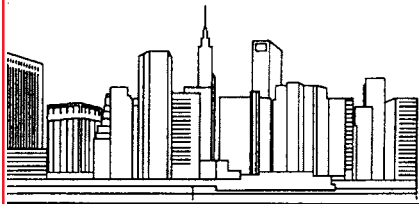


# HAWAII CONDOMINIUM BULLETIN



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## MANAGEMENT OF CONDOMINIUMS

As of July 1, 2006, there exists two sets of condominium laws, Chapter 514A, HRS, (commonly referred to as the “old law”) and Chapter 514B, HRS (commonly referred to as the “new law”). These laws impact the creation of condominiums, registration of such, condominium living, and the management and operations of Hawaii condominiums. Part VI of the new law specifically relates to the “Management of Condominiums” and includes new provisions some of which may impact the rights, duties, responsibilities, liabilities of existing condominium owners, associations, their boards, managing agents, real estate licensees, developers and their attorneys.

What follows are summary explanations of *selected* provisions of the new law. These selected provisions may include information about how the new law might impact condominiums and associations created prior to July 1, 2006, how the new law might impact condominiums and associations created after July 1, 2006, some of the differences between the old law and the new law, and the provisions of the old law which have been incorporated or carried forward into the new law.

The explanations and discussions which follow are not intended to be an exhaustive explanation or coverage of the new law which became effective July 1, 2006. The reader is directed to the official version of the laws as they are set forth in the Hawaii Revised Statutes for a more definitive source of what the new law and old law includes. These statutes may be found at a local library or at the State of Hawaii’s internet posting at [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov). You may also view the Real Estate Commission’s website at: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) for update information, announcements, forms, and other links.

The purpose of this article/reference file is to provide condominium associations, unit owners, managing agents, and related professionals, an overview of the “Management of Condominium” provisions of the new law, Chapter 514B, HRS. The information provided herein is for informational and educational purposes and is **not intended** to be professional nor legal advice.

The readers are advised to seek appropriate professional advice, including legal advice, as to how the new and old law applies to their respective circumstances and situations.

### 1. Applicability of the Act

(§514B-21 - Applicability to new condominiums)

(§514B-22 - Applicability to pre-existing condominiums)

(§514B-23 - Amendments to governing instruments)

(§514B-101 - Exceptions)

The new law applies to all condominiums created in this State after July 1, 2006. Any changes to this new law will apply to all condominiums that have been created after July 1, 2006 regardless of when the changes are made. For example, should the legislature change the law in 2007, the 2007 changes shall apply to the owners, operation, and management of condominiums created after July 1, 2006.

As to condominiums **created prior to July 1, 2006**, they must determine how Part VI of the new law dealing with “Management of Condominiums” and certain sections (listed in section 3 following) apply to its management and operations. It appears the new law provides that Part VI and certain sections apply in varying ways:

- Automatically, associations need not do anything to have the Part VI and certain sections apply, *as long as these sections*:

*See Management of Condominiums on p. 2*

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This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2643 to submit your request.

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## Letter from the Chair . . .

In July 2004, Hawaii's condominium statute, which was first adopted in 1961, was substantially overhauled and recodified into law as Chapter 514B, Hawaii Revised Statutes. Various amendments to the law were passed this past legislative session, and are reflected in Act 273.

This issue is dedicated to reporting on the new law, which went into effect on July 1, 2006. Summaries of the new law are included in this issue; however, to the extent your work requires you to have a more in-depth understanding of how condominium projects are created, sold or managed, we recommend you read the actual law itself. Our staff is available to answer questions you may have, and may be contacted by phone at (808) 586-2643. Various out-



reach efforts were made by the Commission to publicize and familiarize condominium owners, board members, developers and others in the real estate industry with the new law. Educational seminars were held in Hilo, Kona, Kauai, Maui and Oahu, various written summaries of the law were published and publicized, and select sections of the new law were discussed by staff on public television.

The recodification of the condominium law has been a six-year process, and we want to thank again the members of the Commission's Blue Ribbon Recodification Advisory Committee and past Commissioner Mitchell Imanaka, for all of their extraordinary effort in making this law a reality. There is, however, much that remains to be done, including continuing our on-going educational programs; providing guidance on and interpretations of the new law to the public; addressing through future legislation oversights or ambiguities that exist in the current law; and drafting and eventually adopting formal Administrative Rules to supplement the provisions of the new law.

It has been a pleasure serving as the Chair of the Condominium Review Committee this past year, and I want to extend my welcome to William S. Chee, the new Chair of this Committee, as I move on to become the Vice Chair of the Real Estate Commission. Your continued support of the Commission is greatly appreciated.

Sincerely,

*Stanley M. Kuriyama*

Stanley M. Kuriyama  
Chair, Condominium Review Committee

## Management of Condominiums from p. 1

1. Apply only to events and circumstances occurring on or after July 1, 2006, for example, to an election of the board, meeting of an association, assessment for common expenses made after July 1, 2006; and
2. Do not invalidate existing provisions of the association's governing documents (declaration, bylaws, house rules or other constituent documents), in such manner that the application invalidates the reserved rights of a developer; or is an unreasonable impairment of contract.

- Where a majority (more than fifty percent i.e. 51% or more) of the condominium owners by a vote or written consent amend its existing declaration, bylaws, condominium map, or other constituent documents, to adopt Part VI and certain sections as long as the amendments do not invalidate the rights of a developer;
- Where after determining that certain provisions of Part VI and certain other sections of the new law unreasonably impair contract(s) previously made, a majority (more than fifty percent) of the condominium owners may choose to approve **any** or all of those impairing sections and accordingly amend its existing declaration, bylaws, condominium map, or other constituent documents as long as the amendments do not invalidate the rights of a developer.

Associations and unit owners should consider seeking professional advice, including legal advice in deciding the best course of action it should take on the applicability of the new law to its association. Perhaps the most reasonable course of action is for the majority of condominium owners to amend its governing documents to adopt or include ***all or selected*** provisions of the new law as long as the amendments do not invalidate a developer's reserve rights.

Projects created after July 1, 2006 in which no units are for residential uses, and projects with five units or less that is not subject to any continuing development rights will be subject to the management provisions of Part VI, unless they are expressly excluded in the declaration or bylaws of those projects. The one exception is that the provisions with respect to managing agents will apply to all projects. (§ 514B-132)

### 2. Applicability of Specific Provisions to Preexisting Condominiums (§514B-22)

For condominiums created prior to July 1, 2006, the following sections apply:

- §514B-3 Definitions (to the extent necessary to the interpretation of the following sections)
- §514B-4 Separate titles and taxation
- §514B-5 Conformance with county land use laws

- §514B-35 Unit boundaries
- §514B-41(c) Common profits and expenses (limited common elements)
- §514B-46 Merger of projects or increments
- §514B-72 Condominium education trust fund; payments by associations and developers
- Part VI Management of condominiums

The above listed sections of the new law apply provided they:

- Apply only to events and circumstances occurring on or after July 1, 2006
- Must not invalidate existing provisions in the governing documents, if to do so would invalidate the reserved rights of a developer; or be an unreasonable impairment of contract.

### 3. What Bylaws Must Contain

(§514B-108 Bylaws)

The bylaws of the association is the document that governs how the board operates and manages the property for the association and sets forth the powers and responsibilities of the board, the managing agent and unit owners. Bylaws of the association are required by the new law to contain provisions that address at least the following matters:

- The number of directors of the board and the titles of the officers of the association.
- Election by the board of the officers of the association.
- The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers, and the filling of vacancies.
- The powers that the board or officers may delegate to other persons or to a managing agent.
- Designation of the officers who may sign and record amendments to the declaration and bylaws.
- The compensation, if any, of directors.
- The method of amending bylaws, provided that bylaws may be amended by the vote or written consent of at least 67% of all unit owners and any amendment must be adopted within 365 days after it is first mailed as a proposed amendment.

### 4. Amendments to the Declarations and Bylaws

(§514B-32(a)(11))

(§514B-108(e))

The approval of the owners of at least 67% of the common interest is required to amend a declaration except as otherwise provided elsewhere in the new law and as provided by any reservations to modify the declaration or condominium map by the developer. The old law prescribed a 75% requirement. As for amendments to the bylaws, the new law requires at least 67% of all unit owners to vote or consent in writing to the amendments. The old law requires 65% of all apartment owners.

### 5. Powers of the Association

(§514B-104 Association; powers)

While the new law does not require that the bylaws expressly state what powers the association has to operate the project, the new law does state that the association has broad powers to operate and manage the project (subject to some limitations, conditions, declaration and bylaws). The broad powers may include the adoption of budgets, collection of assessments, hiring and discharge of managing agents and other personnel, making of contracts, regulation of the use, maintenance, repair and modification of the common elements, holding title to property, imposition of fees, charges and penalties for late payment of assessments, levy reasonable fines for violations of the declaration, bylaws, house rules and regulations, maintenance of directors and officers liability insurance, borrowing of money, eviction of tenants of a unit owner for violations of the declaration, bylaws or house rules, and adoption of rules and regulations that affect the use of or behavior in residential units.

Where the bylaws are silent, the board or representative may establish a fining procedure that allows for an appeal to the board with notice and opportunity to be heard and further subject to mediation and arbitration and or requested for a DCCA Administrative Hearing. The fine must be first paid prior to its contest.

### 6. Adoption of Rules and Regulations

(§514B-105 Association; limitations on powers)

Subject to the declaration, bylaws, and the condominium law (Chapter 514B, HRS), the association may adopt "house rules." In residential condominiums, for some limited purposes, the association may adopt "house rules" and regulations that affect the use of or behavior in the units. Such rules are intended to prevent any use of a unit that would violate the declaration or bylaws; or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners, or restricts the leasing of residential units for underwriting and mortgage lending purposes.

### 7. The Board and Some of its Powers, Duties and Limitations

(§514B-106 and §514B-107 Board; powers and duties; limitations)

Except as limited by the condominium law, the declaration, and bylaws, the board may act in all instances on behalf of the association. Examples of some of these instances include the power to vote proxies to elect members of the board as provided in section 514B-123, HRS; filling vacancies to serve until the next annual or special meetings, borrowing money for various purposes involving the common elements and personal property of the project, subject to approval requirements and spending limits contained in the project documents, and the vote or written consent of 50% of the owners.

The board may not, however, amend the declaration or bylaws, remove the condominium from the new law, elect members of the board (but may fill vacancies) or determine the qualifications, powers, duties, or terms of board members.

In the performance of their duties, the directors and officers of a board owe a fiduciary duty to the association similar to that of officers and directors of a nonprofit corporation. If a director has a "conflict of interest," defined as an issue in which a director has a direct personal or pecuniary interest not common to other members of the association, the director shall not vote at any board meeting on any such issue. The director 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. Additional laws provide for the expenditure of association funds by directors for travel, directors' fees, per diem, education, and training.

The board shall be comprised of at least three (3) members who shall be elected not later than the termination of any period of developer control. However, projects created after May 18, 1984, with 100 or more units, must have at least nine (9) members unless there is an amendment to the bylaws to reduce the number. Condominium projects where 70% of the owners do not reside at the project may amend the bylaws to reduce the board to as few as five members at an annual or special meeting called for that purpose or by written consent of a majority of owners.

To serve, board members must be unit owners or co-owners, vendees under an agreement, a trustee of a trust, a partner, officer or member or other persons authorized to act on behalf of a legal entity, i.e. a corporation or limited liability company. However, in these situations there shall be only one representative from each unit. A resident manager or an employee of the condominium cannot serve on the board. An owner can be a board member but not an officer of an association and an employee of a managing agent. However, the owner/board member cannot participate in any discussion regarding the management contract including an executive session about the management contract or property manager.

#### **8. Voting and Voting by Proxies at Association Meetings**

(§514B-123 Association meetings; voting; proxies)

(§514B-124 Association meetings; purchaser's right to vote)

##### **Voting In Person Or By Using A Proxy**

A unit owner may vote in person or by proxy at any meeting of the association. Owners may vote by proxy through a duly executed proxy signed by the unit owner. The duly executed proxy may be mailed or electronically

transmitted. The unit owner may revoke a proxy given only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice.

#### **Voting When Units Are Co-Owned**

If a unit is co-owned by several owners and one of the owners is present at a meeting, that owner is entitled to cast all the votes allocated to that unit. Unless the declaration expressly provides otherwise, if more than one of the co-owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority of the owners. There is deemed to be majority agreement if any one of the owners casts the votes allocated to that unit without protest by any of the other owners of the unit to the person presiding over the meeting before the polls are closed. Each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

#### **Voting When There Is An Agreement Of Sale**

The purchaser of a unit pursuant to a recorded agreement of sale shall have all of the rights of a unit owner, including the right to vote, except that the seller of the unit may retain the right to vote on certain matters that substantially affect the seller's interest.

#### **Valid Proxies**

A proxy, to be valid, is subject to the following procedures and rules:

(1) It must be delivered to the secretary of the association 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) It must contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given; and

(3) Where the association has decided to adopt a standard proxy form, the form must contain boxes wherein a unit owner can indicate 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 as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or

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

(e) The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report.

There are additional rules governing proxies and their use:

(1) 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 unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(2) 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.

(3) The rights of a holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit are preserved.

(4) No managing agent or resident manager, or their employees, shall solicit, for use by the managing agent or resident manager, any proxies from any unit owner of the association that retains the managing agent or employs the resident manager. The managing agent or resident manager shall not cast any proxy vote at any association meeting except for the purpose of establishing a quorum.

(5) No board shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by unit owners. A board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions of proxies, or both.

#### **Boards and Individual Owners Can Use Association Funds To Distribute Proxies After Meeting Certain Conditions**

If any board intends to use association funds to distribute proxies, including the standard proxy form, it shall first post notice of its intent to distribute proxies in prominent locations within the project at least 21 days before its distribution of proxies. The old law, Chapter 514A, HRS, requires the posting to be done at least 30 days prior to distribution of the proxies. The old law is still applicable to condominiums **created prior** to July 1, 2006 where the association has not amended its governing documents to include this provision of the new law, Chapter 514B, HRS.

If any owner wishes to use association funds to solicit proxies, the owner must, within 7 days after the board has posted the required notice of its intent to use association funds to distribute proxies, submit the owner's request and statement to the board and the board has two choices: (a) to mail 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) to mail 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.

An owner's statement shall be limited to black text on one single-sided 8-1/2" x 11" page of white paper, indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Under the old law, the owner is limited to a 100-word statement.

#### **9. Changes to Common Elements Including Limited Common Elements**

The initial declaration and bylaws of a project establishes what are common elements and limited common elements of the condominium project. Generally, at least approval of 67% of the owners of the common interest must be obtained to make changes to the common elements. The unit owners may also designate additional areas to be common elements or subject to common expenses with the approval of at least 67% of the owners of the common interest.

However for some limited circumstances, without the approval of 67% of the owners of the common interest, the unit owners and or the board of directors are given various powers to effect changes to the common elements and how they are managed. These limited circumstances include:

- The acquisition of a unit for a resident manager which may be purchased with just board approval; (§514B-104(a)(8));
- Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the declaration;
- Minor additions or alterations of the common elements for the benefit of individual units are permissible if it does not impact the interest of other owners. (§514B-38(3));
- Non-material additions and alterations of the common elements or a unit that does not jeopardize soundness or safety of the property, reduces the value, impair any easement, detract from the appearance of the project, or interferes with or deprives any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any non-consenting owner;
- Transfer of limited common elements between units, which in most cases applies to parking stalls within the project, these may be exchanged between owners by the owners involved signing and recording an amendment of the declaration and delivering a copy of the amendment to the association. Mortgages or leases affecting the units may additionally require further consents for the transfers of limited common elements to be effective. (§514B-40);
- The board may determine that certain limited common element expenses will instead be paid by all unit owners in accordance with the undivided common interest appurtenant to

each unit. To do this, the board must reasonably determine that the extra cost to separately account and bill for the limited common element expenses is not justified. The board may do this by resolution after considering a number of factors, such as the amount at issue, the difficulty of segregating the costs, the number of units involved and the difference between special assessments and assessment by common interest. (§514B-41(c)).

#### **10. Association Fiscal Matter; Assessments for Common Expenses (§514B-144)**

The Association assesses owners for common expenses in proportion to the unit owner's common interest based on a budget that is adopted, distributed or made available at least annually to unit owners. For any past due common expenses assessment or installment the board may assess unit owners at a rate not to exceed 18% per year. Apparently the old law provides no specific percentage. The new law clearly provides that a unit owner can be exclusively assessed a common expense which is incurred because of the unit owner's misconduct. In addition, unless the declaration or bylaws provide differently, the new law allows a board to adopt a resolution that certain limited common element maintenance, repair, and replacement expenses will be assessed to all unit owners in accordance with their undivided common interest instead of the unit owner. The new law provides the board must determine that extra costs to separately account for those limited common element expenses are not justified prior to adopting such a resolution.

#### **11. Provisions Covering New Matters Under the New Law**

There are provisions in Part VI "Management of Condominiums" that have no counterpart under the old existing law (§514A, HRS). These provisions, standards for officers and board members, judicial assistance to the association, high-risk components in a project and elderly unit owners (called "aging in place") warrant a special discussion and are included below. There are, of course, many other changes to provisions that existed under the old law but that have been re-enacted in a slightly different form and with changes.

##### **11.1 Standards for Officers and Board Members**

(§514B-106 – Board; powers and duties)

The new law clarifies the duties that officers and board members owe to the association in the performance of their duties. Specifically, all such persons owe the association a fiduciary duty and shall exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation organized under HRS Chapter 414D. In general,

this means that officers and directors of an association must discharge their duties in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that the director or officer reasonably believes is in the best interest of the association. Directors and officers may rely on information, opinions, reports or statements prepared or presented by employees, managing agents, attorneys and accountants who the directors and officers reasonably believe are reliable and competent in the matters presented.

##### **11.2 Judicial Assistance**

(§514B-111 – Judicial power to excuse compliance with requirements of declaration or bylaws)

In certain situations where an attempt has been made to amend the declaration or bylaws of a project and the necessary vote cannot be obtained, new provisions of the new law permit a party to seek the court's assistance in allowing the project to proceed without the required vote for adoption of the amendments. The provisions for which the court may excuse compliance with include: (1) a provision limiting the amount of any assessment that can be levied against individually owned property; (2) a provision requiring that an amendment to the declaration or bylaws be approved by lenders; (3) a provision requiring a vote of at least 67% of the common interest as long as the provision does not prohibit or materially restrict the use or occupancy of an individually owned unit, change the basis for allocating voting rights or assessments among the unit owners, or apply to less than all of the unit owners; (4) a requirement that an amendment be signed by all unit owners; and (5) a quorum requirement for meetings of unit owners.

However before the court excuses the compliance with the provisions described above, the court must find first that compliance may unreasonably interfere with the association's ability to manage the common elements, administer the project or carry out any other function set forth in the declaration or bylaws and compliance with the provision at issue is not necessary to protect the legitimate interests of the owners or lenders.

It is expected that any appeal to a court for action on these provisions would be undertaken by the board on behalf of an association. If so, the board is required to give notice to all unit owners by certified mail of the date, time and place of any court hearing that is scheduled.

##### **11.3. Expansion of Executive Session Matters**

(§ 514B-125 - Board Meetings)

There has been an expansion of the circumstances in which the board, upon approval of a majority of a quorum of its members, may adjourn a board meeting to reconvene in executive session. While personnel matters and litigation in which the board is involved were covered under the old law, the new law adds situations in which it is necessary to protect the attorney-client privilege of the association and the interests of the association while contracts, leases and other commercial trans-

actions are being discussed or negotiated. (§514B-125(b))

#### **11.4 Directors and Conflicts of Interests**

(§514B - 125(f), HRS)

The new law prohibits directors with a “conflict of interest” from voting at any board meeting on any issue in which the conflict exists. The new law also requires the conflicted director to disclose the nature of the conflict prior to a vote on the issue and requires the board minutes to record the fact that a disclosure was made. The new law defines “conflict of interest” to mean “an issue in which a director has a direct personal or pecuniary interest not common to other members of the association.”

#### **11.5 Upkeep of Condominium; High-Risk Components**

(§514B-138 - Upkeep of condominiums; high-risk components)

The new law permits a board to identify what are called “high-risk components” in order to take steps to prevent commonplace accidents in units that tend to cause damage to other units in a project, such as the rupturing of washing machine hoses or leaking water heaters. The board can determine that certain portions of the units or certain objects or appliances within the units, such as washing machine hoses and water heaters, are high-risk components because they pose a particular risk of damage to other units or the common elements if they are not properly inspected, maintained, repaired, or replaced by owners.

The board may determine what these high-risk components are after notice to all unit owners and an opportunity for owner comment. After identifying the high-risk components in the project, the board may require any or all of the following:

- (1) Inspection at specified intervals;
- (2) Replacement or repair at specified intervals whether or not the component is deteriorated or defective; and
- (3) Replacement or repair may have to meet particular standards or specifications, may include additional components or installations, or may be done using contractors with specific licensing, training, or certification, all be specified or approved by the board.

If a unit owner fails to follow requirements imposed by the board, the association, after reasonable notice, may enter the unit to perform the requirements at the sole cost and expense of the unit owner, which costs and expenses shall be a lien on the unit.

#### **11.6 Tort Liability**

(§514B - 141-Tort and contract liability)

Another provision that has no counterpart in the old law is a provision that states that a unit owner is not personally liable for any injury or damage arising out of the condition or use of the common elements. The provisions of this section also stops the running of the association’s statutory time period for the filing of any lawsuit for any right of action the association may have against a developer until the period of developer control

ends. This tolling of the time period does not apply to unit owners and officers.

#### **11.7 Aging in Place**

(§514B - 142 Aging in place; limitation on liability)

The new law has adopted provisions allowing the association to deal with an elderly unit owner, defined for this section only as age sixty-two or older, who may require services and assistance to maintain independent living in such owner’s unit; so that such owner will not pose any harm to self or to others and will not be disruptive to the condominium community because of the following problems of aging and aging in place:

- (1) The inability to clean and maintain an independent unit;
- (2) Mental confusion;
- (3) Abusing others;
- (4) Inability to care for oneself;
- (5) Inability to arrange for home care;
- (6) Loneliness and neglect; or
- (7) Inappropriate requests of others for assistance.

Upon a report, observation, or complaint relating to an elderly unit owner that identifies one of the problems set forth above, the board may request a functional assessment regarding the condition of the elderly unit owner, as well as recommendations for the services the elderly unit owner may require to continue to live independently without any harm to self or to others and to avoid disruption to the condominium community. The board may recommend available services to the elderly unit owner.

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

The association, its board, unit owners and their agents and tenants shall not have any legal responsibility or legal liability, with respect to any actions or recommendations the board takes on any report, observation or complaint made, or for not requesting, or for declining to request a functional assessment of, and recommendation for, an elderly unit owner regarding problems of aging and aging in place. There is no affirmative duty on the part of the association, its board, the unit owners or their agents or tenants to request or require an assessment and recommendations with respect to an elderly unit owner.

Costs and fees for assessments, recommendations, and actions contemplated in this section shall be as set forth in the declaration or bylaws.

#### **12. Association Meetings, Notices, Minutes**

Association meetings shall be held at least once each year and shall be conducted in accordance with the most

recent edition of Robert's Rules of Order Newly Revised. The meetings are generally held at the project site but the board may decide to hold a meeting somewhere else within the state. A new provision has been added which allows an association meeting to be held outside the state in the event of a natural disaster, such as a hurricane. (§514B-121(e)) In addition, where the declaration or bylaws provide, meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion, i.e. video or speaker phone telephone conferencing.

Notice of association annual meetings and special meetings are usually given to owners by written notices that are mailed. Such notices can also be hand-delivered. A new provision allows notices to be sent by electronic mail to the electronic mailing address designated in writing by a unit owner. This method of receiving notices is at the option of each unit owner. (§514B-121(c))

The notice of any meeting besides stating the date, time, place and items on the agenda, must include the general nature and rationale of any proposed declaration or bylaws amendment and any proposal to remove a member of the board.

Minutes of an association meeting have been usually approved at the next succeeding meeting. The new law permits the board to approve the minutes within sixty days after the meeting if authorized by the owners at the annual meeting. If the board approves the minutes, owners shall be given a copy or notified of their availability within thirty days after approval. An owner may offer corrections to the minutes at an association meeting. (§514B-122)

### **13. Board Meetings, Notices, Minutes**

The board shall meet at least once a year and shall conduct the meeting in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless a quorum of the board votes otherwise, board meetings, other than executive sessions, shall be open to all members of the association, allow for the participation of association members who are not on the board. In addition, unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication as long as all the directors may simultaneously hear each other during the meeting. If the board permits, any unit owner may also participate by the same means which allows simultaneous communication and the board may require the unit owner to pay for the costs associated with this type of participation.

Notice of board meetings under the new law changed slightly. The notice must be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project 72 hours prior to the meeting or simultaneously with notice to the board. Under the old law the posting of the notice is required whenever practical.

Except for motions voted in executive session, board minutes shall include the recorded vote of each board member on all motions. Approvals of these minutes shall be made no later than the second succeeding regular meeting and shall be available within seven calendar days after approval. Unapproved final drafts of the minutes shall be available within 60 days after the meeting. However, executive session minutes may be withheld if the publication of such defeats the lawful purpose of the executive session.

### **14. Association Records**

(§514B-105(d) Association; limitations on powers.)

(§514B-152 Association records; generally.)

(§514B-153 Association records; records to be maintained.)

(§514B-154 Association records; availability; disposal; prohibitions.)

The new law allows the association to comply with the requirements of making certain association records available for examination and copying through downloading from an internet site. An association electing this option must make the records available free of charge to unit owners who elect this option. In general, the new law left substantially unchanged the old law requirements governing the maintenance, availability, disposal and costs for examination of and obtaining copies of association records. However, since the subject of records, maintenance and availability is of such importance to an association's and unit owner's ability to self govern, a non-exhaustive summary of the requirements follow.

#### **General Requirements**

Except as otherwise provided by law, all financial and other records shall be made available for examination by any unit owner and an owner's authorized agent. However, the circumstances of availability is dependent on the type of record requested. On the subject of record storage, the association's financial records and other records shall be stored on the island where the project is located. If original records, including but not limited to invoices, are required to be sent off-island, copies of the records shall be maintained on the island where the project is located.

On the subject of costs, the association cannot charge a unit owner for requesting any legal or other information from the association, unless the association in advance notifies the unit owner that it intends to charge the unit owner for the reasonable cost (§514B-105(d), HRS).

On the subject of disposal of records, a managing agent may dispose of the records of any association that are more than 5 years old, except for tax records, which shall be kept for 7 years. The managing agent is relieved of any liability for disposing the records where it follows the required procedures including the giving of a written notice to the board of its intent to dispose the records and allowing the board not less than 60 days to retrieve the records.



***Specific Records, Types, Maintenance, Availability, Disposal, Costs***

There are numerous provisions (cited above) that detail what records and documents the association is required to keep and make available to owners or their authorized agents. Attached as Appendix I is a summary explanation of those records and the conditions and terms relating to maintenance, availability, disposal, prohibitions, and costs of records.

**15. Insurance**  
(§514B-143)

Under Chapter 514A, HRS, the insurance provisions were limited. The association was required to obtain fire insurance and flood insurance if the property was located in a special flood hazard area. Directors' and officers' liability insurance was optional and left to the board to decide on whether to obtain coverage and the amount of coverage. A fidelity bond was also required in an amount equal to \$500 times the number of units in the project to cover all officers, directors, employees and managing agents who handle, control or have custody of the funds of the association in an amount not less than \$20,000 or more than \$100,000.

Under the new law, the association is required to minimally obtain:

- property insurance on the common elements, for special form causes of loss, in a total amount at not less than the full insurable replacement cost, less deductibles, but including the increased construction costs due to changes in meeting new building code requirements;
- commercial general liability insurance of \$1,000,000 or more to cover claims for liabilities arising in connection with the ownership, existence, use or management of the property;
- fidelity bond coverage to cover persons, including the managing agent and its employees who control or disburse funds of the association in an amount equal to \$500 times the number of units but the limit has been raised to not greater than \$200,000 where a project has more than five units;
- directors and officers liability coverage at a level deemed reasonable by the board if not limited by the declaration or bylaws;
- flood insurance if property is located in a special flood

hazard area as delineated on flood maps issued by the Federal Emergency Management Agency; and

- any other insurance as provided by the declaration, bylaws, or the board, including workers compensation, employment practices, etc.

Additional provisions have been added specifying the scope of insurance coverage and conditions for buildings with attached units and detached units. For example, in a building with attached units, the insurance need not cover "improvements and betterments" within the boundaries of the unit. Should "improvements and betterments" be covered, any increased cost may be assessed against the units affected.

On a claim for damage to a unit or the common elements, the new law after an opportunity for a hearing allows the Board to elect to pay a deductible as a common expense or assess the deductible amount against an owner who caused the damage. Of note, the new law allows the board with the majority of owners' votes or written consent to require unit owners to obtain reasonable types and levels of insurance. If the unit owner does not purchase or produce the board requested insurance coverage, the directors may purchase the insurance and charge the reasonable premium cost back to the unit owner.

The new law relieves the association or board from any liability to any person either with regard to the failure of unit owner to purchase the insurance; or a board decision to purchase or not to purchase the requested insurance for the owner, the timing, amount of or type of coverage.

The general information and instructions contained herein have been prepared by the staff of the Real Estate Branch pursuant to Hawaii Administrative Rules Section 16-201-92 and is not an official or binding interpretation, opinion or decision of the Hawaii Real Estate Commission (Commission) or the Department of Commerce and Consumer Affairs. Should anyone desire an informal non-binding interpretation from the Commission, please submit the request in writing to the Commission or should anyone desire a formal binding opinion, file for a declaratory ruling. Please contact any condominium specialist at (808) 586-2643 for the forms to request for declaratory ruling.

**CAVEAT**

The information provided herein is time sensitive and subject to change without prior notice. Please check the Commission's website for any updates to the information provided herein. Any inconsistencies between the law and the provided information and forms the applicable law controls.

## APPENDIX 1

<b>Records (§514B-154(d), HRS)</b>	<b>Where To Get Records (§514B- 154(d), HRSP</b>	<b>Time Within Which to Make Available</b>	<b>Costs, if Any</b>
Declaration, bylaws, house rules (if any) sample conveyance document, public reports and amendments (accurate copy of)	Managing Agent's office or Board-designated individual or entity	Normal business hours	Reasonable to defray any administrative or duplicating costs
Receipts and expenditures affecting the common elements. Monthly statements indicating current delinquent amount of any unpaid assessments for common expenses (Detailed accurate records in chronological order of)	Managing Agent's office or Board-designated individual or entity	Normal business hours	Reasonable to defray any administrative or duplicating costs
Management Contract	Managing Agent's Office or Board-designated individual or entity	Normal business hours	Reasonable to defray any administrative or duplicating costs
Current list of members of the association, addresses, and the names and addresses of agreement of sale vendees; conditions of availability as provided in the declaration, bylaws, or house rules, or in any case subject to unit owner executing an affidavit	Managing Agent's Office, Board-designated individual, or resident manager	Normal business hours and/or as provided in the declaration, bylaws, and house rules	Reasonable to defray any administrative or duplicating costs, and/or as provided by declaration, bylaws, and house rules
Most current financial statement	Managing Agent's office, or Board-designated individual; at a Board-designated convenient location	24-hour loan	No cost or on 24-hour loan
Board of Directors' Meeting Minutes, once approved, for the current and prior year	Managing Agent's office or Board-designated individual; at a Board-designated convenient location	24-hour loan or within 15 days of a unit owner's request, transmitted either as indicated by the unit owner	No cost or reasonable fee for administrative costs for handling the request by regular mail, email, fax
Financial statement, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the association for the duration records are kept by the association and delinquencies of ninety days or more; subject to unit owner executing an affidavit as may be required by the Board	Managing Agent's office or Board-designated individual; at a Board-designated convenient location	Available for examination at convenient hours during normal business hours	Unit owners shall pay for administrative costs in excess of eight hours per year; reasonable fee for duplication, postage, stationery, and other administrative costs
Proxies, tally sheets, ballots, owners' check-in lists, certificate of election after any association meeting (not earlier); subject to certain conditions—within 30 days of association meeting; subject to unit owner executing an affidavit as may be required by the Board; and payment of administrative costs	Managing Agent's office or Board-designated individual	Normal business hours	Administrative costs in excess of eight hours per year; reasonable fee for duplicating, postage, stationery, and other administrative costs for copies
Examination of other documents of the association not specifically listed in the new law	Written request to the Board	Within 30 days of request, board shall give written authorization or refusal with an explanation	
Distribution of Commission-generated information	Request from the Commission	After reasonable period of time after receipt of request	Cost assessed to the Association

## **SPECIALISTS OFFICE FOR THE DAY AND REAL ESTATE RENEWAL WORKSHOPS COMING IN NOVEMBER**

In November, condominium specialists and real estate specialists will be visiting the different islands for real estate renewal workshops and specialists' office for the day and is open to the public. The sessions will be held at the local board of realtors offices on:

Friday, November 17 – Kauai  
Monday, November 20 – Maui  
Tuesday, November 21 – Hilo

Monday, November 27 – Honolulu  
Tuesday, November 28 – Kona

Please check the Real Estate Commission's website at: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) for update information on the time and location of these workshops.

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## **2006 REAL ESTATE COMMISSION SCHEDULE**

**Laws & Rules Review Committee – 9:00 a.m. Education Review Committee – Upon adjournment of the Laws & Rules Review Committee Meeting. Condominium Review Committee – Upon adjournment of the Education Review Committee Meeting, which is upon the adjournment of the Laws & Rules Review Committee Meeting, which convenes at 9:00 a.m.**

**Real Estate Commission  
9:00 a.m.**

**Tuesday, October 10, 2006**

Wednesday, November 8, 2006

Wednesday, December 6, 2006

Friday, October 27, 2006

Wednesday, November 22, 2006

Friday, December 15, 2006

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor. *Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) or call the Real Estate Commission Office at 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at 586-2643 to submit your request.*

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## **Condo Communities Attend Recodification Education Sessions**

The Real Estate Commission (Commission) provided several educational sessions on the new condominium law, Chapter 514B, Hawaii Revised Statutes (HRS) on Maui, Kauai, Kona, Hilo and Honolulu.

These sessions were held in readiness for the upcoming new condominium law which was eventually signed by Governor Linda Lingle on July 5, 2006 [Act 273 (SLH 2000)].

An additional session was held on September 7, 2006 at the State Capitol in Honolulu.

The sessions were divided in two (2) parts: gover-

nance/management of condominiums and project registration/sales. The volunteer speakers included: Mitchell Imanaka, Esq. (former Commissioner), Kenneth Chong (Condominium Consultant), John Morris, Esq., Joyce Neeley, Esq., Richard Kiefer, Esq., Galen Leong, Esq. (Condominium Consultant) as well as the Condominium Specialists. On behalf of the Commission, we say, "Thank You" to these volunteers.

You may find Chapter 514B, HRS, and the power point presentation for the presentations at the Commission's web site at: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec).

## Condominium Education Calendar

This calendar lists upcoming educational events of interest to the condominium community. The publishers express **no opinion** about the quality or content of any event they do not sponsor. This listing should not be construed as an endorsement or sponsorship of any event, unless expressly indicated. Events may be subject to change; please check directly with the provider to confirm each event.

Date	Time	Event Title	Location	Provider
10/11/06 – 10/12/06		Pacific Rim Real Estate Conference	Sheraton Waikiki Honolulu, Oahu	HAR
10/12/06	12:00-1:30	Owner & Board Disputes	Hale Koa Hotel Honolulu, Oahu	CAI-H
10/18/06	9:30-12:00	Owner & Board Disputes	Cameron Ctr Auditorium Wailuku, Maui	CAI-H/CCM
4/25/07 – 4/28/07		CAI's 56 <sup>th</sup> National Conference & Exposition	Caesars Palace Las Vegas, Nevada	CAI

**\*The seminar is partly funded by funds from the Condominium Education Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii for condominium apartment owners whose AOA is currently registered with the Real Estate Commission.**

**Information is subject to change. For full information on the above-listed courses, please call the provider.**

	Provider	Phone	Address
CAI	Community Associations Institute (National) <a href="http://www.caionline.org">www.caionline.org</a>	(703) 548-8600	225 Reinekers Ln #300 Alexandria, VA 22314
CAI-H	Community Associations Institute - Hawaii Chapter <a href="http://www.caihawaii.org">www.caihawaii.org</a>	488-1133	P.O. Box 976 Honolulu, HI 96808
CCM	Condominium Council of Maui <a href="http://www.mauicondocouncil.com">www.mauicondocouncil.com</a>	573-4231	PO Box 1362 Kihei, HI 96753
HAR	Hawaii Association of Realtors <a href="http://www.hawaiirealtors.com">www.hawaiirealtors.com</a>	733-7060	1136 12 <sup>th</sup> Ave., Ste. 220 Honolulu, HI 96816
HCAAO	Hawaii Council of Associations of Apartment Owners	733-2021	3454 Waiialae Ave Ste. 6 Honolulu, HI 96816
HSAP	Hawaii State Association of Parliamentarians <a href="http://www.hsap.org">www.hsap.org</a>		98-238 Paleo Way Aiea, HI 96701
HSBA-CLE	Hawaii State Bar Association - Continuing Legal Educ. <a href="http://www.hsba.org">www.hsba.org</a>	537-1868	1132 Bishop Street, Ste 906 Honolulu, HI 96813
IREM	Institute of Real Estate Management Hawaii Chapter No. 34 <a href="http://www.iremhawaii.org">www.iremhawaii.org</a>	847-0141	PO Box 17040 Honolulu, HI 96817
LOR	Lorman Education Services <a href="http://www.lorman.com">www.lorman.com</a>		2510 Alpine Road Eau Claire, WI 54703
UH-OC	Noncredit Programs, Outreach College, University of Hawaii	956-8244	2530 Dole Street Honolulu, HI 96822

Real Estate Branch and Real Estate Commission's web page at: <http://www.hawaii.gov/hirec>  
Address: 335 Merchant Street, Rm. 333; Honolulu, HI 96813; Phone: (808) 586-2643

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