortgages]</del> <u>owners' mortgagees</u>.</p>	
	<p><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-13(d) is the source of this section.</p> <p>2. § ____ : 2-8(3) negates <u>Penney v. AOA of Hale Kaaanapali</u>, 70 Haw. 469, 776 P.2d 393 (1989). This paragraph, may need <u>further discussion</u> in light of comments received from some BRRAC members and other stakeholders.</p> <p>3. Recodification Draft #1 requires that units and limited common elements be precisely defined, with everything else being considered common elements. Hence, provisions such as HRS §514A-13(h) are not necessary.</p> <p>4. The bulk of HRS §514A-13 sets forth what can be done with common elements, how such uses can be changed, and other condominium management matters. These provisions were considered for incorporation in Part V – Management of Condominium.</p>	
	<p><b>§ ____ : 2-9. Limited Common Elements.</b> If the declaration designates any portion of the common elements as limited common elements, those limited common elements shall be subject to the exclusive use of the owner of the unit or units to which they are assigned, subject to the provisions of the declaration and bylaws.</p>	
	<p><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. This is a new section. [Note: The BRRAC subcommittee's 10/12/02 draft used the term "Private Elements". The term was edited back to "Limited Common Elements" throughout this discussion draft. California uses the term "Exclusive Use Common Elements".]</p>	
	<p><b>§ ____ : 2-10. Transfer of Limited Common Elements.</b> [Source: <b>HRS §514A-14; modified.</b>] Except as provided in the declaration, any unit owner may transfer or exchange a limited common element that is assigned to the owner's unit to another unit. Such a transfer may be made by execution and recordation of an amendment [ef] <u>to</u> the condominium's declaration. Such an amendment need only be executed by the owner of the unit whose limited common element is being transferred and the owner of the unit receiving the limited common element, provided that unit mortgages and leases may also require the consent of mortgagees or lessors, respectively, of the units involved. A copy of any such amendment shall be promptly delivered to the association.</p>	
	<p><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-14 is the source of this section.</p>	
	<p><b>§ ____ : 2-11. Common Profits and Expenses.</b> [Source: <b>HRS §514A-15; modified.</b>] (a) The common profits</p>	

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	<p>of the property shall be distributed among, and the common expenses shall be charged to, the unit owners, including the developer, in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws. In a mixed-use project containing units for both residential and non-residential use, such charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration. Except as otherwise provided in the declaration or bylaws, all limited common element costs and expenses, including but not limited to, maintenance, repair, replacement, additions and improvements, shall be charged to the owner of the unit to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.</p> <p>(b) A unit owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to the owner's unit at the time the certificate of occupancy relating to the owner's unit is issued by the appropriate county agency; provided that a developer may assume all the actual common expenses in a project, by stating in the public report required by section ____: 3-4 that the unit owner shall not be obligated for the payment of <u>the</u> owner's respective share of the common expenses until such time <u>as</u> the developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the shares of common expenses that are allocated to their respective units. The developer shall mail such written notice to the owners, the association, and the managing agent, if any, at least thirty days before the specified date.</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-15 is the source of this section. Subsection (b) has been amended to allow a developer to assume all of the actual common expenses for any project, not just 100% residential projects.</p>	
	<p><b>§ ____: 2-12. Metering of Utilities.</b> [Source: <b>HRS §514A-15.5; modified.</b>] (a) Units in a project that includes units designated for both residential and non-residential use shall have separate meters, or calculations shall be made, or both, <u>as may be practicable</u>, to determine the use by the non-residential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of such utilities shall be paid by the owners of such non-residential units; provided that the apportionment of such charges among owners of non-residential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. The requirements of this paragraph shall not apply to projects <del>[or]</del> <u>for</u> which construction commenced before January 1, 1978.</p> <p>(b) Subject to any approval requirements and spending limits contained in a project's declaration or bylaws, <u>[a project's]</u> <u>an association's</u> board may authorize the installation of meters to determine the use by the individual units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water and drainage. The cost of metered utilities shall be paid by the owners of such units based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to these owners for the cost of metered utilities.</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-15.5 is the source of this section.</p>	
	<p><b>§ ____: 2-13. Liens Against Units.</b> [Source: <b>HRS §514A-16; modified.</b>] (a) For purposes of this section, "visible commencement of operations" shall have the meaning it has under chapter 507, part II, and a "lien" as used herein means a lien created pursuant to chapter 507, part II.</p> <p>(b) Upon the creation of a condominium, liens shall attach to the units <u>described in the declaration</u> and not to the common elements. If visible commencement of operations occurs prior to the creation of the condominium, then liens arising from such work shall attach to all units in the condominium <u>described in the declaration and their respective undivided interests in the common elements, but not to the common elements as a whole</u>. If visible commencement of operations occurs after creation of the condominium, then liens arising from such work shall attach only to the unit or units <u>described in the declaration</u> on which the work was</p>	

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	<p>performed in the same manner as other real property.</p> <p>(c) If the developer contracts for work on the common elements, either on its behalf or on behalf of the association prior to the first meeting of the association, then liens arising from such work shall attach to all units owned by the developer <u>described in the declaration</u> at the time of visible commencement of operations.</p> <p>(d) If the association contracts for work on the common elements after the first meeting of the association, there shall be no lien <u>on the common elements</u>, but the persons contracting with the association to perform the work or supply the materials incorporated in the work shall have a contractual right to payment by the association.</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-16 is the source of this section.</p>	
	<p><b>§ ____: 2-14. Contents of Deeds or Leases of Units.</b> [Source: <b>HRS §514A-17</b>; <i>modified</i>.] Deeds or leases of units adequately describe the property conveyed or leased if they contain the following information:</p> <p>(1) The title and date of the declaration and the declaration's bureau of conveyances and/or land court document number or liber and page numbers;</p> <p>(2) The unit number of the unit conveyed or leased;</p> <p>(3) The common interest of the unit conveyed or leased;</p> <p>(4) For a unit, title to which is registered in the land court, the land court certificate of title number for the unit; and</p> <p>(5) For a unit, title to which is not registered in the land court, the bureau of conveyances document number or liber and page numbers for the instrument by which the grantor acquired title.</p> <p>Deeds or leases of units may contain such additional information and details deemed desirable and consistent with the declaration and this chapter, including, without limitation, a statement of any encumbrances on title to the unit which are not listed in the declaration. The failure of a deed or lease to include all of the information specified above does not render it invalid.</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-17 is the source of this section.</p>	
	<p><b>§ ____: 2-15. Blanket Mortgages and Other Blanket Liens Affecting a Unit at Time of First Conveyance or Lease.</b> [Source: <b>HRS §514A-18</b>.] At the time of the first conveyance or lease of each unit, every mortgage and other lien, except any improvement district or utility assessment, affecting both the unit and any other unit shall be paid and satisfied of record, or the unit being conveyed or leased and its common interest shall be released therefrom by partial release duly recorded.</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-18 is the source of this section.</p>	
	<p><b>§ ____: 2-16. Merger of Increments.</b> [Source: <b>HRS §514A-19</b>; <i>modified</i>.] (a) Two or more condominium projects, whether or not adjacent to one another, but which are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the units in the merged projects. A merger may be implemented with the vote or consent that the declaration requires for a merger, pursuant to any reserved rights set forth in the declaration, or upon vote of sixty-seven percent of the common interest.</p> <p>(b) A merger becomes effective when a certificate of merger is recorded. The certificate of merger may provide for a single unit owners' association and board of directors for the merged projects and for a sharing of the common expenses of the projects among all the owners of the units in the merged projects. The certificate of merger may also provide for a merger of the common elements of the projects so that each unit</p>	



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	<p>owner in the merged projects has an undivided ownership interest in the common elements of the merged projects. In the event of such a merger of common elements, the common interests of each unit in the merged projects shall be adjusted in accordance with the merger provisions in the projects' declarations so that the total common interests of all units in the resulting merged project totals one hundred percent. If the certificate of merger does not provide for a merger of the common elements, the common elements and common interests of the merged projects shall remain separate, but they shall be subject to <del>[any easements or other rights set forth in the certificate of]</del> <u>the provisions set forth in the respective declarations with respect to merger.</u></p> <p>(c) Upon the recording in the office of the assistant registrar of the land court of the State of Hawaii of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the assistant registrar shall cancel all existing certificates of title for the units in the condominium projects being merged and shall issue new certificates of title for the units in the merged project, covering all of the land of the merged projects. The new certificates of title for the units in the merged condominium shall describe, among other things, each unit's new common interest. The certificate of merger shall at least set forth all of the units of the merged condominium projects, their new common interests, and to the extent practicable, their current certificate of title numbers in the common elements of the merged condominium projects.</p>	
	<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. HRS §514A-19 is the source of this section.</li> <li>2. Subsection (b) is intended to address the so-called "administrative merger" (i.e., a merger for administrative purposes but where title does not merge).</li> </ol> <p><b>HAR §16-107-22(b)(3)(A), Proposed Rules, Draft #6 (5/17/02)</b>, essentially defines "Ownership Merger" as a "merger where the common interests of all apartments are adjusted as each phase is added and the common facilities of the merged phases are administered by one association of apartment owners."</p> <p><b>HAR §16-107-22(b)(3)(B), Proposed Rules, Draft #6 (5/17/02)</b>, essentially defines "Administrative Merger" as a "merger where the common interests of apartments are not adjusted as phases are merged, but a formula is provided for sharing of certain common expenses in each of the merged phases; and one association of apartment owners is created to administer the common elements of the merged phases."</p>	
	<p><b>§ ____: 2-17. Removal from Provisions of This Chapter.</b> [Source: <b>HRS §514A-21</b>; <i>modified</i>.] (a) If:</p> <ol style="list-style-type: none"> <li>(1) Unit owners owning units to which are appurtenant <del>[not less than]</del> <u>at least</u> eighty percent of the common interests, execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of the units of the unit owners executing such instrument consent thereto by instruments duly recorded, or</li> <li>(2) The common elements suffer substantial damage or destruction and such damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof, or the unit owners have earlier determined as provided in the declaration that such damage or destruction shall not be rebuilt, repaired, or restored,</li> </ol> <p>then, and in either event, the property shall be subject to an action for partition by any unit owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and, except as otherwise provided in the declaration, shall be divided among all the unit owners in proportion to their respective common interests, provided that no payment shall be made to a unit owner until there has first been paid off out of the owner's share of such net proceeds all liens on the owner's unit. Upon such sale, the property ceases to be the subject of a condominium or subject to this chapter.</p> <p>(b) All of the unit owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the units consent thereto, by</p>	



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	<p>instruments duly recorded. Upon such removal from this chapter, the property, or the part of the property designated in the instrument, ceases to be the subject of a condominium or subject to this chapter, and is deemed to be owned in common by the unit owners in proportion to their respective common interests.</p> <p>(c) Notwithstanding subsections (a) and (b), if the unit leases for a leasehold project (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:</p> <p>(1) The estate and interest of the unit owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the project;</p> <p>(2) The unit owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the unit owner's leasehold interest;</p> <p>(3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;</p> <p>(4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the unit owners of the buildings and improvements in accordance with their interests; and</p> <p>(5) The unit lease rents are reduced in proportion to the land so acquired or possessed;</p> <p>then, the lessor and the developer shall file an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the unit owners or their respective mortgagees shall not be required, if the land so acquired or possessed constitutes no more than five per cent of the total land of the project. Upon the filing of the amendment, the land acquired or possessed shall cease to be the subject of a condominium or this chapter. The lessor shall notify each unit owner in writing of the filing of the amendment and the rent abatement to which the unit owner is entitled. The lessor shall provide the unit owners' association, through its board of directors, with a copy of the amendment.</p> <p>For purposes of this subsection, the acquisition or right to possession may be effected:</p> <p>(1) By a taking or condemnation of property by the State or a county pursuant to chapter 101;</p> <p>(2) By the conveyance of property to the State or county under threat of condemnation; or</p> <p>(3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.</p> <p>(d) [Source: <b>HRS §514A-22.</b>] The removal provided for in this section shall in no way bar the subsequent resubmission of the property to this chapter.</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §§514A-21 and 514A-22 are the sources of this section.</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-13.5 (Renumeration to allow ingress and egress prohibited) has not been included in the recodification. If it is included, it should be placed in Part V – Management of Condominium.</p> <p>2. HRS §514A-13.5 (Mailboxes for each dwelling required) has not been included in the recodification. If separate mailboxes are not to be provided, that fact should simply be disclosed to prospective purchasers in the public offering statement.</p> <p>3. HRS §514A-14.5 (Ownership of parking stalls) has not been included in the recodification. Parking requirements should be governed by state and county land use laws.</p> <p>4. HRS §514A-15.1 (Common expenses; prior late charges) has been incorporated in Part V – Management of</p>	

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	Condominium, §____: 5-5.	