

CHAPTER 514A
CONDOMINIUM PROPERTY REGIMES

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PART I. GENERAL PROVISIONS AND DEFINITIONS

§514A-1 Title. This chapter shall be known as the Condominium Property Act.

§514A-1.5 Applicability of chapter. (a) This chapter:

- (1) Shall not apply to condominiums created on or after July 1, 2006, or that are registered with the commission pursuant to part IV of chapter 514B; and
- (2) On and after July 1, 2006, shall apply only to:
 - (A) Condominiums created prior to July 1, 2006, except as provided in subsection (b) and sections 514B-22 and 514B-23; and
 - (B) A developer's sale of condominiums in a project for which a notice of intention was filed with the commission prior to July 1, 2006, pursuant to section 514A-31, except where the developer elects to register an existing project with the commission under part IV of chapter 514B, pursuant to section 9(b) of Act 93, Session Laws of Hawaii 2005.

(b) This chapter shall not apply to any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961, unless all of the owners and holders of liens affecting any of the apartments in the project

have expressly declared that this chapter shall apply to the property, and shall govern the rights, interests, and remedies of all persons owning interests in or liens upon the property; provided that any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961, having seven or more apartments shall register with the commission and comply with the requirements pursuant to sections 514A-95.1 and 514A-132, except for the fidelity bond requirement. The express declaration shall be made through the execution and recordation of a declaration in form and content required to establish a condominium property regime pursuant to this chapter.

§514A-1.6 Conformance with county land use ordinances. Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county, pursuant to section 514A-45, to ensure the conformance of condominium property regimes to the purposes and provisions of county zoning and development ordinances and chapter 205. In the case of a property which includes one or more existing structures being converted to condominium status, the condominium property regime shall comply with section 514A-11(13) or section 514A-40(b).

§514A-2 Chapter not exclusive. This chapter is in addition and supplemental to all other provisions of the Revised Statutes; provided that this chapter shall not change the substantive law relating to land court property, and provided further that if this chapter conflicts with chapters 501 and 502, chapters 501 and 502 shall prevail.

§514A-3 Definitions. Unless it is plainly evident from the context that a different meaning is intended, as used herein:

"Apartment" means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace, and patio.

"Apartment owner" means the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease registered under chapter 501 or recorded under chapter 502, a lessee of an apartment shall be deemed to be the owner thereof.

"Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and declaration.

"Commission" means the real estate commission of the state department of commerce and consumer affairs.

"Common elements", unless otherwise provided in the declaration, means and includes:

- (1) The land included in the condominium property regime, whether leased or in fee simple;

- (2) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building or buildings;
- (3) The basements, flat roofs, yards, gardens, recreational facilities, parking areas, and storage spaces;
- (4) The premises for the lodging or use of janitors and other persons employed for the operation of the property;
- (5) Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerators;
- (6) The elevators, escalators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
- (7) Such facilities as may be designated as common elements in the declaration; and
- (8) All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

"Common expense" means and includes:

- (1) Expenses of operation of the property; and
- (2) All sums designated common expenses by or pursuant to this chapter, the declaration or the bylaws.

"Common interest" means the percentage of undivided interest in the common elements appertaining to each apartment, as expressed in the declaration, and any specified percentage of the common interests means such percentage of the undivided interests in the aggregate.

"Common profits" means the balance of all income, rents, profits, and revenues from the common elements remaining after the deduction of the common expenses.

"Completion of construction" means the issuance by the appropriate county official of a certificate of completion.

"Condominium" means the ownership of single units, with common elements, located on property within the condominium property regime.

"Declaration" means the instrument by which the property is submitted to this chapter, as hereinafter provided, and such declaration as from time to time amended.

"Developer" means a person who undertakes to develop a real estate condominium project.

"Limited common elements" means and includes those common elements designated in the declaration as reserved for the use of a certain apartment or certain apartments to the exclusion of the other apartments; provided that no amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the apartment or apartments for the use of which such limited common elements are reserved.

"Majority" or "majority of apartment owners" means the owners of apartments to which are appurtenant more than fifty per cent of the common interests, and any specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

"Managing agent" means any person employed or retained for the purposes of managing the operation of the property.

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

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

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

"Project" means:

- (1) A real estate condominium project; and
- (2) A plan or project whereby a condominium of two or more apartments located within the condominium property regime are offered or proposed to be offered for sale.

"Property" means and includes the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, whether leasehold or in fee simple, to the extent of the interest held therein by the owner or lessee submitting such interest to the condominium property regime, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the regime established by this chapter.

"To record" means to record in accordance with chapter 502, or to register in accordance with chapter 501.

All pronouns used herein include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.

§514A-4 Status of apartments. Each apartment, together with the common interest appertaining thereto, shall for all purposes constitute real property and may be individually conveyed, leased, or encumbered and be the subject of ownership, possession, or sale and for all other purposes be treated as if it were sole and entirely independent of the other apartment or apartments in the property of which it forms a part, and the corresponding individual titles and interests shall be recordable.

§514A-5 Ownership of apartments. The apartment owner is entitled to the exclusive ownership and possession of the apartment. Any apartment may be jointly or commonly owned by more than one person.

§514A-6 Separate taxation. The laws relating to home exemptions from state property taxes are applicable to the individual apartments, which shall have the benefit of home exemption in those cases where the owner of single-family dwelling would qualify. Property taxes assessed by the State shall be assessed on and collected on the individual apartments and not on the property as a whole. Without limitation of the foregoing, each apartment and the common interest appertaining thereto shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.

§514A-7 Condominium specialist; appointment; duties. There are established two permanent condominium specialist positions within the department of commerce and consumer affairs to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominium property regimes. There is also established a permanent secretarial position to provide assistance in carrying out these duties. The condominium specialists and secretary shall be appointed by the director of commerce and consumer affairs without regard to chapter 76. The condominium specialists and secretary shall be members of the employees retirement system of the State and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State.

PART II. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

§514A-11 Recordation and contents of declaration. The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration to which section 514A-20 refers shall express the following particulars:

- (1) Description of the land, whether leased or in fee simple, on which the building or buildings and improvements are or are to be located;
- (2) Description of the building or buildings, stating the number of stories and basements, the number of apartments, and the principal materials of which it or they is or are constructed or to be constructed;
- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, immediate common element to which it has access, designated parking stall if considered a limited common element, and any other data necessary for its proper identification;
- (4) Description of the common elements;
- (5) Description of the limited common elements, if any, stating to which apartments their use is reserved;
- (6) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting;
- (7) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use;
- (8) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of the person which shall be within the county in which the property is located;
- (9) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, or restore the property in the event of damage or destruction of all or part of the property;

- (10) Any further details in connection with the property that the person executing the declaration may deem desirable to set forth consistent with this chapter;
- (11) The method by which the declaration may be amended, consistent with this chapter; provided that an amendment to the declarations of all condominium projects existing as of May 22, 1991, and all condominium projects created thereafter shall require a vote or written consent of seventy-five per cent of all apartment owners, except as otherwise provided in this chapter; provided further that the declarations of condominium projects having five or fewer apartments may provide for the amendment thereof by a vote or written consent of more than seventy-five per cent of all apartment owners;
- (12) Description as to any additions, deletions, modifications, and reservations as to the property, including without limitation provisions concerning the merger or addition of later phases of the project. To the extent provided in the declaration, an amendment to the declaration that is made to implement those additions, deletions, modifications, reservations, or merger provisions shall require the vote or written consent of only the declarant or such percentage of apartment owners as is provided in the declaration; and
- (13) A declaration subject to the penalties set forth in section 514A-49(b) that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514A-1.6, and specifying in the case of a property which includes one or more existing structures being converted to condominium status:
 - (A) Any variances which have been granted to achieve such compliance; and
 - (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal non-conforming uses or structures;

except that a property that is registered pursuant to section 514A-31 shall instead provide this declaration pursuant to [section] 514A-40.

§514A-12 Copy of the floor plans to be filed. Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and, if construction of the building or buildings is completed, as approved by the county or city and county officer. If the plans do not include a statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, there shall be recorded within thirty days from the date of completion of the building or buildings as "date of completion" is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached

a statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, which amendment shall require only the vote or written consent of the declarant or such other person or persons as are provided in the declaration. The plans shall be kept by the recording officer as provided by rules adopted by the department of land and natural resources, pursuant to chapter 91, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "apartment ownership," with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.

§514A-13 Common elements. (a) Each apartment shall have appurtenant thereto a common interest as expressed in the declaration.

(b) The common interest appurtenant to each apartment as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded, except as provided in sections 514A-11(12) and 514A-13.4. An amendment which subdivides or consolidates apartments and reapportions the common interest appurtenant to the subdivided or consolidated apartment shall, to the extent provided in the declaration, require the vote or written consent of only the apartment owners of the subdivided or consolidated apartments, their mortgagees, and such other percentage of apartment owners as the declaration may provide. The common interest shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(c) The common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as otherwise expressed in this chapter. Any provision to the contrary is void.

(d) Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject to:

- (1) The right of the board of directors, upon the approval of the owners of seventy-five per cent of the common interests, except as provided in section 514A-13.4, to change the use of the common elements;
- (2) The right of the board of directors, on behalf of the association of apartment owners, to lease or otherwise use for the benefit of the association of apartment owners those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the board of directors; provided that, except for any leases, licenses, or other agreements entered into for the purposes authorized by section 514A-13.4, unless the approval of the owners of seventy-five per cent of the common interest is obtained, any such lease shall not have a term exceeding five years and shall

contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice;

(3) The right of the board of directors to lease or otherwise use for the benefit of the association of apartment owners those common elements not falling within paragraph (2), upon obtaining:

(A) Except as provided in section 514A-13.4, the approval of the owners of seventy-five per cent of the common elements, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of limited common elements; and

(B) The approval of all mortgagees of record on apartments with respect to which owner approval is required by subparagraph (A), if such lease or use would be in derogation of the interest of such mortgagees; and

(4) The exclusive use of the limited common elements as provided in the declaration.

(e) The operation of the property shall be carried out as provided herein and in the declaration and the bylaws.

(f) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

(g) An undivided interest in the land included in the common elements equal to the apartment's common interest may be leased to the apartment owner and the apartment and other common elements may be deeded to the apartment owner with a right of removal; and, this shall not constitute a division or partition of the common elements, or a separation of the common interest from the apartment to which it appertains; nor shall any such deed be construed as conveying title to the land included in the common elements.

(h) Lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar areas not located inside apartments intended for residential use or the conduct of a business shall constitute common elements unless designated as limited common elements by the declaration.

§514A-13.4 Telecommunications equipment. (a) Notwithstanding any other provisions to the contrary in this chapter, in the declaration of any project, or in the by-laws of any association:

(1) The board of directors of an association shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the apartment or apartments for the use of which the limited common element is reserved; and

(2) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each apartment or to be a structural alteration or addition to any building different in any material respect

from the plans of the project filed in accordance with section 514A-12; provided that no such installation shall directly affect any nonconsenting apartment owner.

(b) Notwithstanding any other provision to the contrary in this chapter, in the declaration of any project or in the by-laws of any association:

- (1) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and
- (2) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each apartment or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section 514A-12.

(c) As used in this section:

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

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

§514A-13.5 Remuneration to allow ingress and egress prohibited. Ingress and egress through lobby areas or walkways, whether common elements, limited common elements, or individually owned, shall not be denied to apartment owners seeking access to the apartments. No payment of any fee or other type of remuneration by individual owners singly, or collectively as part of an owners' association, shall be allowed. This section shall apply to condominium property regimes in existence on May 18, 1984, and those formed thereafter, except as to lobby areas or walkways which are limited common elements, or individually owned.

[§514A-13.6] Mailboxes for each dwelling required. Any:

- (1) Condominium:
 - (A) Built;
 - (B) Rehabilitated, reconstructed, or otherwise improved to the extent that the value of the work required equals at least one per cent of the appraised value of the building; or
- (2) Existing building converted to condominium status; after May 18, 1984, shall provide at least one mail box for each dwelling unit.

§514A-14 Parking stalls. Notwithstanding any provision of the declaration, apartment owners shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the declaration and respective apartment leases or deeds involved. The amendment need only be signed and approved by the lessor (in the case of a leasehold project) and the owners (and their respective mortgagees if any) of the apartments whose parking stalls are being changed. The amendment shall be effective only upon recording or filing of the same of record with the bureau of conveyances.

§514A-14.5 Ownership of parking stalls. (a) Owners of apartments intended for use for dwelling purposes shall have the right to own or have designated parking stalls to be appurtenant to their respective apartments. Where a developer or association of apartment owners owns parking stalls and rents parking stalls to the owners of the apartments, a majority of these apartment owners may request the appointment of an appraiser to establish a price for each parking stall which may then be negotiated for purchase by the respective owners.

(b) The sales contract for any apartment intended for use for dwelling purposes and newly constructed after April 29, 1986, shall include ownership of a parking stall or designate a stall to be appurtenant to the apartment as a limited common element.

(c) This section shall not apply:

(1) To apartments developed under chapter 201H or 356D;

(2) To apartments in a mixed-use project developed under chapter 206E that has a shared parking program approved by the Hawaii community development authority; provided that such a program shall require the availability of the use of not less than one parking space per apartment; and

(3) To apartments designated in the declaration of condominium property regime for hotel, time share, transient vacation rental, or commercial use.

§514A-15 Common profits and expenses. (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners, including the developer, in proportion to the common interest appurtenant to their respective apartments; provided that in a mixed use project containing apartments for both residential and commercial use, such charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration; provided further that all limited common elements costs and expenses, including but not limited to, maintenance, repair, replacement, additions and improvements shall be charged to the owner of the apartment to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.

(b) An apartment owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to his apartment at the time the certificate of occupancy relating to his apartment is issued by the appropriate county agency; provided that a developer may assume all the actual common expenses in a residential project containing no mixed commercial and residential use, by stating in the abstract as required by section 514A-61 that the apartment owner shall not be obligated for the payment of his respective share of the common expenses until such time the developer files an amended abstract with the commission which shall provide, that after a date certain, the respective apartment owner shall thereafter be

obligated to pay for his respective share of common expenses that is allocated to his apartment. The amended abstract shall be filed at least thirty days in advance with the commission with a copy of the abstract being delivered either by mail or personal delivery after the filing to each of the apartment owners whose maintenance expenses were assumed by the developer.

[§514A-15.1] Common expenses; prior late charges. No association of apartment owners shall deduct and apply portions of common expense payments received from an apartment owner to unpaid late fees (other than amounts remitted by an apartment owner in payment of late fees) unless it delivers or mails a written notice to such apartment owner, at least seven days prior to the first such deduction, which states that:

- (1) Failure to pay late fees will result in the deduction of late fees from future common expense payments, so long as a delinquency continues to exist.
- (2) Late fees shall be imposed against any future common expense payment which is less than the full amount owed due to the deduction of unpaid late fees from such payments.

§514A-15.5 Metering of utilities. (a) Notwithstanding the provisions of section 514A-15, commercial apartments in mixed-use projects containing apartments for both residential and commercial use, the construction of which commences after December 31, 1977, shall have a separate meter, or calculations shall be made, or both, to determine the use by the commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage and the cost of such utilities shall be paid by the owners of such commercial units; provided that the apportionment of such charges among owners of commercial apartments shall be done in a fair and equitable manner as set forth in the declaration or bylaws.

(b) Subject to any approval requirements and spending limits contained in the declaration or bylaws of an association of apartment owners, the board of directors may authorize the installation of meters to determine the use by the residential and commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage and drainage. The cost of metered utilities shall be paid by the owners of such apartments based on actual consumption and may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to these owners for the cost of metered utilities.

§514A-16 Liens against apartments; removal from lien; effect of part payment. (a) Subsequent to substantial completion of the project and the recordation of the first conveyance or lease of an apartment in the project to a bona fide purchaser, and thereafter while the property remains the subject of a condominium property regime, no lien shall arise or be created against the common elements. Following such completion and first recordation, liens may arise or be created only against the several apartments and their respective common interests.

During such period while

- (1) The developer retains ownership of any apartment other than:

- (A) The mere reservation of legal title under an agreement of sale to a bona fide purchaser; and
 - (B) The apartment in respect of which a binding contract of sale has been entered into with a bona fide purchaser but which has not, at the time of filing of the application of a mechanic's lien, closed escrow; or
- (2) Any other person retains ownership of any apartment prior to the first conveyance or lease of such apartment to a bona fide purchaser, mechanics' and materialmen's liens may arise or be created for labor or material furnished in project construction performed before the completion of construction, and such liens shall affect every apartment and its respective common interests so retained until released or until the period for making application for such liens has expired without any such application having been filed.
- (b) Labor performed on or materials furnished to an apartment shall not be the basis of a lien pursuant to part II of chapter 507 against the apartment of any apartment owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. No labor performed on or materials furnished to the common elements shall be the basis of a lien thereon.

§514A-17 Contents of deeds or leases of apartments. Deeds or leases of apartments shall include the following particulars:

- (1) Description of the land as provided in section 514A-11, or incorporation by reference of the description in the declaration, or the post office address of the property, including in either case an appropriate reference to the recording of the declaration.
- (2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification.
- (3) Statement of the use for which the apartment is intended and restrictions on its use.
- (4) The common interest appertaining to the apartment.
- (5) All encumbrances on the apartment and any further details which the grantor and grantee, or lessor and lessee, deem desirable to set forth consistent with the declaration and this chapter.

§514A-18 Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance or lease. At the time of the first conveyance or lease of each apartment, every mortgage and other lien, except any improvement district or utility assessment, affecting both the apartment and any other apartment shall be paid and satisfied of record, or the apartment being conveyed or leased and its common interest shall be released therefrom by partial release duly recorded.

§514A-19 Merger of increments. (a) Two or more condominium projects, whether or not adjacent to one another, but which are part of the same incremental plan of development and

in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the apartments in the merged projects. The merger documents may provide for a single association of apartment owners and board of directors for the merged projects and for a sharing of the common expenses of the projects among all the owners of the apartments in the merged projects.

(b) Upon the recording in the office of the assistant registrar of the land court of the State of Hawaii of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the assistant registrar shall cancel all existing certificates of title for the apartments in the condominium projects being merged and shall issue new certificates of title for the apartments in the merged project, covering all of the land of the merged condominium projects. The new certificates of title for the apartment in the merged condominium project shall describe, among other things, the new undivided interest in the land appertaining to each apartment in the merged condominium projects. The certificate of merger shall at least set forth all of the apartments of the merged condominium projects, their new undivided interest, and their current certificate of title numbers in the common elements of the merged condominium projects.

§514A-20 Condominium property regimes. Whenever the sole owner or all of the owners including all of the lessees of a property expressly declare, through the execution and recordation of a master deed, together with a declaration, which declaration shall set forth the particulars enumerated by section 514A-11, the sole owner's or their desire to submit the property to the regime established by this chapter, there shall thereby be established a condominium property regime with respect to the property, and this chapter shall be applicable to the property. If the master deed is already recorded, the recordation of the declaration is sufficient to achieve the same result.

§514A-21 Removal from provisions of this chapter. (a) If:

- (1) Apartment owners owning not less than eighty per cent in number of apartments in the aggregate, and owning apartments to which are appurtenant not less than eighty per cent of the common interests, execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of the apartments of the apartment owners executing such instrument consent thereto by instruments duly recorded, or
- (2) The common elements suffer substantial damage or destruction and such damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof or the apartment owners have earlier determined as provided in the declaration that such damage or destruction shall not be rebuilt, repaired, or restored,

then, and in either event, the property shall be subject to an action for partition by any apartment owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in proportion to their respective common interests, provided that no payment shall be made to an apartment owner until there has first been paid off out of the owner's share of such

net proceeds all liens on the owner's apartment. Upon such sale, the property ceases to be the subject of a condominium property regime or subject to this chapter.

(b) All of the apartment owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto, by instruments duly recorded. Upon such removal from this chapter, the property, or the part of the property designated in the instrument, ceases to be the subject of a condominium property regime or subject to this chapter, and is deemed to be owned in common by the apartment owners in proportion to their respective common interests.

(c) Notwithstanding subsections (a) and (b); if the apartment leases for a leasehold project (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

- (1) The estate and interest of the apartment owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the project;
- (2) The apartment owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the apartment owner's leasehold interest;
- (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;
- (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the apartment owners of the buildings and improvements in accordance with their interests; and
- (5) The apartment lease rents are reduced in proportion to the land so acquired or possessed;

then, the lessor and the declarant shall file an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the apartment owners or their respective mortgagees shall not be required, if the land so acquired or possessed constitutes no more than five per cent of the total land of the project. Upon the filing of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or this chapter. The lessor shall notify each apartment owner in writing of the filing of the amendment and the rent abatement to which the apartment owner is entitled. The lessor shall provide the association of apartment owners, through its board of directors, with a copy of the amendment.

For purposes of this subsection, the acquisition or right to possession may be effected:

- (1) By a taking or condemnation of property by the State or a county pursuant to chapter 101;
- (2) By the conveyance of property to the State or county under threat of condemnation; or
- (3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.

§514A-22 Removal no bar to subsequent resubmission. The removal provided for in section 514A-21 shall in no way bar the subsequent resubmission of the property to this chapter.

PART III. REGISTRATION AND ADMINISTRATION

§514A-31 Notification of intention. (a) Prior to the time when apartments in a condominium project are to be offered for sale in this State, the developer shall register the project with the commission by notifying the commission in writing of the developer's intention to sell such apartments. No offer of sale or sale shall be made until the project has been registered with the commission and the commission has issued an effective date for the project's preliminary, contingent final, or final public report.

(b) Prior to the time when a developer offers or proposes to offer for sale a time share plan located in a condominium project where apartments are being offered or proposed to be offered for sale for the first time to the public, the developer shall register the project with the commission and obtain an effective date for the developer's public report; provided that the developer shall not be required to deliver to a prospective purchaser or purchaser a true copy of the developer's public report or disclosure abstract, as required by this chapter, when a time share plan is duly registered under chapter 514E if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

§514A-32 Questionnaire and filing fee. The notice of intention shall be accompanied by:

- (1) A nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (2) A copy of a questionnaire properly filled in; and
- (3) Such documents and information concerning the project as may be specified by the commission.

The questionnaire shall be in such form and content as prescribed by the commission.

§514A-33 Inspection. After appropriate notification has been made or additional information has been received pursuant to sections 514A-31, 514A-32, 514A-39.5, 514A-40, or 514A-41, an inspection of the condominium project may be made by the commission.

§514A-34 Inspection expenses. When an inspection is to be made of projects, the developer shall be required to pay an amount estimated by the commission to be necessary to cover the actual expenses of the inspection, not to exceed \$500 a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses.

§514A-35 Waiver of inspection. The commission may waive an inspection when in its opinion, a preliminary, contingent final, final, or supplementary public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries.

§514A-36 Public reports and registration fees. (a) Concurrently with its filing with the commission of the notification of intention pursuant to sections 514A-31 and 514A-32, the developer shall prepare and submit to the commission a public report disclosing all material facts pertaining to the project. The public report shall be in such form and content as prescribed by the commission. Such public report may not be used for the purpose of selling any apartments in the project unless and until the commission issues an effective date for the public report. The commission's issuance of an effective date for a public report shall not be construed to constitute the commission's approval or disapproval of the project, or the commission's representation that all material facts concerning the project have been fully or adequately disclosed, or the commission's judgment of the value or merits of the project. No effective date for a final public report shall be issued until execution and recordation of the deed or master lease, the declaration, the bylaws, and floor plans, as provided by sections 514A-12, 514A-20, and 514A-81.

(b) The commission may determine when a public report will supersede the public reports previously issued for the project.

(c) The developer shall be assessed nonrefundable fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, for each effective date requested for a public report, including extensions, if any.

§514A-37 Preliminary public reports. The commission may issue an effective date for a preliminary public report upon the commission's receipt of a notice of intention the filing of which is complete except for some particular requirement, or requirements, which is, or are, at the time not fulfilled, but which may reasonably be expected to be completed. Preliminary public reports shall not be used for any sale under a contract for the sale of an apartment in a condominium project, unless the developer of the project has filed with the commission those documents and that information required to be submitted with the notification of intention referred to in sections 514A-31 and 514A-32, including a specimen copy of the proposed contract of sale and an executed copy of an escrow agreement with a third party depository for retention and disposition of purchasers' funds in accordance with section 514A-65. The developer shall prepare the preliminary public report so as to ensure that the report adequately discloses all material facts which a prospective purchaser should consider in purchasing an apartment in the project, and shall ensure that adequate protection for purchasers' funds has been provided.

§514A-38 Request for effective date or hearing by developer. The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of such review by private consultants shall be borne by the developer. If an effective date for a public report is not issued within a reasonable time after compliance with registration

requirements, or if the developer is materially grieved by the form or content of the public report, the developer may, in writing, request and shall be given a hearing by the commission within a reasonable time after receipt of request.

§514A-39 REPEALED.

[§514A-39.5] Contingent final public report. (a) Prior to the issuance of an effective date for a final public report, the developer may request that the commission issue an effective date for a contingent final public report. The contingent final public report shall be in the form and content as prescribed by the commission.

(b) No effective date shall be issued by the commission for a developer's contingent final public report unless there is submitted to the commission:

- (1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (2) The proposed developer's contingent final public report;
- (3) All documents, information, and other requirements under section 514A-37 if the commission has not issued an effective date for a preliminary public report;
- (4) An executed and recorded option agreement, agreement of sale, deed, or master lease for the property;
- (5) The executed and recorded declaration, bylaws, and floor plans as filed with the county officer having jurisdiction over the issuance of permits for the construction of buildings, as provided by sections 514A-12, 514A-20, and 514A-81;
- (6) A verified statement showing all costs involved in completing the project, including land payments or lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the project;
- (7) A verified estimate of the time of completion of construction of the total project;
- (8) An executed copy of the escrow agreement which complies with the requirements of section 514A-64.5 and, if purchaser's funds are to be used for construction, the requirements of sections 514A-40(a)(6) and 514A-67;
- (9) A parking plan to include designated residence parking stalls and guest parking, if any, exclusive of assignment to individual apartments, if parking stalls are to be considered limited common elements; and
- (10) A letter of interest in financing construction of the project from a lender authorized to do business in the State.

(c) No effective date shall be issued by the commission for a contingent final public report for a project that includes one or more existing structures being converted to condominium status unless there is filed with the commission all items required under subsection (b) and:

- (1) A verified statement signed by an appropriate county official that the project is in compliance with all zoning and building ordinances and codes applicable to the project, and specifying, if applicable:
 - (A) Any variances which have been granted to achieve compliance; and

- (B) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes;
- (2) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the project; and
- (3) A statement by the declarant of the expected useful life of each item reported on in paragraph (2) or a statement that no representations are made in that regard; provided that this paragraph and paragraph (2) apply only to apartments that may be occupied for residential use and have been in existence for five years or more.
- (d) A contingent final public report shall expire nine months after the effective date of the report and, notwithstanding anything to the contrary in section 514A-43, may not be extended or renewed.
- (e) A contingent final public report is subject to sections 514A-41 and 514A-63.

§514A-40 Final reports. (a) No effective date shall be issued by the commission for a final public report prior to completion of construction of the project, unless there is filed with the commission:

- (1) A statement showing all costs involved in completing the project, including land payments or lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the project;
- (2) An estimate of the time of completion of construction of the total project;
- (3) Satisfactory evidence of sufficient funds to cover the total project cost from purchasers' funds, equity funds, interim or permanent loan commitments, or other sources;
- (4) A copy of the executed construction contract;
- (5) Satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the commission;
- (6) If purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the trust fund required under section 514A-67 for financing construction, which expressly shall provide for:
 - (A) No disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for disbursements that have been approved or certified for payment by the project lender or an otherwise qualified financially disinterested person; and
 - (B) No disbursements from the balance of the trust fund after payment of construction costs pursuant to paragraph (A) until construction of the project has been completed and the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute;

- (7) A parking plan to include designated residence parking stalls and guest parking, if any, exclusive of assignment to individual apartments, if parking stalls are to be considered limited common elements;
 - (8) A copy of the disclosure statement required by section 514A-62(f)(3) if an effective date for a contingent final public report has been issued by the commission and the report has not expired; and
 - (9) A declaration subject to the penalties set forth in section 514A-49(b) that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to section 514A-1.6.
- (b) No effective date shall be issued by the commission for a final public report for a project that includes one or more existing structures being converted to condominium status unless there is filed with the commission all items required under subsection (a) and:
- (1) A statement signed by an appropriate county official that the project is in compliance with all zoning and building ordinances and codes applicable to the project, and specifying, if applicable:
 - (A) Any variances which have been granted to achieve such compliance; and
 - (B) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes;
 - (2) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the project; and
 - (3) A statement by the declarant of the expected useful life of each item reported on in paragraph (2) or a statement that no representations are made in that regard; provided that this paragraph and paragraph (2) apply only to apartments that may be occupied for residential use and have been in existence for five years or more.
- (c) No effective date shall be issued by the commission for a final public report until the developer has paid into the condominium management education fund a nonrefundable fee of \$5 for each apartment in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Payments required under this subsection shall be due after June 13, 1989.

§514A-41 Supplementary public report. (a) If after the effective date has been issued by the commission for a public report, any circumstance occurs which would render the public report misleading as to purchasers in any material respect, the developer shall stop all offers of sale and sales and immediately submit to the commission a supplementary public report, together with such supporting information as may be required by the commission, to update the information contained in the public report, accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Offers of sale and sales shall not resume until an effective date has been issued by the commission for the supplementary public report. The developer shall provide all prospective purchasers with a

true copy of the supplementary public report and all prior public reports not superseded by the supplementary public report.

(b) The commission may determine when a supplementary public report will supersede the public reports previously issued for the project.

(c) Notwithstanding the provisions of this section, the rescission rights, if any, of a purchaser shall be governed exclusively by sections 514A-62 and 514A-63. This does not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies.

(d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

§514A-42 True copies of public report; no misleading information. The public reports given by the developer to prospective purchasers shall be an exact reproduction of the public report for which the commission has issued an effective date. All documents (including the public report) prepared by or for the developer and submitted to the commission in connection with the developer's registration of the project, and all information contained in such documents, shall be true, complete and accurate in all respects, and shall not contain any misleading information, or omit any information which would render the information or documents submitted to the commission misleading in any material respect.

§514A-43 Automatic expiration of public reports; exceptions. (a) Except as provided in section 514A-39.5, a public report shall expire thirteen months after the effective date of the report. The commission, upon submission of a written request for an extension by the developer at least thirty calendar days prior to the expiration date, together with such supporting information as may be required by the commission, a review of the registration, and after payment of a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, may issue an order extending the effective date of the preliminary, final, or supplemental public report.

(b) The commission may issue an order that the final public report for a two-apartment condominium project shall have no expiration date, provided that the developer submits to the commission:

- (1) A written request for such an order not later than thirty calendar days prior to the next expiration date of the final public report;
- (2) Satisfactory evidence that one or both apartments are either retained by the developer, or conveyed to an irrevocable trust to benefit a spouse or family member of the developer. A family member is anyone related by blood, descent, or adoption; and

- (3) Payment of a nonrefundable fee as provided by rules adopted by the department of commerce and consumer affairs pursuant to chapter 91.

The final report shall be subject to the supplemental public report requirements as provided in section 514A-41(a).

The developer receiving an order under this subsection shall provide written notification to the commission within thirty calendar days of any subsequent sale and conveyance of either apartment to any person.

§514A-44 Deposit of fees. All fees collected under this chapter shall, unless otherwise provided in this chapter, be deposited by the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).

§514A-45 Supplemental regulations governing a condominium property regime. Whenever they deem it proper, the commission, the county councils of the various counties or the city council of the city and county of Honolulu may adopt supplemental rules and regulations governing a condominium property regime established under this chapter in order to implement this program; provided that any of the supplemental rules and regulations adopted shall not conflict with this chapter or with any of the rules and regulations adopted by the commission to implement this chapter.

§514A-46 Investigatory powers. If the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association of apartment owners, the board of directors, the managing agent, the real estate broker, the real estate salesperson, the purchaser, or the developer. For the purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and shall make the records accessible to the commission upon reasonable notice and demand.

§514A-47 Cease and desist orders. In addition to its authority under section 514A-48, whenever the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of

the law or the rules of the commission charged in the complaint. If upon the hearing the commission is of the opinion that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.

§514A-48 Power to enjoin. Whenever the commission believes from satisfactory evidence that any person has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

§514A-49 Penalties. (a) Any person who violates or fails to comply with section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134, is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134, shall be punished by a fine not exceeding \$10,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.

§514A-50 Limitation of action. No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.

PART IV. PROTECTION OF PURCHASERS

§514A-61 Disclosure requirements. (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or the developer's agent and of the project manager or the project manager's agent;
 - (2) A breakdown of the annual maintenance fees and the monthly estimated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;
 - (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties; and if no warranties exist, the developer shall state that no warranties exist;
 - (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed-use project containing apartments for both residential and hotel use;
 - (5) A statement of the extent of commercial or other nonresidential development in the project.
- (b) In the case of a project which includes one or more existing structures being converted to condominium status:
- (1) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
 - (2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard;
 - (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations;
 - (4) A statement whether the project is on a lot, or has structures or uses, which do not conform to present zoning requirements;
- provided that paragraphs (1), (2), and (3) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years.
- (c) This section shall be administered by the commission. The commission may waive the requirements of subsections (a) and (b) if the information required to be contained in the disclosure abstract is included in the commission's public report on the project.
- (d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E if, with regard to that time share project:
- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
 - (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

§514A-62 Copy of public report to be given to prospective purchaser. (a) The developer (or any other person offering any apartment in a condominium project prior to completion of its construction) shall not enter into a contract or agreement for the sale or resale of an apartment that is binding upon any prospective purchaser until:

- (1) The commission has issued an effective date for either a contingent final public report or a final public report on the project, and the developer has delivered, or caused to be delivered, to the prospective purchaser, either personally or by registered or certified mail with return receipt requested, a true copy of either the contingent final public report or the final public report together with a true copy of all prior public reports on the project, if any, that have not been previously delivered to such prospective purchaser; except that such prior public reports need not be delivered to the prospective purchaser if the contingent final public report or the final public report supersedes such prior public reports. If, prior to the entering into of such contract or agreement for sale or resale, the commission, subsequent to its issuance of an effective date for the contingent final public report or the final public report, has issued an effective date for a supplementary public report on the project, then a true copy of such supplementary public report shall also be delivered to such prospective purchaser in the same manner as the contingent final public report or the final public report, except that if the supplementary public report supersedes all prior public reports on the project, then only the supplementary public report need be delivered to the prospective purchaser;
- (2) The prospective purchaser has been given an opportunity to read the report or reports; and
- (3) The prospective purchaser (A) executes the form of the receipt and notice set forth in subsection (d); and (B) waives the prospective purchaser's right to cancel; provided that if the prospective purchaser does not execute and return the receipt and notice within thirty days from the date of delivery of such reports, or if the apartment is conveyed to the prospective purchaser prior to the expiration of such thirty-day period, the prospective purchaser shall be deemed to have accepted for the reports and to have waived the prospective purchaser's right to cancel.

(b) The receipts and notices taken hereunder shall be kept on file in possession of the developer (or such other person as may offer any apartment in a condominium project prior to completion of its construction), and shall be subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date the receipt and notice was taken.

(c) Unless such right has previously been waived pursuant to subsection (a), a prospective purchaser shall have the right to cancel any agreement for the purchase or reservation of an apartment at any time prior to the earlier of:

- (1) The conveyance of the apartment to the prospective purchaser; or
- (2) Midnight of the thirtieth day following the date of delivery of the first of either the contingent final public report or the final public report to such purchaser,

and, upon any such cancellation, shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

(d) Whenever a contingent final public report, final public report, or supplementary public report is delivered to a prospective purchaser pursuant to subsection (a), two copies of the receipt and notice set out below shall also be delivered to such purchaser, one of which may be used by the purchaser to cancel the transaction. Such receipt and notice shall be printed in capital

and lower case letters of not less than twelve-point type on one side of a separate statement. The receipt and notice shall be in the following form:

"RECEIPT FOR PUBLIC REPORT(S) AND NOTICE OF RIGHT TO CANCEL

I acknowledge receipt of the Developer's (Preliminary, Contingent Final, Final, and Supplementary) Public Report(s) and Disclosure Abstract, contained in the public report, in connection with my purchase of apartment(s) (insert apartment numbers) in the (insert name of condominium project) condominium project.

I understand that I have a legal right under Hawaii law to cancel my purchase, if I desire to do so, without any penalty or obligation within thirty days from the date the above Public Report or Reports were delivered to me. If I cancel, I understand that I will be entitled to receive the refund of any down payment or deposit, less any escrow cancellation fees and other costs, up to \$250.

If I decide to cancel, I understand that I can do so by notifying (insert name of seller) at (insert address of seller) by mail or telegram sent before: (1) the conveyance of my apartment(s) to me; or (2) midnight of the thirtieth day after delivery of the Public Report(s) to me, whichever is earlier. If I send or deliver my written notice some other way, it must be delivered to the above address no later than that time. I understand that I can use any written statement that is signed and dated by me and states my intention to cancel, or I may use this notice by checking the appropriate box and by signing and dating below.

I understand that if I do not act within the above thirty-day period or if the apartment is conveyed to me within the above thirty-day period, I will be considered to have executed this receipt and to have waived my right to cancel my purchase. I also understand that I can waive my right to cancel by checking the appropriate box, by signing and dating below, and by returning this notice to (insert name of seller). I HAVE RECEIVED A COPY OF:

- (1) THE DEVELOPER'S (PRELIMINARY, CONTINGENT FINAL, FINAL, AND SUPPLEMENTARY) PUBLIC REPORT(S) ON (insert name of condominium project); AND
- (2) THE DISCLOSURE ABSTRACT CONTAINED IN THE PUBLIC REPORT.

Purchaser's signature

Date

I HAVE HAD AN OPPORTUNITY TO READ THE PUBLIC REPORT(S) AND
[] I WAIVE MY RIGHT TO CANCEL.
[] I HEREBY EXERCISE MY RIGHT TO CANCEL.

Purchaser's signature

Date"

(e) No obligation to purchase an apartment under any agreement for the purchase or reservation of an apartment entered into prior to the purchaser's receipt of either a contingent

final public report or a final public report is enforceable against the purchaser under such agreement.

(f) Where a developer has delivered to a purchaser a contingent final public report and the purchaser has previously waived the purchaser's right to cancel the purchaser's agreement for the purchase or reservation of an apartment pursuant to this section:

- (1) The issuance of an effective date for a final public report prior to the expiration of the contingent final public report shall not affect the enforceability of the purchaser's obligations under the purchaser's agreement for the purchase of an apartment;
- (2) The developer shall not be required to deliver to the purchaser the final public report for the project and receipt and notice set forth in subsection (d); and
- (3) The developer shall promptly deliver to the purchaser a disclosure statement informing them that the commission has issued an effective date for the final public report and containing all information contained in the final public report that is not contained in the contingent final public report.

(g) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

§514A-63 Rescission rights. (a) Except for any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the declaration, a purchaser shall have the right to rescind a sale made under a binding contract if there is a material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use.

(b) A purchaser's right of rescission under subsection (a) shall be waived upon (1) delivery to such purchaser, either personally or by registered or certified mail, return receipt requested, of a disclosure document which describes the material change and contains a provision for such purchaser's written approval or acceptance of such change, and (2) such purchaser's written approval or acceptance of the material change, or the lapse of ninety days since such purchaser has accepted the apartment, or the occupancy of the apartment by such purchaser; provided that if such purchaser does not rescind the contract or execute and return the written approval or acceptance of such change as provided in the disclosure document within thirty days from the date of delivery of such disclosure document, such purchaser shall be deemed to have approved and accepted such change; provided further that the deemed approval and acceptance shall be effective only if at the time of delivery of the disclosure document, such purchaser is notified in writing of the fact that such purchaser will be deemed to have approved and accepted the change upon such purchaser's failure to act within the thirty-day period; provided further that if, prior to delivery of such disclosure document, ninety days have lapsed since such purchaser

has accepted the apartment, or such purchaser has occupied the apartment, then such purchaser's right of rescission under subsection (a) shall not be waived unless such purchaser shall execute the written approval or acceptance of such change as provided in the disclosure document within thirty days from the date of delivery of such disclosure document or such purchaser is deemed to have approved and accepted such change as set forth above. A copy of the form of disclosure document shall be delivered to the commission prior to delivery to purchasers.

(c) In the event of rescission pursuant to the provisions of this section, a purchaser shall be entitled to a prompt and full refund of any moneys paid.

(d) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies.

§514A-64 REPEALED.

[§514A-64.5] Protection of purchasers' funds. (a) If the commission issues an effective date for a contingent final public report for a project, the escrow agent shall deposit all purchasers' funds in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. The escrow agent shall not disburse the purchasers' funds from the account until the commission issues an effective date for a final public report for the project.

(b) If the commission does not issue an effective date for a final public report for a project by the date on which the project's contingent final public report expires, then the developer shall promptly notify all purchasers thereof by certified mail and the developer or the purchaser, after the expiration of the contingent final public report, may rescind the purchaser's sales contract by giving written notice thereof to the other. In the event of rescission pursuant to this subsection a purchaser shall be entitled to a prompt and full refund of the purchaser's entire deposit together with all interest earned thereon, reimbursement of any required escrow fees, and, if the developer required the purchaser to secure a financing commitment, the purchaser shall also be entitled to reimbursement by the developer of any fees the purchaser incurred in securing that financing commitment.

(c) If the commission issues an effective date for a contingent final public report for a project, the following notice shall be included in the contingent final public report and the receipt and notice required under section 514A-62(d):

"The effective date for the Developer's Contingent Final Public Report was issued before the Developer submitted to the Real Estate Commission: the executed and recorded deed or master lease for the project site; the executed construction contract for the project; the building permit; satisfactory evidence of sufficient funds to cover the total project cost; or satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the Commission. Until the Developer submits each of the foregoing items to the Commission, all Purchaser deposits will be held by the escrow agent in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the

State. If the Developer does not submit each of the foregoing items to the Commission and the Commission does not issue an effective date for the Final Public Report before the expiration of the Contingent Final Public Report, then:

- (1) The Developer will notify the Purchaser thereof by certified mail; and
- (2) Either the Developer or the Purchaser shall thereafter have the right under Hawaii law to rescind the Purchaser's sales contract. In the event of a rescission, the Developer shall return all of the Purchaser's deposits together with all interest earned thereon, reimbursement of any required escrow fees, and, if the Developer required the Purchaser to secure a financing commitment, reimburse any fees the Purchaser incurred to secure that financing commitment."

§514A-65 Escrow requirement. All moneys paid by purchasers prior to the purchaser's receipt of the contingent final public report or the final public report on the project shall be deposited in trust under escrow arrangement with instructions that no disbursements shall be made from such trust funds on behalf of the seller until the contract has become binding, and the requirements of sections 514A-40, 514A-63, and 514A-64.5 have been met.

§514A-66 REPEALED.

§514A-67 Financing construction. Should the apartments be conveyed or leased prior to the completion of construction of the building or buildings for the purpose of financing such construction, all moneys from the sale of such apartments, including any payments made on loan commitments from lending institutions, shall be deposited by the developer in a trust fund with a bank, savings and loan association, or trust company authorized to do business in the State under an escrow arrangement. Disbursements from such fund may be made, from time to time, to pay for construction costs of the building or buildings in proportion to the valuation of the work completed by the contractor as certified by a registered architect or professional engineer, and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the trust fund shall be disbursed only upon completion of the building or buildings, free and clear of all mechanic's and materialman's liens. The real estate commission may impose other restrictions relative to the retention and disbursement of the trust fund.

§514A-68 Misleading statements and omissions. No officer, agent, or employee of any company, and no other person may knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease, and no person may issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning any project which contains any written statement that is false or which contains an untrue statement of a material fact or omits to state a

material fact necessary in order to make the statements therein made in the light of the circumstances under which they are made not misleading.

§514A-69 Remedies; sales voidable when and by whom. Every sale made in violation of section 514A-68 is voidable at the election of the purchaser; and the person making such sale and every director, officer, or agent of or for such seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, is jointly and severally liable to the purchaser in an action in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorney's fees; provided that no action shall be brought for the recovery of the purchase price after two years from the date of the sale and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by the purchaser, together with interest at six per cent on such amount for the period from the date of payment by the purchaser down to the date of repayment.

§514A-70 Warranty against structural and appliance defects; notice of expiration required. The developer of a condominium property regime subject to this chapter shall give notice by certified mail at the appropriate time to all members of the association of apartment owners and all members of the board of directors that the normal one-year warranty period will expire in ninety days. The notice shall set forth specific methods which apartment owners may pursue in seeking remedies for defects, if any, prior to expiration.

PART V. CONDOMINIUM MANAGEMENT

§514A-81 Bylaws. The operation of the property shall be governed by bylaws, a true copy of which shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded.

§514A-82 Contents of bylaws. (a) The bylaws shall provide for at least the following:

- (1) Board of directors:
 - (A) The election of a board of directors;
 - (B) The number of persons constituting the board; provided that condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than sixty-five per cent of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce the minimum number of directors;
 - (C) That for the initial term of office, directors shall serve for a term of three years or the term as specified by the bylaws or until their successors have been elected or appointed;
 - (D) The powers and duties of the board;

- (E) The compensation, if any, of the directors; and
 - (F) Whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them;
- (2) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, constitutes a quorum; what percentage, consistent with this chapter, is necessary to adopt decisions binding on all apartment owners and that votes allocated to any area that constitutes a common element under section 514A-13(h) shall not be cast at any association meeting, regardless of whether it is so designated in the declaration;
 - (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners;
 - (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded;
 - (5) Election of a treasurer who shall keep the financial records and books of account;
 - (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges;
 - (7) Manner of collecting common expenses, expenses, costs, and fees recoverable by the association under section 514A-94, and any penalties and late charges;
 - (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements;
 - (9) Method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;
 - (10) The restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners;
 - (11) The first meeting of the association of apartment owners shall be held not later than one hundred eighty days after recordation of the first apartment conveyance; provided forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year, an annual meeting shall be called; provided ten per cent of the apartment owners so request;
 - (12) All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. There shall not be more than one representative on the board of directors from any one apartment;
 - (13) A director shall not cast any proxy vote at any board meeting, nor shall a director vote at any board meeting on any issue in which the director has a conflict of interest;
 - (14) No resident manager of a condominium shall serve on its board of directors;
 - (15) The board of directors shall meet at least once a year;

- (16) All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order;
- (17) All meetings of the association of apartment owners shall be held at the address of the condominium project or elsewhere within the State as determined by the board of directors; and
- (18) Penalties chargeable against persons for violation of the covenants, conditions, or restrictions set forth in the declaration, or of the bylaws and administrative rules adopted pursuant thereto, method of determination of violations, and manner of enforcing penalties, if any.
 - (b) In addition to the requirements of subsection (a), the bylaws shall be consistent with the following provisions:
 - (1) At any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the apartment owners and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors. If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership; provided that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided in this section, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association;
 - (2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that:
 - (A) Each one of the particulars set forth in this subsection shall be embodied in the bylaws always; and
 - (B) Any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer apartment owners' committee. If submitted by that committee, the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board of directors or

a volunteer apartment owners' committee. If the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board.

This paragraph shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting;

- (3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting and shall contain at least:
 - (A) The date, time, and place of the meeting;
 - (B) The items on the agenda for the meeting; and
 - (C) A standard proxy form authorized by the association, if any;
- (4) No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. Any board of directors that intends to use association funds to distribute proxies, including the standard proxy form referred to in paragraph (3), shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:
 - (A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
 - (B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies;

- (5) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made;
- (6) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments;

- (7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association;
- (8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership;
- (9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors;
- (10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses;
- (11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments;
- (12) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of paragraph (10);
- (13) A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by chapter 667; and
- (14) If the bylaws provide for cumulative voting by the owners, the owners may so vote if an owner gives notice of the owner's intent to cumulatively vote before voting commences.

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date.

§514A-82.1 Employees of condominiums; background check. The board of directors of an association of apartment owners or the manager of a condominium project, upon the written authorization of an applicant for employment as security guard or manager or for a position which would allow the employee access to the keys of or entry into the units in the condominium project or access to association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the board of directors or the manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as a condominium employee with access to association funds or the keys of or entry into the units in

the condominium project, and the judgment of conviction has not been vacated. For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the board of directors, manager, or other responsible party, if so directed by the board or the manager, by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant's name, social security number, date of birth, and gender. This information shall be used only for the purpose of conducting the criminal history record check authorized by this section. Failure of an association of apartment owners or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against an association or manager for acts and omissions of the employee hired.

§514A-82.15 Mixed use property; representation on the board of directors. (a) The bylaws of an association of apartment owners may be amended to provide that the composition of the board reflect the proportionate number of apartments for a particular use, as set forth in the declaration. For example, an association of apartment owners may provide that for a nine-member board where two-thirds of the apartments are for residential use and one-third is for commercial use, sixty-six and two-thirds per cent of the nine-member board, or six members, shall be owners of residential use apartments and thirty-three and one-third per cent, or three members, shall be owners of commercial use apartments.

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

- (1) A majority vote of the board of directors; or
- (2) A submission of the proposed bylaw amendment to the board of directors from a volunteer apartment owner's committee accompanied by a petition from twenty-five per cent of the apartment owners of record.

(c) Within thirty days of a decision by the board or receipt of a petition to initiate a bylaws amendment, the board of directors shall mail a ballot with the proposed bylaws amendment to all of the apartment owners of record. For purposes of this section only and notwithstanding section 514A-82(b)(2), the bylaws may be initially amended by a vote or written consent of the majority (at least fifty-one per cent) of the apartment owners; and thereafter by sixty-five per cent of all apartment owners; provided that each of the requirements set forth in this section shall be embodied in the bylaws.

(d) The bylaws, as amended pursuant to this section, shall be recorded in the bureau of conveyances or filed in land court, as the case may be.

(e) Election of the new board of directors in accordance with an amendment adopted pursuant to this section shall be held within sixty days from the date the amended bylaws are recorded pursuant to subsection (d).

(f) As permitted in the bylaws or declaration, the vote of a commercial apartment owner shall be cast and counted only for the commercial seats available on the board of directors and the vote of a residential apartment owner shall be cast and counted only for the residential seats available on the board of directors.

(g) No petition for a bylaw amendment pursuant to subsection (b)(2) to modify the composition of the board shall be distributed to the apartment owners within one year of the distribution of a prior petition to modify the composition of the board pursuant to that subsection.

(h) This section shall not preclude the removal and replacement of any one or more members of the board pursuant to section 514A-82(b)(1). Any removal and replacement shall not affect the proportionate composition of the board as prescribed in the bylaws as amended pursuant to this section.

(i) This section shall be deemed incorporated into the bylaws of all properties subject to this chapter existing as of July 1, 1998, and thereafter.

§514A-82.2 Restatement of declaration and bylaws. (a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association of apartment owners may at any time restate the declaration of condominium property regime of the project or the bylaws of the association to set forth all amendments thereof by a resolution adopted by the board of directors.

(b) An association of apartment owners may at any time restate the declaration of condominium property regime of the project or the bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, rule or regulation enacted by any governmental authority, by a resolution adopted by the board of directors, and the restated declaration or bylaws shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners; provided that any declaration of condominium property regime or bylaws restated pursuant to this subsection shall identify each portion so restated and shall contain a statement that those portions have been restated solely for purposes of information and convenience, identifying the statute, ordinance, rule, or regulation implemented by the amendment, and that in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, rule, or regulation.

(c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated declaration of condominium property regime or bylaws shall set forth all of the operative provisions of the declaration of condominium property regime or bylaws, as amended, together with a statement that the restated declaration of condominium property regime or bylaws correctly sets forth without change the corresponding provisions of the declaration of condominium property regime or bylaws, as amended, and that the restated declaration of condominium property regime or bylaws supersede the original declaration of condominium property regime or bylaws and all prior amendments thereto.

(d) The restated declaration of condominium property regime or bylaws shall be recorded in the manner provided in section 514A-11 or 514A-82 or both and upon recordation shall supersede the original declaration of condominium property regime or bylaws and all prior amendments thereto; provided that in the event of any conflict, the restated declaration of condominium property regime or bylaws shall be subordinate to the original declaration of condominium property regime or bylaws and all prior amendments thereto.

514A-82.3 Borrowing of money. Subject to any approval requirements and spending limits contained in the declaration or bylaws of the association of apartment owners, the board of directors may authorize the borrowing of money to be used by the association for the repair, replacement, maintenance, operation, or administration of the common elements of the project, or the making of any additions, alterations, and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the project; provided that owners representing fifty per cent of the common interest and apartments give written consent to such borrowing, having been first notified of the purpose and use of the funds.

§514A-82.4 Duty of directors. Each director shall owe the association of apartment owners a fiduciary duty in the performance of the director's responsibilities.

§514A-82.5 Pets in apartments. (a) Whenever the bylaws do not forbid apartment owners from keeping animals as pets in their apartments, the bylaws shall not forbid the tenants of the apartment owners from keeping pets in the apartments rented or leased from the owners; provided that:

- (1) The apartment owner agrees in writing to allow the apartment owner's tenant to keep a pet in the apartment;
 - (2) The tenants may keep only those types of pets which may be kept by apartment owners;
 - (3) The bylaws may allow each owner or tenant to keep only one pet in the apartment;
 - (4) The animals shall not include those described as pests under section 150A-2, or animals prohibited from importation under section 141-2, 150A-5, or 150A-6;
 - (5) The bylaws may include reasonable restrictions or prohibitions against excessive noise or other problems caused by pets on the property; and
 - (6) The bylaws may reasonably restrict or prohibit the running of pets at large in the common areas of the property.
- (b) Any amendments to the bylaws pertaining to pet restrictions or prohibitions which exempt circumstances existing prior to the adoption of the amendments shall apply equally to apartment owners and tenants.

§514A-82.6 Pets, replacement of subsequent to prohibition. (a) Any apartment owner who keeps a pet in the owner's apartment pursuant to a provision in the bylaws which allows owners to keep pets or in the absence of any provision in the bylaws to the contrary may, upon the death of the animal, replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's apartment or another apartment subject to the same bylaws.

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

§514A-83 Purchaser's right to vote. The purchaser of an apartment pursuant to an agreement of sale recorded in the bureau of conveyances or land court shall have all the rights of an apartment owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the apartment, including but not limited to, the right to vote on:

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

§514A-83.1 Board meetings. (a) All meetings of the board of directors, other than executive sessions, shall be open to all members of the association, and association members who are not on the board of directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the board of directors votes otherwise.

(b) The board of directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.

§514A-83.2 Proxies. (a) A proxy, to be valid, shall:

- (1) Be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;
- (2) Contain at least the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed names and signatures of the persons giving the proxy, the apartments for which the proxy is given, and the date that the proxy is given; and
- (3) Contain boxes wherein the owner has indicated that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or

(D) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

(b) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(c) No board of directors or member of the board shall use association funds to solicit proxies except for the distribution of proxies as set forth in section 514A-82(b)(4); provided that this shall not prevent an individual member of the board from soliciting proxies as an apartment owner under section 514-82(b)(4).

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

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

§514A-83.3 Membership list. The resident manager or managing agent or board of directors shall keep an accurate and current list of members of the association of apartment owners and their current addresses and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the resident manager or managing agent or board of directors a duly executed and acknowledged affidavit stating that the list:

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

(2) Shall not be used by such owner or furnished to anyone else for any other purpose. No board of directors shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by apartment owners; provided that a board of directors may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. A board of directors may prohibit commercial solicitations.

§514A-83.4 Meeting minutes. (a) Minutes of meetings of the board of directors and association of apartment owners shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the board of directors and association of apartment owners shall be approved at the next succeeding meeting; provided that for board of directors meetings, no later than the second succeeding meeting.

(c) Minutes of all meetings shall be available within seven calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty

days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

§514A-83.5 Documents of the association of apartment owners. (a) The association's most current financial statement shall be available to any owner at no cost or on twenty-four-hour loan, at a convenient location designated by the board of directors. The meeting minutes of the board of directors, once approved, for the current and prior year shall either:

(1) Be available for examination by apartment owners at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board of directors; or

(2) Be transmitted to any apartment owner making a request for the minutes, by the board of directors, the managing agent, or the association's representative, within fifteen days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request.

Costs incurred by apartment owners pursuant to this subsection shall be subject to section 514A-92.5.

(b) Minutes of board meetings shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(c) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association of apartment owners for the duration those records are kept by the association and delinquencies of ninety days or more shall be available for examination by apartment owners at convenient hours at a place designated by the board; provided that:

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

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

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

(d) Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty days following any association meeting; provided:

(1) That the board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and

(2) That owners pay for administrative costs in excess of eight hours per year.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

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

§514A-83.6 Associations of apartment owners; budgets and reserves. (a) The board of directors of each association of apartment owners shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the association as of the date of the budget;
- (4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

(b) The association shall assess the apartment owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan; provided that a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the association's plan, except:

- (1) The commission shall adopt rules to permit an existing association to fund its estimated replacement reserves in increments after January 1, 1993 and prior to January 1, 2000; and
- (2) The commission shall adopt rules to permit an association to fund in increments, over three years, estimated replacement reserves that have been substantially depleted by an emergency.

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

- (1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

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

(e) The commission may request a copy of the annual operating budget of the association of apartment owners as part of the association's registration with the commission under section 514A-95.1.

(f) A board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this paragraph, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(g) The requirements of this section shall override any requirements in an association's declaration, bylaws, or any other association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

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

(h) Subject to the procedures of section 514A-94 and any rules adopted by the commission, any apartment owner whose association board fails to comply with this section may enforce compliance by the board. In any proceeding to enforce compliance, a board which has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with this section.

(i) The commission may adopt rules to implement this section.

(j) As used in this section:

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

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

"Emergency situation" means any extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;
- (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;

- (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (5) Necessary for the association to obtain adequate insurance for the property which the association must insure.

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

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

§514A-84 Management and contracts; developer, managing agent, and association of apartment owners. (a) If the developer or any affiliate of the developer acts as the first managing agent for the association of apartment owners following its organization, the contract shall not have a term exceeding one year and shall contain a provision that the contract may be terminated by either party thereto on not more than sixty days' written notice. The identity of the managing agent as the developer or the developer's affiliate shall be disclosed to the association of apartment owners no later than the first meeting of the association of apartment owners, which is when the association of apartment owners is organized. An affiliate of, or person affiliated with, a developer is a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.

(b) Any developer or affiliate of the developer or a managing agent, who manages the operation of the property from the date of recordation of the first apartment conveyance until the organization of the association of apartment owners, shall comply with the requirements of sections 514A-95.1, 514A-97, and 514A-132, with the exception of the fidelity bond requirement for the association of apartment owners.

(c) The developer, affiliate of the developer, managing agent, and the association of apartment owners shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract. Prior to the organization of the association of apartment owners, any apartment owner may request to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.

§514A-84.5 Availability of project documents. An accurate copy of the declaration of condominium property regime, the bylaws of the association of apartment owners, the house rules, if any, the master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office. The managing agent shall provide copies of those documents to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. In the event that the project is not managed by

a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the association of apartment owners, to whom this function is delegated.

§514A-85 Records; examination; disposal. (a) The managing agent or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The managing agent or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(b) All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors.

(c) A managing agent employed or retained by one or more condominium associations may dispose of the records of any condominium association which are more than five years old without liability if the managing agent first provides the board of directors of the condominium association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board of directors within sixty days, which notice shall include an itemized list of the records which the managing agent intends to dispose of.

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

§514A-86 Insurance. (a) The association of apartment owners shall purchase and at all times maintain insurance which covers the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with the as-built condominium plans and specifications, against loss or damage by fire sufficient to provide for the repair or replacement thereof in the event of such loss or damages. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration. Exterior glass may be insured at the option of the association of apartment owners. The insurance coverage shall be written on the property in the name of the association of apartment owners. Premiums shall be common expenses. Provision for the insurance shall be without prejudice to the right of each apartment owner to insure the owner's own apartment for the owner's benefit.

(b) The association of apartment owners may purchase and maintain directors' and officers' liability insurance with minimum coverage in such amount as shall be determined by the board of directors. Premiums shall be common expenses.

(c) Any insurance policy providing the coverage required by subsections (a) and (b) shall contain a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the board of directors with a written summary, in layperson's terms, of the policy. The summary shall include the type of policy, a description of

the coverage and the limits thereof, amount of annual premium, and renewal dates. The board of directors shall provide this information to each apartment owner.

§514A-87 Personal application. (a) All apartment owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to this chapter.

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

§514A-88 Compliance with covenants, bylaws, and administrative provisions. Each apartment owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner.

§514A-89 Certain work prohibited. (a) No apartment owner shall do any work that could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament.

(b) No apartment owner shall add any material structure or excavate any additional basement or cellar, without first obtaining in every such case the consent of seventy-five per cent of the apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected.

(c) Nonmaterial structural additions to the common elements, including, without limitation, additions to or alterations of an apartment made within the apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the board of directors of the association of apartment owners and such percentage, number, or group of apartment owners as may be required by the declaration or bylaws; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this section:

"Nonmaterial structural additions to the common elements", means a structural addition to the common elements that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

"Solar energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of

energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and ready to be made operational to qualify as a "solar energy device"; and provided further that "solar energy device" shall not include skylights or windows.

"Townhouse" means a series of individual houses having architectural unity and a common wall between each unit; provided that each unit extends from the ground to the roof.

§514A-90 Priority of lien. (a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the apartment; and
- (2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of notice of a lien by the association of apartment owners, and costs and expenses including attorneys' fees provided in such mortgages.

The lien of the association of apartment owners may be foreclosed by action or by non-judicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board of directors, acting on behalf of the association of apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The managing agent or board of directors, acting on behalf of the association of apartment owners, unless prohibited by the declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment which became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the apartment shall be deemed to acquire title and shall be required to pay the apartment's share of common expenses and assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure pursuant to section 667-5; or
- (4) Upon the recording of the instrument of conveyance,

whichever occurs first; provided that the mortgagee of record or other purchaser of the apartment shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the apartment shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) No apartment owner shall withhold any assessment claimed by the association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;
- (5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and
- (6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

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

(d) An apartment owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the apartment owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under part VII; provided that an apartment owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the apartment owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all association assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the association which are not owed.

(e) As an alternative to foreclosure proceedings under subsection (a), where an apartment is owner-occupied, the association of apartment owners may authorize its managing agent or board of directors to, after sixty days' written notice to the apartment owner and to the apartment's first mortgagee of the nonpayment of the apartment's share of the common expenses,

terminate the delinquent apartment's access to the common elements and cease supplying a delinquent apartment with any and all services normally supplied or paid for by the association of apartment owners. Any terminated services and privileges shall be restored upon payment of all delinquent assessments.

(f) Before the board of directors or managing agent may take the actions permitted under subsection (e), the board must adopt a written policy providing for such actions and have the policy approved by a majority vote of the apartment owners at an annual or special meeting of the association or by the written consent of a majority of the apartment owners.

(g) Subject to this subsection, and subsections (h) and (i), the board of an association of apartment owners may specially assess the amount of the unpaid regular monthly common assessments for common area expenses against a person who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent apartment; provided that:

(1) A purchaser who holds a mortgage on a delinquent apartment that was recorded prior to the filing of a notice of lien by the association of apartment owners and who acquires the delinquent apartment through a judicial or nonjudicial foreclosure proceeding, including purchasing the delinquent apartment at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and

(2) A person who subsequently purchases the delinquent apartment from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; provided that the mortgagee or subsequent purchaser may require the association of apartment owners to provide at no charge a notice of the association's intent to claim a lien against the delinquent apartment for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent apartment. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the apartment.

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

(i) For purposes of subsections (g) and (h), the following definitions shall apply:

"Completion" means:

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

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

"Regular monthly common assessments" shall not include:

(1) Any other special assessment, except for a special assessment imposed on all apartments as part of a budget adopted pursuant to section 514A-83.6;

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association of apartment owners;

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

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

§514A-90.5 Unpaid common expenses; collection from tenants. (a) If the owner of an apartment rents or leases the apartment and is in default for thirty days or more in the payment of the apartment's share of the common expenses, the board of directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the apartment, an amount sufficient to pay all sums due from the apartment owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Prior to taking any action under this section, the board of directors shall give to the delinquent apartment owner written notice of its intent to collect the rent owed. The notice shall:

- (1) Be sent both by first-class and certified mail;
- (2) Set forth the exact amount the association claims is due and owing by the apartment owner; and
- (3) Indicate the intent of the board of directors to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The apartment owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the apartment's share of common expenses by the tenant pursuant to a written demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the apartment owner against a tenant.

(e) The board may not demand payment from the tenant pursuant to this section if:

- (1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;
- (2) A mortgagee is in possession pending a mortgage foreclosure; or
- (3) The tenant is served with a court order directing payment to a third party.

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

(g) Before the board of directors may take the actions permitted under subsection (a), the board must adopt a written policy providing for the actions and have the policy approved by a majority vote of the apartment owners at an annual or special meeting of the association or by the written consent of a majority of the apartment owners.

§514A-90.6 Lease rent renegotiation. (a) Notwithstanding any provision in the declaration or bylaws of any property subject to this chapter, any lease or sublease of the

property or of an apartment, or an undivided interest in the land to an apartment owner, whenever any lease or sublease of the property, an apartment, or an undivided interest in the land to an apartment owner provides for the periodic renegotiation of lease rent thereunder, the association of apartment owners shall represent the apartment owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent as a common expense of the association.

(b) If some, but not all of the apartment owners have purchased the leased fee interest appurtenant to their apartments, all costs and expenses of the renegotiation shall be assessed to the remaining lessees in the same proportion that the common interest appurtenant to each lessee's apartment bears to the common interest appurtenant to all lessees' apartments. The unpaid amount of this assessment shall constitute a lien upon the lessee's apartment, which may be collected in accordance with sections 514A-90 and 514A-94 in the same manner as an unpaid common expense.

§514A-91 Joint and several liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance the grantee of an apartment is jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee is entitled to a statement from the manager or board of directors setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty-day period immediately preceding the date of such statement, the grantee is not liable for, nor is the apartment conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

§514A-92 Waiver of use of common elements; abandonment of apartment; conveyance to board of directors. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment. Subject to such terms and conditions as may be specified in the bylaws, any apartment owner may, by conveying his apartment and his common interest to the board of directors on behalf of all other apartment owners, exempt himself from common expenses thereafter accruing.

§514A-92.1 Designation of additional areas. Designation of additional areas to be common elements or subject to common expenses after the initial filing of the bylaws or declaration shall require the approval of ninety per cent of the apartment owners; provided that if the developer discloses to the initial buyer in writing that additional areas will be designated as common elements pursuant to an incremental or phased project, this requirement shall not apply as to those additional areas.

§514A-92.2 Notification of maintenance fee increases. The manager or board of directors shall notify the apartment owners in writing of maintenance fee increases at least thirty days prior to such an increase.

§514A-92.5 Association of apartment owners; prior written notice of assessment of the cost of providing information. No apartment owner who requests legal or other information from the association of apartment owners, the board of directors, the managing agent, or their employees or agents, shall be charged for the cost of providing the information unless the association notifies the apartment owner that it intends to charge the apartment owner for the cost. The association shall notify the apartment owner in writing at least ten days prior to incurring the cost of providing the information, except that no prior notice shall be required to assess the cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the association's governing documents.

After being notified of the cost of providing the information, the apartment owner may withdraw the request, in writing. An apartment owner who withdraws a request for information shall not be charged for the cost of providing the information.

§514A-93 Actions. Without limiting the rights of any apartment owner, actions may be brought by the manager or board of directors, in either case in the discretion of the board of directors on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one apartment. Service of process on two or more apartment owners in any action relating to the common elements or more than one apartment may be made on the person designated in the declaration to receive service of process.

§514A-93.5 Disposition of unclaimed possessions. (a) When personalty in or on the common elements of a project has been abandoned, the board of directors may sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty days after the board complies with the following:

- (1) The board notifies the owner in writing of:
 - (A) The identity and location of the personalty, and
 - (B) The board of directors' intent to so sell, store, donate, or dispose of the personalty.

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

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

(b) The proceeds of any sale or disposition of personalty under subsection (a) shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty days. Any proceeds not claimed within this period shall become the property of the association of apartment owners.

§514A-94 Attorneys' fees, delinquent assessments, and expenses of enforcement. (a)

All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments against any owner's apartment;
- (2) Foreclosing any lien thereon; or
- (3) Enforcing any provision of the declaration, bylaws, house rules, and the Condominium Property Act; or the rules of the real estate commission;

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

(b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

- (1) The owner first shall have demanded and allowed reasonable time for the board of directors to pursue such enforcement; or
- (2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless.

If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless the action was filed in small claims court or prior to filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under part VII of this chapter, and made a good faith effort to resolve the dispute under any of those procedures.

(c) Anyone contracted by the association of apartment owners to collect delinquent assessments against any owner's apartment shall not share in any portion of any penalties or late charges collected.

§514A-95 Managing agents. (a) Every managing agent shall:

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under article 8 of chapter 412;

- (2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission.
Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include the name, business address, phone number, and names of association of apartment owners managed;
- (3) Obtain and keep current a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of apartments of the association of apartment owners managed by the managing agent; provided that the amount of the fidelity bond shall not be less than \$20,000 nor greater than \$100,000. Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond or a certification statement from an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirement of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association of apartment owners funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The fidelity bond shall protect the managing agent against the loss of any association of apartment owners' moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or a bond alternative, or permit deductibles;
- (4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association of apartment owners, and apply the fidelity bond proceeds, if any, to reduce the association of apartment owners' loss. If more than one association of apartment owners suffers a loss, the managing agent shall divide the proceeds among the associations of apartment owners in proportion to each association of apartment owners' loss. An association of apartment owners may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association of apartment owners cannot recover its loss from the fidelity bond proceeds of the managing agent, the association of apartment

owners may recover by court order from the real estate recovery fund established under section 467-16, provided that:

- (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
 - (B) The managing agent is a licensed real estate broker; and
 - (C) The association of apartment owners fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;
- (5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and
- (6) Report immediately in writing to the commission any changes to the information contained on the registration application or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements.
- (b) The commission may deny any registration or reregistration application or terminate a registration without hearing if the fidelity bond and its evidence fail to meet the requirements of this chapter and the rules adopted pursuant thereto.
- (c) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent.
- (d) The registration and fidelity bond requirements of this section shall not apply to active real estate brokers in compliance with and licensed under chapter 467.

§514A-95.1 Association of apartment owners registration; fidelity bond. (a) Each condominium project or association of apartment owners having six or more apartments shall:

- (1) Secure a fidelity bond in an amount equal to \$500 multiplied by the number of apartments, to cover all officers, directors, employees, and managing agents of the association of apartment owners who handle, control, or have custody of the funds of the association of apartment owners; provided that the amount of the fidelity bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The fidelity bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons, including any managing agent, handling the funds of the association of apartment owners. An association of apartment owners shall act promptly and diligently to recover from the fidelity bond required by this section. An association of apartment owners that is unable to obtain a fidelity bond may seek approval for an exemption or a bond alternative from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or a bond alternative, or permit deductibles. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide current evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently

maintained. Current evidence of a fidelity bond includes a certification statement from an insurance company registered with the department of commerce and consumer affairs certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission;

- (2) Register with the commission through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. Beginning June 30, 1997, the registration shall be for a biennial period with termination on June 30 of an odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any condominium project or association of apartment owners that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. Any new condominium project or association of apartment owners shall register within thirty days of the association of apartment owners' first meeting. If the association of apartment owners has not held its first meeting and it is at least one year after the recordation of the purchase of the first apartment in the condominium project, the developer or developer's affiliate or the managing agent shall register on behalf of the unorganized association of apartment owners and shall comply with this section, except the fidelity bond requirement for association of apartment owners. The public information required to be submitted on any completed application form shall include but not be limited to evidence of and information on fidelity bond coverage, names and positions of the officers of the association, the name of the association of apartment owners' managing agent, if any, the street and the postal address of the condominium, and the name and current mailing address of a designated officer of the association of apartment owners where the officer can be contacted directly;
- (3) Pay a nonrefundable application fee and, upon approval, an initial registration fee and subsequently pay a reregistration fee, and the condominium management education fund fee, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (4) Register or reregister and pay the required fees by the due date. Failure to register or reregister or pay the required fees by the due date shall result in the assessment of a penalty equal to the amount of the registration or reregistration fee; and
- (5) Report immediately in writing to the commission any changes to the information contained on the registration or reregistration application, the evidence of the fidelity bond, or any other documents set forth by the commission. Failure to do so may result in termination of registration and subject the condominium project or the association of apartment owners to initial registration requirements.

(b) The commission may reject or terminate any registration submitted by a condominium project or an association of apartment owners that fails to comply with this section. Any association of apartment owners that fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding

in the courts of this State until it registers. The failure of an association of apartment owners to register, or rejection or termination of its registration, shall not impair the validity of any contract or act of the association of apartment owners nor prevent the association of apartment owners from defending any action or proceeding in any court in this State.

§514A-96 Board of directors, audits, audited financial statement, transmittal. (a) The association of apartment owners shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all apartment owners taken at an association meeting.

(b) The board of directors of the association shall make available a copy of the annual audit to each apartment owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall provide upon all official proxy forms a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report. The board shall not be required to submit a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by that date, the board shall make available:

- (1) An unaudited year end financial statement for the fiscal year to each apartment owner at least thirty days prior to the annual meeting; and
- (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the association's fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

§514A-97 Association of apartment owners funds; handling and disbursement. (a) The funds in the general operating account of the association of apartment owners shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall a managing agent commingle any association funds with the managing agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual apartment owners of a project and the payment of ground lease rents to the ground lessor; provided that:

- (1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual apartment leases of the project;
- (2) If a management contract exists, it requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor;
- (3) The system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association; and

- (4) No managing agent or association shall pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.
- (c) All funds collected by an association, or by a managing agent for any association, shall be:
 - (1) Deposited in a financial institution, including a federal or community credit union, located in the State and whose deposits are insured by an agency of the United States government;
 - (2) Held by a corporation authorized to do business under article 8 of chapter 412;
 - (3) Held by the United States Treasury;
 - (4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation; or
 - (5) Placed through a federally insured financial institution located in the State for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States.
- (d) All funds collected by an association, or by a managing agent for any association, shall be invested only in:
 - (1) Demand deposits, investment certificates, and certificates of deposit;
 - (2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the apartment owners at an annual or special meeting of the association or by written consent of a majority of the apartment owners;
 - (3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the apartment owners at an annual or special meeting of the association or by written consent of a majority of the apartment owners; or
 - (4) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;

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

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board of directors. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision

of the association's board of directors. The commission may draft rules governing the handling and disbursement of condominium association funds.

(e) A managing agent or board of directors shall not transfer association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

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

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

§514A-98 False statement. It shall be unlawful for any person or person's agents to testify before or file with the commission any notice, statement, application, or other document required under this chapter that is false or untrue or contains any material misstatement of fact, or contains forgery. In addition to any sanctions or remedies as provided in this chapter, any violation of this section shall constitute a misdemeanor.

§514A-99 Rules. The commission shall adopt, amend, or repeal such rules as it may deem proper to fully effectuate this chapter.

PART VI. SALES TO OWNER-OCCUPANTS

§514A-101 Definitions. As used in this part:

"Chronological system" means a system in which the residential apartments designated for sale to prospective owner-occupants are offered for sale to prospective owner-occupants in the chronological order in which the prospective owner-occupants deliver to the developer or the designated real estate broker completed owner-occupant affidavits, executed sales contracts or reservations, and earnest money deposits.

"Initial date of sale" means the date of the first publication of the announcement or advertisement pursuant to section 514A-102.

"Lottery system" means a system in which no prospective owner-occupant has an unfair advantage in the determination of the order in which residential units designated for sale to prospective owner-occupants are offered for sale because the order is determined by a lottery.

"Owner-occupant" means any individual in whose name sole or joint legal title is held in a residential apartment which, simultaneous to such ownership, serves as the individual's principal residence, as defined by the state department of taxation, for a period of not less than three hundred sixty-five consecutive days; provided that the individual retains complete possessory control of the premises of the residential apartment during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held; except that an individual shall be deemed to have complete possessory control even when

the individual conveys or transfers the apartment into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period.

"Residential apartment" means "apartment" as defined in section 514A-3, but excludes:

- (1) Any apartment intended for commercial use;
- (2) Any apartment designed and constructed for hotel or resort use that is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to section 46-4; and
- (3) Any other use pursuant to authority granted by law to a county.

§514A-102 Announcement or advertisement; publication. At least once in each of two successive weeks, and at any time following the issuance of an effective date of the first public report for the condominium project, the developer shall cause to be published in at least one newspaper published daily in the State with a general circulation in the county in which the project is to be located, and, if the project is located other than on the island of Oahu, in at least one newspaper that is published at least weekly in the county in which the project is to be located, an announcement or advertisement containing at least the following information:

- (1) The location of the project;
- (2) The minimum price of the residential apartments;
- (3) A designation as to whether the residential apartments are to be sold in fee simple or leasehold;
- (4) A statement that for a thirty-day period following the initial date of sale of the condominium project, at least fifty per cent of the residential apartments being marketed shall be offered only to prospective owner-occupants;
- (5) The name, telephone number, and address of the developer or other real estate broker designated by the developer that an interested individual may contact to secure an owner-occupant affidavit, public report, and any other information concerning the project; and
- (6) If applicable, a statement that the residential apartments will be offered to prospective purchasers through a public lottery.

§514A-103 Designation of residential apartments. (a) The developer of any project containing residential apartments shall designate at least fifty per cent of the apartments for sale to prospective owner-occupants pursuant to section 514A-105. The designation shall be set forth either in the public report or in the announcement or advertisement required by section 514A-102, and may be set forth in both. The apartments shall constitute a proportionate representation of all the residential apartments in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not the apartment has a lanai.

(b) A developer shall have the right to substitute an apartment designated for owner-occupants with an apartment that is not so designated; provided that the apartments are similar with regard to factors enumerated in subsection (a). The substitution shall not require the developer's submission of a supplementary public report.

§514A-104 Apartment selection, requirements. (a) When the chronological system is used, the developer or the developer's real estate broker, as the case may be, shall offer the residential apartments that have been designated pursuant to section 514A-103 as follows:

- (1) For thirty days from the date of the first published announcement or advertisement required under section 514A-102, the developer or developer's real estate broker shall offer the residential apartments that have been designated pursuant to section 514A-103 to prospective purchasers chronologically in the order in which they submit to the developer or the developer's real estate broker, a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit in a reasonable amount designated by the developer. The developer or the developer's real estate broker shall maintain at all times a sufficient number of sales contracts and affidavits for prospective owner-occupants to execute. Prospective purchasers who do not have the opportunity to select a residential apartment during the thirty-day period shall be placed on a back-up reservation list in the order in which they submit a completed owner-occupant affidavit and earnest money deposit in a reasonable amount designated by the developer;
- (2) If two or more prospective owner-occupants intend to reside jointly in the same residential apartment, only one residential apartment designated pursuant to section 514A-103 shall be offered to them or only one of them shall be placed on the back-up reservation list;
- (3) No developer, employee or agent of the developer, or any real estate licensee shall, either directly or through any other person, release any information or inform any prospective owner-occupant about the publication announcement or advertisement referred to in section 514A-102, including the date it is to appear and when the chronological system will be initiated, until after the announcement or advertisement is published; and
- (4) The developer shall compile and maintain a list of all prospective purchasers that submit a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit, and maintain a back-up reservation list, if any. Upon the request of the commission, the developer shall provide a copy of the list of all prospective purchasers and the back-up reservation list.

(b) When the public lottery system is used, the developer or the developer's broker, as the case may be, shall offer the residential apartments that have been designated pursuant to section 514A-103 as follows:

- (1) From the date of the first published announcement or advertisement required under section 514A-102 until five calendar days after the last published announcement or advertisement, the developer or developer's real estate broker shall compile and maintain a list of all prospective owner-occupants who have submitted to the developer or the developer's real estate broker a duly executed owner-occupant affidavit. All prospective owner-occupants on this list shall be included in the public lottery described in paragraph (2). The developer and the developer's real estate broker shall maintain at all times sufficient copies of affidavits for prospective owner-occupants to execute. Upon the request of the

commission, the developer shall provide a copy of the lottery list of prospective owner-occupants;

- (2) The developer or developer's real estate broker shall conduct a public lottery on the date, time, and location as set forth in the published announcement, or advertisement. Any person, including all prospective owner-occupants eligible for the lottery, shall be allowed to attend the lottery;
- (3) The public lottery shall be conducted so that no prospective owner-occupant shall have an unfair advantage, and shall, as to all owner-occupants whose affidavits were submitted to the developer or the developer's real estate broker within the time period referred to in the first sentence of subsection (b)(1) above, be conducted without regard to the order in which the affidavits were submitted. If two or more prospective owner-occupants intend to reside jointly in the same residential apartment, only one of them shall be entitled to enter the public lottery; and
- (4) After the public lottery, each prospective owner-occupant purchaser, in the order in which they are selected in the lottery, shall be given the opportunity to select one of the residential apartments that have been designated pursuant to section 514A-103, execute a sales contract, and submit an earnest money deposit in a reasonable amount designated by the developer. The developer shall maintain a list, in the order of selection, of all prospective purchasers selected in the lottery, and maintain a list of all prospective purchasers who selected one of the residential apartments designated pursuant to section 514A-103. Those prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential apartments designated pursuant to section 514A-103 but who submitted an earnest money deposit in a reasonable amount designated by the developer shall be placed on a back-up reservation list in the order in which they were selected in the public lottery. Upon request of the commission, copies of the aforementioned lists shall be submitted.

§514A-104.5 Affidavit. (a) The owner-occupant affidavit required by section 514A-104 shall expire after three hundred sixty-five consecutive days have elapsed after the recordation of the instrument conveying the apartment to the affiant. The affidavit shall expire prior to this period upon acquisition of title to the property by an institutional lender or investor through mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure.

(b) The affidavit shall include statements by the affiant affirming that the affiant shall notify the commission immediately upon any decision to cease being an owner-occupant.

(c) The affidavit shall be personally executed by all the prospective owner-occupants of the residential apartment and shall not be executed by an attorney-in-fact.

§514A-104.6 Prohibitions. (a) No person who has executed an owner-occupant affidavit shall sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, or convey the apartment until at least three hundred sixty-five consecutive days have elapsed since the recordation of the purchase; provided that a person who continues in the use of the premises

as the individual's principal residence during this period may convey or transfer the apartment into a trust for estate planning purposes. Any contract or instrument entered into in violation of this part shall be subject to the remedies provided in section 514A-69.

(b) No developer, employee or agent of a developer, or real estate licensee shall violate or aid any other person in violating this part.

§514A-105 Sale of residential apartments; developer requirements. (a) The developer may go to sale using either a chronological system or a lottery system at any time after issuance of an effective date for a public report for which the effective date has not expired.

(b) For a thirty-day period following the initial date of sale of apartments in a condominium project, at least fifty per cent of the apartments being sold shall be offered for sale only to prospective owner-occupants; provided that notwithstanding this part, in the case of a project that includes one or more existing structures being converted to condominium status, each residential apartment contained in the project first shall be offered for sale to any individual occupying the apartment immediately prior to the conversion and who submits an owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

(c) Each contract for the purchase of a residential apartment by an owner-occupant may be conditioned upon the purchaser obtaining adequate financing, or a commitment for adequate financing. If the sales contract is canceled, the developer shall re-offer the residential apartment first to prospective owner-occupants on the back-up reservation list described in sections 514A-104 and 514A-105, in the order in which the names appear on the reservation list; provided that the prospective owner-occupant has not already executed a sales contract or reservation for a residential apartment in the project.

(d) At any time, any prospective owner-occupant on the back-up reservation list may be offered any residential apartment in the project that has not been sold or set aside for sale to prospective owner-occupants.

§514A-106 REPEALED.

§514A-107 Enforcement. (a) Whenever the commission believes from satisfactory evidence that any person is violating or has violated any provision of this part or rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter and bring an action in the name of the commission in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Before the commission brings an action in any court of competent jurisdiction pursuant to subsection (a) against any person who executed an affidavit pursuant to this part, it may consider whether the following extenuating circumstances affected the person's ability to comply with the law:

- (1) Serious illness of any of the owner-occupants who executed the affidavit or any other person who was to or has occupied the residential apartment;

- (2) Unforeseeable job or military transfer;
- (3) Unforeseeable change in marital status, or change in parental status; or
- (4) Any other unforeseeable occurrence subsequent to execution of the affidavit.

Thereafter, the commission may cease any further action and order release of any net proceeds held in abeyance.

(c) Any individual who executes an affidavit pursuant to this part and who subsequently sells or offers to sell, leases or offers to lease, rents or offers to rent, assigns or offers to assign, or otherwise transfers any interest in the residential apartment that the person obtained pursuant to this part, shall have the burden of proving his or her compliance with the requirements of this part.

(d) Upon request, the commission may require a verification of owner-occupancy from the presumed owner-occupant. In the event that the presumed owner-occupant fails to submit verification of continuing owner-occupancy, as defined in this section, because of sale, lease, assignment, or transfer, the presumed owner-occupant may also be subject to a fine in the amount equal to the profit made from the sale, assignment or transfer.

(e) The commission shall adopt rules, pursuant to chapter 91, to carry out the purposes of, and its responsibilities under, this part.

§514A-107.5 Penalties. (a) Any person who executes an affidavit required by this part and violates or fails to comply with any of the provisions of this part or any rule adopted by the commission pursuant thereto shall be subject to a civil penalty of up to \$10,000 or fifty per cent of the net proceeds received or to be received by the person from the sale, lease, rental, assignment, or other transfer of the residential apartment to which the violation relates, whichever is the greater.

(b) Any developer, employee or agent of a developer, or real estate licensee who violates or fails to comply with any of the provisions of this part or any rule adopted by the commission pursuant thereto shall be subject to a civil penalty of up to \$10,000. Each violation shall constitute a separate offense.

[§514A-107.6] False statement. It shall be unlawful for any person to make a false statement in the affidavit required by this part or for any person to file with the commission any notice, statement, or other document required under this part or any rule adopted by the commission pursuant thereto which is false or contains a material misstatement of fact. Any violation of this section shall be a misdemeanor punishable by a fine not to exceed \$2,000, or by imprisonment for a term not to exceed one year, or both.

§514A-108 Inapplicability of part or sections. (a) This part shall not apply to a project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201H, 206, or 356D; provided that the developer of the project may elect to be subject to this part through a written notification to the commission.

(b) This part shall not apply to condominium projects where the developer intends to convey, and does in fact convey, all of the residential apartment units in the project to a spouse or family members related by blood, descent or adoption.

(c) This part shall not apply to condominium projects consisting of two or fewer apartments.

(d) A developer of a project specified in subsection (a) electing to be subject to this part or a project developed pursuant to an affordable housing condition or provision by a state or county governmental agency may elect to waive specific provisions of this part that conflict with the eligibility or preference requirements imposed by the governmental agency. The developer of a project specified in subsection (a) who exercises the election shall provide detailed written notification to the commission of the specific provisions that will be waived, an explanation for each waived provision, and a statement from the affected government agency that the project is either an inapplicable project pursuant to subsection (a) or a project whereby a governmental agency has imposed eligibility or preference requirements. A copy of this notification shall be filed with the affected governmental agency.

(e) Such filing to meet the notification requirements of subsections (a) or (d) shall not be construed to be an approval or disapproval of the project by the commission.

PART VII. ARBITRATION; MEDIATION

§514A-121 Arbitration of disputes. (a) At the request of any party, any dispute concerning or involving one or more apartment owners and an association of apartment owners, its board of directors, managing agent, or one or more other apartment owners relating to the interpretation, application or enforcement of chapter 514A or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and the provisions of chapter 658A; provided that the Condominium Property Regime Rules on Arbitration of Disputes of the American Arbitration Association shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658A, chapter 658A shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

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

- (1) The real estate commission;
- (2) The mortgagee of a mortgage of record;
- (3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also an

apartment owner, a director, or managing agent, such person shall, in those capacities, be subject to the provisions of subsection (a);

- (4) Actions seeking equitable relief involving threatened property damage or the health or safety of apartment owners or any other person;
- (5) Actions to collect assessments which are liens or subject to foreclosure; provided that an apartment owner who pays the full amount of an assessment and fulfills the requirements of section 514A-90(d) shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment;
- (6) Personal injury claims;
- (7) Actions for amounts in excess of \$2,500 against an association of apartment owners, a board of directors, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association of apartment owners or its board of directors would be unavailable because action by arbitration was pursued; or
- (8) Any other cases which are determined, as provided in section 514A-122, to be unsuitable for disposition by arbitration.

§514A-121.5 Mediation; condominium management dispute resolution; request for hearing; hearing. *[Section 514A-121.5(b) to (j) shall be repealed on June 30, 2009; provided further that cases pending before the office of administrative hearings of the department of commerce and consumer affairs as part of the condominium dispute resolution pilot project established by section 28 of Act 164, Session Laws of Hawaii 2004, on June 30, 2006, that may have been dismissed due to the repeal of part VII of chapter 514A, Hawaii Revised Statutes, shall be reinstated and subject to section 514A-121.5, Hawaii Revised Statutes.]*

(a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, house rules, or a matter involving section 514A-82 (b) (1) to (13), 514A-82.1, 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2, 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, or 514A-92.5, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If an apartment owner or the board of directors refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorney's fees.

(b) If a dispute is not resolved by mediation as provided in this section, including for the reason that a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, any party to that proposed or terminated mediation may file for arbitration no sooner than thirty days from the termination date of the mediation; provided that the termination date shall be deemed to be the earlier of:

- (1) The last date the parties all met in person with the mediator;
- (2) The date that a unit owner or a board of directors refuses in writing to mediate a particular dispute; or

- (3) Thirty days after a unit owner or a board of directors receives a written or oral request to engage in mediation and mediation does not occur within fifty-one days after the date of the request.
- (c) If a dispute is not resolved by mediation as provided in subsection (a), including for the reason that a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, any party to that proposed or terminated mediation may file a request for a hearing with the office of administrative hearings, department of commerce and consumer affairs, as follows:
 - (1) The party requesting the hearing shall be a board of directors of a duly registered association of apartment owners, or an apartment owner that is a member of an association duly registered pursuant to section 514A-95.1;
 - (2) The request for hearing shall be filed within thirty days from the termination date as specified in writing by the mediation service; provided that the termination date shall be deemed to be the earlier of:
 - (A) The last date the parties all met in person with the mediator;
 - (B) The date that a unit owner or a board of directors refuses in writing to mediate a particular dispute; or
 - (C) Thirty days after a unit owner or a board of directors receives a written or oral request to engage in mediation and mediation does not occur within fifty-one days after the date of the request;
 - (3) The request for hearing shall name one or more parties in the proposed or terminated mediation as an adverse party and identify the statutory provisions in dispute; and
 - (4) The subject matter of the hearing before the hearings officer may include any matter that was the subject of the mediation pursuant to subsection (a).
- (d) For purposes of this section, the office of administrative hearings for the department of commerce and consumer affairs shall accept no more than thirty requests for hearing per fiscal year under this section.
- (e) The party requesting the hearing shall pay a filing fee of \$25 to the department of commerce and consumer affairs, and the failure to do so shall result in the request for hearing being rejected for filing. All other parties shall file a response, accompanied by a filing fee of \$25 to the department of commerce and consumer affairs, within twenty days of being served with the request for hearing.
- (f) The hearings officers appointed by the director of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review any request for hearing filed under subsection (c). The hearings officers shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that shall be final and conclusive, unless a party adversely affected by the decision files an appeal in the circuit court under section 91-14.
- (g) Chapter 16-201, Hawaii Administrative Rules, shall govern all proceedings brought under subsection (c). The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.
- (h) Hearings to review and make determinations upon any requests for hearings filed under subsection (c) shall commence within sixty days following the receipt of the request for

hearing. The hearings officer shall issue written findings of fact, conclusions of law, and an order as expeditiously as practicable after the hearing has been concluded.

(i) Each party to the hearing shall bear the party's own costs, including attorney's fees, unless otherwise ordered by the hearings officer.

(j) Any party to a proceeding brought under subsection (c) who is aggrieved by a final decision of a hearings officer may apply for judicial review of that decision pursuant to section 91-14; provided that any party seeking judicial review pursuant to section 91-14 shall be responsible for the costs of preparing the record on appeal, including the cost of preparing the transcript of the hearing.

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

§514A-122 Determination of unsuitability. At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to the circuit court in the judicial circuit in which the condominium is located for a determination that the subject matter of the dispute is unsuitable for disposition by arbitration.

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

- (1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;
- (2) Problems referred to the court where court regulated discovery is necessary;
- (3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to chapter 514A;
- (4) The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration under section 514A-121; or
- (5) Any matters of dispute where disposition by arbitration, in the absence of complete judicial review, would not afford substantial justice to one or more of the parties.

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

§514A-123 Determination of insurance coverage. In the event of a dispute as to whether a claim shall be excluded from mandatory arbitration under section 514A-121(b)(7), any party to an arbitration may file a complaint for declaratory relief against the involved insurer or insurers for a determination of whether insurance coverage is unavailable due to the pursuit of action by arbitration. The complaint shall be filed with the circuit court in the judicial circuit in which the condominium is located. The insurer or insurers shall file an answer to the complaint within twenty days of the date of service of the complaint and the issue shall be disposed of by the circuit court at a hearing to be held at the earliest available date; provided that the hearing shall not be held within twenty days from the date of service of the complaint upon the insurer or insurers.

§514A-124 Costs, expenses and legal fees. Notwithstanding any provision in this chapter to the contrary, the declaration or the bylaws, the award of any costs, expenses, and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses and legal fees shall be binding upon all parties.

§514A-125 Award; confirming award. The award of the arbitrator shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and shall be served by the arbitrator on each of the parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court of the judicial circuit in which the condominium is located for an order confirming the award. The court shall grant the order confirming the award pursuant to section 658A-22, unless the award is vacated, modified, or corrected, as provided in sections 658A-20, 658A-23, and 658A-24, or a trial de novo is demanded under section 514A-127, or the award is successfully appealed under section 514A-127. The record shall be filed with the motion to confirm award and notice of the motion shall be served upon each other party or their respective attorneys in the manner required for service of notice of a motion.

§514A-126 Findings of fact and conclusions of law. Findings of fact and conclusions of law, as requested by any party prior to the arbitration hearing, shall be promptly provided to the requesting party upon payment of the reasonable cost thereof.

§514A-127 Trial de novo and appeal. (a) The submission of any dispute to an arbitration under section 514A-121 shall in no way limit or abridge the right of any party to a trial de novo.

(b) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ten days after service of the arbitration award upon all parties.

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

(d) In any trial de novo demanded under subsection (b), if the party demanding a trial de novo does not prevail at trial, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial. When there is more than one party on one or both sides of an action, or more than one issue in dispute, the court shall allocate its award of costs, expenses and attorneys' fees among the prevailing parties and tax such fees against those nonprevailing parties who demanded a trial de novo in accordance with the principles of equity.

(e) Any party to an arbitration under section 514A-121 may apply to vacate, modify, or correct the arbitration award for the grounds set out in chapter 658A. All reasonable costs, expenses, and attorneys' fees on appeal shall be charged to the nonprevailing party.

[PART VIII.] CONDOMINIUM MANAGEMENT EDUCATION FUND

[§514A-131] Condominium management education fund. (a) The real estate commission shall establish a condominium management education fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:

- (1) Education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under this chapter;
- (2) The improvement and more efficient administration of condominium associations; and
- (3) Expedient and inexpensive procedures for resolving condominium association disputes.

(b) The commission may use any and all moneys in the condominium management education fund for purposes consistent with subsection (a).

§514A-132 Payments to the fund. (a) Each condominium project or association of apartment owners with six or more apartments shall pay to the department of commerce and consumer affairs the condominium management education fund fee on or before June 30 of an odd-numbered year or within thirty days of the association of apartment owners' first meeting or within one year after the recordation of the purchase of the first apartment, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The department of commerce and consumer affairs shall allocate the fees collected to the condominium management education fund established pursuant to section 514A-131.

(c) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable. Failure to pay the required fee by the due date, shall result in a penalty assessment of ten per cent of the amount due and the association of apartment owners shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association of apartment owners to pay a fee required under this section shall not impair the validity of any claim of the association of apartment owners for common expenses or other assessments, or prevent the association of apartment owners from defending any action in any court of this State.

§514A-133 Management of fund. (a) The sums received by the commission for deposit in the condominium management education fund shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium management education fund to employ necessary personnel not subject to chapters 76 and 77 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium management education fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the

same manner as are the funds of the employees retirement system of the State. The interest from these investments shall be deposited to the credit of the condominium management education fund.

(d) The commission shall annually submit to the legislature, prior to the convening of each regular session:

- (1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund, and
- (2) A copy of the budget for the current fiscal year, including summary information on programs which were funded or are to be funded.

[§514A-134] False statement. It shall be unlawful for any association of apartment owners, its officers, its board of directors, or its agents to file with the commission any notice, statement, or other document required under this chapter that is false or untrue or contains any material misstatement of fact. Any violation of this section shall constitute a misdemeanor.

[§514A-135] Rules. The real estate commission shall adopt rules pursuant to chapter 91 to effectuate fully the purpose of this [part].