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Condominium Property Regimes: Board Members Powers and Duties

BASED UPON THE HAWAII REVISED STATUTES AS OF JULY 15, 2009

Real Estate Commission
Department of Commerce and Consumer Affairs
State of Hawaii

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<p>INSIDE THIS BOOKLET</p> <p>2 Disclaimer</p> <p>3 Preface</p> <p>6 Introduction to Condominiums</p> <p>9 Legal Basis for the Condominium</p> <p>17 The Hawaii Real Estate Commission</p> <p>27 The Association</p> <p>31 Management of the Association</p> <p>37 Board Members Powers and Duties</p> <p>62 Conclusion</p> <p>63 Glossary of Select Terms</p> <p>69 Addendum 1</p> <p>73 Addendum 2</p> <p>75 Addendum 3</p> <hr/> <p><i>“this booklet . . . is not a substitute for obtaining legal advice or other competent professional assistance”</i></p> <hr/>	<p style="text-align: center;">DISCLAIMER</p> <p>© Hawaii Real Estate Commission 2009. All rights reserved. This booklet, or any part hereof, may not be reproduced without the written permission of the Hawaii Real Estate Commission, except that permission is granted to currently registered Hawaii condominium associations to reproduce and distribute copies of this entire publication for educational purposes, but not for profit. Funding is provided by the Condominium Education Trust Fund, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, State of Hawaii.</p> <p>The information contained in this booklet is intended to provide general information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific situations. Since this booklet will not contain subsequent law changes, it should only be used as a general source of information and is not intended to be a substitute for a careful reading of the law and the condominium documents. Readers are advised to check the current laws and rules to determine if any changes have occurred since publication. Board members acting on behalf of an association should also be particularly careful to consult with an attorney about important legal issues, and with qualified experts about other subject matters.</p> <p>All information in this booklet is current as of July 15, 2009. Pursuant to Hawaii Administrative Rules (“HAR”) Section 16-201-92, the information in this publication does not constitute an official or binding interpretation, opinion or decision of the Hawaii Real Estate Commission or the Department of Commerce and Consumer Affairs, State of Hawaii.</p> <p>All art work used in this booklet was obtained from public domain sources and is not subject to the Commission’s copyright.</p>
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PREFACE

Condominiums have become a very popular form of housing in Hawaii. Many condominium board members, however, are not familiar with their powers and duties under Hawaii law. State law, through the Condominium Property Acts, Hawaii Revised Statutes Chapters 514A and 514B, provides for a number of powers and duties for boards and directors.

The Hawaii Real Estate Commission contracted for the development of this booklet. The consultant, in developing this booklet, sought input from unit owners, board members, managing agents, and real estate licensees via the following organizations: the Hawaii Chapter of the Community Associations Institute, Hawaii Independent Condominium and Cooperative Owners, the Hawaii Council of Associations of Apartment Owners, the Hawaii Association of Realtors, the Condominium Council of Maui, and selected property management firms involved in the condominium industry.

The information contained in this booklet is a brief overview of the rights, duties, and responsibilities of associations and unit owners in condominium developments. In particular, this booklet discusses the powers and duties of board members under the applicable laws. If you have general questions about the law or the information in this booklet, you may call the Real Estate Commission's Condominium Specialists at (808) 586-2646. If you have specific questions about a legal issue you should consult an attorney experienced with condominium issues.

A condominium association is a "*mini-government*" in which unit owners elect the association's board of directors, which in turn is given broad authority to govern and manage the affairs of the association, limited only by federal and state laws, county ordinances, and condominium governing documents. Depending on the condominium association's governing documents, the board of directors may have power over more aspects of the association members' lives than any other level of government. In general, the "*self-governance principles*" under which a condominium association operates require board members and owners to understand that: (1) the owners' most important role is electing directors; (2) once elected, the board has most of the power over the day-to-day operations of the association;

"A condominium association is a "mini-government" in which unit owners elect the association's board of directors, which in turn is given broad authority to govern and manage the affairs of the association, limited only by federal and state laws, county ordinances, and condominium governing documents."

*“Being elected to an association board does **NOT** mean board members can do anything they want. Board members can only do what the law and the association's condominium governing documents (declaration, bylaws, and articles of incorporation) authorize them to do.”*

(3) the board also has most of the responsibility for the day-to-day operations of the association; (4) the board's power is not unlimited but is subject to the law and the declaration and bylaws; (5) the board must act as a group, not as individuals; (6) differences of opinion among board members are not necessarily violations of the law; (7) the managing agent is only an agent and is subject to the direction and control of the board; and (8) owners, rather than the State, must observe and evaluate the board and the operation of their project. On the other hand, unit owners have the authority to elect and remove directors, amend their governing documents, and petition for special meetings.

Being elected to an association board does **NOT** mean board members can do anything they want. Board members can only do what the law and the association's condominium governing documents (declaration, bylaws, and articles of incorporation) authorize them to do. Board members should be cautious about exercising *"implied"* or *"inherent"* powers which are not clearly stated in the law or condominium documents.

Board members who request and reasonably rely on the advice of professionals, such as attorneys, are usually protected from personal liability by the *"business judgment rule"* discussed later in this booklet. Board members who exceed their authority are likely to face increased liability, including personal liability. For that reason, board members should be familiar with their powers, duties, and responsibilities under the law and their governing documents.

Chapter 514B can be found online. Go to http://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0514B/ for the Hawaii Revised Statutes, and browse the text of the sections under Chapter 514B.

Chapter 514A can also be found online. Go to http://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0514A/ for the Hawaii Revised Statutes, and browse the text of the sections under Chapter 514A.

The discussion in this booklet is a general treatment of rights and responsibilities as provided under Chapter 514B, with only limited discussion of the application of Chapter 514A. In most cases, the discussion in this booklet applies to those who own fee simple or leasehold condominiums. However, the discussion does not

	<p>separately address apartment leases of leasehold projects. In general, for leasehold condominiums, courts may also look to the ground lease when interpreting the governing documents.</p>
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<p>IN THIS CHAPTER</p> <p>THE CONDOMINIUM CONCEPT</p> <p>A What Is a Condominium?</p> <p>B Units, Common Elements, and Limited Common Elements</p> <p>ADVANTAGES AND DISADVANTAGES OF CONDOMINIUM LIVING</p>   <p><i>“Like people, condominiums come in many sizes, shapes and forms.”</i></p>	<p style="text-align: center;">INTRODUCTION TO CONDOMINIUMS</p> <p>THE CONDOMINIUM CONCEPT</p> <p>A. What Is a Condominium?</p> <p>The word "condominium" comes from two Latin words meaning common ownership or control. It describes a legal form of ownership and not a type of building or residence. In the condominium form of property ownership, an individual owns a unit (also known as an "apartment") exclusively and also owns "common elements" jointly with all other unit owners in the condominium. An owner may be given an exclusive right to use certain common elements, which are then described as "limited common elements." (Parking stalls are one of the most common limited common elements.)</p> <p>The owners in a condominium project are legally organized into an "association," which is responsible for governing and maintaining the common elements of the condominium. The association is a separate entity from the members, each with their own rights and responsibilities. Each owner pays a monthly fee or assessment for governing the association and maintaining the common elements. Some condominium associations choose to incorporate as non-profit corporations. Those associations are governed by Hawaii Revised Statutes (“HRS”) Chapter 414D when it does not conflict with the Condominium Property Act.</p> <p>Like people, condominiums come in many sizes, shapes and forms. This type of ownership can be found not only in high-rise buildings but also in low-rise, garden type townhouses, and even in semi-detached or detached structures. Some large condominium projects have a combination of different types of structures. Condominiums can also consist of different types of residential and non-residential uses. Although most condominiums are residential, condominiums can include commercial, industrial, agricultural, parking, boat docks and mixed uses.</p> <p>B. Units, Common Elements, and Limited Common Elements</p> <p>The inner space of a condominium residence, the “unit” (§514B-3), is the owner’s to decorate, to maintain, to live in. Nevertheless, the owner may not do anything in the unit that will jeopardize any other</p>
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<hr/> <p><i>“You and the other unit owners share common element ownership in an undivided manner.”</i></p> <hr/>	<p>property in the condominium or interfere with the use and enjoyment of the property by other owners (§514B-140). The owner may also be restricted on what he or she may add to the outside of the unit. Changes to the unit are subject to board control and may also be subject to owner control.</p> <p>Usually, everything else in the condominium development – the land, the exterior walls, the halls and stairways, load-bearing members, common utilities, the recreation facilities – is the common property of everyone who owns a unit and is termed "common elements" (§514B-3). These common elements are available for use by everyone in the development, subject to certain reserved rights of the board and other owners (§514B-38; §514A-13(d)).</p> <p>Unit owners share common element ownership in an undivided manner. This means that each owner does not <u>own</u> a specific part of the common elements but only a percentage share of all of them, known as the percentage of "common interest" (§514B-3). The percentage of common interest pertaining to each unit is legally attached to that unit; is permanent; cannot be changed without the consent of the unit owner affected; and must be transferred with the unit when it is sold (§514B-37).</p> <p>The <u>use</u> of the common elements, on the other hand, may be changed by the board of directors under certain circumstances. Some changes in use need the approval of owners holding at least 67 percent of the common interest. Other changes also require the approval of the owners directly affected by the changes. Still other changes require the approval of the board, alone, but can be made only with respect to certain common elements or for no more than five years (§514B-38).</p> <p>Some of this commonly owned space, such as lanais or parking spaces, may be called "limited common elements" and are restricted to use only by the owner, family members, or anyone who occupies the unit (§514B-3). In the case of stairways or laundry facilities, use may be limited to other families who live in nearby units, but those parts of the project remain the common property of all the co-owners in the project. The declaration may provide that only the owners of units that have a right to use a particular limited common element are required to pay for its maintenance and use (§514B-41(a)). Limited common elements assigned to a unit may generally be transferred from that unit to another unit by their respective owners, except as provided in the declaration (§514B-40).</p>
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<hr/> <p><i>“In exchange for the convenience of condominium living, owners give up some degree of control and decision-making authority.”</i></p> <hr/>	<p>ADVANTAGES AND DISADVANTAGES OF CONDOMINIUM LIVING</p> <p>Condominium living offers many benefits which appeal to individuals and families. Usually, initial purchase costs are lower than for a comparable single family home. Condominium units demand less individual maintenance than single family homes since maintenance of the property is handled by the association rather than the unit owners. In addition, condominiums provide an opportunity to enjoy commonly owned recreational facilities, such as swimming pools and tennis courts, that an individual homeowner might otherwise be unable to afford.</p> <p>The disadvantages of condominium living arise from the collective nature of this form of home ownership and may include higher population density, living in close proximity to neighbors, rules and restrictions, the responsibility of co-ownership, majority rule, and reduced privacy. In exchange for the conveniences of condominium living, owners give up some degree of control and decision-making authority.</p>
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<p>IN THIS CHAPTER</p> <p>THE CONDOMINIUM PROPERTY ACTS, GENERALLY</p> <p>THE CONDOMINIUM PROPERTY ACT, CHAPTER 514B</p> <p>THE CONDOMINIUM PROPERTY ACT, CHAPTER 514A</p> <p>HAWAII ADMINISTRATIVE RULES, TITLE 16, CHAPTER 107, SUBCHAPTER 6, REQUIREMENTS FOR REPLACEMENT RESERVES</p> <p>HAWAII NONPROFIT CORPORATIONS ACT, CHAPTER 414D</p> <p>HAWAII UNINCORPORATED NONPROFIT ASSOCIATION ACT, CHAPTER 429</p> <p>BASIC CONDOMINIUM DOCUMENTS</p> <p>A The Declaration</p> <p>B The Condominium Map</p> <p>C The Bylaws</p> <p>D House Rules</p> <p>LAWS AND RULES APPLY TO ALL</p> <p>AVAILABILITY OF CONDOMINIUM DOCUMENTS</p>	<p><i>LEGAL BASIS FOR THE CONDOMINIUM</i></p> <p>As of July 1, 2006, Chapter 514B, Hawaii Revised Statutes (“HRS”) provides the framework for the creation and governance of condominium associations. Prior to July 1, 2006, Chapter 514A provided the framework for this creation and governance. Federal and county requirements may also affect condominium associations.</p> <p>Federal law affects condominium associations primarily in the areas of fair housing and discrimination, telecommunications and U.S. flag rights, discussed later in the section of this booklet on "Adoption and Enforcement of Rules." County ordinances affect condominium associations primarily in the areas of construction of improvements and use of units in the project.</p> <p>Chapter 514B allows a condominium to be created by the recording or filing of two key documents, the “master deed” and the "declaration" (together with the "bylaws") (§514B-31). A condominium map, showing the layout of the condominium, must also be recorded. Most condominiums also have another document, the "house rules," which do not have to be recorded. Together, the law, those documents, and the condominium map define what property is owned and the responsibilities of ownership; create a system of governance of the condominium project; and establish a system of rules and regulations for the use of the project.</p> <p>THE CONDOMINIUM PROPERTY ACTS, GENERALLY</p> <p>There are currently two Condominium Property Acts in effect in Hawaii. Chapter 514B, the new Condominium Property Act, became effective on July 1, 2006. Chapter 514A, the prior Condominium Property Act, is still in effect, but only partially applicable to condominium associations in Hawaii. Chapter 514B applies to all condominiums created after July 1, 2006. In addition, with a few exceptions, the provisions of Chapter 514B that govern the management and operation of condominium associations supersede the old Condominium Property Act even for condominiums created before July 1, 2006. It is possible for preexisting condominium associations to adopt amendments to their declarations to more fully opt-in to the new Condominium Property Act (see Addendum 3 on the recodification of the Condominium Property Act). Those preexisting</p>
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<hr/> <p><i>“Together, the law, [the declaration, bylaws, house rules], and the condominium map define what property is owned and the responsibilities of ownership; create a system of governance for the condominium project; and establish a system of rules and regulations for the use of the project.”</i></p> <hr/>	<p>condominium associations that have not “opted-in” to the new statute will be governed by both laws and will need to consult with their attorney to analyze under what circumstances Chapter 514A and Chapter 514B apply to them. Addendum 3 contains a general explanation of when Chapters 514A and 514B apply when a preexisting condominium has not “opted-in” to the new statute.</p> <p>THE CONDOMINIUM PROPERTY ACT, CHAPTER 514B</p> <p>Among other things, Chapter 514B states many of the basic requirements for the declaration, condominium map, bylaws and house rules. Since these documents are subject to Chapter 514B, they may not contradict its requirements. However, as noted above, portions of Chapter 514B do not apply to preexisting condominium associations that have not “opted-in” to the new statute. This booklet is designed to acquaint board members with certain important provisions of Chapter 514B relating to governance of a condominium association. However, this booklet is not intended as a substitute for a careful reading of Chapter 514B or legal advice.</p> <p>Chapter 514B can be found online. Go to http://www.capitol.hawaii.gov/Vol12_Ch0501-0588/HRS0514B for the Hawaii Revised Statutes, and browse the text of the sections under Chapter 514B.</p> <p>The Hawaii Legislature considers Chapter 514B to be so important for boards of directors that the law requires an association to provide all its directors with a current copy of the chapter and all amendments (§514B-107(e)). The association also must provide directors with current copies of the condominium governing documents and house rules.</p> <p>THE CONDOMINIUM PROPERTY ACT, CHAPTER 514A</p> <p>Chapter 514A, the previous Condominium Property Act, is still in effect. Most of the provisions of Chapter 514A that govern the management and operation of condominium associations have been superseded by Chapter 514B (see the “Special Note” on condominium recodification in Addendum 3 at the end of this booklet), but some provisions of Chapter 514A still apply to condominiums in Hawaii created before July 1, 2006. The original legislation that recodified Hawaii’s condominium law repealed parts of Chapter 514A, causing difficulty for older condominiums that had not yet chosen to “opt in” to the provisions of Chapter 514B. This problem was remedied in 2007</p>
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<hr/> <p style="text-align: center;"><i>“ . . . with a few exceptions, the provisions of Chapter 514B that govern the management and operation of condominium associations supersede the old Condominium Property Act even for condominiums created before July 1, 2006.”</i></p> <hr/>	<p>when the Legislature passed Act 244, reenacting the previously repealed parts of Chapter 514A.</p> <p>Chapter 514A can also be found online. Go to http://www.capitol.hawaii.gov/Vol12_Ch0501-0588/HRS0514A for the Hawaii Revised Statutes, and browse the text of the sections under Chapter 514A.</p> <p>This booklet focuses on the provisions of Chapter 514B because most of the management and operation provisions of the new condominium law apply to preexisting condominiums. Therefore, preexisting condominium associations that have not “opted-in” should seek the advice of an attorney experienced in condominium law.</p> <p>HAWAII ADMINISTRATIVE RULES, TITLE 16, CHAPTER 107, SUBCHAPTER 6, REQUIREMENTS FOR REPLACEMENT RESERVES</p> <p>The Hawaii Real Estate Commission adopted administrative rules effective in 1995 to implement the requirement of Chapter 514A that all condominium associations must follow budgets and establish statutory replacement reserves. The objective is to ensure that each owner in a condominium project pays a fair share of the short-term and long-term costs of operating the project, based on the owner’s period of ownership. The rules were adopted before the Legislature approved the “cash flow” method as a means of funding reserves (§514B-148(b)), but the Legislature confirmed in its recodification amendments in 2006 (Section 34 of Act 273) that the rules continue in effect until changed by the Commission. While the administrative rules are in effect, those rules that conflict with the legislature’s subsequent adoption of “cash flow” method of funding do not apply to the “cash flow” method.</p> <p>HAWAII NONPROFIT CORPORATIONS ACT, CHAPTER 414D</p> <p>Incorporated condominium associations are also subject to the Hawaii Nonprofit Corporations Act, Hawaii Revised Statutes, Chapter 414D. Incorporation of condominium associations entails both advantages and disadvantages. The advantages include simplified procedures for ownership of real property; as well as greater protection for board members, who under the nonprofit corporations law are subject to a higher standard of liability for negligence (“gross negligence”) than are directors of unincorporated associations. The disadvantages of incorporation include additional cost and complexity.</p>
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<hr/> <p style="text-align: center;"><i>“A condominium is created when all of the owners of the fee simple interest in the land execute and record a ‘master deed’ and a ‘declaration.’”</i></p> <hr/>	<p>For boards of directors of incorporated condominiums, deciding whether the condominium law or nonprofit corporations law should apply may not always be clear and may require careful analysis. Generally, a provision of the Chapter 514B will supersede a contrary provision of Chapter 414D (§414D-311). When the condominium law does not cover an issue and the nonprofit corporations law has a specific provision on the issue, it should apply. A board should consult the association’s attorney when in doubt as to which law applies.</p> <p>HAWAII UNINCORPORATED NONPROFIT ASSOCIATION ACT, CHAPTER 429</p> <p>Unincorporated condominium associations are also subject to the Hawaii Unincorporated Nonprofit Association Act, Hawaii Revised Statutes, Chapter 429. The Unincorporated Nonprofit Association Act was enacted in 1999 and attempts to limit the liability of members for the debts and torts of the association. In addition, it provides that unincorporated associations can hold title to real property, although the procedures are more complicated than for nonprofit corporations.</p> <p>Unlike the Nonprofit Corporation Act, the Unincorporated Nonprofit Association Act does not contain extensive management or operation provisions. Therefore, the likelihood of a conflict between the Condominium Property Act and the Unincorporated Nonprofit Association Act is remote. In the unlikely event of a conflict between the condominium law and Chapter 429, a board should consult the association’s attorney about which law applies.</p> <p>BASIC CONDOMINIUM DOCUMENTS</p> <p>A. The Declaration</p> <p>A condominium is created when all of the owners of the fee simple interest in the land execute and record a “master deed” and a “declaration” (§514B-31). The master deed is simply the document that shows that the person recording the declaration (referred to as the Declarant) owns fee simple title to the land under the condominium. The declaration and its amendments are the controlling documents that create and define a condominium project and divide the property into separate units and their appurtenant common elements, including limited common elements (§514B-4(a)). The declaration establishes the percentage of ownership each unit has in the total project (§514B-32(4)). This percentage is called the “common</p>
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<p style="text-align: center;"><i>“The declaration and its amendments are the controlling documents that create and define a condominium project and divide the property into separate units and their appurtenant common elements, including limited common elements.”</i></p>	<p>interest" and will help determine each unit owner's obligation for payment of common assessments and voting percentage at association meetings.</p> <p>In addition, the declaration includes but is not limited to:</p> <ul style="list-style-type: none"> • A description of the land on which the condominium project is located. • A description of the building(s), including the number of apartment units. • A description of the types of apartment unit, their unit numbers, and their physical or spatial boundaries (perimeters). • A description of the "common elements" and "limited common elements," and the units to which limited common elements (such as parking stalls) are attached. • The permitted and prohibited uses of the buildings, common elements, and apartment units. • The method of amending the declaration, including the percentage of common interest required to approve such amendments. • The percentage of common interest required to approve rebuilding, repairing, or restoring the condominium if it is damaged or destroyed. • Any reserved rights of the developer or others regarding the condominium. • A declaration that the condominium is in compliance with all county zoning and building ordinances and codes. <p>NOTE: In 2006, the Legislature changed the law relating to the percentage of owners required to approve declaration amendments (§514B-32(a)(11)). Prior to that time, under Chapter 514A, the law provided that the declaration could be amended only with the affirmative vote or written consent of owners holding 75 percent of the common interest, except for projects with five or fewer units, which could set higher approval requirements (§514A-11(11)). The 2006 change reduced the percentage of owners required to approve a declaration amendment to owners having at least 67 percent of the common interest. The change in the law does <u>not</u> apply retroactively to existing condominiums, but requires associations to “opt-in” to the provisions of Chapter 514B by majority vote or written consent of the owners, to gain the benefit of the reduced approval requirements (§514B-23(b)). All declarations and amendments must be recorded.</p>
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<hr/> <p><i>“A “condominium map” is a map or plan of the condominium property regime containing the information required by HRS Section 514B-33 -- floor plans, plot plans, and elevations accurately depicting the condominium project and structures”</i></p> <hr/>	<p>B. The Condominium Map</p> <p>A “condominium map” is a map or plan of the condominium property regime containing the information required by HRS Section 514B-33 -- floor plans, plot plans, and elevations accurately depicting the condominium project and structures, including the parking plan and limited common elements, if any (§514B-3 and §514B-33). The condominium map is often considered to be a part of the declaration and must be recorded with it (§514B-32(a)(2), §514B-33§514B-33). However, it deserves special mention because many owners and board members are unaware of the document. While the declaration describes the condominium project with words, the condominium map consists of plans of the project. The map must be certified by an engineer or architect and recorded (§514B-34). It must also reference and be referenced by the declaration (§514B-32(a)(2), §514B-33). The law does not specifically address how amendments to the map are to be made after it is first recorded, other than amendments to achieve the results of the new condominium law (§514B-23). Condominium map amendments are usually made as declaration amendments (approval of owners having at least 67 percent of the common interest for Chapter 514B condominiums and approval of owners having 75 percent of the common interest for Chapter 514A condominiums).</p> <p>C. The Bylaws</p> <p>The bylaws are a companion document to the declaration. The bylaws contain most of the provisions relating to the governance of the association. They also establish the rules for the operation of the condominium project. As with the declaration, the bylaws must be recorded (§514B-108(a)). HRS Section 514B-108(b) specifies in detail what the bylaws must minimally contain, including provisions for number of board members, election of officers, association operations, and qualifications for election and removal of directors; powers and duties of the board, and what may be delegated to officers, a managing agent or others; compensation, if any, of directors; method for amending bylaws; and percentage required to adopt decisions binding on all owners. The bylaws may provide for staggered terms of directors (§514B-108(c)), and for other matters deemed necessary and appropriate by the association (§514B-108(d)). Amending the bylaws requires the vote or written consent of at least 67 percent of all unit owners (§514B-108(e)).</p>
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<hr/> <p><i>“All persons who use or occupy the condominium project are subject to Chapters 514A and/or 514B as well as the declaration, bylaws, condominium map, and house rules.”</i></p> <hr/>	<p>The remainder of this booklet discusses in more detail many of the requirements of the bylaws regarding your powers and duties as a board member.</p> <p>D. House Rules</p> <p>The bylaws usually provide authority to the board of directors to establish "house rules" for the governance and control of the common elements of the condominium project (§514B-104(a)(1), §514B-106(a)). The board enforces the house rules, typically through the managing agent and/or resident manager. These rules make possible a harmonious living situation within the condominium community. They should be enforced uniformly and consistently as to all violators, and according to specific, well-published standards and criteria. All board members should know the contents of the house rules.</p> <p>House rules are intended to implement bylaw provisions governing the use of common elements, and are not intended to be a substitute for the declaration and bylaws. In the event of a conflict, the declaration and bylaws will control. House rules may only regulate behavior in units used for residential purposes when necessary to prevent violation of the declaration or bylaws, avoid unreasonable interference with the use and enjoyment of other units and the common elements by other owners, and restrict the leasing of units to meet the underwriting requirements of lenders (§514B-105(b)). Otherwise, House rules define guidelines and limits on the behavior of owners, tenants, and their guests while using the common elements. For example, the house rules may prohibit such activities as excessive noise, hanging items over lanai railings, or keeping personal property in the common areas. The house rules may also implement bylaw provisions on what kinds of alterations you can make to your unit.</p> <p>Usually the bylaws permit the board of directors to amend the house rules without owner approval. Sometimes the bylaws require the board to seek owners' comments and input before amending the house rules. Occasionally the board needs owner approval to amend the house rules. Board members should review their own condominium documents to determine what is required for their condominium association.</p> <p>LAWS AND RULES APPLY TO ALL</p>
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<hr/> <p><i>“Access to documents is an important part of the self-governance theory of the condominium law. Owners are responsible for overseeing the operation and management of their project and association, but they can only do so with full access to relevant information about both.”</i></p> <hr/>	<p><u>All</u> persons who use or occupy the condominium project are subject to Chapters 514A and/or 514B as well as the declaration, bylaws, condominium map, and house rules. Anyone using the property must obey the conditions and restrictions contained in these documents. Owners may be responsible for their guests, tenants, and employees while they are on the property. Enforcement of these laws and rules may be sought by the managing agent, resident manager, the board, or an aggrieved owner (§514B-112).</p> <p>AVAILABILITY OF CONDOMINIUM DOCUMENTS</p> <p>Unit owners may inspect condominium documents maintained at the association's or managing agent's office. The documents that must be made available include the declaration, the bylaws, the house rules, the master lease (if any), a sample original conveyance document, all developer's public reports, certain financial records (receipts, expenditures, delinquent assessments), and a list of members of the association (subject to certain restrictions) (§514B-153). A unit owner (or prospective buyers and their prospective agents) may obtain copies of these documents from the managing agent (or other person or entity to whom this function is delegated by the association) during normal business hours for a reasonable charge (§514B-154(d)). (Some title companies can also provide some of these documents.) In addition, owners may examine, at a convenient location, the association's most current financial statement at no cost or on 24-hour loan (§514B-154(a)). Board minutes for the current and prior year must be made available to owners at no cost or on 24-hour loan or transmitted to them at a reasonable fee. Owners can request that the board minutes be transmitted to them by mail, electronic mail or facsimile (§514B-154(a)). In addition, owners may examine and request copies of earlier financial statements, ledgers, insurance policies, certain contracts, invoices, delinquencies of 90 days or more, and association election materials, upon submission of any required affidavit and upon payment of a reasonable fee for administrative costs (§514B-154(b),(c)). Association biennial registration information and some developer's public reports are available on the Hawaii Real Estate Commission website.</p> <p>Access to documents is an important part of the self-governance theory of the condominium law. Owners are responsible for overseeing the operation and management of their project and association, but they can only do so with full access to relevant information about both.</p>
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<p>IN THIS CHAPTER</p> <p>THE ROLE OF THE REAL ESTATE COMMISSION</p> <p>POWERS AND DUTIES OF THE COMMISSION</p> <p>A Registration of New Condominiums</p> <p>B Enforcement of the Law</p> <p>C Providing Information and Assistance</p> <p>D Resolving Disputes</p>	<p style="text-align: center;"><i>THE HAWAII REAL ESTATE COMMISSION</i></p> <p>THE ROLE OF THE REAL ESTATE COMMISSION</p> <p>The Hawaii Real Estate Commission (“Commission”) is charged with the responsibility of administering certain portions of the Condominium Property Acts (both Chapters 514B and 514A). The portions of Chapter 514B administered by the Commission are described in more detail below, under Powers and Duties of the Commission. The Commission, which is administratively attached to the Department of Commerce and Consumer Affairs (“DCCA”), is involved in a number of activities affecting the condominium community, in particular the registration of: (a) condominium projects; (b) condominium associations; (c) condominium managing agents that are authorized Hawaii trust companies; and (d) condominium hotel operators that are not duly licensed as real estate brokers. Previously the Commission registered all condominium managing agents and condominium hotel operators. However, duly licensed real estate brokers conducting managing agent activities and condominium hotel operations are no longer required to register with the Commission. All other managing agents and condominium hotel operators must register with the Commission.</p> <p>POWERS AND DUTIES OF THE COMMISSION</p> <p>A. Registration of New Condominiums</p> <p>Prior to offering units for sale, condominium developers must first register the condominium project with the Commission and obtain an effective date for a developer’s public report from the Commission (§514B-51). As part of the registration, the condominium developer must file with the Commission copies of the condominium documents, including the declaration, by-laws, house rules (if any), and condominium map (§514B-52 and §514B-54). Before any units are sold, the Commission must issue an effective date for the developer’s public report on the project (§514B-82). A developer’s public report does not constitute an approval or disapproval of a particular project. It is intended to</p>
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<hr/> <p><i>“ . . . the Commission has the power to: investigate certain violations of Chapter 514B and examine the books, accounts, contracts, records, and files of all relevant parties . . . ; issue "cease and desist" orders after a hearing; and bring an action in court to enjoin a person from continuing a violation.”</i></p> <hr/>	<p>disclose pertinent or material facts about the project. Specifically, the public report is required to contain, at a minimum (§514B-83(a)):</p> <ul style="list-style-type: none"> ➤ The project name and address; ➤ The name, address, phone number and e-mail address of the developer or the developer’s agent; ➤ A statement of the deadline, pursuant to HRS Section 514B-89, for completion of construction or, in the case of a conversion, for the completion of any repairs required to comply with Section 514B-5 and the remedies available if the deadline is missed; ➤ A breakdown of the annual maintenance fees and the monthly estimated cost for each unit based on generally accepted accounting principles; ➤ A statement regarding when a purchaser shall become obligated to start paying the maintenance fees; ➤ A description of all warranties for the individual units and the common elements; ➤ A summary of the permitted uses of the units and the number of units planned to be devoted to a particular use; ➤ A description of any development rights reserved to anyone; ➤ A declaration that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements; and ➤ Any other facts, documents, or information that would have a material impact on the use or value of the unit or the common elements. <p>The developer must provide the public report to purchasers or prospective purchasers (§514B-82). The developer must promptly amend the public report if there are pertinent and/or material changes in the information required to be contained in the report (§514B-83(b)).</p> <p>B. Enforcement of the Law</p> <p>The Commission is responsible for enforcing certain provisions of the Condominium Property Acts. In addition, since most condominium managing agents are licensed as real estate brokers, their conduct is regulated by the Real Estate Brokers and</p>
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“One of the Commission’s tasks is providing information to condominium owners, boards of directors, developers and the public.”

Salespersons Law, HRS Chapter 467, and is subject to disciplinary action by the Commission. The Commission's enforcement powers and the provisions it enforces are outlined in HRS Sections 514B-65, 514B-66, 514B-67, 514B-68, and 514B-69. Pursuant to these sections, the Commission has the power to: investigate certain violations of Chapter 514B and examine the books, accounts, contracts, records, and files of all relevant parties (§514B-65); issue "cease and desist" orders after a hearing; and bring an action in court to enjoin a person from continuing a violation. The Commission may also terminate the registration of a condominium project for failure of a developer to perform or comply with the applicable law (§514B-67). Imposition of civil and criminal penalties for violations is generally within the jurisdiction of the courts, not the Commission. Pursuant to HRS Section 26-9(m), the Commission delegated its authority to receive, arbitrate, investigate, and prosecute complaints to the DCCA. The Regulated Industries Complaints Office (“RICO”) is the designated body within the DCCA to investigate and prosecute these violations.

Note, however, that the Commission's oversight of the development of condominiums relates to the registration of condominium projects and the issuance of effective dates for the developer’s public report prior to offering for sale any units in the project (§514B-57). In the area of condominium governance, the Commission has other, more limited powers relating to: availability of information for owners; record-keeping requirements of the managing agent and the board of directors; the registration and bonding of managing agents and associations; and the handling of association funds. Essentially, the Commission’s powers relating to the governance of condominiums relate to the Commission’s administration of the Condominium Education Trust Fund for educational purposes. These educational purposes include the promotion of self-governance of condominiums through education and research in condominium management, condominium project registration, real estate, improvement and more efficient administration of associations, and expeditious and inexpensive procedures for resolving association disputes (§514B-71). The Legislature intended that owners have access to the information they need to ensure that their boards of directors are following the law and their governing documents.

<p style="text-align: center;"> <hr/> <i>“The basic principles of the condominium law remain self-governance and self-enforcement. Owners must govern their own associations and resolve their own disputes.”</i> <hr/> </p> <p style="text-align: center;"> <hr/> <i>“The options for resolving . . . disputes include negotiation, mediation, arbitration, and administrative hearing (‘Condominium Dispute Resolution Program’ . . .).”</i> <hr/> </p>	<p>C. Providing Information and Assistance</p> <p>One of the Commission's tasks is providing information to condominium owners, boards of directors, developers and the public. The Commission's "condominium specialists", appointed by the Director of the DCCA, assist consumers with information, advice, and referral on any matter relating to Chapter 514B or Chapter 514A or otherwise concerning condominiums (§514B-63). Their telephone number is (808) 586-2643.</p> <p>In 1989, a "Condominium Management Education Fund" (now known as the "Condominium Education Trust Fund") was established for use by the Commission for condominium education. The purpose of the fund is to promote education and research in the areas of condominium management, registration, and real estate; to improve the administration of condominium associations; and to establish procedures for resolving disputes quickly and inexpensively (§514B-71). Each association with six or more units must secure and maintain a fidelity bond, and pay an annual fee to the fund as required by HRS Section 514B-103.</p> <p>D. Resolving Disputes</p> <p>The Commission has only limited powers to enforce certain portions of the Condominium Property Acts. These limited powers are described in more detail above. The basic principles of the condominium law remain self-governance and self-enforcement. Owners must govern their own associations and resolve their own disputes.</p> <p>Disputes may involve one or more unit owners, the association, the board of directors, the managing agent, the resident manager, and others. Disputes may arise over a range of issues relating to the condition or use of the property, house rules violations and enforcement, actions of the board or management, claims against owners and residents, employment-related problems, vendor complaints, and neighborhood problems.</p> <p>The options for resolving such disputes include negotiation, mediation, arbitration, litigation, and administrative hearing ("Condominium Dispute Resolution Program," which is set to expire on June 30, 2011). However, as more fully explained on page 23, the law mandates mediation and arbitration only of certain disputes between certain parties, and only after meeting</p>
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<hr/> <p><i>“ . . . owners are entitled to seek the removal of directors, solicit proxies, elect directors, propose declaration and bylaw amendments at association meetings, petition for bylaw amendments, and petition for special meetings of the Association. These self-help measures are often as effective as litigation.”</i></p> <hr/>	<p>certain conditions. The Commission is statutorily charged with promoting informal resolution of condominium disputes without legal action. Legal action can be time-consuming and expensive. The Legislature intended that the Commission expend its educational funds to encourage board members and unit owners to first try to resolve their dispute through discussion and communication. If that is not possible, the parties then may consider the services of mediators contracted by the Commission specifically for resolving disputes between condominium owners and board members (§514B-161). Disputes that can be mediated include interpretation or enforcement of an association’s declaration, bylaws, or house rules, or Part VI of HRS Chapter 514B (“Management of Condominiums”). In the event these disputes remain unresolved, they may be submitted to the Condominium Dispute Resolution Program described on page 25.</p> <p>In addition to litigation and similar proceedings, owners are entitled to seek the removal of directors, solicit proxies, elect directors, propose declaration and bylaw amendments at association meetings, petition for bylaw amendments and petition for special meetings of the Association. These self-help remedies are often as effective as litigation.</p> <p><u>Negotiation:</u></p> <p>Too often, people resort to a structured program such as mediation, arbitration, litigation or other formal dispute resolution techniques when they should just talk. If there is a problem, the first step usually should be to discuss the dispute with the parties involved. Many times, disputes can be resolved by courteous discussion of the problem. In appropriate circumstances, the Board may want to obtain legal advice about its authority and obligations before meeting with the other party.</p> <p><u>Mediation:</u></p> <p>Mediation is a very effective method of settling disputes before they escalate to the point of arbitration or litigation. There are generally two types of mediation. The more common form of mediation is called facilitative mediation. Until recently, facilitative mediation was the only type of mediation that was available. Evaluative mediation is the other type of mediation now currently available.</p>
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<hr/> <p style="text-align: center;"><i>“Mediation is a very effective method of settling disputes before they escalate to the point of arbitration or litigation.”</i></p> <hr/>	<p>In facilitative mediation, the facilitative mediator assists the parties in reaching a mutually agreeable resolution by serving as an intermediary. The facilitative mediator does not make recommendations to the parties or give his or her own advice or opinion as to the outcome of the case, although the mediator may communicate the stated position of the parties.</p> <p>Evaluative mediation is more similar to settlement conferences before a judge. In evaluative mediation, the mediator will attempt to facilitate a settlement, but will also provide advice about and evaluation of the parties’ case. Since evaluative mediation involves legal analysis and familiarity with the law, it is normally more expensive than facilitative mediation. However, evaluative mediation can resolve cases without the need for more expensive litigation.</p> <p>Any board of directors or unit owner may seek mediation with the other about the interpretation or enforcement of the association’s declaration, bylaws, or house rules, or a matter involving Part VI of HRS Chapter 514B (the sections of the law involving the management of condominiums) (§514B-161(a)). The Commission itself does not conduct mediations, although mediation services are available under the Condominium Education Trust Fund. Facilitative mediation services are provided on Oahu (Mediation Center of the Pacific, Inc.), Maui (Mediation Services of Maui, Inc.), West Hawaii - Kona (West Hawaii Mediation Center), East Hawaii - Hilo (Ku`ikahi Mediation Center), and Kauai (Kauai Economic Opportunity, Inc.). Since these providers are subject to change, please check the Commission website for the subsidized mediation service providers. You may contact one of the subsidized service providers or other mediation service directly about the procedures, type and cost of mediation, and to arrange for mediation.</p> <p>Except as noted below, mediation is voluntary. Some boards refuse to mediate because they believe they have nothing to gain. Often they have been advised that the law supports their actions or requires them to follow a certain practice. Those boards may be ignoring the <u>educational</u> benefits of mediation.</p> <p>Many disputes arise because owners either do not realize how much power the law gives to boards, or misunderstand the</p>
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<hr/> <p style="text-align: center;"><i>“Mediation is <u>mandatory</u> in certain circumstances involving disputes about money claimed by the association for assessments [or] if an owner or a board of directors requests mediation of a dispute involving the interpretation or enforcement of the project declaration, bylaws, house rules or Part VI of HRS Chapter 514B involving management of condominiums.”</i></p> <hr/>	<p>limitations on that power. In those cases, explaining the board's position in the controlled setting of mediation may prove worthwhile. Mediation may take far less time than prolonged arbitration or litigation with an ill-informed owner who does not understand the broad powers which Hawaii law gives to boards. An owner who does not resort to arbitration or litigation may still subject a board to months of bitter infighting at association meetings. Therefore, a board should carefully consider the educational benefits of mediation before rejecting an owner's request for mediation.</p> <p>Mediation is <u>mandatory</u> in certain circumstances involving disputes about money claimed by the association for assessments (§514B-146(d)). If an owner pays the full amount claimed by the association, the owner may file a claim in Small Claims Court or may elect mediation to determine the validity of the association's claim and to obtain a refund of any amounts not owed. If the dispute cannot be resolved by mediation, either party may file for arbitration, provided that the owner must pay in full all amounts claimed by the association before the owner may file for arbitration.</p> <p>Mediation is also <u>mandatory</u> if an owner or a board of directors requests mediation of a dispute involving the interpretation or enforcement of the project declaration, bylaws, house rules, or Part VI of HRS Chapter 514B involving management of condominiums (§514B-161(a)). Unless the parties agree otherwise, each party is responsible for its own costs for the mediation, and if a party refuses to participate in the mediation, a court may later take this refusal into account in awarding expenses, costs and attorneys' fees.</p> <p>If an interpretation or enforcement dispute between an owner and a board is not resolved by mediation, either party may file for arbitration or request a hearing before the Office of Administrative Hearings of the DCCA. A demand for arbitration may be filed <u>no sooner</u> than 30 days after the termination of the mediation (§514B-161(d)), while a request for administrative hearing may be made <u>no later</u> than 30 days after the termination of the mediation (§514B-161(e)). The arbitration and administrative hearing options in HRS Sections 514B-161(d) and (e) have a repeal date of June 30, 2011 (Act 009, SLH 2009) – see also “Condominium Dispute Resolution Program” on page 25.</p>
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<hr/> <p style="text-align: center;"><i>“Arbitration . . . is simply a method of solving disputes by submitting them to an impartial person who has the power to decide the issues in controversy.”</i></p> <hr/>	<p><u>Arbitration:</u></p> <p>Chapter 514B also provides that disputes involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners, and relating to the interpretation, application, or enforcement of Chapter 514B or the declaration, bylaws or house rules of the association, shall be submitted to arbitration at the request of any party (§514B-162(a)). Not all disputes can be arbitrated, such as disputes involving the Commission, a mortgagee, a project developer, threatened property damage or the health and safety of unit owners, personal injury claims, certain insured amounts over \$2,500, and matters determined unsuitable by a court (§514B-162(b)). Arbitration of some disputes is also subject to restrictions. For example, an owner may only arbitrate a dispute concerning assessments claimed by an association if the owner pays the full amount claimed by the association and keeps all payments to the association current during the arbitration (§514B-146(d), §514B-162(b)(5)).</p> <p>Arbitration is, however, appropriate for many condominium disputes. Arbitration under Section 514B-162 and Chapter 658A is simply a method of solving disputes by submitting them to an impartial person who has the power to decide the issues in controversy. An arbitration hearing is similar to a court hearing, but usually less formal. Sworn testimony and evidence may be presented, as in a court. Any party to the arbitration may demand a “trial de novo” (new trial) in circuit court within 10 days of the award, but the complaint must be filed in circuit court within 30 days of the demand (§514B-163(b)). If a trial de novo is not requested, the decision of the arbitrator is binding and enforceable in circuit court, although a party who dislikes an arbitrator's decision may move to modify, correct, or vacate the order within 90 days of the award. The grounds for vacating an arbitration order are strictly limited (§514B-162(h), §658A-23), and a rehearing is seldom granted.</p> <p><u>Litigation:</u></p> <p>Any condominium-related dispute can be decided in court, although parties may demand arbitration of some disputes (§514B-162). With the exception of Small Claims Court, however, litigation can be expensive and time-consuming, so the</p>
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<hr/> <p style="text-align: center;"><i>“ . . . litigation can be expensive and time-consuming, so the Legislature intended to encourage owners first to consider mediation or arbitration.”</i></p> <hr/>	<p>Legislature intended to encourage owners and associations first to consider mediation or arbitration.</p> <p>Small Claims Court is a division of District Court in which certain types of claims are decided by a judge in a simple and informal manner. Individuals may ask the clerk of the court for assistance in filing their claims. Parties to a dispute need not (but can) be represented by attorneys, and attorneys’ fees cannot be charged to the losing party. Parties cannot appeal from judgments of Small Claims Court. Small Claims Court has the power to decide claims for money, usually to a maximum of \$3,500, but has only limited power to order parties to act or not act in a particular way.</p> <p>For more specific information you should contact the Small Claims Court in your area. You may also review a copy of the booklet “<i>Your Guide to the Small Claims Court: Questions & Answers</i>” available on the Hawaii Judiciary website (http://www.state.hi.us/jud/pdf/SmallClaims.pdf).</p> <p>IMPORTANT NOTE: An owner who files suit against an association in Small Claims Court and loses is not liable for the association's attorneys' fees. An owner who files suit against an association in any other court and loses can be liable for the association's reasonable attorneys' fees, <u>unless</u> before filing suit the owner first made a good faith effort to resolve the dispute through mediation or arbitration (§514B-157). (An association does <u>not</u> have a similar exemption from liability for attorneys' fees if it sues an owner and loses.) If a party demands a trial de novo after arbitration, and loses, the losing party will be charged all reasonable costs, expenses, and attorneys’ fees of trial (§514B-163(d)).</p> <p><u>Condominium Dispute Resolution Program:</u></p> <p>Act 164 (SLH 2004) effective July 2, 2004, established a new “Condominium Dispute Resolution Program” (“CDRP”) pilot program as an administrative hearing process, initially for two years but extended for five more years by Act 277 (SLH 2006) and Act 205 (SLH 2008), which added temporary new subsections to Section 514B-161 (§514B-161(d)-(m)). The CDRP is still considered a pilot program because it will be repealed on June 30, 2011, under Act 009 (SLH 2009) unless extended again</p>
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<hr/> <p style="text-align: center;"><i>“CDRP is an administrative hearing process . . . conducted less formally than in a courtroom.”</i></p> <hr/>	<p>by the Legislature. The DCCA is responsible for organizing and administering the program, which is intended to supplement but not replace existing condominium dispute resolution processes (negotiation, mediation, arbitration, and litigation).</p> <p>CDRP is an administrative hearing process conducted by the Office of Administrative Hearings of the DCCA. Like arbitration, an administrative hearing is a simplified process conducted less formally than in a courtroom. Therefore, parties may participate without attorneys, and strict rules of evidence need not apply.</p> <p>Any party requesting a CDRP hearing must first have participated in mediation (unless one of the parties refuses to participate, in which case the other party may proceed to CDRP). The CDRP hearing must relate to an issue that was mediated (or any matter identified in the request for mediation if one of the parties refuses to participate) and involve a dispute involving the interpretation or enforcement of the association’s declaration, bylaws, house rules or a matter involving part VI of the Condominium Property Act. The parties to the CDRP hearing must be (1) the board of directors of a registered condominium association; and (2) a unit owner who is a member of a registered condominium association. The requesting party must petition for hearing within 30 days after the termination date of the mediation as specified by the mediator, and the responding party must reply within 20 days of being served with a request for a hearing.</p> <p>The party requesting a CDRP hearing must pay a filing fee of \$25, and each party filing a response must also pay a fee of \$25. All parties must pay their own costs, including attorneys’ fees, unless the hearings officer decides otherwise.</p> <p>A CDRP hearing must commence within 60 days after the DCCA Office of Administrative Hearings receives a request from a qualified person. No more than 30 requests for CDRP hearings may be accepted in a fiscal year. The party filing for the hearing has the burden of proof. A DCCA hearings officer acts as the "judge" and has the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that are final and conclusive unless an adversely affected party files an appeal to the circuit court.</p>
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<p>IN THIS CHAPTER</p> <p>BASIC STRUCTURE AND OPERATIONS</p> <p>MEMBERSHIP IN THE ASSOCIATION</p> <p>ASSOCIATION MEETINGS</p> <p>VOTING BY PROXY AT ASSOCIATION MEETINGS</p> <hr/> <p><i>“The association has powers and responsibilities which are similar to those of local governments . . . to create ‘laws’ . . . through the association’s bylaws and house rules; to ‘tax’ through the collection of maintenance fees and assessments; and to impose penalties and interest for late payment of assessments, and fines for violations of the declaration, bylaws, and house rules.”</i></p> <hr/>	<p style="text-align: center;">THE ASSOCIATION</p> <p>BASIC STRUCTURE AND OPERATION</p> <p>The operation of a condominium is carried out through its association of unit owners, made up of all persons owning units in the condominium project. (In older condominium projects, the association may be referred to as an “association of apartment owners.” Newer associations may be referred to as “association of unit owners” or just “associations.”) Condominium associations have legally established authority or duties to preserve and maintain common property; create and enforce rules affecting association living; and provide other services, such as security, trash pickup, and the like.</p> <p>The association has powers and responsibilities which are similar to those of local governments. Included in these powers is the power to create “laws” (provisions governing the project and its owners) through the association’s bylaws and house rules; to “tax” through the collection of maintenance fees and assessments; and to impose penalties and interest for late payment of assessments, and fines for violations of the declaration, bylaws, and house rules (§514B-104(a)).</p> <p>As previously discussed in detail, the declaration, condominium map, bylaws, and Chapter 514B form the legal basis for the "mini-government" of homeowners that is created. These documents are used to establish the framework for the operation of the association. Most associations delegate their powers for the day-to-day operation of the association to a board of directors.</p> <p>MEMBERSHIP IN THE ASSOCIATION</p> <p>Membership in the association is mandatory. When unit owners take title to the condominium unit, they automatically become a voting member of the association of apartment owners and are responsible for their share of the common expenses of the association. Each member's share is determined by the percentage ownership of the common elements stated in the declaration (the percentage of "common interest"). Membership automatically terminates when title is transferred. Only owners</p>
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<p style="text-align: center;"><i>“Only owners (including lessees under recorded leases) can be association members, and all owners must be members.”</i></p> <hr/> <p style="text-align: center;"><i>“Regardless what the bylaws state, notice of association meetings must be given to members at least 14 days prior to the meeting, although the bylaws may require greater notice.”</i></p>	<p>(including lessees under recorded leases) can be association members, and all owners must be members (§514B-3, §514B-95, §514B-107(a)).</p> <p>ASSOCIATION MEETINGS</p> <p>The bylaws establish the method of calling meetings of the association, as well as what percentage of the owners constitutes a quorum, and what percentage is necessary to adopt decisions binding on all unit owners, consistent with Chapter 514B. Regardless what the bylaws state, notice of association meetings must be given to members at least 14 days prior to the meeting, although the bylaws may require greater notice. The notice must contain the date, time, and place of the meeting, as well as items on the meeting agenda, including the general nature and rationale of any proposal to amend the declaration or bylaws, or remove a member of the board; provided that no unit owner is precluded from proposing such an amendment or removal of a director at an annual meeting (§514B-121(c)).</p> <p>Association meetings fall into two categories, "annual" association meetings and "special" association meetings. The function of the annual meeting is to present certain important matters that must be addressed by the entire association for consideration and/or approval. Election of directors, review of the annual financial report, reports of board officers and association committees and amendment of the declaration or bylaws are a few of the items often found on the annual meeting agenda. If so provided by the declaration or bylaws, association meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion (§514B-121(d)). Association meetings usually must be held at the condominium or elsewhere within the State as determined by the board, except in the event of a natural disaster (§514B-121(e)).</p> <p>Special association meetings are held from time to time to address one or more specific items that require membership consideration and approval and cannot wait until the next annual meeting, such as amendments to project documents and removal of directors. Special meetings may generally be called by the president, a majority of the board, or by a petition to the secretary or managing agent by not less than 25 percent of unit owners (§514B-121(b)). As a general rule, only the topics listed in</p>
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 <p><i>“Association members may vote by proxy at association meetings if the proxy is delivered to the association secretary or managing agent by 4:30 p.m. on the second business day before the meeting.”</i></p>	<p>the notice may be considered at a special meeting.</p> <p>VOTING BY PROXY AT ASSOCIATION MEETINGS</p> <p>Association members may vote by proxy at association meetings if the proxy is delivered to the association secretary or managing agent by 4:30 p.m. on the second business day before the meeting. The proxy must include the name of the association, the date of the meeting, printed names and signatures of persons giving the proxy, unit numbers for which the proxy is given, the names of the persons to whom the proxy is given, and the date the proxy is given (§514B-123(d)). The proxy is valid only for the meeting to which it pertains, and any adjournments of that meeting (§514B-123(e)).</p> <p>The resident manager and the managing agent or its employees may <u>not</u> solicit proxies from any owner for their own use. They may vote by proxy <u>only</u> to establish a quorum at association meetings (§514B-123(i)).</p> <p>Owners may give proxies to be voted by any designated person (§514B-123(e)). A proxy form distributed by the association must contain four boxes to allow owners to give the proxy: (1) for quorum purposes only; (2) to a specific individual whose name is printed on a line next to the box; (3) to the board as a whole to be voted by the majority of members present at the meeting; or (4) to those board members present with their votes to be shared equally (§514B-123(d)(3)).</p> <p>If association funds are used to distribute proxies, the board must post notice of its intent to distribute proxies in prominent locations within the project at least 21 days in advance of the solicitation. If the distribution is to occur when the board sends the notice of meeting, agenda and proxy to owners, the board must post the notice of the solicitation at least <u>35</u> days before the meeting (because the notice and distribution must go out at least 14 days prior to the meeting, subject to any provision of the bylaws requiring more than 14 days notice). All unit owners responding within 7 days to the notice, and requesting the use of association funds to solicit proxies, can have the association send a one page statement with the association’s distribution of proxies. The statement must be</p>
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<hr/> <p><i>“The votes of unit owners by proxy are allocated to units in accordance with the units’ percentage of common interest, and may be sent by mail or electronic transmission.”</i></p> <hr/>	<p>on one side of an 8½ by 11 sheet of paper, indicating the owner’s qualifications to serve on the board or providing the owner’s reasons for wanting to receive proxies. The association must then send the statements to all owners with either (1) a proxy form containing the names of the owners who have requested association funds to solicit proxies, or (2) a blank proxy form accompanied by a list of those owners’ names (§514B-123(h)).</p> <p>The board of directors, managing agent, or resident manager must keep an accurate, current list of all association members and their addresses, together with names and addresses of vendees under agreements of sale, if any. Owners can obtain a copy of the list at reasonable cost, as provided in the condominium documents, and by submitting an affidavit stating that you intend to use the list for soliciting votes or proxies or disseminating association information to members and not for any other purpose (§514B-153(e)).</p> <p>The votes of unit owners by proxy are allocated to units in accordance with the units’ percentage of common interest, and may be sent by mail or electronic transmission. If a unit is owned by more than one person, the unit’s allocated votes are cast (in person or by proxy) in accordance with the majority interest of the owners by agreement, or by any owner in the absence of protest by the others. A proxy may be revoked only by actual notice of the owner to the secretary of the association or the managing agent (§514B-123(a),(b)).</p>
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<p>IN THIS CHAPTER</p> <p>THE BOARD OF DIRECTORS</p> <p>A Election of Directors</p> <p>B Officers</p> <p>C Removal of Directors and Officers</p> <p>D Meetings of the Board</p> <p>PARLIAMENTARY PROCEDURE; ROBERT'S RULES OF ORDER</p>	<p style="text-align: center;"><i>MANAGEMENT OF THE ASSOCIATION</i></p> <p>THE BOARD OF DIRECTORS</p> <p>The association is governed by a board of directors elected by the unit owners to represent them in governing and managing the condominium (§514B-106(a)). The board's primary responsibility is the establishment of policies governing the operations of the association. The board is then responsible for delegating authority to implement the policies it adopts and for the overall supervision of the association's officers, employees, and agents. The board's powers and duties, including its fiduciary duties, are discussed further in the next chapter beginning on page 37.</p> <p>NOTE: Despite the broad powers given to boards of directors, the owners retain ultimate control through their authority to elect and remove directors.</p> <p>A. Election of Directors</p> <p>The condominium bylaws establish the number of board members and their qualifications, and the manner of electing and removing board members and officers. The bylaws also designate the powers and duties of the board and its officers, what powers may be delegated, and the method of determining the compensation, if any, of directors. The bylaws further provide for the percentage of votes required to adopt decisions binding on all owners. These minimum requirements for the content of bylaws are specified in HRS Section 514B-108(b).</p> <p>Condominium boards must have at least three members; provided that projects created after May 18, 1984, with 100 or more units are required to have a board of at least nine members (unless the owners amend the bylaws to reduce that number, and provided further that projects where at least 70 percent of the owners are non-residents, the board may have as few as five members) (§514B-106(e)). Unless they resign or are removed, directors serve for whatever term is specified in the bylaws and normally until a successor is elected or appointed. Owners cannot be forced to serve on the board, so some associations have to operate with fewer board members than the law or their bylaws require. As long</p>
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<hr/> <p style="text-align: center;"><i>“The condominium bylaws establish the number of board members and their qualifications, . . . the manner of electing and removing board members and officers . . . [and] designate the powers and duties of the board and its officers, what powers may be delegated, and the method of determining the compensation, if any, of directors.”</i></p> <hr/>	<p>as the board has a quorum of the required number, decisions of these boards are valid.</p> <p>Qualifications and terms of board members vary depending on the bylaws of your association. Directors appointed to fill the unexpired terms of directors who have resigned or been removed often serve until the next election.</p> <p>Every board member must be a unit owner, or co-owner, vendee under an agreement of sale, trustee of a trust which owns a unit, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a unit. (§514B-107(a)). No single unit may be represented by more than one board member (§514B-107(a)). A resident manager or employee of the association shall not serve as a director for the association that employs him or her (§514B-107(b)).</p> <p>Some condominium bylaws include provisions for cumulative voting. If the bylaws do not authorize cumulative voting, it does not apply to the condominium association. Cumulative voting is a method of voting that is intended to permit a minority of the owners to elect directors to the board if they have sufficient votes. Under cumulative voting, each owner is entitled to vote his percentage common interest multiplied by the number of vacancies on the board. The resulting percentage may be divided among the candidates in any way the owner wishes. For example, if the owner has a common interest of 2 percent and three vacancies exist on the board, the owner will have total of 6 votes (or 6 percent) to divide among the three candidates. The owner may give all 6 percent to one candidate, or divide it either between two candidates or among all three.</p> <p>B. Officers</p> <p>The officers of the association are responsible to the board for the day-to-day operations of the association. Officers are normally elected by and from the board of directors.</p> <p>The procedure for the election of officers of the association is outlined in the bylaws. The bylaws must provide for the election of at least a president, secretary, and treasurer, and may provide for other officers. Most bylaws provide that officers are elected annually and serve at the pleasure of the board. Chapter 514B prohibits any unit owner who is an employee of the managing agent from serving at the same time as an officer (although not as a director), and any director who is also an</p>
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“Good officers are the key to the successful and efficient conduct of board business. Nevertheless, ALL directors should still maintain an active interest in the operations of the association.”

employee of the managing agent shall not participate in any discussion of the management contract at a board meeting, and shall be excluded from any executive session in which the contract or the property manager are discussed (§514B-107(c)).

The specific roles of the officers are described in your bylaws. Normally, the president chairs the meetings and operates as the chief executive officer of the association. The vice president assumes the duties and responsibilities of the president in the latter’s absence. The secretary is responsible for keeping the minutes of meetings and recording all resolutions. The treasurer must ensure that the financial records and books of account of the association are properly kept. In most associations, employees of the association or its managing agent usually assist the secretary and treasurer.

Good officers are the key to the successful and efficient conduct of board business. Nevertheless, ALL directors should still maintain an active interest in the operations of the association. Directors have the ultimate responsibility for ensuring that the project and association operate in compliance with the law.

C. Removal of Directors and Officers

The bylaws must include a mechanism for removal of directors (§514B-108(b)(3)). A majority of unit owners (owners holding a majority of the common interest) may remove any board member at any regular or special meeting of the association, and elect a replacement director, in accordance with the requirements and procedures specified in the bylaws (§514B-106(f)). That means that cumulative voting does not factor into the removal and replacement of directors. Removal may be with or without cause, although the bylaws or *Robert’s Rules of Order Newly Revised* often give directors the right to speak on their own behalf, prior to the removal vote.

Under state law, special meetings for the removal of a director may be called by the president of the association, a majority of the board, or by a petition presented to the secretary or managing agent with the signatures of at least 25 percent of the owners (§514B-121(b)). The date of the meeting must be set no more than 60 days after receipt of the petition. If the secretary or managing agent fails to send out notices for the special meeting within 14 days of receiving the petition, then the petitioners may set the



"All board meetings, except for those held in 'executive session,' are open to all members of the association, unless a majority of quorum of the board votes otherwise."

date, time, and place for the meeting and send out notices according to the bylaws. Since proxies may be distributed by the association only after posting a notice, this notice will normally not include form proxies, but the proxies will be mailed later. The notice for a special meeting to remove a director must indicate the meeting is called for that purpose. At an annual meeting, no unit owner is precluded from proposing removal of a director, in which case the owners may remove a director without prior notice (§514B-121(c)).

State law does not have any specific provisions on removal of officers. Usually, a board of directors can remove an officer at any time. The association's bylaws must specify the manner for removal of officers (§514B-108(b)(3)).

D. Meetings of the Board

Chapter 514B requires that boards meet at least once a year. Notice of board meetings must be posted at least 72 hours prior to the meeting, or simultaneously with notice to the board (§514B-125(d)), at prominent locations within the project. Board members must be present to vote at board meetings and **CANNOT** vote by proxy (§514B-125(e)). Unless otherwise provided by the declaration or bylaws, board meetings may be conducted by any means of communication through which all participants may simultaneously hear each other during the meeting (§514B-125(c)).

All board meetings, except for those held in "executive session," are open to all members of the association, unless a majority of quorum of the board votes otherwise. Owners may participate in any discussion, unless a majority of a quorum of the board votes otherwise (§514B-125(a)). The board, with approval of a majority of quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, any pending or potential lawsuits involving the association, when necessary to protect the attorney-client privilege of the association, or when necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions. The board must first announce, in open session, the nature of the business to be discussed in executive session (§514B-125(b)).

NOTE: The law intends that owners should be present to learn how their association is being run. Executive sessions are permitted for

<hr/> <p style="text-align: center;"><i>“The law requires that board minutes include the recorded vote of each board member on all motions, except those voted on in executive session . . . Normally, minutes do not include a summary of the discussions leading to the vote.”</i></p> <hr/>	<p>only limited purposes. Therefore, boards that go into executive session just because they do not want owners present may be violating the law. Consult with an experienced attorney if you do not understand when your board may go into executive session.</p> <p>Although a board may vote not to allow owners to participate at board meetings, many boards permit owner participation, subject to reasonable restrictions. For example, boards may impose time limits on owner statements and require that complex issues be presented to the board in advance or in writing. Some boards set aside time at the beginning or end of their meetings for owner discussion. Restrictions on owner participation should be stated clearly <u>in advance</u> of a meeting. Otherwise, a board may find itself criticized for trying to suppress owner complaints.</p> <p>Minutes must be kept for board meetings. The law requires that board minutes include the recorded vote of each board member on all motions, except those voted on in executive session (§514B-126(a)). Therefore, the board should ensure that it makes a decision or acts on any issue presented to it at a meeting. The minutes will then include a record of disposition of the issue. When a board decision is unanimous, the minutes may simply reflect that fact. Normally, minutes do not include a summary of the discussions leading to the vote.</p> <p>PARLIAMENTARY PROCEDURE; ROBERT'S RULES OF ORDER</p> <p>Parliamentary procedure is a set of rules for conducting meetings. All meetings of the association and the board of directors must be conducted according to the most current version of <i>Robert's Rules of Order Newly Revised</i>, the recognized standard for parliamentary procedure (§514B-121(d), §514B-125(c)). Although <i>Robert's Rules of Order Newly Revised</i> applies to meetings of the board of directors, most of its provisions are inapplicable to a small board (12 members or less).</p> <p>All board members should generally be familiar with <i>Robert's Rules of Order Newly Revised</i>. If used correctly, these rules enable decisions to be made in an orderly manner, which allows for debate, protection of rights, saves time, and promotes democratic rule and flexibility. Board members should also be familiar with Chapter 514B and the association's bylaws concerning conduct of meetings. Specific legal and by-law requirements will usually</p>
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	<p>override general rules of parliamentary procedure, such as <i>Robert's Rules of Order Newly Revised</i>.</p> <p>Because the copyright on the original Robert's Rules of Order has lapsed, there are many books that have "Robert's Rules" in their title. <i>Robert's Rules of Order Newly Revised</i> is a specific book whose authors include the descendants of General Henry M. Robert, the original author of Robert's Rules of Order. The current version is the 10th edition, published in 2000. Since <i>Robert's Rules of Order Newly Revised</i> is revised every 10 years, the next revision will be the 11th edition in 2010. Only books with the title, "<i>Robert's Rules of Order Newly Revised</i>," are the correct parliamentary authority for condominium meetings.</p>
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<p>IN THIS CHAPTER</p> <p>GENERAL</p> <p>A Familiarity with Legal Documents</p> <p>B Fiduciary Duty of Directors</p> <p>C Conflicts of Interest</p> <p>D Delegation of Responsibility</p> <p>E Business Judgment Rule</p> <p>HIRING MANAGING AGENTS</p> <p>BI-ANNUAL REGISTRATION OF THE ASSOCIATION</p> <p>INSURANCE</p> <p>A Introduction</p> <p>B Property Insurance</p> <p>C Flood Insurance</p> <p>D Commercial General Liability Insurance</p> <p>E Directors and Officers (D&O) Liability Insurance</p> <p>F Fidelity Bond Requirement</p> <p>G Other Insurance</p>	<p>BOARD MEMBERS POWERS AND DUTIES</p> <p>GENERAL</p> <p>The board of directors has the ultimate responsibility for the operation of the association on behalf of the owners. Although the board can delegate authority to others, such as managing agents, it cannot delegate that responsibility. In meeting its responsibility, the board has certain significant duties or obligations to the association which also must be performed.</p> <p>A. Familiarity with Legal Documents</p> <p>As previously discussed, Chapter 514B and the condominium documents form the primary basis for the definition and scope of the board's power and responsibilities. Board members need to be familiar with Chapter 514B, as well as with the association's declaration, bylaws, and house rules. If the association is incorporated as a nonprofit corporation, board members also need to be familiar with Chapter 414D and the association's articles of incorporation. A good understanding of those documents is essential to the board members' ability to carry out their duties under the law.</p> <p>NOTE: Being elected to the board does <u>NOT</u> mean you can do anything you want. Your actions must be based on a power given to you by the law or the condominium documents. You may be liable if you act or authorize action not permitted by the law or those documents.</p> <p>B. Fiduciary Duty of Directors</p> <p>Chapter 514B provides that every director owes the association a "fiduciary duty" in the performance of the director's duties, to exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation (§514B-106(a)). A fiduciary relationship is a special type of relationship which arises when the confidence, trust, and reliance of one party is placed upon the judgment and advice of another. A fiduciary is bound to protect the interests of the parties relying on it. In exercising their fiduciary duties, board members must act in good faith in the best interests of the association, exercising the same degree of care and skill in making decisions or taking actions that would be expected of an</p>
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<p>FINANCIAL MANAGEMENT</p> <p>A Keeping Financial Records</p> <p>B Annual Audits</p> <p>C Budgeting and Assessments</p> <p>D Reserve Account</p> <p>E Borrowing</p> <p>F Investment of Association Funds</p> <p>G Limitations on the Use of Association Funds</p> <p>ADOPTION AND ENFORCEMENT OF RULES</p> <p>ASSOCIATION DOCUMENTS AND RECORDS</p> <p>A Making Documents and Records Available to Owners</p> <p>B Amendment to the Declaration</p> <p>C Amendment of the Bylaws</p> <p>D Restating the Declaration and Bylaws</p>	<p>ordinarily prudent person in a similar situations (§414D-149(a)). As fiduciaries, directors must place the interests of the association above their own interests at all times.</p> <p>In discharging their duties, directors are entitled to rely on information, opinions, reports, or statements of officers and employees of the association, legal counsel, public accountants, or other competent professional experts (§414D-149(b)). If a director has knowledge of a matter that makes reliance on an expert or a board committee unwarranted, the director cannot in good faith act on such reliance (§414D-149(c)). The high standard of conduct to which officers and directors are held may subject each or all of them to <u>personal</u> liability for a breach of their fiduciary duty. The fact that officers or directors are part-time or unpaid volunteers does not excuse them from their fiduciary duty. However, the liability of unpaid directors of <u>incorporated</u> associations is limited to gross negligence in the performance of (or failure to perform) their duties (§414D-149(f)).</p> <p>C. Conflicts of Interest</p> <p>Fiduciary duty includes a duty of undivided loyalty and honesty in voting on any matter where conflicts of interest or self-dealing could arise. A director must not permit another duty or interest to prevent the director from making an independent decision based on the best interests of the association. Directors must disclose any conflict of interest prior to a vote on the matter at the board meeting, and the disclosure must be recorded in the minutes of the meeting. If a director has a conflict of interest, he or she may <u>not</u> cast a vote on that matter (§514B-125(f)).</p> <p>Conflict of interest can be a confusing concept. It usually arises if a director has a financial interest in the matter which is the subject of a board decision. For example, if the association is contemplating entering into a business transaction with a company in which the director has a direct personal or financial interest not common to other members of the association, the director must disclose that fact and should abstain from voting (§514B-125(f)). Although conflicts of interest are normally based on financial interests, they can also arise when the interest is personal. For instance, a conflict of interest can arise when a board considers the conduct of a unit owner or resident who is related to a director.</p>
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“Chapter 514B provides that every director owes the association a ‘fiduciary duty’ in the performance of the director’s duties, to exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation.”

Another typical conflict of interest occurs when directors are members of a hotel operation which rents association property, such as a front desk area. In that situation, those directors should be particularly careful to disclose the potential conflict. The board may wish to create a committee of disinterested board members or owners to make recommendations on rent to the board, to ensure that the association receives a fair rent for the property.

D. Delegation of Responsibility

Many people, including board members, mistakenly believe that the managing agent is solely responsible for everything relating to the management and operation of the condominium project. The managing agent, except in limited circumstances, must implement the policies of the Board of Directors. Since most directors are unpaid volunteers, it is natural for boards to delegate some of their authority to the managing agent or association employees. An important aspect of the director's fiduciary duty is the supervision of those persons to whom the board has delegated authority for the day-to-day operation of the condominium project. Although the board may delegate certain authority to the officers, managing agent, resident manager, or committees, the board must still ensure that association business is conducted in accordance with the law and condominium documents. In other words, board members can delegate their authority under certain circumstances, but they cannot delegate their responsibility to operate and manage the condominium project. That means that board members can ultimately be held liable for the actions of agents and employees of the association if those agents or employees fail to carry out the board's and their own fiduciary duties.

E. Business Judgment Rule

In judging the actions of directors, courts frequently apply a test called the "business judgment rule." The courts recognize that they should not second guess the lawful decisions of the board of directors. The board of directors is the duly elected representative of the association; its members own units in the project and have knowledge of the needs and desires of the community. The basic self-governance principle of the condominium law limits judicial inquiry into board decisions. Instead of deciding whether the buildings in a project should be painted blue or brown or green, the courts decide whether the board of directors has the authority to change the color of the buildings, acts



“The basic self-governance principle of the condominium law limits judicial inquiry into board decisions. . . . The business judgment rule recognizes that volunteer board members will not always make the right decision, but if they follow the right procedures and act in the interest of the association, they will usually not be personally liable for their actions on behalf of the association.”

in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the directors reasonably believe to be in the best interests of the association. This means that directors should adequately research and carefully examine the alternatives, costs, and risks of a particular decision. The process a board follows in making a decision may ultimately be more important in determining liability than the decision the board ultimately makes.

The business judgment rule recognizes that volunteer board members will not always make the right decision, but if they follow the right procedures and act in the interest of the association, they will usually not be personally liable for their actions on behalf of the association. Board members should remember the following important points about the business judgment rule:

- (1) Be informed about the association's business generally. Before making an important decision, research and consider all relevant information reasonably available to you and discuss it with your fellow board members. Consult experts if you do not have the expertise to deal with an issue. Then act reasonably and rationally.
- (2) Attend and participate in meetings, and be sure absences are recorded in the minutes.
- (3) Register dissents in the minutes when in disagreement with board actions. However, once a decision is made by the board, it is the decision of the board as a whole.
- (4) Act in the best interests of the association, not yourself. The principles of conflict of interest apply. You should not vote on matters in which you are on both sides of the transaction or from which you will derive personal or financial benefit over and above that derived by other owners. You may have problems convincing anyone that you acted in the best interests of the association if your decision primarily benefited yourself.
- (5) Do not exceed your authority. Be knowledgeable about the law and the association's condominium documents. In particular, consult a knowledgeable attorney if you are not sure that legally you can or should do what you plan to do. The expense of an attorney's advice before you act may be far less than the expense of litigation if your actions exceed your authority.


<hr/> <p><i>“Chapter 514B provides that every managing agent is a fiduciary with respect to the property the agent manages. As with board members, the fiduciary duty of the managing agent requires that the agent act with diligence, care, and skill, and make decisions in the best interests of the association.”</i></p> <hr/>	<p>(6) Do something. The rule will <u>not</u> protect you if you fail to act. If you do nothing, it should be only because you carefully considered the issue and consciously decided to do nothing, <u>not</u> because you ignored the issue in the hope that it would go away. Making the wrong decision may be less damaging than making no decision at all.</p> <p>HIRING MANAGING AGENTS</p> <p>The board is responsible for both the upkeep and protection of the property's physical assets, as well as keeping the association's finances in a healthy state. Since board members are typically unpaid volunteers, they often turn to the services of a managing agent or association employees to handle the day-to-day operations of the condominium.</p> <p>The board's authority to hire a managing agent is usually found in the bylaws. Boards need to ensure that managing agents they hire meet the following qualifications:</p> <ol style="list-style-type: none"> (1) Be a licensed real estate broker or a trust company authorized to do business in Hawaii; (2) If the agent is not a duly licensed real estate broker, register bi-annually with the Commission and pay the required fees; and (3) Obtain a fidelity bond for the required amounts to protect against the loss of association funds or property caused by the fraudulent or dishonest acts of the agent's employees (§514B-132(a)). <p>The above requirements apply <u>only</u> to independent contractors who assist the board in the operation of the property. An <u>employee</u> of the association, even if the employee performs the same functions as a managing agent, is <u>not</u> considered a "managing agent." Contact the Commission at (808) 586-2646 if you have questions about managing agents; but note that the Commission does not register managing agents that are duly licensed real estate brokers (§514B-132(d)).</p> <p>Chapter 514B provides that every managing agent is a fiduciary with respect to the property the agent manages (§514B-132(c)). As with board members, the fiduciary duty of the managing agent requires that the agent act with diligence, care, and skill, and make decisions in the best interests of the association.</p>
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<hr/> <p><i>“As in many things, you get what you pay for. The cheapest managing agent may not always provide the best service.”</i></p> <hr/>	<p>The managing agent is responsible for carrying out all duties agreed to in its contract with the association. These duties may include financial management, such as collection of common assessments and other income, payment of bills and the preparation of monthly financial statements, as well as physical management. Physical management includes routine inspections of the property, supervision of maintenance, repairs and improvements, coordination of all of the various goods and services needed to operate and maintain the property, and meeting the insurance and other needs of the project.</p> <p>The law does not specify in detail what services a managing agent must perform for an association. Therefore, the board should review its contract with the managing agent to determine what services the managing agent will perform. The Community Associations Institute has a publication for sale that contains information about the services commonly provided by managing agents. If the board desires services not included in the proposed management contract, it should negotiate for those services and ensure that the contract clearly indicates that the managing agent <u>will</u> provide those services. Otherwise, disputes and ill-feeling may arise.</p> <p>As in many things, you get what you pay for. The cheapest managing agent may not always provide the best service.</p> <p>BI-ANNUAL REGISTRATION OF THE ASSOCIATION</p> <p>All associations comprised of more than five units are <u>required</u> to register bi-annually with the Commission. The association registers through approval of a completed application, payment of a bi-annual registration fee, and submission of the following information: proof of fidelity bond coverage, the names and positions of officers of the association, the name of the managing agent (if any), the street and postal address of the condominium, and the name and current mailing address of a designated officer of the association who can be contacted directly (§514B-103(a)).</p> <p>Failure to pay the registration fee may result in additional fines. Any association not complying with the registration requirements, or whose registration is terminated by the Commission, will not be allowed to bring any action in a Hawaii court until it registers (§514B-103(b)).</p>
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<hr/> <p><i>“If not otherwise provided in the declaration and bylaws, the law requires condominium associations for multi-family dwellings to purchase property insurance to cover the common elements, limited common elements, and units for Special Form losses and the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements.”</i></p> <hr/>	<p>INSURANCE</p> <p>A. Introduction</p> <p>The association, through its board of directors, is responsible for securing adequate insurance coverage for the condominium. For the most part, the declaration or bylaws will state the insurance required for condominium associations. The Condominium Property Acts do not normally overrule the insurance requirements in the governing documents. However, the Act does require that associations must, at a minimum, unless otherwise provided in the declaration or bylaws, obtain and maintain four basic types of insurance: (1) property insurance; (2) commercial general liability insurance; (3) a fidelity bond (for associations with more than five dwelling units); and (4) directors and officers liability insurance (§514B-143(a)). Flood insurance must also be maintained if the project is located in a flood hazard area. These insurance policies should be in the name of the association and the premiums are normally common expenses. More detailed information about insurance requirements can be found by reading the law on the Commission website (go to: http://hawaii.gov/dcca/areas/real/main/hrs/).</p> <p>Board members should review their insurance requirement carefully and discuss it with an experienced insurance broker or agent or an experienced attorney if they have any questions. Failure to have adequate insurance can create considerable problems for associations. Boards that deliberately decide to secure less than the required insurance may find themselves exposed to considerable <u>personal</u> liability.</p> <p>B. Property Insurance</p> <p>Property insurance covers the structures against certain perils that are identified in the policy. Old terms for property insurance include “all risk insurance” or “fire with extended coverage.” Currently, property insurance policies are normally referred to as Broad Form coverage or Special Form coverage. The perils normally covered by property coverage are fire, lightning, wind and hail, smoke, explosion, civil commotion and riot (but some policies have special provisions for acts of terrorism), aircraft and vehicle damage, vandalism, sprinkler leakage, and sinkhole collapse. In addition, some policies have coverage for breakage of glass, falling objects, water damage, collapse of structure, and volcanic action. Flood, hurricane and earthquake are</p>
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<hr/> <p><i>“Unit owners need to get their own insurance policy if they wish to cover improvements to their units or personal property in the unit. The Condominium Property Act permits the board, with the consent of a majority of owners, to <u>require</u> unit owners to obtain reasonable insurance on their own units, including coverage of deductible damage caused to other units or damage not covered by the association’s required insurance.”</i></p> <hr/>	<p>special perils requiring special insurance policies.</p> <p>The specific requirements for the association’s property insurance policy should be contained in the declaration or bylaws. If not otherwise provided in the declaration and bylaws, the law requires condominium associations for multi-family dwellings to purchase property insurance to cover the common elements, limited common elements, and units for Special Form losses and the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements (§514B-143(a)(1), §514B-143(b)). The property insurance policy need not cover “improvements and betterments” installed by units owners (§514B-143(b)). The statutory requirement for property insurance is what is also commonly found in most association documents.</p> <p>Normally, the association’s property insurance policy does not cover any improvements to the units or personal property in the unit. Unit owners need to get their own insurance policy if they wish to cover improvements to their units or personal property in the unit. The Condominium Property Act now permits the board, with the consent of a majority of owners, to <u>require</u> unit owners to obtain reasonable insurance on their own units, including coverage of deductible damage caused to other units or damage not covered by the association’s required insurance. This policy normally costs a couple of hundred dollars a year and provides additional protections to the association and its members. The board may purchase this additional insurance and charge the premium back to the unit owner (§514B-143(g)). Owners should also be aware that the law allows the board to allocate all or part of the deductible on the association’s policy to unit owners (§514B-143(d)).</p> <p>It is important to remember that the coverage provided by property insurance policies is not normally based on fault. In other words, the insurance company does not determine whether a unit owner is at fault when a claim involves the unit. Instead, the insurance company determines whether the policy terms fall within the coverage as defined by the insurance policy. That means that if a unit owner negligently causes damage to the parts of his or her unit, the only question is normally whether the damage is covered by the policy. Since the insurance is purchased with common funds, the association normally must make a claim on behalf of the unit owner even though he or she may have caused the damage.</p>
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<hr/> <p><i>“Liability insurance is required to provide adequate coverage against claims and liability arising out of acts of the association or its officers relating to the ownership, existence, use, or management of the property (common elements), in a minimum amount of \$1,000,000.”</i></p> <hr/>	<p>The Condominium Property Act authorizes the board to:</p> <ol style="list-style-type: none"> 1. Pay the insurance deductible amount as a common expense; 2. After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or 3. Require the unit owners of the units affected to pay the deductible amount (§514B-143(d)). <p>That means that although the property insurance policy may cover damage to a unit caused by an apartment owner, the board may assess the insurance deductible against the unit owner.</p> <p>C. Flood Insurance</p> <p>Flood insurance is a special type of property insurance that covers the property for floods. Most flood insurance is provided by the federal government, but some private insurers provide flood insurance under federal guidelines. Flood insurance must be maintained if the project is located in a special flood hazard area delineated by the Federal Emergency Management Agency (§514B-143(e)).</p> <p>D. Commercial General Liability Insurance</p> <p>Liability insurance is required to provide adequate coverage against claims and liability arising out of acts of the association or its officers relating to the ownership, existence, use, or management of the property (common elements), in a minimum amount of \$1,000,000 (§514B-143(a)(2)). The most common type of liability insurance for condominium associations is “Commercial General Liability Insurance” (“CGL”). This policy covers the association for certain bodily injury and property damage claims, certain personal injury claims and advertising injury claims (e.g. libel, slander, false arrest, malicious prosecution, and certain advertising activity). In addition a CGL policy also covers certain medical payments for someone injured on the common areas even if the association is not at fault.</p> <p>The CGL policy has two major components. First, it provides a defense to the insured if it is sued. For instance, if someone sued the association because he or she fell on the common element walkway, the CGL policy would require the insurance company to hire and pay for an attorney to defend the association. Second, the CGL policy</p>
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 <p><i>“The managing agent or the board is required by law to keep detailed, accurate records in chronological order, listing all receipts and expenditures affecting the common elements and monthly statements of delinquent assessments and any other incurred expenses.”</i></p>	<p>provides coverage for damages sustained for a covered claim. For instance, if the association loses the lawsuit filed by the person who fell on the walkway, the insurance company would pay for the judgment if the claim were covered by the CGL policy.</p> <p>E. Directors and Officers (D&O) Liability Insurance</p> <p>D & O insurance is a special type of liability insurance that provides coverage, in an amount deemed reasonable by the board, against claims that board members and officers failed to properly perform their association duties or functions (§514B-143(a)(4)). Sometimes, the D & O insurance policy also covers volunteers, employees of the association, managing agents, and the association itself.</p> <p>F. Fidelity Bond Requirement</p> <p>For condominium projects having five or more units, the association must obtain and maintain a fidelity bond each year to cover all persons (e.g., officers, directors, employees, and managing agents) who control or disburse funds of the association, in an amount equal to \$500 times the number of units, for a total amount not less than \$20,000 nor more than \$200,000 (unless the association qualifies for an exemption under Commission rules) (§514B-103(a)(1), §514B-143(a)(3)(A)). The purpose of the bond is to protect the association against fraud or dishonesty on the part of those handling association funds.</p> <p>G. Other Insurance</p> <p>The declaration or bylaws may also contain additional insurance requirements for workers compensation, employment practices, environmental hazards, and equipment breakdown (§514B-143(e)).</p> <p>FINANCIAL MANAGEMENT</p> <p>A. Keeping Financial Records</p> <p>One of the board of directors’ most important responsibilities is managing the financial affairs of the association. Accurate records are essential to the proper financial management of association funds. The managing agent or the board is required by law to keep detailed, accurate records in chronological order, listing all receipts and expenditures affecting the common elements and monthly statements of delinquent assessments and any other incurred expenses (§514B-153(b)). The statement of receipts and disbursements shows how</p>
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<hr/> <p><i>“The audit and surprise cash verification are conducted by independent certified public accountants and are important tools to help combat fraud or theft. For that reason, boards should encourage association members <u>not</u> to waive the audit”</i></p> <hr/>	<p>much money was taken in by the association, and provides the details of how the association spent its money. The financial statements are usually prepared monthly by the managing agent (where there is one). Financial statements are prepared either on a cash or accrual basis. Financial statements prepared on a cash basis recognize income and expenses when the funds are received or paid. Financial statements prepared on an accrual basis recognize income and expenses when they are earned. Although the American Institute of Certified Public Accountants recommends that condominium association use accrual financial statements, most associations prepare their financial statements on a cash basis. If you do not understand the financial statements, ask the managing agent to explain them.</p> <p>Boards should adopt adequate financial controls to protect themselves and association members. The business judgment rule applies in this area. Boards should review and independently confirm account balances. Experts recommend that boards require two signatures on large checks and on transfers to and from association reserve accounts. They should encourage association members <u>not</u> to waive the audit required by law (see below).</p> <p>B. Annual Audits</p> <p>An audit results in a written opinion by a certified public accountant that the financial statements accurately reflect the financial position of the association and do not contain material misstatements. Although the condominium law is silent on the standards to which an audit must comply, experts recommend that audit reports be prepared after independent investigation and verification in accordance with the American Institute of Certified Public Accountants guidelines.</p> <p>The audit and surprise cash verification are conducted by independent certified public accountants and are important tools to help combat fraud or theft. For that reason, boards should encourage association members <u>not</u> to waive the audit, when they have the power to waive the audit. Not only does the audit confirm the association's financial condition, it also protects board members from subsequent complaints that they mishandled the financial affairs of the association. In addition, boards should decide on their certified public accountant based on more than which accountant provided the lowest price for the audit.</p> <p>Chapter 514B requires a yearly audit of association financial accounts</p>
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*"All owners **MUST** pay the assessments, which constitute a lien on the unit (§514B-146(a)); the assessments cannot be avoided simply by not utilizing various common facilities."*

and at least one yearly "unannounced" verification of the association's cash balance by a public accountant. If an association is comprised of fewer than 20 owners, a majority of the unit owners may waive this requirement at an association meeting (§514B-150(a)).

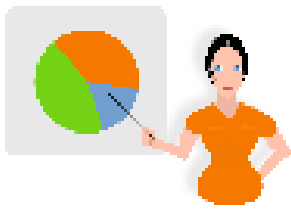
The board must make a copy of the annual audit available to the owners at least 30 days prior to the association's annual meeting if it is available. The association's official proxy must include a box for owners to indicate if they would like a copy of the annual audit. The board need only send copies of the audit to those owners who mark the box on the proxy. If the annual audit is not completed 30 days before the meeting, the board must provide requesting owners with: (1) an unaudited year-end or year-to-date financial statement at least 30 days before the meeting; and (2) a copy of the annual audit by the date of the meeting or no later than six months after the meeting (§514B-150(b)).

C. Budgeting and Assessments

The cost of operating and maintaining the condominium is funded through the collection of common assessments that directly results from the board's budgeting process. The sole source of income for many associations is regular periodic assessments, often called "maintenance fees," levied on all owners in the project. Determining the total amount of assessments is based on the annual budget approved by the board. Most associations prepare their budgets by determining the amount that they need to operate the association, including amounts needed for reserves to replace major components. That total is then split up with all the unit owners in the project.

The amount of a unit owner's fee is determined by the owner's interest in the common elements (the "common interest") as set forth in the declaration (§514B-41(a)). All owners **MUST** pay the assessments (§514B-146(a)); they cannot be avoided simply by not utilizing various common facilities (§514B-144(g)). Assessments cannot be withheld or put into escrow because owners think they do not owe them or disagree with board policies. The board of directors is responsible for notifying the owners in writing of any maintenance fee increases at least 30 days in advance (§514B-144(h)).

In addition to assessments for common expenses, owners can be assessed the cost of repair and maintenance of the limited common elements assigned to their unit in an equitable manner as set forth in



"Association boards are required to adopt an annual budget."

the declaration (§514B-41(a)). The board can choose to forego allocation of the limited common expense to the owners of the unit to which the limited common element is assigned under certain circumstances. The board must reasonably determine that the extra cost incurred to separately account for and charge the costs is not justified and adopt a resolution to that effect (§514B-41(c)).

A unit 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 penalties, late fees, lien filing fees, and any other charges included in the assessment; and
- (3) The amount of attorneys' fees and costs, if any, included in the assessment.

The statement must also inform the owner of the owner's rights under the law; namely, that:

- (1) Hawaii law gives unit owners no right to withhold assessments for any reason;
- (2) An unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the unit owner immediately pays the assessment in full and keeps assessments current; and
- (3) Payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owned (§514B-146(c)).

A unit owner who pays an association the full amount it claims also may file in Small Claims Court or require the association to mediate to resolve disputes concerning the amount or validity of the association's claim. If the dispute cannot be resolved in mediation, either party may file for arbitration, but the unit owner must keep all assessments current during the arbitration, or it may be suspended or dismissed (§514B-146(d)).

Regular assessments cover the day-to-day costs of running the association, reserves for capital improvements (which may include repairs and maintenance costs), insurance reserve funds, security, and

<hr/> <p><i>“Replacement reserves are an essential part of the association's annual operating budget. They are generally collected with the regular assessments and set aside for future use in separate accounts to cover the cost of repairs and replacements of those parts of the property . . . that the association is obligated to maintain and for which capital expenditures or major maintenance will exceed \$10,000 for each part, with a single aggregated reserve for those parts for which capital expenditures or major maintenance will not exceed \$10,000.”</i></p> <hr/>	<p>the operation of common recreational facilities such as swimming pools and tennis courts. The law gives the board wide discretion in determining the level and timing of repairs and improvements, although the bylaws may impose restrictions.</p> <p>Major repairs, new construction, or a one-time, unanticipated expense may require the board to levy a special assessment. The need for special assessments can be alleviated by careful long-range planning and by building reserves to fund improvements.</p> <p>Association boards are required to adopt an annual budget. As a part of the budgeting process, the association shall determine the estimated replacement reserves required to maintain the property based on a reserve study performed by the association, and the amount to be collected to fund the estimated replacement reserves for the fiscal year (§514B-144(a), §514B-148(a)). The board must distribute or make available the budget it adopts to the owners (§514B-144(a)) at least 30 days before the date of the association's annual meeting (HAR §16-107-74), and may not exceed the budget by more than 20 percent in a fiscal year, except in an emergency situation or if approved by a majority of the unit owners (§514B-148(e)). This 20 percent limit does not apply to increases between budget years, but only applies to increases during the budget year. "Emergency situation" is defined as an extraordinary expense: (1) required by a court order; (2) required to repair association property which poses a threat to personal safety; (3) required for a repair to association property which the board could not have reasonably foreseen when preparing the budget; (4) necessary to respond to a legal or administrative proceeding that could not have been foreseen; or (5) necessary to obtain adequate insurance (§514B-148(h)). (An association's condominium documents may also impose similar requirements.)</p> <p>Individuals purchasing a condominium unit can be held jointly and severally liable for the seller's share of all unpaid assessments for common expenses up to the time of the transfer, without prejudice to the buyer's right to recover from the seller the amounts paid by the buyer therefor. Owners and prospective buyers may obtain a statement of the amount of unpaid assessments from the board of directors (§514B-144(f)), and except for dishonored checks, the prospective buyer will not be responsible for unpaid assessments greater than the amount set forth in such statement.</p>
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<hr/> <p style="text-align: center;"><i>“ . . . the costs of borrowing become a common expense of the association if the owners of 50 percent of the common interest vote affirmatively or give their written consent, provided that written notice of the purpose and use of the funds must first be sent to all unit owners.”</i></p> <hr/>	<p>In the event that an owner loses the unit through foreclosure, the buyer in foreclosure is not liable for assessments charged to the unit and still owing prior to the foreclosure. The unpaid share of expenses will be a common expense allocated among all of the units, including the foreclosed unit (§514B-146(b)). However, the association’s limited priority lien must be paid by a subsequent purchaser if the mortgage company acquired the unit in the foreclosure sale (§514B-146(g)(2)).</p> <p>D. Reserve Account</p> <p>Replacement reserves are an essential part of the association's annual operating budget. They are generally collected with the regular assessments and set aside for future use in separate accounts to cover the cost of repairs and replacements of those parts of the property (common elements) such as roofs, walls, decks, paving, and equipment that the association is obligated to maintain and for which capital expenditures or major maintenance will exceed \$10,000 for each part, with a single aggregated reserve for those parts for which capital expenditures or major maintenance will not exceed \$10,000 (§514B-148(c)(2), (h)). Insufficient reserves can result in the board levying an especially burdensome special assessment, borrowing the funds, or even deferring the necessary repairs.</p> <p>With respect to a board's responsibility to establish adequate reserves as part of the annual budgeting process, the law requires a board to adopt a budget including at least: (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 percent funded or cash flow plan (§514B-148(a)). The law exempts from liability any association or unit owner, director, officer, managing agent, or employee of an association whose good faith estimate of the association's reserve requirements subsequently proves to be incorrect (§514B-148(d)).</p>
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<hr/> <p style="text-align: center;"><i>“In managing and investing association reserves, a board's primary concern should be the security of the funds. Obtaining the maximum rate of return may serve little purpose if the funds are not available when needed.”</i></p> <hr/>	<p>E. Borrowing</p> <p>The board may borrow money to be used by the association for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, or improvements thereto. The board must comply with any approval requirements or spending limits specified in the law, declaration or bylaws. In particular, the costs of borrowing become a common expense of the association if the owners of 50 percent of the common interest vote affirmatively or give their written consent, provided that written notice of the purpose and use of the funds must first be sent to all unit owners (§514B-105(e)).</p> <p>F. Investment of Association Funds</p> <p>Chapter 514B contains two specific requirements for the investment and handling of association funds. The first requirement identifies the type of entities that may hold association funds, and the second requirement identifies the type of investments in which association funds may be kept. The types of entities that may hold association funds are: (1) pursuant to a resolution adopted by the board, a financial institution, including a federal or community credit union, located in Hawaii and whose deposits are insured by an agency of the United States government; (2) a trust company authorized to do business in Hawaii; (3) the U.S. Treasury; (4) a securities broker that is registered with the Securities and Exchange Commission, has an office in Hawaii, and whose accounts purchased in the name of the association are held for the benefit of the association by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation; and (5) a federally insured financial institution located in Hawaii for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service (“CDARS”) in federally insured financial institutions located in the United States (§514B-149(c)(1)).</p> <p>If association funds are held by these five types of entities, they may be invested in the following investments: (1) deposits, investment certificates, savings accounts, and certificates of deposit; (2) obligations of the United States government, the State of Hawaii, or their respective agencies (but if they are for maturities longer than 10 years, they require approval by vote or written consent of a majority of the owners); (3) mutual funds comprised solely of investments in the</p>
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<hr/> <p><i>“ . . . the association normally does not owe lease rent. Therefore, associations and their managing agents are normally not permitted to pay the lessor more than the lease rent they actually collect from their members.”</i></p> <hr/>	<p>obligations of the United States government, the State of Hawaii, or their respective agencies (but if they are for maturities longer than 10 years, they require approval by vote or written consent of a majority of the owners); or (4) certificates of deposit issued through “CDARS” in an amount at least equal in market value but not exceeding the par value of the amount on deposit (§514B-149(c)(2)). Before any investment longer than one year is made by an association, the board must approve the action, and clearly disclose all such investments to the owners at each year’s association annual meeting.</p> <p>Records of deposits and disbursements must be kept and funds shall only be disbursed by an association employee under supervision of the board, or by the managing agent or the managing agent’s employees under supervision of the board and in strict compliance with applicable law and any agreement made with the owners (§§514B-149(c) and (e)).</p> <p>In managing and investing association reserves, a board's primary concern should be the security of the funds. Obtaining the maximum rate of return may serve little purpose if the funds are not available when needed.</p> <p>Security of the funds includes not only where the funds are invested but also who has control of them. As noted previously, boards should adopt adequate financial controls to protect themselves and association members. Best industry practice is that boards should review and independently confirm account balances and require at least two signatures on large checks and on transfers to and from association reserve accounts. Large losses have occurred in the past because boards failed to adopt such elementary financial controls.</p> <p>G. Limitations on the Use of Association Funds</p> <p>Funds kept in the condominium's general operating account shall not be "commingled" (intermixed) with other funds for activities such as lease rent collection, rental or time share operations, and assisted living facility operations (§514B-149(a)). While it is common for apartment leases for leasehold condominiums to require that the association’s managing agent collect the lease rent for the lessor, the association normally does not owe lease rent. Therefore, associations and their managing agents are normally not</p>
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permitted to pay the lessor more than the lease rent they actually collect from their members.

The managing agent must hold association funds in a client trust account and, of course, may not commingle association funds with the agent's own funds. In addition, directors may not use association funds for travel, director's fees, or per diem expenses without obtaining the approval of a majority of the unit owners; provided that with board approval, directors may be reimbursed for actual expenditures incurred on behalf of the association. Board meeting minutes shall reflect in detail the items and amounts of these reimbursements (§514B-107(d)).

ADOPTION AND ENFORCEMENT OF RULES

The bylaws usually provide authority to the board of directors, on behalf of the association, to establish "house rules" for the governance and control of the common elements of the condominium project (§514B-104(a)(1), §514B-106(a)). The board enforces the house rules, typically through the managing agent and/or resident manager. These rules make possible a harmonious living situation within the condominium community. They should be enforced uniformly and consistently as to all violators, and according to specific, well-published standards and criteria. The board should ensure that all owners know the contents of the house rules.



“ . . . an association with a ‘no pets’ policy may have to make a “reasonable accommodation” to permit a trained service animal used to control a resident’s physical or mental disability.”

Again, remember that house rules are intended to implement bylaw provisions governing the use of common elements. House rules are not intended to be a substitute for the declaration and bylaws, and in the event of a conflict, the declaration and bylaws will control. House rules may only regulate behavior in units used for residential purposes when necessary to prevent violation of the declaration or bylaws, avoid unreasonable interference with the use and enjoyment of other units and the common elements by other owners, and restrict the leasing of units to meet the underwriting requirements of lenders (§514B-105(b)). See also the House Rule section on page 15.

Fair Housing and Anti-Discrimination Laws. All house rules and the provisions of the association's declaration and bylaws should be carefully examined to ensure they do not contain provisions which might be discriminatory. Federal law prohibits discrimination in

<hr/> <p><i>“Owners have the right to inspect and obtain copies of many condominium documents . . . they may have to pay for the administrative costs to provide the documents or sign an affidavit to review documents.”</i></p> <hr/>	<p>housing by condominium associations and their agents and employees on the basis of race, color, national origin, sex, religion, disability, and familial status (children in the family). In addition, Hawaii law prohibits discrimination in real property transactions on the basis of marital status, gender identity or expression, sexual orientation, HIV, age, and ancestry. The Federal Department of Housing and Urban Development ("HUD") has broad powers to investigate and prevent discrimination, including the power to impose substantial fines. The Hawaii Civil Rights Commission ("HCRC") has similar powers.</p> <p>Examples of discriminatory rules include those that restrict children but not adults from certain activities, such as using the swimming pool or other project facilities (except for housing for older persons). Rules that excessively restrict the number of people who may occupy a unit in a condominium project also may be discriminatory if they effectively restrict parents with children from living in the project. However, a project may be exempt from discrimination against children if it qualifies as housing for older persons.</p> <p>In addition, rules that impact residents with disabilities may be deemed discriminatory, particularly if those residents are barred from making “reasonable modifications” to the project, at their own expense, in order to enjoy the premises. For example, it may be discriminatory to prevent a resident who has respiratory problems from installing an air-conditioner, even if the condominium rules prohibit air-conditioners. Also, physically disabled residents may have a right to install ramps, handrails, and similar improvements to enable them to have full use of the project or their unit. And an association with a “no pets” policy may have to make a “reasonable accommodation” to permit a trained service animal used to control a resident’s physical or mental disability. Associations should consult an experienced attorney familiar with fair housing and anti-discrimination law.</p> <p>Questions about fair housing and discrimination issues should also be directed to the HCRC at (808) 586-8636 or to HUD at (800) 669-9777 or (800) 347-3739, extension 6524. See also the Commission’s now outdated “Board of Directors’ Guide: Preventing Housing Discrimination in Condominiums” (May 1998). Go to:</p> <p>http://hawaii.gov/dcca/areas/real/condo_ed/condo_gen/condo_bod/disc</p>
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<p style="text-align: center;"><u>“Owners have a right to the association’s most current financial statement at no cost . . . [and to] inspect financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the association”</u></p>	<p>rimation.pdf.</p> <p><u>Television Antennas and Satellite Dishes.</u> Restrictions on installation of television antennas and satellite dishes are regulated by federal law. Generally, owners and tenants are authorized to place certain antennas and satellite dishes on their exclusive use areas (their apartment and the limited common elements). Associations can enforce rules relating to their placement in these areas, but the rules have to be narrowly drawn to comply with federal law. Associations should consult an experienced attorney familiar with the federal telecommunications law.</p> <p><u>Flags.</u> Restrictions on flying the U.S. flag are also regulated by federal law. Rules regulating the U.S. flag must also be narrowly drawn to comply with federal law. Associations should consult an experienced attorney familiar with the federal flag law.</p> <p>ASSOCIATION DOCUMENTS AND RECORDS</p> <p>A. Making Documents and Records Available to Owners</p> <p>Owners have the right to inspect and obtain copies of many condominium documents, including those described below. In some instances, they may have to pay for the administrative costs to provide the documents or sign an affidavit to review documents. (Some title companies can also provide some of these documents.) In many instances, a prospective purchaser and prospective agents are also allowed to review and obtain copies of the documents (§514B-154(d)). Most records must be kept on the island on which the project is located, but this requirement can be met by storing the records off-island and keeping copies of the records on the island (§514B-152, §514B-153(c)).</p> <p><u>Condominium documents.</u> An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, all public reports and any amendments thereto must be kept in the managing agent’s office (§514B-153(a), §514B-153(d)).</p> <p><u>Membership list.</u> Owners may obtain a copy of the membership list with the current addresses (including the names and addresses of vendees under an agreement of sale, if any). Owners can be charged the cost for copies as described below. Under certain circumstances, they may also be required to provide a duly executed affidavit. The</p>
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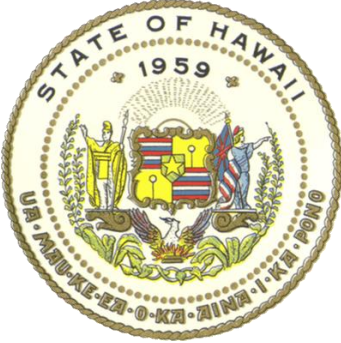
<p style="text-align: center;"><i>“Owners have the right to view documents relevant to association elections, such as proxies, tally sheets, and ballots, for 30 days following the meeting, but not before the meeting.”</i></p>	<p>affidavit, if required, must state that the membership list will be used by the owner personally and only for the purpose of soliciting votes or proxies or for providing information to other owners with respect to association matters and that the membership list will not be used by the owner or furnished to anyone else for any other purpose (§514B-153(e)). The managing agent or resident manager shall not use or distribute any membership list for any purpose (including commercial or political purposes) without the prior written consent of the board (§514B-153(f)), nor may the managing agent, resident manager, or the board create any separate list for the purpose of evading the foregoing requirements (§514B-153(g)).</p> <p><u>Current financial statements.</u> Owners have a right to the association's most current financial statement at no cost or on 24-hour loan at a convenient location designated by the board (§514B-154(a)).</p> <p><u>Other financial statements, ledgers, certain financial documents, etc.</u> Owners have a right to inspect financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the association for the duration those records are kept by the association (§514B-154(b)). In addition, owners may review delinquencies of ninety days or more. If the association is managed by a managing agent, a written managing agent contract is required by law (§514B-153(d)). As one of the contracts of the association, owners are entitled to inspect and obtain copies of the management contract.</p> <p>Owners may review these records during convenient hours at a place designated by the board. Owners may be required to provide a duly executed affidavit. The affidavit, if required, must state that the information is required in good faith for the protection of the interest of the association, its members or both. They may also be required to pay for administrative costs and reasonable cost for copies, duplication, stationary and postage. In addition, the association may charge owners for administrative costs in excess of 8 hours per year.</p> <p><u>Certain election materials.</u> Owners have the right to view documents relevant to association elections, such as proxies, tally sheets, and ballots, for 30 days following the meeting, but not before the meeting. If owners request the right to review these items, they must be kept for an additional 60 days. Owners may be required to provide a duly executed affidavit. The affidavit, if required, must state that the information is required in good faith for the protection of the interest</p>
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<hr/> <p style="text-align: center;"><i>“Should the board fail to provide an owner access to the documents and information requested pursuant to HRS Sections 514B-152 through 154, the owner can mediate or arbitrate the refusal pursuant to HRS Section 514B-161, or file a complaint with the Regulated Industries Complaints Office (‘RICO’).”</i></p> <hr/>	<p>of the association, its members or both. They may also be required to pay for administrative costs and reasonable cost for copies, duplication, stationary and postage (§514B-154(c)). In addition, the association may charge owners for administrative costs in excess of 8 hours per year.</p> <p><u>Association meeting minutes.</u> Association meeting minutes must be available seven days after approval or (in final draft) within 60 days of the meeting (§514B-122(b)). If the association minutes are approved by the board, owners should be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval (§514B-122(a)).</p> <p><u>Board meeting minutes for the current and prior year.</u> Owners have the right to inspect board minutes for the current and prior year. The association can provide owners the board minutes either (1) at no cost or on 24-hour loan at a convenient location at the project to be determined by the board; or (2) by mail, e-mail or fax (as indicated by the owner) and transmitted within 15 days of receipt of the request. Board minutes 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. Minutes of executive sessions of the board may be withheld if their publication would defeat the lawful purpose of the executive session (§514B-126(c)).</p> <p><u>Other records.</u> Owners may file a written request with the board to examine other documents. The board must give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request (§514B-154(f)).</p> <p><u>Reasonable fees.</u> A “reasonable fee” charged to an association member for copies of records will include administrative and duplicating costs, but not exceed \$1.00 per page except for pages exceeding 8-½ by 14 inches in size (§514B-154(j)). In certain instances, the association may charge owners for the reasonable cost of providing the information, only after the association has provided an owner with at least 10 days prior notice of that reasonable cost (§514B-105(d)). However, to be safe, owners should ask for an estimate of any costs when they make a request for documents or information since this does not apply to all requests.</p> <p><u>Destruction of records.</u> The managing agent may dispose of association records that are more than five years old, except for tax</p>
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<hr/> <p><i>“The board may propose an amendment to the declaration by written consent. In addition, any owner may make a motion to amend the declaration at a regular association meeting or a special association meeting called for that purpose.”</i></p> <hr/>	<p>records, which must be kept for at least seven years. In addition, associations may destroy certain records as deemed appropriate by the board within legal requirements (§514B-154(h)).</p> <p><u>Failure to provide access to records.</u> Should the board fail to provide an owner access to the documents and information requested pursuant to HRS Sections 514B-152 through 154, the owner can mediate or arbitrate the refusal pursuant to HRS Section 514B-161, or file a complaint with the Regulated Industries Complaints Office (“RICO”). Litigation is also an option, subject to the obligation to mediate. The Commission may receive complaints, conduct an investigation, and enjoin violations relating to certain provisions of the condominium law, including complaints of non-availability of the documents and information required to be made available under HRS Sections 514B-152 through 514B-154. The Commission, pursuant to HRS Section 26-9(m), has delegated this task to RICO. Contact information for RICO on the various islands is as follows: Oahu ((808) 587-3222), Kauai ((808) 274-3200), Maui ((808) 243-5808), Hilo ((808) 933-8846), and Kona ((808) 322-1908). Complaint forms may be downloaded from http://hawaii.gov/dcca/areas/rico/.</p> <p>B. Amendment of the Declaration</p> <p>The board may propose an amendment to the declaration by written consent. In addition, any owner may make a motion to amend the declaration at a regular association meeting or a special association meeting called for that purpose (§514B-121(c)). For those condominiums governed by HRS Chapter 514B, the approval of owners having at least 67 percent of the common interest is required for most amendments to the declaration (§514B-32(a)(11)). For those condominiums governed by HRS Chapter 514A, the approval of owners having 75 percent of the common interest is required for most amendments to the declaration (§514A-11(11)). Some declaration amendments, however, require approval of 100 percent of the owners. For instance, changing a common element to a limited common element often requires approval of 100 percent of the owners.</p> <p>C. Amendment of the Bylaws</p> <p>Any owner may make a motion to amend the bylaws at a regular association meeting or a special association meeting called for that purpose (§514B-121(c)). In addition, the board of directors or a volunteer unit owners group may propose an amendment to the</p>
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<p style="text-align: center;"><u><i>“The board may <u>ONLY</u> restate the declaration or the bylaws to: (i) comply with federal, state, or county requirements; (ii) incorporate amendments previously approved by the association; or (iii) correct the percentage of common interest in certain circumstances.”</i></u></p>	<p>bylaws together with a detailed rationale for the proposal. If the amendment is proposed by a volunteer unit owners group it must be accompanied by a petition of not less than 25 percent of unit owners. Within 30 days after receiving a petition for a bylaws amendment, the board must mail the proposal, its rationale, and the consent ballots to all owners. The written consent (whether proposed by the board or a volunteer unit owners group) must be obtained within one year of the mailing. Amendment of the bylaws requires an affirmative vote or written consent of at least 67 percent of all the unit owners. If the proposal is defeated, the volunteer owner group must wait one year before submitting a similar proposed amendment, but any owner or volunteer unit owners group may propose an amendment at an annual meeting (§514B-108(e)).</p> <p>D. Restating the Declaration and Bylaws</p> <p>The board, by resolution, may restate the declaration or bylaws to include all previous amendments (§514B-109(a)). Subject to the limits of HRS Section 514B-23, the board may also, by resolution, conform the declaration or bylaws to the provisions of HRS Chapter 514B, any other federal or state statute, county ordinances, and rules enacted by any governmental authority. In addition, the board may restate the declaration to correct the percentage of common interest if it does not add up to 100 percent, if the association has opted-in to the new Condominium Property Act. Any restated declaration or bylaws must (1) identify each portion restated; (2) contain a statement that those portions have been restated solely for information and convenience; (3) identify the statute, ordinance, or rule implemented by the amendment; and (4) contain a statement that in case of conflict, the restated declaration or bylaws shall be subordinate to the cited statute, rule, or ordinance (§514B-109(b)). The "restated" declaration or bylaws must be recorded and upon recordation, supersedes the original and all prior amendments (§514B-109(d)).</p> <p>NOTE: The board may <u>ONLY</u> restate the declaration or the bylaws to: (i) comply with federal, state, or county requirements; (ii) incorporate amendments previously approved by the association; or (iii) correct the percentage of common interest in certain circumstances. The board may <u>NOT</u> restate the declaration or bylaws to make changes not required by law. That power is reserved to the owners. Moreover, if the board's restatement does not correctly restate the requirements of the law, the restatement may be challenged and ruled invalid. In the event of any conflict, the restated declaration or bylaws are</p>
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	<p>subordinate to the original and all prior amendments (§514B-109(d)). Consult an experienced condominium attorney if you are not sure about the board's rights to restate the association's documents.</p>
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CONCLUSION

The board of directors has broad authority to manage the affairs of the condominium association, as defined and limited by HRS Chapter 514B, the condominium governing documents (declaration, bylaws, house rules, and articles of nonprofit incorporation, if any). The board governs the association, establishes policies and rules, ensures the accuracy of financial and administrative records, maintains the common elements, and promotes a quality environment for all residents. Because of the critical role the board plays in the life of the association, board members need to be aware of their responsibilities and familiar with the law and the condominium documents.

GLOSSARY OF SELECT TERMS

NOTE: The definitions included in this glossary are for informational purposes and may be less specific than those in HRS Chapters 514A and 514B. In case of any conflict, the statutory definition prevails.

AMENDMENT: A written statement reflecting a formal change or revision in the declaration, bylaws or other document governing the condominium.

ARBITRATION: A method of resolving legal disputes by submitting them to an impartial person called an "arbitrator" (or a panel of arbitrators) who has the power to make a decision concerning the issues in controversy. The award is usually binding and enforceable in circuit court, subject to a motion of a party within 90 days to modify, correct, or vacate the award.

ASSESSMENT (REGULAR): A unit owner's proportionate share of the expenditures made by, and financial liabilities of, the association for operation of the property, including any allocation to reserves. This charge is typically paid monthly and is also called a "maintenance fee." See COMMON EXPENSES.



ASSESSMENT (SPECIAL): An assessment made for the expenses of a "one-time" purpose such as unforeseen major repairs or improvements. Special assessments are in addition to regular assessments for operating expenses ("maintenance fees"). See COMMON EXPENSES.

ASSOCIATION (ALSO KNOWN AS "ASSOCIATION OF APARTMENT OWNERS" AND "ASSOCIATION OF UNIT OWNERS"): The legal entity whose membership consists exclusively of all the unit owners of a condominium project.

AUDIT: A formal examination and checking of accounts or financial records to verify their correctness. The Condominium Property Act requires a yearly audit of association financial accounts and at least one yearly unannounced cash balance verification by a public accountant (unless, for associations of fewer than 20 owners, this requirement is waived by a majority of all unit owners at an association meeting).

“Courts will normally not substitute their decisions for the business judgment of the elected representatives of the association (the board) if the board is: (1) acting within the scope of its authority; (2) reasonably and appropriately informed (e.g., by an investigation); (3) not personally interested in the outcome; and (4) acting rationally and in good faith in the best interests of the association.”



BOARD OF DIRECTORS: The governing body of the condominium association elected periodically by the unit owners to administer the affairs of, and act on behalf of, the association.


BOARD MEETINGS: Meeting of the members of the board of directors for the purpose of conducting condominium business. Board meetings must be held at least once a year and, except for "executive sessions," are open to all unit owners, unless a majority of quorum of the board votes otherwise.

BUSINESS JUDGMENT RULE: Courts will normally not substitute their decisions for the business judgment of the elected representatives of the association (the board) if the board is: (1) acting within the scope of its authority; (2) reasonably and appropriately informed (e.g., by an investigation); (3) not personally interested in the outcome; and (4) acting rationally and in good faith in the best interests of the association. See REASONABLENESS STANDARD.

BYLAWS: The document which governs the operation of the condominium property. The bylaws provide for administration of the association, meetings, quorums, voting, and other rules and procedures relating to governance of the project. The bylaws must be recorded at the Bureau of Conveyances or filed in Land Court, and may be amended by the vote or written consent of at least 67 percent of all unit owners. The Condominium Property Act specifies in detail what provisions the bylaws must minimally contain.

COMMISSION (REAL ESTATE): The state agency responsible for administering certain portions of the Condominium Property Act. The Commission is part of the Department of Commerce and Consumer Affairs.

COMMON ELEMENTS: All parts of a condominium other than the units; and any other real property interests subject to the declaration for the benefit of unit owners. Common elements are jointly owned by all of the unit owners, as provided by the declaration, and may include the land, load-bearing members, roofs, hallways, recreational facilities, utility installations, and the like. Maintenance of the common elements is managed by the association through the board, and each owner must pay a monthly assessment according to the owner's percentage of ownership. See COMMON EXPENSES, COMMON INTEREST, LIMITED COMMON

	<p>ELEMENTS, UNDIVIDED INTEREST.</p> <p>COMMON EXPENSES: The expenditures made by, and financial liabilities of, the association for operation of the condominium property, including any allocation to reserves, together with all other sums designated as common expenses by or pursuant to the Condominium Property Act, the declaration, or the bylaws. See ASSESSMENT.</p> <p>COMMON INTEREST: The percentage of undivided interest in the common elements appurtenant to each condominium unit, as expressed in the declaration. The percentage of common interest in the aggregate determines the amount an owner will be assessed for maintenance of the common elements, and the number of votes allocated to a unit that may be cast by its owner in the condominium association. The common interest may vary by unit, but need not be proportional to the size, value, or location of the unit.</p> <p>CONDOMINIUM: A form of ownership of real property consisting of (1) separate ownership of individual portions (units) and (2) common ownership of the remainder of the property (common elements) solely by the owners of the units. Undivided interests in the common elements are vested in the unit owners. Each condominium unit may be sold separately from all other units, but may not be sold separately from its appurtenant common interest.</p> <p>CONDOMINIUM MAP: A plan or map of the condominium property regime containing floor plans, plot plans, and elevations accurately depicting the project and its structures, including vehicle parking and limited common elements, if any.</p> <p>CONDOMINIUM PROPERTY ACT: The law that forms the legal basis for condominiums in Hawaii, found at HRS Chapters 514A and 514B. These statutes permit the creation of the condominium form of ownership and establish the basis for determining ownership interest, the rights and obligations of the owners, and the duties and powers of the association and the board of directors.</p> <p>DECLARATION: The document (including any amendments) that creates a condominium by establishing and dividing the project under the Condominium Property Act. The declaration must be recorded at the Bureau of Conveyances or filed in Land Court, and a copy must be kept by the association or its managing agent, and made available to owners at a reasonable charge. The declaration contains legal</p>
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descriptions of the property, including the units. It also describes the common elements and limited common elements, and each unit owner's undivided interest in the common elements.

DEVELOPER'S PUBLIC REPORT: Documents and information, prepared by a condominium developer, disclosing all material facts, other required information and documents that the prospective purchaser of a new condominium project should know before buying a unit. The Commission issues an effective date for the public report.

FIDELITY BOND: A fidelity bond is purchased from an insurance or bonding company to cover persons, such as employees or the managing agent, who are entrusted with sums of money or are responsible for valuable assets of the association. The purpose of the bond is to protect against fraud or dishonesty on the part of such persons.

FIDUCIARY: A relationship which implies a position of trust or confidence wherein one person is entrusted to hold or manage property for another. Condominium board members owe fiduciary duties to the association to act at all times in good faith, with diligence and loyalty to the association, and with obedience to the law and the governing documents, in the best interests of the association.

HOUSE RULES: Rules and regulations adopted by the board of directors of the association (or sometimes by the owners). The house rules usually contain provisions governing the use of common elements, but may also prevent the use of units in violation of the declaration or bylaws; regulate behavior in or occupancy of units when necessary to prevent unreasonable interference with the use and enjoyment of other units and the common elements by other unit owners; or restrict the leasing of residential units.

LIMITED COMMON ELEMENTS: A portion of the common elements designated for the exclusive use of a particular unit or units, but fewer than all the units. For example, a parking space assigned to a unit may be a limited common element. The limited common elements are described by law or in the declaration. See COMMON ELEMENTS.

MAJORITY OF UNIT OWNERS: The owners of units representing more than 50 percent of the common interest (as opposed to 50 percent of the number of units in the condominium). Note: "majority of those present", "majority vote", or "majority of a quorum" can be less than 50 percent of all owners.

“Employees of the association who manage the operation of the property are not considered managing agents.”



MANAGING AGENT: An independent contractor retained by the association to manage the operation of the condominium project. Every managing agent is a fiduciary with respect to the property the agent manages. Every managing agent must have a fidelity bond and be licensed as a real estate broker or be a trust company. Managing agents that are not active real estate brokers (e.g., trust companies) must register with the Commission. Employees of the association who manage the operation of the property are not considered managing agents.

PARLIAMENTARY PROCEDURE: A set of rules for the orderly conduct of meetings. Unless the law or association bylaws state different rules, all meetings of the board and association must be conducted according to the current version of *“Robert’s Rules of Order Newly Revised,”* the recognized standard for parliamentary procedure.

PERCENTAGE OF OWNERSHIP: The percentage of ownership each unit has in the common elements. Each unit has an assigned percentage, which is also known as the “common interest.” The percentage of ownership for all units should total 100 percent. See COMMON ELEMENTS, COMMON INTEREST.

PROXY: Written authorization for one person to act or vote for another at a meeting of the association of apartment owners.

QUORUM: The minimum number of people who must be present before business can be transacted at a meeting.

REASONABLENESS STANDARD: Courts may inquire whether a decision of a board was arbitrary and capricious, discriminatory and unfair, not in good faith for the common welfare of owners, and made without proper notice or without following established procedures. In addition, courts may consider whether there is a rational relationship between a legitimate association purpose and the board’s action. See BUSINESS JUDGMENT RULE.

REPLACEMENT RESERVES: Money collected as part of regular assessments and set aside, as part of the annual budgeting process, to repair or replace association property and common elements, with separate designated reserves for each part for which capital expenditures or major maintenance will exceed \$10,000, and a single aggregated reserve for those parts for which capital expenditures or major maintenance will not exceed \$10,000.

<hr/> <p style="text-align: center;"><i>“Most older condominiums use the term ‘apartment’ instead of ‘unit.’”</i></p> <hr/>	<p>UNDIVIDED INTEREST: Jointly owned property where each co-owner owns a percentage of the whole. In a condominium, the members own an undivided interest in the common elements, and a member cannot point to a particular part of the common elements (like the swimming pool) as his or hers. See COMMON ELEMENTS, LIMITED COMMON ELEMENTS, COMMON INTEREST.</p> <p>UNIT: The physical or spatial portion of the condominium property that is individually owned or occupied, as designated in the declaration, with access to a public road or common element leading to a public road. (Most older condominiums use the term “apartment” instead of “unit.”) A unit (apartment) <u>may</u> include appurtenant areas such as a parking space, storage room, balcony, terrace or patio. In many condominium projects, however, these appurtenant areas may be "limited common elements," and may be subject to regulation by the association. See LIMITED COMMON ELEMENTS.</p> <p>UNIT OWNER: Person or persons (including trusts, corporations, partnerships, limited liability companies, and lessees under a recorded lease) owning a condominium unit and the percentage of common interest pertaining to that unit. Every unit owner is a member of the association.</p>
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Addendum 1

***SPECIAL NOTE ON
COMMUNITY ASSOCIATION
RIGHTS AND RESPONSIBILITIES***

NOTE: The Community Associations Institute (“CAI”) is a national organization dedicated to improving the operation and management of condominiums and other homeowner associations. The following set of suggested principles, developed by the CAI to help board and association members manage their associations more effectively, is included here for discussion purposes only.

COMMUNITY ASSOCIATIONS INSTITUTE

**Rights and Responsibilities
for Better Communities**

Principles for Homeowners and Community Leaders

More than a destination at the end of the day, a community is a place people want to call home and where they feel at home. This goal is best achieved when homeowners, non-owner residents and association leaders recognize and accept their rights and responsibilities. This entails striking a reasonable balance between the preferences of individual homeowners and the best interests of the community as a whole. It is with this challenge in mind that Community Associations Institute (CAI) developed Rights and Responsibilities for Better Communities.

Rights and Responsibilities can serve as an important guidepost for all those involved in the community—board and committee members, community managers, homeowners and nonowner residents.

Homeowners Have the Right to:

- A responsive and competent community association.

“More than a destination at the end of the day, a community is a place people want to call home and where they feel at home. This goal is best achieved when homeowners, non-owner residents and association leaders recognize and accept their rights and responsibilities.”

<p style="text-align: center;"><i>“Homeowners have the responsibility to . . . [r]ead and comply with the governing documents of the community.”</i></p>	<ul style="list-style-type: none"> ● Honest, fair and respectful treatment by community leaders and managers. ● Participate in governing the community association by attending meetings, serving on committees and standing for election. ● Access appropriate association books and records. ● Prudent expenditure of fees and other assessments. ● Live in a community where the property is maintained according to established standards. ● Fair treatment regarding financial and other association obligations, including the opportunity to discuss payment plans and options with the association before foreclosure is initiated. ● Receive all documents that address rules and regulations governing the community association—if not prior to purchase and settlement by a real estate agent or attorney, then upon joining the community. ● Appeal to appropriate community leaders those decisions affecting non-routine financial responsibilities or property rights. <p>Homeowners Have the Responsibility to:</p> <ul style="list-style-type: none"> ● Read and comply with the governing documents of the community. ● Maintain their property according to established standards. ● Treat association leaders honestly and with respect. ● Vote in community elections and on other issues. ● Pay association assessments and charges on time. ● Contact association leaders or managers, if necessary, to discuss financial obligations and alternative payment arrangements. ● Request reconsideration of material decisions that personally affect them. ● Provide current contact information to association leaders or managers to help ensure they receive information from the community.
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<hr/> <p style="text-align: center;"><i>“Community leaders have the right to . . . [r]espectful and honest treatment from residents.”</i></p> <hr/>	<ul style="list-style-type: none"> ● Ensure that those who reside on their property (e.g., tenants, relatives, friends) adhere to all rules and regulations. <p>Community Leaders Have the Right to:</p> <ul style="list-style-type: none"> ● Expect owners and non-owner residents to meet their financial obligations to the community. ● Expect residents to know and comply with the rules and regulations of the community and to stay informed by reading materials provided by the association. ● Respectful and honest treatment from residents. ● Conduct meetings in a positive and constructive atmosphere. ● Receive support and constructive input from owners and nonowner residents. ● Personal privacy at home and during leisure time in the community. ● Take advantage of educational opportunities (e.g., publications, training workshops) that are directly related to their responsibilities, and as approved by the association. <p>Community Leaders Have the Responsibility to:</p> <ul style="list-style-type: none"> ● Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community. ● Exercise sound business judgment and follow established management practices. ● Balance the needs and obligations of the community as a whole with those of individual homeowners and residents. ● Understand the association’s governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly. ● Establish committees or use other methods to obtain input from owners and non-owner residents. ● Conduct open, fair and well-publicized elections. ● Welcome and educate new members of the community—owners and non-owner residents alike. ● Encourage input from residents on issues affecting them personally and the community as a whole.
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“Community leaders have the responsibility to . . . [f]ulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.”

- Encourage events that foster neighborliness and a sense of community.
- Conduct business in a transparent manner when feasible and appropriate.
- Allow homeowners access to appropriate community records, when requested.
- Collect all monies due from owners and non-owner residents.
- Devise appropriate and reasonable arrangements, when needed and as feasible, to facilitate the ability of individual homeowners to meet their financial obligations to the community.
- Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights—where permitted by law and the association’s governing documents.
- Initiate foreclosure proceedings only as a measure of last resort.
- Make covenants, conditions and restrictions as understandable as possible, adding clarifying “lay” language or supplementary materials when drafting or revising the documents.
- Provide complete and timely disclosure of personal and financial conflicts of interest related to the actions of community leaders, e.g., officers, the board and committees. (Community associations may want to develop a code of ethics.)

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<hr/> <p><i>“Provide at least one form of regular communication with residents, and use it to report substantive actions taken by the board.”</i></p> <hr/>	<p style="text-align: center;">Addendum 2</p> <p style="text-align: center;">SPECIAL NOTE ON COMMUNITY ASSOCIATION GOVERNANCE GUIDELINES</p> <p style="text-align: center;"><i>NOTE: For discussion purposes only.</i></p> <p><i>The Community Association Governance Guidelines are offered by CAI’s Center for Community Association Volunteers (CCAV) to help board members and other community leaders create and sustain more effective, harmonious communities. This initiative supports CAI’s mission of making community associations better—even preferred—places to call home.</i></p> <p>ANNUAL MEETINGS. Conduct at least one membership meeting annually, providing at least two weeks notice to homeowners and more than two weeks if specified in the governing documents or dictated by state statute.</p> <p>ASSESSMENTS. Collect assessments and other fees from homeowners in a timely and equitable manner and in accordance with state statutes and board-approved procedures.</p> <p>COMMUNICATION. Provide at least one form of regular communication with residents, and use it to report substantive actions taken by the board.</p> <p>CONFLICTS OF INTEREST. Disclose all personal and financial conflicts of interest before assuming a board position and, once on the board, before participating in any board decisions.</p> <p>ELECTIONS. Hold fair and open elections in strict conformance with governing documents, giving all candidates an equal opportunity to express their views and permitting each candidate to have a representative observe the vote-counting process.</p> <p>FINANCIAL TRANSPARENCY. Share critical information and rationale with residents about budgets, reserve funding, special assessments and other issues that could impact their financial obligations to the association. Give members an opportunity—before final decisions are made—to ask questions of a representative who is fully familiar with these financial issues.</p>
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“Allow residents to bring grievances before the board or a board appointed committee, and follow well-publicized procedures that give residents the opportunity to correct violations before imposing fines or other sanctions.”

FORECLOSURE. Initiate lien and foreclosure proceedings only as a last step in a well-defined debt collection procedure—and only after other, less-disruptive measures have failed to resolve a serious delinquency issue in a specified period of time.

GOVERNANCE AND THE LAW. Govern and manage the community in accordance with all applicable laws and regulations. Conduct reviews of governing documents to ensure legal compliance and to determine whether amendments are necessary.

GRIEVANCES AND APPEALS. Allow residents to bring grievances before the board or a board appointed committee, and follow well-publicized procedures that give residents the opportunity to correct violations before imposing fines or other sanctions.

RECORDS. Allow homeowners reasonable access to appropriate community records, including annual budgets and board meeting minutes.

RESERVE FUNDING. Account for anticipated long-term expenditures as part of the annual budget development process, commissioning a reserve study when professional expertise is warranted.

RULES. Enforce all rules, including architectural guidelines, uniformly, but only after seeking compliance on a voluntary basis. Distribute proposals for new rules and guidelines to all homeowners and nonowner residents. Advise them when the board will consider new rules and encourage input. Once adopted, new rules and effective dates should be distributed to every owner and resident.

Note: Laws governing community and condominium associations vary considerably from state to state. In addition to understanding and adhering to these laws, community association leaders need to be aware of legislative and regulatory issues that could affect their associations.

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<hr/> <p><i>“ . . . the governance provisions of the recodification (part VI of chapter 514B) and a few other sections will apply to an existing association automatically after [July 1, 2006].”</i></p> <hr/>	<p style="text-align: center;">Addendum 3</p> <p style="text-align: center;">SPECIAL NOTE ON CONDOMINIUM RECODIFICATION</p> <p><i>NOTE: For discussion purposes only, the following summary of the applicability of the Hawaii Revised Statutes, Chapter 514B, prepared by the law firm of Ekimoto & Morris, is included here with permission.</i></p> <p style="text-align: center;"><u>DIRECTOR’S GUIDE TO HAWAII COMMUNITY ASSOCIATION LAW</u></p> <p style="text-align: center;">THE RECODIFICATION PROCESS</p> <p>The recodification (chapter 514B) is not as intimidating as it seems because it: (1) includes large parts of chapter 514A; and (2) is much better organized than chapter 514A. In addition, it includes new and useful sections focusing on the repair and maintenance of buildings and related problems, including insurance claims. Moreover, the changes for 2006 (Act 273, signed July 5, 2006, formerly, House Bill 3225 CD 1) eliminate some of the worst problems of the original recodification.</p> <p>The recodification took effect July 1, 2006. Issues relating to the applicability of the recodification to existing associations are outlined [below]. Essentially, the governance provisions of the recodification (part VI of chapter 514B) and a few other sections will apply to an existing association automatically after that date. (The governance provisions deal with all the day to day matters, such as meetings, proxies, reserves, handling of funds, alterations and repairs, etc.) An owner challenging the applicability of a provision of the new law will have to prove that the provision in the new law: (i) contradicts the association’s declaration and bylaws, (ii) in a way that amounts to an “unreasonable impairment” of the owner’s rights under the declaration and bylaws. Otherwise that provision will apply.</p> <p>Alternatively, by the vote or written consent of a majority of the owners, any existing association can opt in to the new law without worrying about whether those two qualifications will limit the applicability of the new law. Ekimoto & Morris recommend opting in to the new law because there are key provisions that are not automatically applicable to existing associations and it simplifies</p>
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<hr/> <p><i>“Each of the statutory sections listed [in HRS §514B-22] automatically applies to existing condominiums unless one of . . . three exceptions applies.”</i></p> <hr/>	<p>operations for board members and managers if they only have to deal with one condominium statute.</p> <p>APPLICABILITY OF RECODIFICATION TO EXISTING CONDOMINIUMS</p> <p>I. Sections of Recodification That Are Automatically Applicable to Existing Condos</p> <p>There is a fair amount of confusion about how the Recodification applies to existing condominiums. Hawaii Revised Statutes §514B-22 (attached) states that the following sections automatically apply to existing condominiums unless one of three exceptions comes into play:</p> <ol style="list-style-type: none"> 1. HRS §514B-3: Definitions (to the extent that they are involved in any of the other sections, below) 2. HRS §514B-4: Separate Title & Taxation of Condominium Units 3. HRS §514B-5: Conformance with county land use laws 4. HRS §514B-35: Unit boundary provisions that treat windows, doors and other parts of the project that affect fewer than all of the owners as limited common elements 5. HRS §514B-41(c): An exception to rule apportioning limited common expenses to each unit when it would be more expensive to do so 6. HRS §514B-46: Merger of increments 7. HRS §514B-72: Payments into condominium education trust fund 8. HRS Chapter 514B, Part VI: Most of the provisions of the new law that are applicable to the management of condominiums <p>II. Three Exceptions to the Automatic Applicability Provisions</p> <p>Each of the statutory sections listed above automatically applies to existing condominiums unless one of the following three exceptions applies:</p> <ol style="list-style-type: none"> 1. You are dealing with an event or circumstance occurring before July 1, 2006
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<p style="text-align: center;"><i>“While . . . most of the condominium governance provisions of the Recodification automatically apply to existing condominiums, there are a few provisions that do not automatically apply . . .”</i></p>	<ol style="list-style-type: none"> 2. The section conflicts with an existing provision of one of the condominium documents in a way that invalidates a reserved right of a developer; or 3. The section conflicts with an existing provision of one of the condominium documents in a way that would be an “unreasonable impairment of contract.” <p>Exception 1 means that if something occurred before the effective date of the Recodification, it would be governed by the old condominium law. For instance, an amendment to the By-Laws required 65% approval under the old condominium law but requires 67% approval under the new law. All the amendments that were passed before July 1, 2006 with more than 65% but less than 67% approval still remain valid.</p> <p>The next two exceptions (2 and 3) only apply when the new law conflicts with your Association’s governing documents. In contrast, if the governing documents are silent or consistent with the list of statutory sections in §514B-22 (see above), exceptions 2 and 3 do not apply.</p> <p>Otherwise, exception 2 is intended to protect a developer’s reserved rights. For instance, the developer might have reserved the right to merge phases into a single condominium. Hawaii Revised Statutes §514B-22 means that the Recodification will not prevent the developer from merging the phases into a single condominium.</p> <p>Exception 3 involves the “contract clause” of the U. S. Constitution. The contract clause prohibits the government from passing laws that impair existing contracts. That does not mean that all laws which contradict the provisions of a contract are invalid. The Hawaii Attorney General has issued opinions that the legislature may adopt statutes having retroactive application on procedural issues. Nevertheless, it is possible that a provision of 514B might be substantive and could legitimately be held to impair the existing governing documents of an association.</p> <p>III. Sections of Recodification That Are Not Automatically Applicable to Existing Condos</p> <p>While, as outlined above, most of the condominium governance provisions of the Recodification automatically apply to existing condominiums, there are a few provisions that do not automatically</p>
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<p style="text-align: center;"><u><i>“ . . . with the approval of only a majority of the apartment owners, you can adopt amendments to the governing documents that will allow you to take advantage of the Recodification sections that do not automatically apply to existing condominiums.”</i></u></p>	<p>apply to existing condominium associations. Some of the most significant provisions that do not automatically apply to existing condominiums are:</p> <ol style="list-style-type: none"> 1. HRS §514B-9 (this provision establishes an obligation of good faith for associations, directors and owners on obligations and duties imposed by HRS Chapter 514B) 2. HRS §514B-10 (this provision requires that the condominium documents and 514B to be liberally construed by the courts and eliminates punitive damages for any claims under 514B) 3. HRS §514B-32(11) (this provision reduces the approval requirement for Declaration amendments to 67%) 4. HRS §514B-38 (this provision: (a) reduces the approval requirement for leases of the common elements to 67%; (b) permits the Association to allow owners to have minimal exclusive use of the common elements without 100% owner approval; and (c) permits the Association to convert open spaces to other uses without 100% owner approval) 5. HRS §514B-47 (this provision includes specific instructions for what happens when a leasehold condominium is condemned) <p>IV. Opting-In to the Recodification</p> <p>As you can see, some of the provisions that do not automatically apply to existing condominiums can have a substantial benefit to those associations. For example, if you would like to eliminate punitive damages for your condominium association or reduce the approval requirement for declaration amendments and leases of the common elements to 67%, you need to opt-in to the Recodification. Hawaii Revised Statutes §514B-23 (often referred to as the "opt-in" provision of the Recodification) will allow you to amend your governing documents to conform to the provisions of Hawaii Revised Statutes Chapter 514B with the approval of only a majority of the owners.</p> <p>While an amendment will not be needed for those sections that automatically apply to existing condominiums (provided that one of the three exceptions listed above does not come into play), existing</p>
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<hr/> <p style="text-align: center;"><i>“Opting-in also has the benefit of eliminating the concern that the automatic provisions will not apply because of a contract clause issue.”</i></p> <hr/>	<p>condominiums must adopt an amendment for the other provisions of the Recodification to apply. Thus, with the approval of only a majority of the apartment owners, you can adopt amendments to the governing documents that will allow you to take advantage of the Recodification sections that do not automatically apply to existing condominiums.</p> <p>[Ekimoto & Morris] recommend, in particular, that any existing condominium association that is considering an amendment to its Declaration should seek a vote to opt-in. Even if you are not amending your Declaration, there are significant provisions that could benefit the Association. Opting-in also has the benefit of eliminating the concern that the automatic provisions will not apply because of a contract clause issue. For that reason, it is likely that most condominium associations will eventually choose to opt-in.</p> <p><u>Addendum</u></p> <p>§514B-22 Applicability to preexisting condominiums. Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72, and part VI, and section 514B-3 to the extent definitions are necessary in construing any of those provisions, and all amendments thereto, apply to all condominiums created in this State before July 1, 2006; provided that those sections (i) apply only with respect to events and circumstances occurring on or after July 1, 2006; and (ii) shall not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents of those condominiums if to do so would invalidate the reserved rights of a developer or be an unreasonable impairment of contract. For purposes of interpreting this chapter, the terms “condominium property regime” and “horizontal property regime” shall be deemed to correspond to the term “condominium”; the term “apartment” shall be deemed to correspond to the term “unit”; the term “apartment owner” shall be deemed to correspond to the term “unit owner”; and the term “association of apartment owners” shall be deemed to correspond to the term “association.”</p>
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