Important note: Prior to a **unit purchase or a voluntary acquisition of title**, prospective acquirers of title are advised to request a statement from the manager or the board listing all unpaid common expenses and assessments owed by those conveying title to the unit. H.R.S. Section 514A-91 states that in a voluntary conveyance of a condominium unit, **persons acquiring title become jointly and severally liable** with persons conveying title for all unpaid common expenses and assessments owed by those conveying title up to the time of the grant or conveyance. "Joint and several liability" means that the persons acquiring title are *individually or collectively liable* with the persons conveying title for the *full* amount of any unpaid common expenses and assessments. The persons acquiring title, however, retain the right to recover the unpaid amounts from those conveying title through a separate legal action.

Tax Treatment

The following general tax information applies to condominiums: (1) Pursuant to H.R.S. Section 514A-6, each condominium unit is subject to separate assessment and taxation, including special assessments; (2) State and federal income tax regulations recognize interest deductions for condominium home mortgages; (3) Owner-occupants of condominium units are eligible for county homeowner property tax exemptions; (4) Owners who rent out their condominium units must possess an excise tax license and pay excise tax on the gross rental income received from the unit; (5) Units held for investment purposes qualify for like-kind exchanges; (6) Under Paragraph 129 of the Taxpayer Relief Act of 1997, individuals may exclude from income up to $250,000 of gain realized on the sale or exchange of a condominium used as a principal residence if the individual owned and occupied the unit for an aggregate of at least two of the five years before the sale or exchange. The amount of excludable gain is increased to $500,000 for married individuals filing jointly, subject to restrictions specified in Paragraph 129 of the Taxpayer Relief Act of 1997.

Liens

H.R.S. Section 514A-90(c) states that no unit owner shall withhold any assessment claimed by the association. All unpaid common expenses chargeable to a unit constitute a **lien** on the unit which may be foreclosed by an action of the manager or the board in a manner similar to a mortgage of real property pursuant to H.R.S. Section 514A-90(a). **Note: If the person acquiring title** via a mortgage or a purchase **obtains title as a result of foreclosure**, then the acquirer of title shall *not* be liable for common expenses or assessments due prior to acquisition of title, and the unpaid common expenses or assessments shall be collectible from *all* owners, including the acquirer of title (H.R.S. Section 514A-90(b)).

Pets

Whenever the bylaws do not forbid *owners* from keeping pets in their unit, the bylaws shall *not* forbid *tenants* of owners from keeping pets in their unit, subject to provisions stated in H.R.S. Section 514A-82.5(a) The bylaws, however, may include reasonable prohibitions against excessive noise or problems caused by pets on the property, and may reasonably restrict or prohibit the running of pets on common areas pursuant to H.R.S. Sections 514A-82.5(a)(5), (6). Also, H.R.S. Section 514A-82.6(b) states that any owner who is keeping a pet in their unit as of the effective date of an amendment to the bylaws which prohibits such pets, shall *not* be subject to the pet prohibition and shall be entitled to keep such pets and acquire new pets. Further, H.R.S. Section 514A-82.6(a) allows an owner to replace the animal, upon its death, with another animal and continue to do so for as long as the owner continues to reside in the unit or another unit subject to the same bylaws. The practical effect of this law is to "grandfather in" the *owner*, rather than a pet, so that the owner may keep and continue to acquire any type of pet that the owner once rightfully kept in accordance with the bylaws, as long as the owner continues to reside in the project. Finally, it is *not* generally lawful under state fair housing law to prohibit animals in condominium projects that are used to assist the disabled such as dogs that guide blind persons and alert deaf persons to sounds, and animals trained to provide life activities (H.R.S. Section 515-3(8)).

USEFUL INFORMATION SOURCES

Hawaii Real Estate Research & Education Center (HRREC): The following publications are available through HRREC: (1) Board of Directors Guides on Fiduciary Duty; Proxies; Condominium Insurance-Including Fidelity Bonds; Sense of Community; New Rights to Fair Housing in Hawaii; and An Introduction to Condominium Living in Hawaii. A guide regarding antidiscrimination in Hawaii condominiums will also be published in 1998. (2) Condominium Reserves Reference Manual. (3) Hawaii Condominium Bulletin - a quarterly newsletter mailed to registered Hawaii condominium associations and managing agents with individual subscriptions also available for purchase. To obtain a Publication Description & Order Form, call HRREC at 956-7892 (or toll free from neighbor islands at 1-800-642-4756).

Department of Commerce and Consumer Affairs (DCCA): Copies of H.R.S. Chapter 514A regarding Condominium Property Regimes and H.A.R. Chapter 107 regarding Horizontal Property Regimes are available for a nominal fee at the DCCA Cashier's Office located in downtown Honolulu at 1010 Richards Street, Third Floor. Readers may also obtain copies of the above laws and rules via mail by sending the correct amount of cash or check to: Cashier-DCCA; P.O. Box 541; Honolulu, HI 96809. To verify availability and the current cost of the laws and rules, Oahu readers may call 586-2832 and neighbor island readers may call toll free as follows: **Kauai** 274-3141 ext 6-2832; **Maui** 984-2400 ext 6-2832; **Hawaii** 974-4000 ext 6-2832; and **Molokai & Lanai** 1-800-468-4644 ext 6-2832.

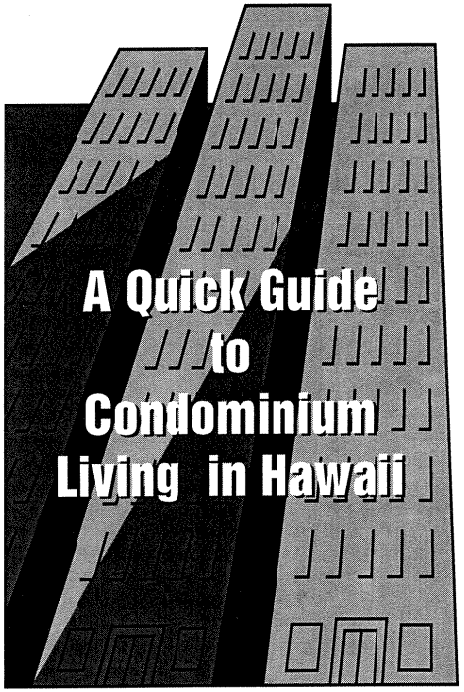
For information regarding: condominium project registration and public reports; condominium association, managing agent, hotel operator and limited equity cooperative registration; condominium association and CPR registration forms; and to contact Condominium Specialists, Oahu readers may call 586-2644. Neighbor island readers may call toll free as follows: **Kauai** 274-3141 ext 6-2644; **Maui** 984-2400 ext 6-2644; **Hawaii** 974-4000 ext 6-2644; and **Molokai & Lanai** 1-800-468-4644 ext 6-2644.

For information regarding condominium governance and management, H.R.S. Chapter 514A, H.A.R. Title 16 Chapter 107; Condominium Review Committee meetings and agendas; and to contact Condominium Specialists, Oahu readers may call 586-2646. Neighbor island readers may call toll free as follows: **Kauai** 274-3141 ext 6-2646; **Maui** 984-2400 ext 6-2646; **Hawaii** 974-4000 ext 6-2646; and **Molokai & Lanai** 1-800-468-4644 ext 6-2646.

Condominium Reference Library: A collection of condominium publications is available for public reference at Hawaii State library branches on all major islands. A set of condominium reference materials is also available at the Real Estate Branch, DCCA; 250 S. King Street, Room 702; Honolulu, Hawaii.

NOTICE: This brochure was funded by the Condominium Management Education Fund, and is an accompaniment to the Board of Directors' Guide "An Introduction to Condominium Living in Hawaii." This information is intended to provide general information and is *not* a substitute for obtaining legal advice or other competent professional assistance to address specific situations. If legal or other professional assistance is required, readers are advised to seek the services of licensed, competent professionals. All information is current as of March 1998. Because the law may change over time, readers are advised to check the current laws and rules to determine if any changes have occurred since publication.

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.



March 1998
Real Estate Commission,
Professional & Vocational Licensing Division,
Department of Commerce and Consumer Affairs,
State of Hawaii

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INTRODUCTION

This brochure is designed to introduce you to condominium living in Hawaii. Condominium living provides many advantages which may include attractive locations, extensive recreational facilities, well-landscaped open spaces and no direct responsibility for maintaining the common areas. Shared ownership of common areas may also allow you to enjoy facilities in a location that ordinarily might be too expensive for individual owners. Obligations are also a part of condominium living such as the mandatory payment of maintenance fees and special assessments, following your condominium's rules and regulations, compliance with the State's condominium statutes and rules, and cooperation regarding the joint operation and management of your condominium. Readers are encouraged to consider for themselves whether the many benefits of condominium living outweigh mandatory obligations before making a first-time commitment to condominium living in Hawaii.

WHAT IS A CONDOMINIUM?

Contrary to common perception, the term "condominium" does not refer to the outward appearance of a structure such as a tall building consisting of many individual residences. Condominiums come in many shapes and have varying uses. Rather, the term "condominium" refers to a form of real property ownership consisting of both ***individual and common ownership interests.***

The *individual* ownership interest consists of an exclusive right of possession and ownership of a particular condominium unit. Each unit may be mortgaged, is separately assessed for taxes and has an individual deed or lease.

The *common* ownership interest includes a percentage of undivided interest in the **common elements** as well as any designated interest in the **limited common elements**. Generally, **common elements** are those portions of the land and structures jointly owned and utilized by all unit owners such as the land, foundations, main walls, roofs, recreational facilities, etc. **Limited common elements** typically consist of those common elements reserved for the exclusive use of specific units such as private lanais or assigned parking stalls. Your condominium's "Declaration of Condominium Property Regime" filed at either the Bureau of Conveyances or at the Land Court will delineate the common and limited common elements in your project.

The common ownership interest distinguishes condominium living from traditional forms of home ownership. Characteristics of common ownership include:

- Unit owners automatically become members of the condominium association which manages the operation of the condominium on behalf of all owners.
- Unit owners are required to pay maintenance fees and special assessments for the upkeep of the common elements.
- Unit owners have rights and obligations which are defined in their condominium project documents and in the condominium law, Hawaii Revised Statutes (H.R.S.) Chapter 514A and Hawaii Administrative Rules (H.A.R.) Title 16 Chapter 107.

HOW ARE CONDOMINIUMS GOVERNED AND MANAGED?

Condominiums are governed by their own condominium association. The condominium association is an private organization that functions as a "mini government" with the condominium project documents serving as the association's "constitution." The Board of Directors is the governing body of the association. Board members are elected by and from among the condominium owners, and generally are not compensated for their time and effort. All meetings of the board of directors, other than executive sessions, are open to unit owners who may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the board votes otherwise pursuant to H.R.S. Section 514A-83.1(a).

Practically speaking, joint ownership and governance of a condominium project means that no individual has control over the decision-making process, and management is an essential component of condominium living. Many condominium associations hire a professional management company, although associations are not required to do so by law. Larger associations may employ a full-time resident manager, although resident managers are also not mandated by law. Smaller associations may simply utilize resident volunteers to handle management tasks. Prospective owners should inquire how the condominium project is managed and whether the current occupants are satisfied with the management services provided.

If you are considering purchasing a condominium unit, it is important to carefully review the project documents and/or have them reviewed by your legal representative because all owners, tenants and employees of owners must comply with the requirements contained in these documents (H.R.S. Section 514A-88). Project documents consist of: the **declaration of condominium property regime, the bylaws, the house rules and the master deed or lease**. If your condominium association has incorporated, then the **articles of incorporation** are also part of the project documents. H.R.S. Section 514A-84.5 requires that accurate copies of project documents be made available to owners, prospective purchasers and their prospective agents by the managing agent or a person/entity employed by the association to whom this function has been delegated.

The **declaration of condominium property regime** is a document filed at the Bureau of Conveyances or the Land Court which contains basic information necessary to create a condominium project. The **bylaws** govern the operation of the condominium project and must be recorded in the same manner as the declaration (H.R.S. Section 514A-81). The **house rules** provide more detailed guidelines and limitations on the use and operation of the condominium project. These rules are *not* intended as a substitute for amending the declaration and/or bylaws, and in the event of a conflict, the declaration and bylaws control. House rules are typically designed to govern the use of common and limited common elements such as pools, recreation areas, parking garages, etc., and to protect residents and guests from bothersome actions or actions that detract from the value of the property such as excessive noise, hanging laundry in exterior visible areas, etc. The method for adopting and amending house rules is often specified in the bylaws.

Hawaii has also adopted laws in H.R.S. Chapter 514A and rules in H.A.R. Title 16 Chapter 107 which govern condominium projects. Prospective owners are encouraged to review these state laws and rules prior to purchasing a condominium in Hawaii.

OTHER FACTORS TO CONSIDER PRIOR TO PURCHASE

Resolving Disputes Through Mediation, Arbitration

Due to the inherent nature of shared governance and management of condominium projects, as well as the close living proximity of residents, disputes between owners, the association, the board and the managing agent are inevitable. Condominium law is based upon principles of self-governance, owner enforcement, voluntary and mandatory mediation, mandatory arbitration and limited government intervention only as specified in H.R.S. Sections 514A-46, 47 and 48. This means that the owners, association, board and management must work together to enforce the laws and rules and to resolve disputes through discussion, mediation, arbitration and, if necessary, litigation.

The Real Estate Commission encourages the informal resolution of condominium disputes prior to taking legal action. Parties are urged to solve condominium governance and management disputes through early communication and mature discussion. Careful checking of condominium project documents as well as the state condominium laws and rules (which the Commission mails to all registered Hawaii condominium associations and managing agents) is recommended to determine if the disputed matter must be resolved according to requirements contained in these governing sources. Parties may also find it prudent to bring the dispute before the association board of directors for a decision.

If the condominium dispute cannot be resolved among the parties, either party may request **mediation**. Mediation involves an impartial third party mediator guiding the parties through a problem-solving process to assist them in arriving at a mutually agreeable resolution. The Real Estate Commission subsidizes mediation services for eligible parties and issues utilizing mediators specifically trained to assist in resolving condominium disputes. Statewide services are available through the Neighborhood Justice Center; 200 N. Vineyard Boulevard, Suite 320; Honolulu, HI 96817; Phone: 521-6767. Mediation services on Maui only are also available via Mediation Services of Maui, Inc.; Cameron Center; 95 Mahalani Street; Wailuku, HI 96793; Phone: 244-5744.

Parties to condominium disputes have the right to demand **arbitration** if the dispute involves owners, boards, associations or managing agents regarding the interpretation, application or enforcement of H.R.S. Chapter 514A, association declarations, bylaws or house rules pursuant to H.R.S. Section 514A-121(a). An arbitration is similar to a court hearing because sworn testimony and discovery of evidence is permitted. The process, however, is generally more flexible and informal because the arbitrator is not bound by rules of evidence, except for provisions relating to privileged communications, and the arbitrator may restrict the scope of discovery for good cause to avoid excessive delay and costs, or refer discovery matters to the circuit court for disposition pursuant to H.R.S. Section 514A-121(a). To contact local arbitrators, parties may consult the yellow pages of the telephone book under "Arbitration Services."

Condominium Fees and Assessments

Maintenance Fees: A regularly scheduled fee that owners are required to pay for the maintenance and operation of the buildings, land and facilities. The amount each owner must pay may vary according to unit size and location. Maintenance fees typically cover expenses for water, sewage, security, upkeep and repair of common elements, association taxes/insurance and property management. The manager or association board of directors must notify the owners in writing of any maintenance fee increases at least thirty days prior to any increase (H.R.S. Section 514A-92.2).

Special Assessments: A fee collected in addition to regularly scheduled maintenance fees to fund special expenses such as improvements to the property and association legal fees and costs.

Replacement Reserves: Funds required by H.R.S. Section 514A-83.6 and H.A.R. Title 16 Chapter 107 Subchapter 6 to be collected for the upkeep, repair or replacement of those parts of the condominium project that the association is obligated to maintain. Prospective condominium purchasers should inquire about the amount of replacement reserves collected by the association to date, and the total amount to be collected annually to ascertain the likelihood of the association imposing special assessments on owners to fund insufficient replacement reserves.