



GOV. MSG. NO. 653

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 22, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on April 22, 2008, the following bill was signed into law:

SB2401 SD1

A BILL FOR AN ACT RELATING TO
CONDOMINIUMS: MAKING VARIOUS TECHNICAL
AMENDMENTS TO THE HAWAII REVISED
STATUTES FOR THE PURPOSE OF CORRECTING
ERRORS AND REFERENCES, AND CLARIFYING
LANGUAGE.
(ACT 28)

Sincerely,


LINDA LINGLE

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS: MAKING VARIOUS TECHNICAL AMENDMENTS
TO THE HAWAII REVISED STATUTES FOR THE PURPOSE OF
CORRECTING ERRORS AND REFERENCES, AND CLARIFYING LANGUAGE.

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

PART I

1 SECTION 1. In 1961, Hawaii became the first state in the
2 nation to enact a comprehensive framework recognizing and
3 incorporating the creation of condominium property regimes (Act
4 180, Session Laws of Hawaii 1961). Codified as chapter 170A,
5 Revised Laws of Hawaii, this landmark legislation now stands as
6 chapter 514A, Hawaii Revised Statutes.

7 The four decades that passed since the establishment of the
8 Hawaii Horizontal Property Regimes Act have seen enormous
9 economic growth and population dispersal on a very limited land
10 base, resulting in a concomitant explosion in the creation of
11 condominiums throughout the islands that has fostered debate
12 over the fundamental issues of housing needs, land tenure, and
13 property rights in the State. The legislature, through the
14 years, has responded to ever increasing demands to clarify these
15 issues as they relate to condominiums through piecemeal



1 amendments to chapter 514A, Hawaii Revised Statutes, resulting
2 in a cumbersome and overwhelming document.

3 Recognizing the need to clarify and update the condominium
4 laws in the State, in 2000 the legislature mandated the real
5 estate commission of the department of commerce and consumer
6 affairs to conduct a comprehensive review and recodification of
7 chapter 514A (Act 213, Session Laws of Hawaii 2000, and Act 131,
8 Session Laws of Hawaii 2003).

9 The results of the commission's study were reported to the
10 legislature in December, 2003, and included proposed legislation
11 (S.B. 2210 (2004)) that repealed the existing chapter 514A,
12 replaced it with a new comprehensive condominium law, and made
13 amendments to existing statutes to conform to this change. The
14 final version of that measure that passed the legislature and
15 was signed into law, however, veered significantly from the
16 original vision of the real estate commission's study. Act 164,
17 Session Laws of Hawaii 2004, not only removed parts of the new
18 condominium law, but also retained parts of the existing chapter
19 514A. The legislature again revisited the issue of condominium
20 regulation in the 2005, 2006, and 2007 sessions, fine-tuning the
21 "new" condominium law (codified as chapter 514B) and reinstating
22 the "old" condominium law (chapter 514A) resulting in two



1 separate chapters on condominiums in the Hawaii Revised
2 Statutes.

3 The purpose of this Act is to amend various sections of the
4 Hawaii Revised Statutes to reflect the existence of the two
5 chapters on condominiums.

6 The substantive portions of this Act are divided into three
7 parts:

- 8 • Part II amends sections of the Hawaii Revised Statutes
9 amended by Act 164, Session Laws of Hawaii 2004, to
10 reinstate references to chapter 514A and its various
11 sections deleted by that Act;
- 12 • Part III amends statutes that have been enacted or
13 amended since 2004 and that refer only to chapter 514B
14 and its sections, to include references to chapter 514A
15 and its sections; and
- 16 • Part IV amends statutes to conform terminology
17 differences found between chapters 514A and 514B, Hawaii
18 Revised Statutes.

19 **PART II**

20 SECTION 2. The real estate commission's final report to
21 the legislature on the recodification of chapter 514A, Hawaii
22 Revised Statutes, recommended that the existing condominium law



1 be repealed and replaced with a new chapter setting forth
2 updated statutory provisions. Senate Bill 2210 (2004)
3 incorporated the commission's recommendations. That bill not
4 only proposed the repeal of chapter 514A and the enactment of
5 its replacement chapter, but also made numerous amendments to
6 existing sections of the Hawaii Revised Statutes to change
7 references to chapter 514A and its sections to reflect the new
8 chapter (codified as chapter 514B, Hawaii Revised Statutes) and
9 its sections. The final version of S.B. 2210 that was enacted
10 (Act 164, Session Laws of Hawaii 2004) retained both the "old"
11 chapter 514A and the "new" chapter 514B; however, the amendments
12 to other sections of the Hawaii Revised Statutes in the original
13 proposed language to change references to chapter 514A and its
14 sections to chapter 514B and its sections, were not corrected to
15 reflect this two-chapter scheme. Thus, the various statutes
16 amended by Act 164 apply only to condominiums under chapter
17 514B, and not to condominiums under chapter 514A.

18 The purpose of this part is to amend sections of the Hawaii
19 Revised Statutes amended by Act 164, Session Laws of Hawaii
20 2004, to reinstate references to chapter 514A and its various
21 sections, deleted by that Act.



1 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
2 amended as follows:
3 1. By amending subsection (c) to read:
4 "(c) The board of acupuncture, board of public
5 accountancy, board of barbering and cosmetology, boxing
6 commission, board of chiropractic examiners, contractors license
7 board, board of dental examiners, board of electricians and
8 plumbers, elevator mechanics licensing board, board of
9 professional engineers, architects, surveyors, and landscape
10 architects, board of massage therapy, board of medical
11 examiners, motor vehicle industry licensing board, motor vehicle
12 repair industry board, board of examiners in naturopathy, board
13 of nursing, board of examiners in optometry, pest control board,
14 board of pharmacy, board of physical therapy, board of
15 psychology, board of private detectives and guards, real estate
16 commission, board of veterinary examiners, board of speech
17 pathology and audiology, and any board, commission, program, or
18 entity created pursuant to or specified by statute in
19 furtherance of the purpose of this section including but not
20 limited to section 26H-4, or chapters 484, 514A, 514B, and 514E
21 shall be placed within the department of commerce and consumer
22 affairs for administrative purposes."



1 2. By amending subsection (o) to read:

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



1 the application for renewal, restoration, reactivation, or
2 reinstatement of the license. If the fees are not paid, the
3 director may deny renewal, restoration, reactivation, or
4 reinstatement of the license. The director may establish,
5 increase, decrease, or repeal the fees when necessary pursuant
6 to rules adopted under chapter 91. The director may also
7 increase or decrease the fees pursuant to section 92-28.

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



1 revenues of the workers' compensation special compensation fund,
2 section 386-151, the captive insurance administrative fund,
3 section 431:19-101.8, the insurance commissioner's education and
4 training fund, section 431:2-214, the medical malpractice
5 patients' compensation fund as administered under section 5 of
6 Act 232, Session Laws of Hawaii 1984, and fees collected for
7 deposit in the office of consumer protection restitution fund,
8 section 487-14, the real estate appraisers fund, section 466K-1,
9 the real estate recovery fund, section 467-16, the real estate
10 education fund, section 467-19, the contractors recovery fund,
11 section 444-26, the contractors education fund, section 444-29,
12 the condominium management education fund, section 514A-131, and
13 the condominium education trust fund, section 514B-71. Any law
14 to the contrary notwithstanding, the director may use the moneys
15 in the fund to employ, without regard to chapter 76, hearings
16 officers and attorneys. All other employees may be employed in
17 accordance with chapter 76. Any law to the contrary
18 notwithstanding, the moneys in the fund shall be used to fund
19 the operations of the department. The moneys in the fund may be
20 used to train personnel as the director deems necessary and for
21 any other activity related to compliance resolution.



1 As used in this subsection, unless otherwise required by
2 the context, "compliance resolution" means a determination of
3 whether:

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

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

9 (3) Any person submitting any filing required by chapter
10 514E or section 485-6(15) has complied with chapter
11 514E or section 485-6(15); or

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

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

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



1 3. By amending subsection (o) to read:
2 "(o) Every person licensed under any chapter within the
3 jurisdiction of the department of commerce and consumer affairs
4 and every person licensed subject to chapter 485A or registered
5 under chapter 467B shall pay upon issuance of a license, permit,
6 certificate, or registration a fee and a subsequent annual fee
7 to be determined by the director and adjusted from time to time
8 to ensure that the proceeds, together with all other fines,
9 income, and penalties collected under this section, do not
10 surpass the annual operating costs of conducting compliance
11 resolution activities required under this section. The fees may
12 be collected biennially or pursuant to rules adopted under
13 chapter 91, and shall be deposited into the special fund
14 established under this subsection. Every filing pursuant to
15 chapter 514E or section [+]485A-202(a)(26)[+] shall be assessed,
16 upon initial filing and at each renewal period in which a
17 renewal is required, a fee that shall be prescribed by rules
18 adopted under chapter 91, and that shall be deposited into the
19 special fund established under this subsection. Any unpaid fee
20 shall be paid by the licensed person, upon application for
21 renewal, restoration, reactivation, or reinstatement of a
22 license, and by the person responsible for the renewal,



1 restoration, reactivation, or reinstatement of a license, upon
2 the application for renewal, restoration, reactivation, or
3 reinstatement of the license. If the fees are not paid, the
4 director may deny renewal, restoration, reactivation, or
5 reinstatement of the license. The director may establish,
6 increase, decrease, or repeal the fees when necessary pursuant
7 to rules adopted under chapter 91. The director may also
8 increase or decrease the fees pursuant to section 92-28.

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



1 section 431:10C-115, insurance premium taxes and revenues,
2 revenues of the workers' compensation special compensation fund,
3 section 386-151, the captive insurance administrative fund,
4 section 431:19-101.8, the insurance commissioner's education and
5 training fund, section 431:2-214, the medical malpractice
6 patients' compensation fund as administered under section 5 of
7 Act 232, Session Laws of Hawaii 1984, and fees collected for
8 deposit in the office of consumer protection restitution fund,
9 section 487-14, the real estate appraisers fund, section 466K-1,
10 the real estate recovery fund, section 467-16, the real estate
11 education fund, section 467-19, the contractors recovery fund,
12 section 444-26, the contractors education fund, section 444-29,
13 the condominium management education fund, section 514A-131, and
14 the condominium education trust fund, section 514B-71. Any law
15 to the contrary notwithstanding, the director may use the moneys
16 in the fund to employ, without regard to chapter 76, hearings
17 officers and attorneys. All other employees may be employed in
18 accordance with chapter 76. Any law to the contrary
19 notwithstanding, the moneys in the fund shall be used to fund
20 the operations of the department. The moneys in the fund may be
21 used to train personnel as the director deems necessary and for
22 any other activity related to compliance resolution.



1 As used in this subsection, unless otherwise required by
2 the context, "compliance resolution" means a determination of
3 whether:

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

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

9 (3) Any person submitting any filing required by chapter
10 514E or section [†]485A-202(a)(26)[†] has complied
11 with chapter 514E or section [†]485A-202(a)(26)[†];

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

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

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

21 The director shall prepare and submit an annual report to
22 the governor and the legislature on the use of the compliance



1 resolution fund. The report shall describe expenditures made
2 from the fund including non-payroll operating expenses."

3 SECTION 4. Section 237-16.5, Hawaii Revised Statutes, is
4 amended by amending subsection (e) to read as follows:

5 "(e) As used in this section:

6 "Lease" means the rental of real property under an
7 instrument in writing by which one conveys real property for a
8 specified term and for a specified consideration, and includes
9 the written extension or renegotiation of a lease, and any
10 holdover tenancy.

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

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

15 "Real property or space" means the area actually rented and
16 used by the lessee, and includes common elements as defined in
17 section 514A-3 or 514B-3.

18 "Sublease" includes the rental of real property which is
19 held under a lease and is made in a written document by which
20 one conveys real property for a specified term and for a
21 specified consideration. [~~Sublease~~] A sublease includes the



1 written extension or renegotiation of a sublease and any
2 holdover tenancy under the written sublease.

3 "Sublessee" means one who holds real property under a
4 sublease.

5 "Sublessor" means one who conveys real property by
6 sublease."

7 SECTION 5. Section 237D-1, Hawaii Revised Statutes, is
8 amended by amending the definitions of "lease", "let", or
9 "rental" and "transient accommodations" to read as follows:

10 "'Lease", "let", or "rental" means the leasing or renting
11 of living quarters or sleeping or housekeeping accommodations in
12 hotels, apartment hotels, motels, condominium property regimes
13 or apartments defined in chapter 514A or units defined in
14 chapter 514B, cooperative apartments, rooming houses, or other
15 places in which lodgings are regularly furnished to transients
16 for a consideration, without transfer of the title of such
17 property.

18 "Transient accommodations" [~~mean~~] means the furnishing of a
19 room, apartment, suite, or the like which is customarily
20 occupied by a transient for less than one hundred eighty
21 consecutive days for each letting by a hotel, apartment hotel,
22 motel, condominium property regime or apartment as defined in



1 chapter 514A or unit as defined in chapter 514B, cooperative
2 apartment, or rooming house that provides living quarters,
3 sleeping, or housekeeping accommodations, or other place in
4 which lodgings are regularly furnished to transients for
5 consideration."

6 SECTION 6. Section 302A-1312, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) The department of education shall prepare a six-year
9 program and financial plan for school repair and maintenance
10 that 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 or 514B-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 7. 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]~~
3 sections 78-2.7 and 831-3.1 ~~[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 pursuant
10 to section 321-171.5;
- 11 (4) The judiciary pursuant to section 571-34;
- 12 (5) The counties pursuant to section 846-2.7;
- 13 (6) Armed security services pursuant to section 261-17(b);
- 14 (7) Providers of a developmental disabilities domiciliary
15 home pursuant to section 333F-22;
- 16 (8) Private schools pursuant to ~~[section]~~ sections 302C-1
17 and 378-3(8) ~~[and section 302C-1]~~;
- 18 (9) Financial institutions in which deposits are insured
19 by a federal agency having jurisdiction over the
20 financial institution pursuant to section 378-3(9);
- 21 (10) Detective agencies and security guard agencies
22 pursuant to sections 463-6(b) and 463-8(b);



- 1 (11) Employers in the business of insurance pursuant to
2 section 431:2-201.3;
- 3 (12) Employers of individuals or supervisors of individuals
4 responsible for screening passengers or property under
5 49 U.S.C. §44901 or individuals with unescorted access
6 to an aircraft of an air carrier or foreign carrier or
7 in a secured area of an airport in the United States
8 pursuant to 49 U.S.C. §44936(a);
- 9 (13) The department of human services pursuant to sections
10 346-97 and 352-5.5;
- 11 (14) The public library system pursuant to section
12 302A-601.5;
- 13 (15) The department of public safety pursuant to section
14 353C-5;
- 15 (16) The board of directors of a cooperative housing
16 corporation or the manager of a cooperative housing
17 project pursuant to section 421I-12;
- 18 (17) The board of directors of an association of
19 ~~[apartment]~~ owners~~[r]~~ under chapter 514A or 514B, or
20 the manager of a condominium project pursuant to
21 section 514A-82.1 or 514B-133; and



1 (18) The department of health pursuant to section 321-
2 15.2."

3 SECTION 8. Section 414D-311, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§414D-311 Superseding chapters.** In the event of any
6 conflict between the provisions of this chapter and the
7 provisions of chapter 421J, 514A, 514B, or 514E, the provisions
8 of chapter 421J, 514A, 514B, or 514E shall supersede and control
9 the provisions of this chapter."

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

12 "**§421I-9 Mediation and arbitration of disputes.** At the
13 request of any party, any dispute concerning or involving one or
14 more shareholders and a corporation, its board of directors,
15 managing agent, resident manager, or one or more other
16 shareholders relating to the interpretation, application, or
17 enforcement of this chapter or the corporation's articles of
18 incorporation, bylaws, or rules adopted in accordance with its
19 bylaws shall be submitted first to mediation. When all
20 reasonable efforts for mediation have been made and the dispute
21 is not settled either in conference between the parties or
22 through mediation, the dispute shall be submitted to arbitration



1 in the same manner and subject to the same requirements, to the
2 extent practicable, which now apply to condominium property
3 regimes under part VII of chapter 514A or section 514B-162."

4 SECTION 10. Section 467-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "hotel" to read as
6 follows:

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

19 SECTION 11. Section 484-3, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Unless the method of disposition is adopted for the
22 purpose of evasion of this chapter, or unless the subdivider



1 files in writing with the director that this chapter shall apply
2 to the subdivider's subdivision, this chapter shall not apply to
3 offers or dispositions of an interest in land:

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

6 (2) If fewer than twenty separate lots, parcels, units, or
7 interests in subdivided lands are offered by a person
8 in a period of twelve months;

9 (3) Where the division of lands is a leasehold
10 agricultural lot within state agricultural districts
11 on which no dwelling structures are constructed as
12 provided in section 205-4.5(e);

13 (4) On which there is a residential, commercial, or
14 industrial building, or as to which there is a legal
15 obligation on the part of the seller to construct a
16 building on the land within two years from the date of
17 disposition; provided that the obligation to construct
18 shall not be, directly [+]or[+] indirectly,
19 transferred to or otherwise imposed upon the
20 purchaser;

21 (5) To persons who are engaged in, and are duly licensed
22 to engage in, the business of construction of



1 buildings for resale, or to persons who acquire an
 2 interest in subdivided lands for the purpose of
 3 engaging, and do engage in, and are duly licensed to
 4 engage in, the business of construction of buildings
 5 for resale;

6 (6) Pursuant to court order;

7 (7) By any government or government agency;

8 (8) As cemetery lots or interests; or

9 (9) Registered as a condominium property regime pursuant
 10 to chapter 514A or 514B."

11 SECTION 12. Section 501-106, Hawaii Revised Statutes, is
 12 amended by amending subsection (a) to read as follows:

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

16 (1) In pursuance of any deed or other voluntary
 17 instrument;

18 (2) Upon the recording of a certificate of merger that
 19 merges two or more condominium projects as provided by
 20 section 514A-19 or 514B-46;

21 (3) Upon the recording of an amendment to a declaration of
 22 condominium property regime which alters the



1 percentage interest of the respective apartment or
2 unit owners in the common [~~element,~~] elements;

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

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

5 SECTION 13. Section 502C-1, Hawaii Revised Statutes, is
6 amended by amending the definitions of "common elements" or
7 "common area", "declaration", and "townhouse" to read as
8 follows:

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

10 (1) The same as "common elements" as defined in section
11 514A-3 or 514B-3; and

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

16 "Declaration" means:

17 (1) The instrument by which property is submitted to
18 chapter 514A or 514B, as provided in [~~that chapter,~~]
19 those chapters, and such declaration as from time to
20 time amended; and

21 (2) Any recorded instrument, however denominated, that
22 imposes on an association maintenance or operational



1 responsibilities for the common area and creates the
2 authority in the association to impose on units, or on
3 the owners or occupants of the units, any mandatory
4 payment of money as a regular annual assessment or
5 otherwise in connection with the provisions,
6 maintenance, or services for the benefit of some or
7 all of the units, the owners, or occupants of the
8 units or the common areas, including any amendment or
9 supplement to the instrument.

10 "Townhouse" means a series of individual apartments or
11 units having architectural unity and common elements, with each
12 apartment or unit extending from ground to roof or from the
13 first or second floor to roof, and where apartments or units may
14 share a common wall or be freestanding structures, including
15 townhouse projects that are created pursuant to chapters 514A,
16 514B, and 421J, as well as projects that are not created
17 pursuant to those chapters but are governed by an association;
18 provided that "townhouse" shall not include any apartments or
19 units located in a building of more than three stories."

20 SECTION 14. Section 514C-22, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§514C-22 Power of association of [~~apartment~~] owners to
2 negotiate, purchase, and sell lessor's interest. (a) The
3 association of [~~apartment~~] owners under chapter 514A or 514B may
4 purchase the lessor's interest in the condominium project;
5 provided that the declaration of condominium property regime
6 shall either contain or be amended to include a provision
7 authorizing the board of directors to effectuate such a
8 purchase. If the lessor is also a condominium unit lessee, the
9 lessor's lessee interest shall be disregarded in the computation
10 of the percentage of condominium unit lessees needed to achieve
11 the vote or written consent required to amend the declaration of
12 condominium property regime.

13 (b) If the association of [~~apartment~~] owners is authorized
14 to purchase the lessor's interest pursuant to this section, the
15 following powers, in addition to any other existing powers,
16 shall be conferred upon the association [~~of apartment owners~~]:

17 (1) To purchase or otherwise acquire, own, improve, use,
18 and deal in and with the lessor's interest in the
19 leased fee interest appurtenant to the various
20 condominium units in the condominium project and in
21 the various apartment, unit, and ground leases



- 1 including but not limited to the interest of any
2 sublessor or any or all undivided interests therein;
- 3 (2) To incur liabilities, borrow money, and secure any of
4 its obligations by mortgage or pledge of all or any
5 portion of its property, assessments, and funds to
6 effectuate acquisition of the lessor's interest;
- 7 (3) To assess, except as provided in subsection (d), as a
8 common expense, the expenses incurred in acquiring and
9 holding the leased fee interest, and to service any
10 debt associated therewith; and
- 11 (4) To sell the leased fee interest in a condominium unit
12 and acquired from the lessor by the association of
13 [~~apartment~~] owners, to the then condominium unit
14 lessee or subsequent purchaser of such unit; provided
15 that if the lessee or subsequent purchaser declines to
16 purchase the leased fee interest, the leased fee
17 interest may be sold to other persons so long as
18 reasonable disclosure is made of the [~~association of~~
19 ~~apartment owners~~] association's intent to sell the
20 leased fee interest to such other persons, and the
21 disclosure includes a statement that the lessees may
22 have no legal remedy if they subsequently wish to



1 purchase the leased fee interest and the other persons
2 refuse to sell or will sell only at a price
3 unacceptable to the lessees.

4 (c) No condominium unit lessee shall be compelled to
5 purchase the leased fee interest in such condominium unit and
6 acquired from the lessor by the association of [~~apartment~~]
7 owners, but may instead pay lease rent to the association [~~of~~
8 ~~apartment owners~~] together with the lessee's share of the common
9 expenses incurred in acquiring the leased fee interest in the
10 condominium units in the project including any debt associated
11 therewith.

12 (d) If some, but not all, lessees have purchased the
13 leased fee interest in their condominium units directly from the
14 lessor[~~r~~] (other than purchases by the lessor or the association
15 of [~~apartment~~] owners), the association [~~of apartment owners~~]
16 may undertake the purchase of all or any part of the leased fee
17 interest in the remaining leasehold condominium units in the
18 project in accordance with subsection (b); provided that:

19 (1) Sixty-seven per cent of the remaining lessees approve
20 an amendment to the declaration authorizing the
21 purchase of the leased fee interest by the association
22 consistent with the requirements of this section;



1 (2) All costs and expenses and all proceeds and benefits
2 of acquiring and holding the leased fee interest and
3 to service any debt associated therewith shall be
4 separately assessed or credited to the condominium
5 units of the remaining lessees in the same ratio that
6 the common interest appurtenant to each remaining
7 lessees' apartment or unit bears to the total common
8 interest appurtenant to all of the remaining lessees'
9 condominium units;

10 (3) The association of [~~apartment~~] owners shall sell the
11 leased fee interest in a condominium unit only to the
12 lessee of the condominium unit or to the permitted
13 assigns or successors of the lessee; provided that if
14 the lessee or the lessee's permitted assigns or
15 successors decline to purchase the leased fee
16 interest, the leased fee interest may be sold to other
17 persons so long as reasonable disclosure is made of
18 the [~~association of apartment owners'~~] association's
19 intent to sell the leased fee interest to the other
20 persons and the disclosure includes a statement that
21 the lessees may have no legal remedy if they
22 subsequently wish to purchase the leased fee interest



1 and the other persons refuse to sell or will sell only
2 at a price unacceptable to the lessees; and

3 (4) The association of [~~apartment~~] owners, through its
4 board of directors in the exercise of its authority,
5 may decide not to accept an offer from the lessor to
6 sell all of the remaining portion of the lessor's
7 interest to the association [~~of apartment owners~~] on
8 the basis that the purchase is not financially
9 feasible or is otherwise not in the best interests of
10 the association. In that event, the board shall adopt
11 a resolution containing written findings as to its
12 reasons for not accepting the offer and shall
13 distribute the resolution to the remaining lessees.

14 (e) If the association of [~~apartment~~] owners acquires all
15 of the remaining portion of the lessor's interest in accordance
16 with subsection (d), any debt associated therewith shall be
17 secured only by the interests so acquired and by the common
18 expense assessments upon the condominium units of the remaining
19 lessees.

20 (f) For purposes of this section:

21 "Remaining lessees" means the lessees of condominium units
22 in a condominium project who have not purchased the leased fee



1 interest in their condominium units as of the effective date of
2 the amendment referred to in subsection (d) (1).

3 "Condominium unit" has the same meaning as the term
4 "apartment" or "unit" as defined in section 514A-3 or 514B-3."

5 SECTION 15. Section 514E-1, Hawaii Revised Statutes, is
6 amended by amending the definition of "blanket lien" to read as
7 follows:

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

- 20 (1) The lien of current real property taxes;
21 (2) Taxes and assessments levied by public authority and
22 that are not yet due and payable;



1 (3) A lien for common expenses under chapter 514A or 514B
2 or a lien on an individual time share unit for similar
3 expenses in favor of a homeowners or community
4 association;

5 (4) An apartment lease or condominium conveyance document
6 conveying or demising a single condominium apartment
7 or unit or a lease of a single cooperative apartment;
8 and

9 (5) Any lien for costs or trustee's fees charged by a
10 trustee holding title to time share units pursuant to
11 a trust created under section 514E-19; provided that
12 the costs or trustee's fees are not yet due and
13 payable."

14 SECTION 16. Section 514E-29, Hawaii Revised Statutes, is
15 amended by amending subsection (d) to read as follows:

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

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



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

5 (3) For a time share interest subject to a condominium
6 property regime, the lien of the association of
7 [apartment] owners under chapter 514A or 514B, created
8 pursuant to section 514A-90 or 514B-146."

9 SECTION 17. Section 516D-1, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§516D-1 Applicability.** This chapter applies to all lands
12 on which are situated either residential condominium property
13 regimes created under chapter 514A or 514B, or cooperative
14 housing corporations, which are owned or held privately or by
15 the State or by the counties, except Hawaiian home lands subject
16 to [~~Article~~] article XII of the [~~State Constitution~~] state
17 constitution and lands owned or held by the federal government."

18 SECTION 18. Section 521-38, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§521-38 Tenants subject to rental agreement; notice of**
21 **conversions.** When a period of tenancy is pursuant to any rental
22 agreement and where a landlord contemplates conversion to a



1 condominium property regime under chapter 514A or 514B, the
2 landlord shall provide notice to the tenant at least one hundred
3 twenty days in advance of the termination of the rental
4 agreement."

5 SECTION 19. Section 521-71, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

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



- 1 retirement system, and the rights, benefits, and other
2 income, comparable to the rights, benefits, and other
3 income exempted by section 88-91, under any other
4 public retirement system;
- 5 (3) Any compensation received in the form of a pension for
6 past services;
- 7 (4) Compensation paid to a patient affected with Hansen's
8 disease employed by the State or the United States in
9 any hospital, settlement, or place for the treatment
10 of Hansen's disease;
- 11 (5) Except as otherwise expressly provided, payments made
12 by the United States or this State, under an act of
13 Congress or a law of this State, which by express
14 provision or administrative regulation or
15 interpretation are exempt from both the normal and
16 surtaxes of the United States, even though not so
17 exempted by the Internal Revenue Code itself;
- 18 (6) Any income expressly exempted or excluded from the
19 measure of the tax imposed by this chapter by any
20 other law of the State, it being the intent of this
21 chapter not to repeal or supersede any express
22 exemption or exclusion;



- 1 (7) Income received by each member of the reserve
2 components of the Army, Navy, Air Force, Marine Corps,
3 or Coast Guard of the United States of America, and
4 the Hawaii national guard as compensation for
5 performance of duty, equivalent to pay received for
6 forty-eight drills (equivalent of twelve weekends) and
7 fifteen days of annual duty, at an:
- 8 (A) E-1 pay grade after eight years of service;
9 provided that this subparagraph shall apply to
10 taxable years beginning after December 31, 2004;
- 11 (B) E-2 pay grade after eight years of service;
12 provided that this subparagraph shall apply to
13 taxable years beginning after December 31, 2005;
- 14 (C) E-3 pay grade after eight years of service;
15 provided that this subparagraph shall apply to
16 taxable years beginning after December 31, 2006;
- 17 (D) E-4 pay grade after eight years of service;
18 provided that this subparagraph shall apply to
19 taxable years beginning after December 31, 2007;
20 and



- 1 (E) E-5 pay grade after eight years of service;
2 provided that this subparagraph shall apply to
3 taxable years beginning after December 31, 2008;
- 4 (8) Income derived from the operation of ships or aircraft
5 if the income is exempt under the Internal Revenue
6 Code pursuant to the provisions of an income tax
7 treaty or agreement entered into by and between the
8 United States and a foreign country; provided that the
9 tax laws of the local governments of that country
10 reciprocally exempt from the application of all of
11 their net income taxes, the income derived from the
12 operation of ships or aircraft that are documented or
13 registered under the laws of the United States;
- 14 (9) The value of legal services provided by a prepaid
15 legal service plan to a taxpayer, the taxpayer's
16 spouse, and the taxpayer's dependents;
- 17 (10) Amounts paid, directly or indirectly, by a prepaid
18 legal service plan to a taxpayer as payment or
19 reimbursement for the provision of legal services to
20 the taxpayer, the taxpayer's spouse, and the
21 taxpayer's dependents;



- 1 (11) Contributions by an employer to a prepaid legal
2 service plan for compensation (through insurance or
3 otherwise) to the employer's employees for the costs
4 of legal services incurred by the employer's
5 employees, their spouses, and their dependents;
- 6 (12) Amounts received in the form of a monthly surcharge by
7 a utility acting on behalf of an affected utility
8 under section 269-16.3 shall not be gross income,
9 adjusted gross income, or taxable income for the
10 acting utility under this chapter. Any amounts
11 retained by the acting utility for collection or other
12 costs shall not be included in this exemption; and
- 13 (13) One hundred per cent of the gain realized by a fee
14 simple owner from the sale of a leased fee interest in
15 units within a condominium project, cooperative
16 project, or planned unit development to the
17 association of [~~apartment~~] owners under chapter 514A
18 or 514B, or the residential cooperative corporation of
19 the leasehold units.
- 20 For purposes of this paragraph:



1 "Fee simple owner" shall have the same meaning as
2 provided under section 516-1; provided that it shall
3 include legal and equitable owners;

4 "Legal and equitable owner", and "leased fee
5 interest" shall have the same meanings as provided
6 under section 516-1; and

7 "Condominium project" and "cooperative project"
8 shall have the same meanings as provided under section
9 514C-1."

10 SECTION 22. Section 281-1, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending the definition of "condominium hotel" to
13 read:

14 ""Condominium hotel" means an establishment consisting of
15 one or more buildings that includes:

16 (1) Guest rooms that are apartments, as defined in section
17 514A-3, or units, as defined in section 514B-3, which
18 are used to provide transient lodging for periods of
19 less than thirty days under a written contract with
20 the owner of [a] the apartment or unit in the
21 condominium hotel operation;



1 (2) Guest rooms that are units, owned or managed by the
2 condominium hotel operator providing transient lodging
3 for periods of less than thirty days, which are
4 offered for adequate pay to transient guests; and

5 (3) A suitable and adequate kitchen and dining room, where
6 meals are regularly prepared and served to guests and
7 other customers.

8 A "condominium hotel" does not include a hotel that may be part
9 of a condominium property regime established under chapter 514A
10 or 514B, that does not have guest rooms that are separate
11 apartments, as defined in section 514A-3, or units, as defined
12 in section 514B-3."

13 2. By amending the definition of "premises" or "licensed
14 premises" to read:

15 ""Premises" or "licensed premises" means the building and
16 property that houses the establishment for which a license has
17 been or is proposed to be issued; provided that in the case of
18 class 12 hotel license, "premises" includes the hotel premises;
19 provided further that in the case of a class 15 condominium
20 hotel license, "premises" includes apartments, as defined in
21 section 514A-3, or units, as defined in section 514B-3, that are
22 used to provide transient lodging for periods of less than



1 thirty days under a written contract with the owner or owners of
2 each unit in, and common elements for access purposes as
3 established by the declaration of condominium property regime
4 of, the condominium hotel; and provided further that if an
5 establishment is in a retail shopping complex the businesses of
6 which have formed a merchants association, "premises" means the
7 establishment. As used in this definition, "establishment"
8 means a single physical location where the selling of liquor
9 takes place."

10 SECTION 23. Section 485A-202, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) The following transactions are exempt from the
13 requirements of sections 485A-301 to 485A-305 and 485A-504:

- 14 (1) An isolated nonissuer transaction, whether or not
15 effected by or through a broker-dealer;
- 16 (2) A nonissuer transaction by or through a broker-dealer
17 registered[7] or exempt from registration under this
18 chapter, and a resale transaction by a sponsor of a
19 unit investment trust registered under the Investment
20 Company Act of 1940, in a security of a class that has
21 been outstanding in the hands of the public for at
22 least ninety days, if, at the date of the transaction:



- 1 (A) The issuer of the security is engaged in
2 business, the issuer is not in the organizational
3 stage or in bankruptcy or receivership, and the
4 issuer is not a blank check, blind pool, or shell
5 company that has no specific business plan or
6 purpose or has indicated that its primary
7 business plan is to engage in a merger or
8 combination of the business with, or an
9 acquisition of, an unidentified person;
- 10 (B) The security is sold at a price reasonably
11 related to its current market price;
- 12 (C) The security does not constitute the whole or
13 part of an unsold allotment to, or a subscription
14 or participation by, the broker-dealer as an
15 underwriter of the security or a redistribution;
- 16 (D) A nationally recognized securities manual or its
17 electronic equivalent designated by rule adopted
18 or order issued under this chapter or a record
19 filed with the Securities and Exchange Commission
20 that is publicly available and contains:
- 21 (i) A description of the business and operations
22 of the issuer;



- 1 (ii) The names of the issuer's executive officers
- 2 and the names of the issuer's directors, if
- 3 any;
- 4 (iii) An audited balance sheet of the issuer as of
- 5 a date within eighteen months before the
- 6 date of the transaction or, in the case of a
- 7 reorganization or merger when the parties to
- 8 the reorganization or merger each had an
- 9 audited balance sheet, a pro forma balance
- 10 sheet for the combined organization; and
- 11 (iv) An audited income statement for each of the
- 12 issuer's two immediate previous fiscal years
- 13 or for the period of existence of the
- 14 issuer, whichever is shorter, or, in the
- 15 case of a reorganization or merger when each
- 16 party to the reorganization or merger had
- 17 audited income statements, a pro forma
- 18 income statement; and
- 19 (E) Any one of the following requirements is met:
- 20 (i) The issuer of the security has a class of
- 21 equity securities listed on a national
- 22 securities exchange registered under Section



1 6 of the Securities Exchange Act of 1934 or
2 designated for trading on the National
3 Association of Securities Dealers' Automated
4 Quotation System;

5 (ii) The issuer of the security is a unit
6 investment trust registered under the
7 Investment Company Act of 1940;

8 (iii) The issuer of the security, including its
9 predecessors, has been engaged in continuous
10 business for at least three years; or

11 (iv) The issuer of the security has total assets
12 of at least \$2,000,000 based on an audited
13 balance sheet as of a date within eighteen
14 months before the date of the transaction
15 or, in the case of a reorganization or
16 merger when the parties to the
17 reorganization or merger each had such an
18 audited balance sheet, a pro forma balance
19 sheet for the combined organization;

20 (3) A nonissuer transaction by or through a broker-dealer
21 registered or exempt from registration under this
22 chapter in a security of a foreign issuer that is a



1 margin security defined in regulations or rules
2 adopted by the Board of Governors of the Federal
3 Reserve System;

4 (4) A nonissuer transaction by or through a broker-dealer
5 registered or exempt from registration under this
6 chapter in an outstanding security if the guarantor of
7 the security files reports with the Securities and
8 Exchange Commission under the reporting requirements
9 of Section 13 or 15(d) of the Securities Exchange Act
10 of 1934 (15 U.S.C. 78m or 78o(d));

11 (5) A nonissuer transaction by or through a broker-dealer
12 registered or exempt from registration under this
13 chapter in a security that:

14 (A) Is rated at the time of the transaction by a
15 nationally recognized statistical rating
16 organization in one of its four highest rating
17 categories; or

18 (B) Has a fixed maturity or a fixed interest or
19 dividend, if:

20 (i) A default has not occurred during the
21 current fiscal year or within the three
22 previous fiscal years or during the



1 existence of the issuer and any predecessor
2 if less than three fiscal years, in the
3 payment of principal, interest, or dividends
4 on the security; and

5 (ii) The issuer is engaged in business, is not in
6 the organizational stage or in bankruptcy or
7 receivership, and is not and has not been
8 within the previous twelve months a blank
9 check, blind pool, or shell company that has
10 no specific business plan or purpose or has
11 indicated that its primary business plan is
12 to engage in a merger or combination of the
13 business with, or an acquisition of, an
14 unidentified person;

15 (6) A nonissuer transaction by or through a broker-dealer
16 registered or exempt from registration under this
17 chapter effecting an unsolicited order or offer to
18 purchase;

19 (7) A nonissuer transaction executed by a bona fide
20 pledgee without the purpose of evading this chapter;

21 (8) A nonissuer transaction by a federal covered
22 investment adviser with investments under management



1 in excess of \$100,000,000, acting in the exercise of
2 discretionary authority in a signed record for the
3 account of others;

4 (9) A transaction between the issuer or other person on
5 whose behalf the offering is made and an underwriter,
6 or among underwriters;

7 (10) A transaction in a note, bond, debenture, or other
8 evidence of indebtedness secured by a mortgage or
9 other security agreement if:

10 (A) The note, bond, debenture, or other evidence of
11 indebtedness is offered and sold with the
12 mortgage or other security agreement as a unit;

13 (B) A general solicitation or general advertisement
14 of the transaction is not made; and

15 (C) A commission or other remuneration is not paid or
16 given, directly or indirectly, to a person not
17 registered under this chapter as a broker-dealer
18 or as an agent;

19 (11) A transaction by an executor, administrator of an
20 estate, personal representative, sheriff, marshal,
21 receiver, trustee in bankruptcy, guardian, or
22 conservator;



- 1 (12) A sale or offer to sell to:
 - 2 (A) An institutional investor;
 - 3 (B) A federal covered investment adviser; or
 - 4 (C) Any other person exempted by rule adopted or
 - 5 order issued under this chapter;

- 6 (13) Any transaction pursuant to a sale or an offer to sell
- 7 securities of an issuer, if the transaction is part of
- 8 an issue in which:
 - 9 (A) There are no more than twenty-five purchasers
 - 10 (other than those designated in paragraph (12)),
 - 11 wherever located, during any twelve consecutive
 - 12 months;
 - 13 (B) The issuer reasonably believes that all
 - 14 purchasers (other than those designated in
 - 15 paragraph (12)), wherever located, are purchasing
 - 16 for investment purposes and not with the view to,
 - 17 or for sales in connection with, a distribution
 - 18 of the security. The purchase shall be presumed
 - 19 to be made with a view to distribute and not to
 - 20 invest if any resale of a security sold in
 - 21 reliance on this exemption is within twelve
 - 22 months of sale, except a resale pursuant to a



- 1 registration statement effective under section
2 485A-301, or to an accredited investor pursuant
3 to an exemption available under this chapter;
- 4 (C) No commission, discount, or other remuneration is
5 paid or given, directly or indirectly, to a
6 person, other than a broker-dealer or agent
7 registered under this chapter, for soliciting a
8 prospective purchaser in this State; and
- 9 (D) The securities of the issuer are not offered or
10 sold by general solicitation or any general
11 advertisement or other advertising medium;
- 12 (14) A transaction under an offer to existing security
13 holders of the issuer, including persons [~~that~~] who at
14 the date of the transaction are holders of convertible
15 securities, options, or warrants, if a commission or
16 other remuneration, other than a standby commission,
17 is not paid or given, directly or indirectly, for
18 soliciting a security holder in this State;
- 19 (15) (A) A transaction involving the offer or sale of a
20 security by an issuer to an accredited investor
21 that meets the following requirements:



- 1 (i) The issuer reasonably believes that the sale
2 is to persons who are accredited investors;
- 3 (ii) The issuer is not in the development stage,
4 without specific business plan or purpose;
- 5 (iii) The issuer has not indicated that the
6 issuer's business plan is to engage in a
7 merger or acquisition with an unidentified
8 company or companies, or other entity or
9 person; and
- 10 (iv) The issuer reasonably believes that all
11 purchasers are purchasing for investment
12 purposes and not with the view to, or for
13 sales in connection with, a distribution of
14 the security. The purchase shall be
15 presumed to be made with a view to
16 distribute and not to invest if any resale
17 of a security sold in reliance on this
18 exemption is within twelve months of sale,
19 except a resale pursuant to a registration
20 statement effective under section 485A-301,
21 or to an accredited investor pursuant to an
22 exemption available under this chapter;



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

11 (i) Within the last five years has filed a
12 registration statement that is the subject
13 of a currently effective registration stop
14 order entered by any state securities
15 administrator or the Securities and Exchange
16 Commission;

17 (ii) Within the last five years has been
18 convicted of any criminal offense in
19 connection with the offer, purchase, or sale
20 of any security, or involving fraud or
21 deceit;



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

6 (iv) Is currently subject to any order, judgment,
7 or decree of any court of competent
8 jurisdiction, entered within the last five
9 years, temporarily, preliminarily, or
10 permanently restraining or enjoining such
11 party from engaging in or continuing to
12 engage in any conduct or practice involving
13 fraud or deceit in connection with the
14 purchase or sale of any security;

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

16 (i) The party subject to the disqualification is
17 licensed or registered to conduct
18 securities-related business in the state in
19 which the order, judgment, or decree
20 creating the disqualification was entered
21 against such party;



1 (ii) Before the first offer under this exemption,
2 the commissioner, or the court or regulatory
3 authority that entered the order, judgment,
4 or decree waives the disqualifications; or
5 (iii) The issuer establishes that the issuer did
6 not know and in the exercise of reasonable
7 care, based on a factual inquiry, could not
8 have known that a disqualification existed
9 under this paragraph; and

10 (D) An issuer claiming the exemption under this
11 paragraph, within fifteen days after the first
12 sale in this State, shall file with the
13 commissioner a notice of transaction, a consent
14 to service of process, a copy of the offering
15 circular or similar document provided to the
16 accredited investor and a \$200 filing fee.

17 For the purposes of this paragraph, "accredited
18 investor" shall have the same meaning as provided in
19 Rule 501(a) adopted under the Securities Act of 1933
20 (17 C.F.R. 230.501(a));



1 (16) An offer to sell, but not a sale, of a security not
2 exempt from registration under the Securities Act of
3 1933 if:

4 (A) A registration or offering statement or similar
5 record as required under the Securities Act of
6 1933 has been filed, but is not effective, or the
7 offer is made in compliance with Rule 165 adopted
8 under the Securities Act of 1933 (17 C.F.R.
9 230.165); and

10 (B) A stop order of which the offeror is aware has
11 not been issued against the offeror by the
12 commissioner or the Securities and Exchange
13 Commission, and an audit, inspection, or
14 proceeding that is public and that may culminate
15 in a stop order is not known by the offeror to be
16 pending;

17 (17) An offer to sell, but not a sale, of a security exempt
18 from registration under the Securities Act of 1933 if:

19 (A) A registration statement has been filed under
20 this chapter, but is not effective;

21 (B) A solicitation of interest is provided in a
22 record to offerees in compliance with a rule



1 adopted by the commissioner under this chapter;

2 and

3 (C) A stop order of which the offeror is aware has
4 not been issued by the commissioner under this
5 chapter and an audit, inspection, or proceeding
6 that may culminate in a stop order is not known
7 by the offeror to be pending;

8 (18) A transaction involving the distribution of the
9 securities of an issuer to the security holders of
10 another person in connection with a merger,
11 consolidation, exchange of securities, sale of assets,
12 or other reorganization to which the issuer, or its
13 parent or subsidiary and the other person, or its
14 parent or subsidiary, are parties;

15 (19) A rescission offer, sale, or purchase under section
16 485A-510;

17 (20) An offer or sale of a security to a person not a
18 resident of this State and not present in this State
19 if the offer or sale does not constitute a violation
20 of the laws of the state or foreign jurisdiction in
21 which the offeree or purchaser is present and is not



1 part of an unlawful plan or scheme to evade this
2 chapter;

3 (21) Employees' stock purchase, savings, option, profit-
4 sharing, pension, or similar employees' benefit plan,
5 including any securities, plan interests, and
6 guarantees issued under a compensatory benefit plan or
7 compensation contract, contained in a record,
8 established by the issuer, its parents, its
9 majority-owned subsidiaries, or the majority-owned
10 subsidiaries of the issuer's parent for the
11 participation of their employees, including offers or
12 sales of such securities to:

13 (A) Directors; general partners; trustees, if the
14 issuer is a business trust; officers;
15 consultants; and advisors;

16 (B) Family members who acquire the securities from
17 those persons through gifts or domestic relations
18 orders;

19 (C) Former employees, directors, general partners,
20 trustees, officers, consultants, and advisors if
21 those individuals were employed by or providing



1 services to the issuer when the securities were
2 offered; and

3 (D) Insurance agents who are exclusive insurance
4 agents of the issuer, or the issuer's
5 subsidiaries or parents, or who derive more than
6 fifty per cent of their annual income from those
7 organizations;

8 (22) A transaction involving:

9 (A) A stock dividend or equivalent equity
10 distribution, whether or not the corporation or
11 other business organization distributing the
12 dividend or equivalent equity distribution is the
13 issuer, if nothing of value is given by
14 stockholders or other equity holders for the
15 dividend or equivalent equity distribution other
16 than the surrender of a right to a cash or
17 property dividend if each stockholder or other
18 equity holder may elect to take the dividend or
19 equivalent equity distribution in cash, property,
20 or stock;

21 (B) An act incident to a judicially approved
22 reorganization in which a security is issued in



1 exchange for one or more outstanding securities,
2 claims, or property interests, or partly in such
3 exchange and partly for cash; or

4 (C) The solicitation of tenders of securities by an
5 offeror in a tender offer in compliance with Rule
6 162 adopted under the Securities Act of 1933 (17
7 C.F.R. 230.162);

8 (23) A nonissuer transaction in an outstanding security by
9 or through a broker-dealer registered or exempt from
10 registration under this chapter, if the issuer is a
11 reporting issuer in a foreign jurisdiction designated
12 by this paragraph or by rule adopted or order issued
13 under this chapter; has been subject to continuous
14 reporting requirements in the foreign jurisdiction for
15 not less than one hundred eighty days before the
16 transaction; and the security is listed on the foreign
17 jurisdiction's securities exchange that has been
18 designated by this paragraph or by rule adopted or
19 order issued under this chapter, or is a security of
20 the same issuer that is of senior or substantially
21 equal rank to the listed security or is a warrant or
22 right to purchase or subscribe to any of the



1 foregoing. For purposes of this paragraph, Canada,
2 together with its provinces and territories, is a
3 designated foreign jurisdiction and the Toronto Stock
4 Exchange, Inc., is a designated securities exchange.
5 After an administrative hearing in accordance with
6 chapter 91, the commissioner, by rule adopted or order
7 issued under this chapter, may revoke the designation
8 of a securities exchange under this paragraph, if the
9 commissioner finds that revocation is necessary or
10 appropriate in the public interest and for the
11 protection of investors;

12 (24) Any offer or sale by or through a real estate broker
13 or real estate salesperson licensed under the laws of
14 this State, of a security issued on or after
15 July 1, 1961, by a corporation organized under the
16 laws of this State, the holder of which is entitled
17 solely by reason of the holder's ownership thereof, to
18 occupy for dwelling purposes a house, or an apartment
19 in a building, owned or leased by such corporation;
20 provided that the issuer of the security shall apply
21 for the exemption to the commissioner on such form and
22 containing such information as the commissioner may



1 prescribe. If the commissioner finds that the
2 business applicant's proposed plan and the proposed
3 issuance of securities are fair, just, and equitable,
4 that the applicant intends to transact its business
5 fairly and honestly, and that the securities that the
6 applicant proposes to issue and the method to be used
7 by the applicant in issuing or disposing of the
8 securities will not, in the opinion of the
9 commissioner, work a fraud upon the purchaser thereof,
10 the commissioner shall issue to the applicant a permit
11 authorizing the applicant to issue and dispose of the
12 securities in this State in the manner provided herein
13 and in such amounts and for such consideration as the
14 commissioner may provide in the permit. Otherwise,
15 the commissioner shall deny the application and refuse
16 the permit and notify the applicant of the decision in
17 writing, subject to appeal as provided in section
18 485A-609. In any permit issued under this paragraph,
19 the commissioner may require the deposit in escrow or
20 impoundment of any or all securities, the proceeds
21 from the sale thereof, approval of advertising
22 material, and any of the conditions as set forth in



1 section 485A-304(f). The commissioner may act as
2 escrow holder for securities required to be deposited
3 in escrow by the commissioner's order or as a
4 necessary signatory on any account in which impounded
5 proceeds from the sale of escrowed securities are
6 deposited;

- 7 (25) Any offer or sale by or through a real estate broker
8 or real estate salesperson licensed under the laws of
9 this State of an apartment or unit in a condominium
10 project, and a rental management contract relating to
11 the apartment~~[r]~~ or unit, including an interest in a
12 partnership formed for the purpose of managing the
13 rental of apartments or units if the rental management
14 contract or the interest in the partnership is offered
15 at the same time as the apartment or unit is offered.

16 For the purposes of this paragraph, the terms
17 "apartment", "unit", "condominium", and "project"
18 shall have the meanings prescribed in section 514A-
19 3~~[+]~~ or 514B-3; and

- 20 (26) Any transaction not involving a public offering within
21 the meaning of Section 4(2) of the Securities Act of
22 1933 (15 U.S.C. 77d), but not including any



1 transaction specified in the rules and regulations
2 thereunder."

3 SECTION 24. Section 521-3, Hawaii Revised Statutes, is
4 amended by amending subsection (d) to read as follows:

5 "(d) [~~A unit owners' association under chapter~~] An
6 association of owners under chapter 514A or 514B shall have
7 standing to initiate and prosecute a summary proceeding for
8 possession against a tenant residing in the condominium project
9 who repeatedly violates the association's governing documents or
10 the rights of other occupants to quiet enjoyment and whose
11 landlord refuses to act; provided that in such cases, the
12 landlord shall be named as an additional party defendant."

13 **PART IV**

14 SECTION 25. There are fundamental differences between
15 chapters 514A and 514B, Hawaii Revised Statutes, including
16 changes in terminology. An "apartment" under chapter 514A is a
17 "unit" under chapter 514B, and an "association of apartment
18 owners" under chapter 514A is a "unit owners' association" under
19 chapter 514B. Numerous statutory provisions in the Hawaii
20 Revised Statutes delineate the powers and duties, rights and
21 responsibilities of condominium owners and associations using
22 terminology of common usage rather than referring to specific



1 sections or chapters of the Hawaii Revised Statutes. To clarify
2 that these provisions apply to both condominiums and owners
3 under chapter 514B as well as condominiums and owners under
4 chapter 514A, these sections should be amended to include terms
5 used in both chapters.

6 The purpose of this part is to make amendments to sections
7 of the Hawaii Revised Statutes to conform to the terminology
8 used in chapters 514A and 514B, Hawaii Revised Statutes.

9 SECTION 26. Section 237-24.3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§237-24.3 Additional amounts not taxable.** In addition to
12 the amounts not taxable under section 237-24, this chapter shall
13 not apply to:

- 14 (1) Amounts received from the loading, transportation, and
15 unloading of agricultural commodities shipped for a
16 producer or produce dealer on one island of this State
17 to a person, firm, or organization on another island
18 of this State. The terms "agricultural commodity",
19 "producer", and "produce dealer" shall be defined in
20 the same manner as they are defined in section 147-1;
21 provided that agricultural commodities need not have
22 been produced in the State;



- 1 (2) Amounts received from sales of:
- 2 (A) Intoxicating liquor as the term "liquor" is
- 3 defined in chapter 244D;
- 4 (B) Cigarettes and tobacco products as defined in
- 5 chapter 245; and
- 6 (C) Agricultural, meat, or fish products;
- 7 to any person or common carrier in interstate or
- 8 foreign commerce, or both, whether ocean-going or air,
- 9 for consumption out-of-state on the shipper's vessels
- 10 or airplanes;
- 11 (3) Amounts received by the manager, submanager, or board
- 12 of directors of:
- 13 (A) An association of [~~apartment~~] owners of a
- 14 condominium property regime established in
- 15 accordance with chapter 514A or 514B; or
- 16 (B) A nonprofit homeowners or community association
- 17 incorporated in accordance with chapter 414D or
- 18 any predecessor thereto and existing pursuant to
- 19 covenants running with the land,
- 20 in reimbursement of sums paid for common expenses;
- 21 (4) Amounts received or accrued from:



1 (A) The loading or unloading of cargo from ships,
2 barges, vessels, or aircraft, whether or not the
3 ships, barges, vessels, or aircraft travel
4 between the State and other states or countries
5 or between the islands of the State;

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

10 (C) The transportation of pilots or governmental
11 officials to ships, barges, or vessels offshore;
12 rigging gear; checking freight and similar
13 services; standby charges; and use of moorings
14 and running mooring lines;

15 (5) Amounts received by an employee benefit plan by way of
16 contributions, dividends, interest, and other income;
17 and amounts received by a nonprofit organization or
18 office, as payments for costs and expenses incurred
19 for the administration of an employee benefit plan;
20 provided that this exemption shall not apply to any
21 gross rental income or gross rental proceeds received
22 after June 30, 1994, as income from investments in



1 real property in this State; and provided further that
2 gross rental income or gross rental proceeds from
3 investments in real property received by an employee
4 benefit plan after June 30, 1994, under written
5 contracts executed prior to July 1, 1994, shall not be
6 taxed until the contracts are renegotiated, renewed,
7 or extended, or until after December 31, 1998,
8 whichever is earlier. For the purposes of this
9 paragraph, "employee benefit plan" means any plan as
10 defined in section 1002(3) of title 29 of the United
11 States Code, as amended;

12 (6) Amounts received for purchases made with United States
13 Department of Agriculture food coupons under the
14 federal food stamp program, and amounts received for
15 purchases made with United States Department of
16 Agriculture food vouchers under the Special
17 Supplemental Foods Program for Women, Infants and
18 Children;

19 (7) Amounts received by a hospital, infirmary, medical
20 clinic, health care facility, pharmacy, or a
21 practitioner licensed to administer the drug to an
22 individual for selling prescription drugs or



1 prosthetic devices to an individual; provided that
2 this paragraph shall not apply to any amounts received
3 for services provided in selling prescription drugs or
4 prosthetic devices. As used in this paragraph:

5 "Prescription drugs" are those drugs defined
6 under section 328-1 and dispensed by filling or
7 refilling a written or oral prescription by a
8 practitioner licensed under law to administer the drug
9 and sold by a licensed pharmacist under section 328-16
10 or practitioners licensed to administer drugs; and

11 "Prosthetic device" means any artificial device
12 or appliance, instrument, apparatus, or contrivance,
13 including their components, parts, accessories, and
14 replacements thereof, used to replace a missing or
15 surgically removed part of the human body, which is
16 prescribed by a licensed practitioner of medicine,
17 osteopathy, or podiatry and which is sold by the
18 practitioner or which is dispensed and sold by a
19 dealer of prosthetic devices; provided that
20 "prosthetic device" shall not mean any auditory,
21 ophthalmic, dental, or ocular device or appliance,
22 instrument, apparatus, or contrivance;



1 (8) Taxes on transient accommodations imposed by chapter
2 237D and passed on and collected by operators holding
3 certificates of registration under that chapter;

4 (9) Amounts received as dues by an unincorporated
5 merchants association from its membership for
6 advertising media, promotional, and advertising costs
7 for the promotion of the association for the benefit
8 of its members as a whole and not for the benefit of
9 an individual member or group of members less than the
10 entire membership;

11 (10) Amounts received by a labor organization for real
12 property leased to:
13 (A) A labor organization; or
14 (B) A trust fund established by a labor organization
15 for the benefit of its members, families, and
16 dependents for medical or hospital care, pensions
17 on retirement or death of employees,
18 apprenticeship and training, and other membership
19 service programs.

20 As used in this paragraph, "labor organization" means
21 a labor organization exempt from federal income tax



1 under section 501(c)(5) of the Internal Revenue Code,
2 as amended;

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

7 (12) Amounts received as rent for the rental or leasing of
8 aircraft or aircraft engines used by the lessees or
9 renters for interstate air transportation of
10 passengers and goods. For purposes of this paragraph,
11 payments made pursuant to a lease shall be considered
12 rent regardless of whether the lease is an operating
13 lease or a financing lease. The definition of
14 "interstate air transportation" is the same as in 49
15 U.S.C. 40102."

16 SECTION 27. Section 467-30, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§467-30 Registration, bonding, and other requirements for**
19 **condominium hotel operators.** (a) As used in this section,
20 "condominium hotel" includes those apartments or units in a
21 project as defined in section 514A-3 or 514B-3 and subject to



1 chapter 514A or 514B, which are used to provide transient
2 lodging for periods of less than thirty days.

3 (b) All condominium hotel operators shall register with
4 the commission as a sole proprietor, partnership, limited
5 liability company, or corporation and shall:

6 (1) Register by submitting a completed commission
7 application form with the commission requested
8 information, receive commission approval prior to
9 conducting condominium hotel activity, and re-register
10 on or before the commission prescribed deadline prior
11 to the registration expiration date. The registration
12 and re-registration shall expire on December 31 of an
13 even-numbered year. Registration information shall
14 include but not be limited to the number of apartments
15 or units managed for others as well as the number of
16 apartments or units owned by the condominium hotel
17 operator. Any operator failing to register with the
18 commission shall be subject to a fine not exceeding an
19 amount equal to \$25 multiplied by the aggregate number
20 of apartments or units being utilized as a condominium
21 hotel. Each month or fraction of a month of



1 noncompliance shall be deemed a new and separate
2 violation;

- 3 (2) Obtain and keep current a fidelity bond from an
4 insurance company authorized to issue fidelity bonds
5 by the insurance division of the department of
6 commerce and consumer affairs. The fidelity bond
7 shall be in an amount equal to \$500 multiplied by the
8 aggregate number of apartments or units in the
9 condominium hotel operation; provided that the minimum
10 amount of the fidelity bond required by this paragraph
11 shall not be less than \$20,000 nor greater than
12 \$100,000. The aggregate number of apartments or units
13 excludes the number of apartments or units owned by
14 the condominium hotel operator either as a sole
15 proprietor, partnership, limited liability company, or
16 corporation or those apartments or units included in a
17 registered time share plan managed by a registered
18 time share plan manager. The fidelity bond shall
19 cover all of the condominium hotel operator's
20 employees handling or having custody and control of
21 either the condominium hotel operator's or the
22 apartment or unit owner's funds, or both. Upon request



1 by the commission, the condominium hotel operator
2 shall provide evidence of a current fidelity bond or a
3 certification statement from an insurance
4 representative of an insurance company authorized by
5 the insurance division of the department of commerce
6 and consumer affairs certifying that the fidelity bond
7 is in effect and meets the requirements of this
8 section and the rules adopted by the commission. The
9 commission may adopt rules establishing conditions and
10 terms by which it may grant a bond alternative or
11 permit deductibles. No condominium hotel operator
12 shall be exempt from the fidelity bond requirement;
13 and

- 14 (3) Pay an application fee and an initial registration or
15 a re-registration fee as provided in rules adopted by
16 the director of commerce and consumer affairs pursuant
17 to chapter 91, which fees shall be deposited with the
18 director of commerce and consumer affairs to the
19 credit of the compliance resolution fund established
20 pursuant to section 26-9(o);

21 provided that this section shall not apply to persons who are
22 subject to section 467-2.



1 (c) In the course of operating a condominium hotel,
2 neither a real estate broker license nor a real estate
3 salesperson license shall be required of those employees of a
4 condominium hotel operator who only perform or facilitate the
5 delivery of customary hotel services.

6 (d) All employees handling or having custody or control of
7 the funds received by the condominium hotel operator shall be
8 covered by a fidelity bond. The fidelity bond shall protect the
9 condominium hotel operator against fraudulent or dishonest acts by
10 the employees of the condominium hotel operator.

11 (e) As used in this section, "operating a condominium
12 hotel" includes the management of the apartments or units in a
13 condominium project for purposes of providing transient lodging,
14 and includes the renting or leasing of condominium apartments or
15 units directly or indirectly from the apartment or unit owners
16 for purposes of providing transient lodging. The condominium
17 hotel operator shall provide a written contract to the owner or
18 owners of each apartment or unit under the condominium hotel
19 operation, expressing the exact agreements of each party
20 including all financial and accounting obligations, and the
21 notification requirements of subsection (g).



1 (f) A condominium hotel operator shall operate in
2 condominium projects specifically authorized for transient
3 lodgings by county zoning and regulations and specifically
4 permitted by the condominium project's declaration and bylaws.

5 (g) The registered condominium hotel operator:

6 (1) Shall not provide or offer lodgings thirty days or
7 longer;

8 (2) Shall not be licensed as a real estate broker or a real
9 estate salesperson;

10 (3) Shall not conduct any other activities contained in the
11 definition of the term "real estate broker";

12 (4) Shall appoint an employee or principal to have direct
13 management and responsibility over condominium hotel
14 operations; and

15 (5) Shall provide evidence of written notification to all
16 representing apartment or unit owners of the provisions
17 of this section including the nonapplicability of the
18 real estate recovery fund.

19 (h) Any condominium hotel operator aggrieved by the
20 fraudulent or dishonest acts of an employee shall act promptly
21 and diligently to recover from the fidelity bond required by
22 this section. The condominium hotel operator shall apply all



1 proceeds received from the fidelity bond against all losses
2 incurred by apartment or unit owners due to fraudulent or
3 dishonest acts by employees. If more than one apartment or unit
4 owner suffers a loss, the condominium hotel operator shall
5 divide the proceeds among the [~~apartment~~] owners in proportion
6 to each [~~apartment~~] owner's loss.

7 (i) All persons handling or having custody and control of
8 either the condominium hotel operator's or the apartment or unit
9 owner's funds shall be either employees of the condominium hotel
10 operator or principals of the condominium hotel operator.

11 (j) The registration and fidelity bond requirements of
12 this section shall not apply to active real estate brokers, in
13 compliance with and licensed under this chapter, conducting
14 condominium hotel activity."

15 SECTION 28. Section 501-20, Hawaii Revised Statutes, is
16 amended by amending the definition of "apartment lease" to read
17 as follows:

18 ""Apartment lease" means an apartment or unit lease, a
19 condominium conveyance document, an apartment or unit deed and
20 ground lease, or other instrument which has been registered
21 pursuant to section 501-121 and which leases or subleases a
22 condominium apartment or unit or its appurtenant undivided



1 interest in the land of a condominium project established or
2 existing under [~~the condominium property act~~] chapter 514A or
3 514B or at common law."

4 SECTION 29. Section 501-105, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§501-105 Grantee's address, etc., to be stated.** Every
7 deed or other voluntary instrument presented for recording shall
8 contain or have indorsed upon it the full name or names, if more
9 than one, and the address of the grantee or other person
10 acquiring or claiming an interest under the instrument and every
11 document shall also contain or have indorsed upon it a statement
12 that the grantee is married or unmarried, and if married, the
13 statement shall give the name in full of the husband or wife.
14 Whenever the grantee is a corporation or partnership, the
15 document shall contain or have indorsed upon it the state where
16 the entity is registered and the entity's address. All names
17 and addresses shall also be entered on all certificates.
18 Notices and processes issued in relation to registered land in
19 pursuance of this chapter may be served upon any person in
20 interest by mailing the same to the address so given, and shall
21 be binding whether such person resides within or without the
22 State.



1 Any deed conveying one or more but not all lots or all
2 interests in a lot appurtenant to apartments or units in a
3 condominium [~~property regime~~] project in a certificate shall
4 contain full memoranda relating to easements, rights-of-way, and
5 all other liens and encumbrances affecting the particular lot,
6 lots, interest appurtenant to an apartment[~~r~~] or unit, or
7 interests appurtenant to apartments or units conveyed. If the
8 deed affects all of the land or interests appurtenant to
9 apartments or units in a certificate of title, encumbrances may
10 be referred to by reference."

11 SECTION 30. Section 501-241, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending subsection (b) to read:

14 "(b) Without limiting the generality of subsection (a),
15 the following instruments need not be registered pursuant to
16 this chapter to be effective and shall be recorded in the bureau
17 of conveyances pursuant to chapter 502:

18 (1) An assignment or other instrument transferring a
19 leasehold time share interest;

20 (2) A mortgage or other instrument granting a lien on a
21 leasehold time share interest;



- 1 (3) An agreement of sale for the sale of a leasehold time
2 share interest. Any such agreement of sale shall be
3 subject to section 502-85 and shall not be subject to
4 section 501-101.5;
- 5 (4) A lien or notice of lien pertaining to a leasehold
6 time share interest in favor of a time share owners
7 association, an association of [~~apartment~~] owners[~~7~~]
8 under chapter 514A or 514B, or a similar homeowner's
9 association;
- 10 (5) A judgment, decree, order of court, attachment, writ,
11 or other process against a leasehold time share
12 interest;
- 13 (6) A mechanic's or materialman's lien or other lien upon
14 a leasehold time share interest;
- 15 (7) A lis pendens or notice of pendency of action, notice,
16 affidavit, demand, certificate, execution, copy of
17 execution, officer's return, or other instrument
18 relating to a leasehold time share interest and
19 otherwise required or permitted to be recorded or
20 registered in connection with the enforcement or
21 foreclosure of any lien, whether by way of power of



1 sale pursuant to [~~a power of sale under~~] section 667-
2 5, or otherwise;

3 (8) A power of attorney given by the owner of a leasehold
4 time share interest or the vendor or vendee under an
5 agreement of sale for the sale of a leasehold time
6 share interest, a mortgagee or other lienor having a
7 mortgage or lien upon a leasehold time share interest,
8 or another party holding a claim or encumbrance
9 against or an interest in a leasehold time share
10 interest; or

11 (9) An instrument assigning, extending, continuing,
12 dissolving, discharging, releasing in whole or in
13 part, reducing, canceling, extinguishing, or otherwise
14 modifying or amending any of the foregoing
15 instruments."

16 2. By amending subsection (e) to read:

17 "(e) Notwithstanding subsections (a), (b), and (c), the
18 following instruments shall be registered by recording the
19 instrument with the assistant registrar and by a brief
20 memorandum thereof made by the assistant registrar upon the
21 certificate of title, and signed by the assistant registrar:



- 1 (1) The apartment or unit lease, and any amendments
2 thereto, and any cancellation or extinguishment
3 thereof;
- 4 (2) Any deed or other instrument conveying the fee
5 interest in registered land and any other instrument
6 encumbering or otherwise dealing with the fee interest
7 in registered land including but not limited to a
8 mortgage of the fee interest, an assignment of the
9 lessor's interest in a lease, or the designation,
10 grant, conveyance, transfer, cancellation, relocation,
11 realignment, or amendment of any easement encumbering
12 the fee interest;
- 13 (3) If the apartment or unit lease is a sublease, any
14 assignment or other conveyance of the sublessor's
15 estate or any other leasehold estate which is superior
16 to the apartment or unit lease, and any other
17 instrument mortgaging, encumbering, or otherwise
18 dealing with the sublessor's estate or any other
19 estate which is prior and superior to the leasehold
20 time share interest;



1 (4) Any other instrument assigning, modifying, canceling,
2 or otherwise dealing with an interest in registered
3 land which is:

4 (A) Less than an estate in fee simple; and

5 (B) Prior or superior to the lessee's interest in a
6 leasehold time share interest;

7 (5) The declaration of condominium property regime or
8 similar declaration by whatever name denominated, the
9 bylaws of the association of [~~apartment~~] owners[~~7~~]
10 under chapter 514A or 514B, the condominium map, any
11 declaration of annexation or deannexation, any
12 declaration of merger and any instrument effecting a
13 merger, and any amendments to any of the foregoing and
14 any cancellation or extinguishment thereof;

15 (6) Any declaration of covenants, conditions, and
16 restrictions, or similar instrument, by whatever name
17 denominated, encumbering the fee, the bylaws of any
18 homeowners association, any declaration of annexation
19 or deannexation, any amendments and supplements
20 thereto, and any cancellation or extinguishment
21 thereof;



- 1 (7) Any declaration of covenants, conditions,
- 2 restrictions, or similar instrument, by whatever name
- 3 denominated, establishing the time share plan, the
- 4 bylaws of the time share owners association, any
- 5 declaration of annexation or deannexation, any
- 6 amendments and supplements thereto, and any
- 7 cancellation or extinguishment thereof; and
- 8 (8) Any notice of time share plan, any declaration of
- 9 annexation or deannexation, any amendments thereto,
- 10 and any cancellation or extinguishment thereof."

11 SECTION 31. Section 508D-3, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "**§508D-3 Exemptions.** This chapter shall not apply to the
 14 following sales of residential real property:

- 15 (1) Sale to a co-owner;
- 16 (2) Sale to a spouse, parent, or child of the seller;
- 17 (3) Sale by devise, descent, or court order;
- 18 (4) Sale by operation of law, including[7] but not limited
- 19 to[7] any transfer by foreclosure, bankruptcy, or
- 20 partition, or any transfer to a seller's creditor
- 21 incident to a deed (or assignment) in lieu of
- 22 foreclosure, workout, or the settlement or partial



1 settlement of any preexisting obligation of a seller
2 owed a creditor and any later sale of residential real
3 property by such creditor;

4 (5) Sale by a lessor to a lessee resulting from conversion
5 of leased land to fee simple;

6 (6) Initial sale of new residential real property pursuant
7 to chapter 484 under a current public offering
8 statement or chapter 484 exemption;

9 (7) Sales of condominium apartments or units accompanied
10 by delivery of an unexpired developer's public report;
11 or

12 (8) Sale of time share interests as defined under chapter
13 514E."

14 SECTION 32. Section 514C-1, Hawaii Revised Statutes, is
15 amended by amending the definition of "condominium unit lessee"
16 to read as follows:

17 ""Condominium unit lessee" means an individual or
18 individuals owning or leasing a condominium apartment or unit
19 situated on leasehold land."

20 SECTION 33. Section 514C-2, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "[+]§514C-2[+] **Right of first refusal.** When the leased
2 fee interest in land under a condominium project or cooperative
3 project or any part thereof is to be sold to any party other
4 than the association of owners or the cooperative housing
5 corporation, the seller shall first provide the board of
6 directors of the association of owners or the cooperative
7 housing corporation with written notice delivered or mailed by
8 registered or certified mail, return receipt requested, postage
9 prepaid, to any two of the president, vice-president, or
10 managing agent (if any), of its intent to sell that interest,
11 together with a complete and correct copy of the purchaser's
12 written offer, which offer shall contain the full and complete
13 terms thereof. The association of [~~apartment~~] owners or
14 cooperative housing corporation shall have a right of first
15 refusal to purchase that leased fee interest for the same price
16 as is contained in the written purchase offer."

17 SECTION 34. Section 514C-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§514C-5 Offer to other prospective purchasers; time**
20 **limit.** No lessor shall sell the leased fee interest in any land
21 under a condominium project or cooperative project containing
22 one or more residential units or any part thereof to any party



1 other than the association of [~~apartment~~] owners or cooperative
2 housing corporation for that project until a right of first
3 refusal for the purchase of that interest has been offered as
4 required by this part and has been rejected in writing by the
5 board of directors, except in the case of sales to individual
6 condominium unit lessees or cooperative unit lessees, which
7 shall be subject to the requirements of section 514C-6.5;
8 provided that an offer made pursuant to sections 514C-2, 514C-3,
9 and 514C-6.5 shall be deemed to be rejected if not accepted in
10 writing by the board of directors of the condominium project or
11 the cooperative housing corporation within one hundred twenty
12 days of its receipt of the written notice from the seller, as
13 evidenced by the return receipts, or if the sale, through no
14 fault of the seller, has not closed upon the purchase of one
15 hundred per cent of the interest being sold within one hundred
16 eighty days of receipt by the board of directors of such written
17 notice, as evidenced by the return receipts. In the event that
18 closing is delayed due to any fault of the seller, the deadline
19 for closing shall be extended for a period of time equal to the
20 delay caused by [+the+] seller."

21 SECTION 35. Section 514C-6, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§514C-6 Powers of association of [~~apartment~~] owners and
2 cooperative housing corporation. (a) The association of
3 [~~apartment~~] owners under chapter 514A or 514B, or cooperative
4 housing corporation may purchase the leased fee interest in the
5 land; provided that at least sixty-seven per cent of the
6 condominium unit lessees or cooperative unit lessees approve of
7 the purchase. If the seller is also a condominium unit lessee
8 or cooperative unit lessee, the seller's interest shall be
9 disregarded in the computation to achieve the sixty-seven per
10 cent requirement. As used herein:

- 11 (1) Sixty-seven per cent of the condominium unit lessees
12 means the lessees of units to which sixty-seven per
13 cent of the common interests are appurtenant; and
14 (2) Sixty-seven per cent of the cooperative unit lessees
15 means shareholders having at least sixty-seven per
16 cent of the shares in the cooperative housing
17 corporation.

18 [+] (b) [+] If the association of [~~apartment~~] owners or
19 cooperative housing corporation accepts the seller's offer to
20 purchase the leased fee interest in the land, the following
21 powers, in addition to any other powers, shall be conferred upon
22 the association of owners or cooperative housing corporation:



1 (1) To purchase or otherwise acquire, own, improve, use,
2 and otherwise deal in and with the leased fee interest
3 to the land or any or all undivided interests therein;

4 (2) To incur liabilities, borrow money, and secure any of
5 its obligations by mortgage or pledge of all or any
6 portion of its property, assessments, and funds;

7 (3) To assess, in a fair and equitable manner, the
8 condominium unit lessees or cooperative unit lessees
9 for the expenses incurred in acquiring the leased fee
10 interest to the land, or to service any debt
11 associated therewith; and

12 (4) To sell the leased fee interest appurtenant to a
13 condominium apartment or unit to any condominium unit
14 lessee or subsequent purchaser of such unit.

15 [+](c)[+] No conveyance of the leased fee interest to or
16 by an association of owners or cooperative housing corporation,
17 and no borrowing, mortgage, or pledge by an association of
18 owners or cooperative housing corporation shall be invalid
19 because it was without capacity or power to do such an act or to
20 make or receive such conveyance, transfer, or loan.

21 [+](d)[+] No condominium unit lessee shall be compelled to
22 participate in the purchase of the leased fee interest of the



1 property, but may instead pay lease rent to the association of
2 owners."

3 SECTION 36. Section 514C-6.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§514C-6.5 Sales to individual lessees.** Notwithstanding
6 any other provision in this part to the contrary, a lessor may
7 sell the leased fee interest in any land under a condominium
8 project or cooperative project or any part thereof to individual
9 condominium unit lessees or cooperative unit lessees; provided
10 that the following requirements have been complied with:

11 (1) No individual lessee shall be obligated to enter into
12 a contract to purchase without having been afforded a
13 period of at least ninety days within which to
14 consider the offer made by the lessor; provided that
15 the individual lessee may enter into a contract to
16 purchase before the ninety days expires if the
17 individual lessee so desires. The lessee shall
18 further have the right to terminate such contract to
19 purchase without penalty for a period of ninety days
20 from the date the contract was first entered into;

21 (2) At the time any offer to sell the leased fee interest
22 is communicated to the lessee by the lessor, the



1 association of owners or cooperative housing
2 corporation shall be provided with written notice
3 delivered or mailed by registered or certified mail,
4 return receipt requested, postage prepaid, to any two
5 of the president, vice-president, or managing agent
6 (if any), of the lessor's intent to sell the interest,
7 together with a complete and correct copy of the
8 offer, which offer shall contain the full and complete
9 terms thereof. Except as provided in paragraph (3),
10 where the board of directors of the association of
11 [~~apartment~~] owners or cooperative housing corporation
12 has written authorization to represent its members,
13 then the association of owners or cooperative housing
14 corporation shall have a right of first refusal to
15 purchase that leased fee interest for the same price
16 as is contained in the written purchase offer;
17 provided that the offer shall be deemed to be rejected
18 if not accepted in writing by the board of directors
19 of the condominium project or the cooperative housing
20 corporation within one hundred twenty days of its
21 receipt of written notice from the seller, as
22 evidenced by the return receipts;



1 (3) Any board of directors of the association of
2 ~~[apartment]~~ owners or cooperative housing corporation
3 may fully or partially waive its right of first
4 refusal at any time with written notice to the lessor;
5 provided that it shall waive its right of first
6 refusal with respect to the leased fee interest
7 appurtenant to a lessee's apartment at the written
8 request of the lessee. The legislature hereby gives
9 the board of directors of the association of
10 ~~[apartment]~~ owners or cooperative housing corporation
11 the authority to exercise the foregoing waiver without
12 having to amend any bylaws, charter, or other
13 governing documents;

14 (4) Notwithstanding any provision contained in any bylaws,
15 ~~[or]~~ any amendment thereto, or written
16 authorization~~[r]~~ authorizing the board of directors of
17 the association of ~~[apartment]~~ owners or cooperative
18 housing corporation to represent the individual
19 lessees in the lease-to-fee conversion, each
20 ~~[individual]~~ lessee shall have the right to represent
21 ~~[himself or herself]~~ oneself in such lease-to-fee



1 conversion by giving written notice of such desire to
 2 the lessor and the board of directors; and
 3 (5) After the lessor (or its agent or representative) has
 4 been able to hold one meeting with the lessees and has
 5 been able to provide a written summary of the meeting
 6 to the lessees, then for a period of ninety days
 7 thereafter, the lessor, its agents, employees, and
 8 representatives, shall not initiate communication with
 9 the lessees regarding the offer, although such parties
 10 may respond to inquiries made by lessees."

11 SECTION 37. Section 516D-11, Hawaii Revised Statutes, is
 12 amended by amending subsection (a) to read as follows:

13 "(a) Except as otherwise provided [~~for~~] in this section,
 14 for any sale of a condominium or a cooperative residential
 15 leasehold apartment[~~7~~] or unit, no later than ten calendar days
 16 after the acceptance of the deposit, receipt, offer, and
 17 acceptance contract (DROA) or other similar contract, the
 18 seller, either directly or through the seller's agent, shall
 19 provide to the buyer for the buyer's approval and acceptance one
 20 of the following lease documents which provide the major
 21 provisions of the lease, such as the length of the lease, lease



1 rent terms, lease rent renegotiation dates, how renegotiated
2 lease rents will be calculated, and surrender clause provisions:

- 3 (1) Master lease and any amendments thereto; [~~or~~]
4 (2) Apartment or unit lease and any amendments thereto; or
5 (3) For initial buyers of condominium apartments or units
6 only, an unexpired preliminary, final or supplemental
7 condominium property regime public report.

8 A sale for the purposes of this subsection shall not be deemed
9 to include any transfer to a co-owner, or to a spouse, parent,
10 or child of the seller, or to any transfer by devise, descent,
11 court order, or by operation of law, including[~~7~~] but not
12 limited to[~~7~~] any transfer by foreclosure, bankruptcy, or
13 partition sale. Upon receipt of the applicable lease document,
14 the buyer shall have ten calendar days to review, accept or
15 reject the terms of the lease."

16 SECTION 38. Section 521-52, Hawaii Revised Statutes, is
17 amended by amending subsection (d) to read as follows:

18 "(d) If the dwelling unit is an apartment or unit in a
19 condominium property regime the tenant shall comply with the
20 bylaws of the association of [~~apartment~~] owners under chapter
21 514A or 514B and if the dwelling unit is an apartment in a



1 cooperative housing corporation the tenant shall comply with the
2 bylaws of the corporation."

3 SECTION 39. Section 667-5.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§667-5.5 Foreclosure notice.** Notwithstanding any law or
6 agreement to the contrary, any person who forecloses on a
7 property within a planned community [~~association~~], a condominium
8 apartment[~~]~~ or unit, or an apartment in a cooperative housing
9 project shall notify, by way of registered or certified mail,
10 the board of directors of the planned community association, the
11 association of [~~apartment~~] owners of the condominium[~~]~~ project,
12 or the cooperative housing project in which the property to be
13 foreclosed is located, of the foreclosure at the time
14 foreclosure proceedings are begun. The notice, at a minimum,
15 shall identify the property, condominium apartment[~~]~~ or unit,
16 or cooperative apartment which is the subject of the foreclosure
17 and identify the name or names of the person or persons bringing
18 foreclosure proceedings. This section shall not apply when the
19 planned community association, condominium association[~~]~~ of
20 owners, or cooperative housing corporation is a party in a
21 foreclosure action. This section shall not affect civil
22 proceedings against parties other than the planned community



1 association, association of [~~apartment~~] owners, or cooperative
2 housing corporation."

3 SECTION 40. Section 672E-4, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) Within thirty days following any proposal for
6 inspection under subsection (b)(2), the claimant shall provide
7 access to:

- 8 (1) Inspect the premises;
- 9 (2) Document any alleged construction defects; and
- 10 (3) Perform any testing required to evaluate the nature,
11 extent, and cause of the asserted construction defect,
12 and the nature and extent of any repair or replacement
13 that may be necessary to remedy the asserted
14 construction defect;

15 provided that if the claimant is an association of [~~apartment~~]
16 owners[7] under chapter 514A or 514B, the claimant shall have
17 forty-five days to provide such access. If access to an
18 individual condominium apartment or unit is necessary, and the
19 association is unable to obtain such access, then the
20 association shall have a reasonable time to provide access. If
21 destructive testing is required, the contractor shall give
22 advance notice of tests and return the premises to its pre-



1 testing condition. If inspection or testing reveals a condition
2 that requires additional testing to fully and completely
3 evaluate the nature, cause, and extent of the construction
4 defect, the contractor shall provide notice to the claimant of
5 the need for additional testing. [~~Claimant~~] The claimant shall
6 provide additional access to the premises. If a claim is
7 asserted on behalf of owners of multiple dwellings, or multiple
8 owners of units within a multi-family complex, the contractor
9 shall be entitled to inspect each of the dwellings or units."

10 **PART V**

11 SECTION 41. This Act shall be amended to conform to all
12 other acts passed by the legislature during the regular session
13 of 2008, whether enacted before or after the effective date of
14 this Act, unless the other acts specifically provide otherwise.

15 SECTION 42. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 43. Upon its approval, this Act shall take effect
18 retroactive to July 1, 2006; provided that:

- 19 (1) Section 3(2) shall be repealed on June 30, 2008;
20 (2) Sections 3(3) and (23) shall take effect on July 1,
21 2008; and



1 (3) The amendments to section 237-24.3, Hawaii Revised
2 Statutes, by section 26 of this Act shall not be
3 repealed when that section is reenacted on December
4 31, 2009, by section 4 of Act 239, Session Laws of
5 Hawaii 2007.

APPROVED this 22 day of APR, 2008



GOVERNOR OF THE STATE OF HAWAII



