

New Condominium Law 514B, HRS

**“Chapter 514B, HRS, Condominium
Management Provisions
The 21st Century Remake of Chapter 514A,
HRS”**

*Presentation of the Hawaii Real Estate Commission Selected
Provisions of Chapter 514B, HRS*

Funded by the Condominium Education Trust Funds

Real Estate Commission

Real Estate Branch

Professional and Vocational Licensing Division

Department of Commerce and Consumer Affairs

State of Hawaii

November 2007

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Goals For Today

- Illustrate the benefits of the new condominium law, Chapter 514B, HRS
- Make “opting in” the norm for condominiums operating under the original condominium law, Chapter 514A, HRS
- Increase developers awareness that governing documents for condominiums created after July 1, 2006 must include the new condominium management provisions of Chapter 514B, HRS
- Assist real estate licensees with the task of educating prospective purchasers about the realities of condominium living

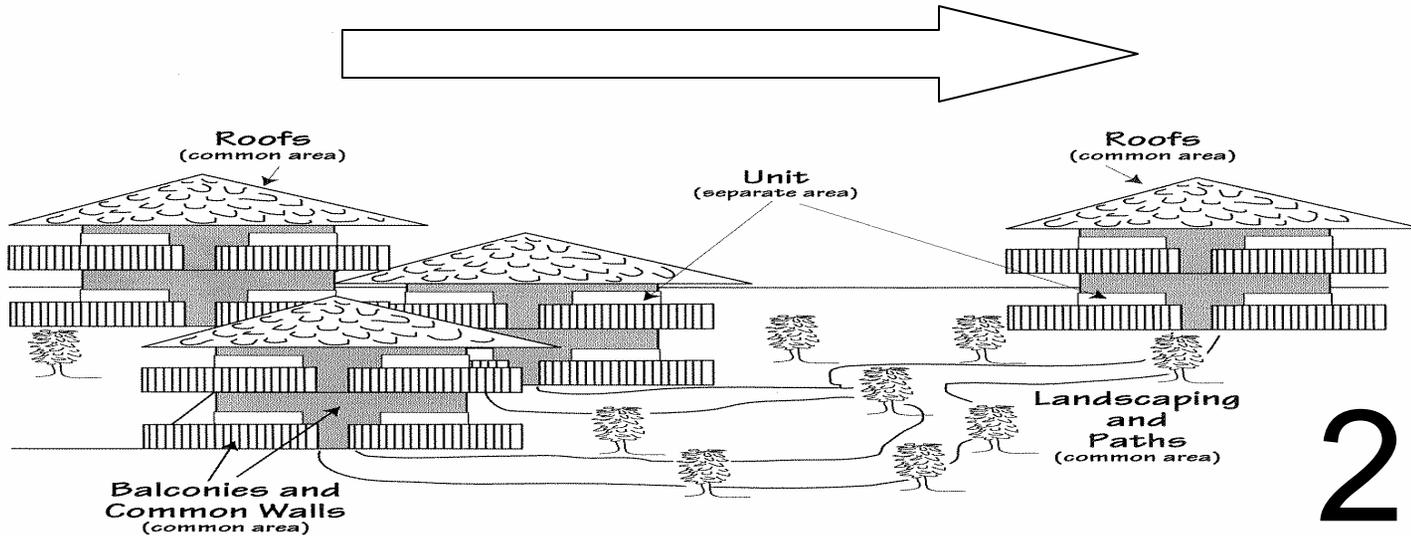
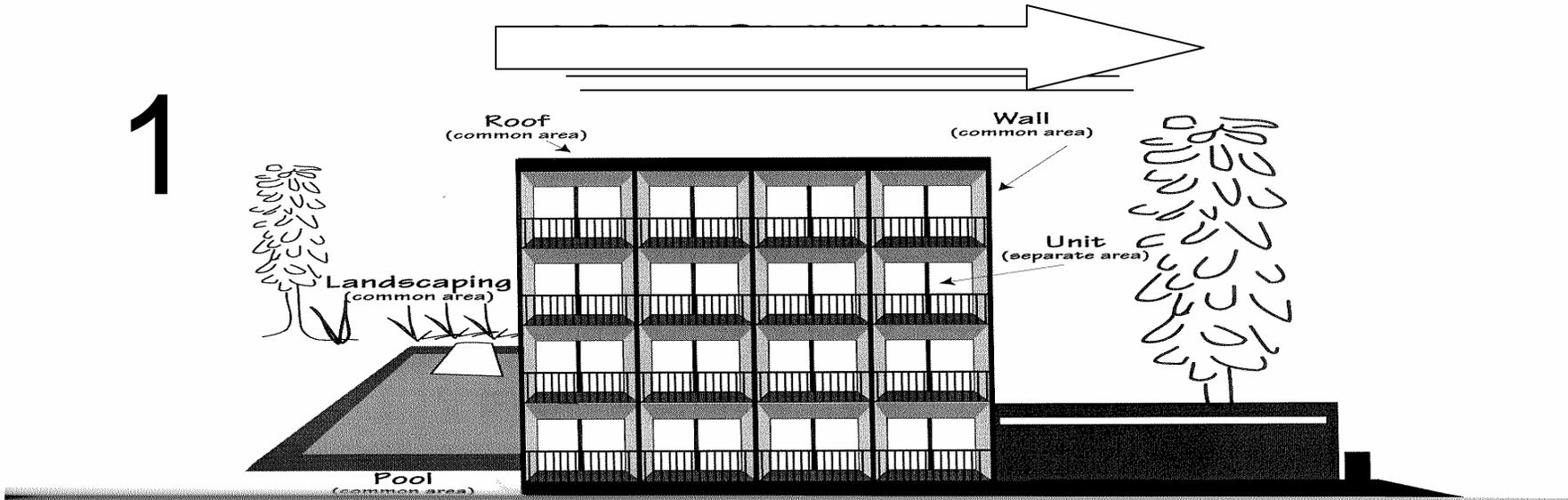
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 - Interpretations of the law may be found in declaratory
- 4 rulings, attorney general opinions, court rulings

What is a Condominium ?

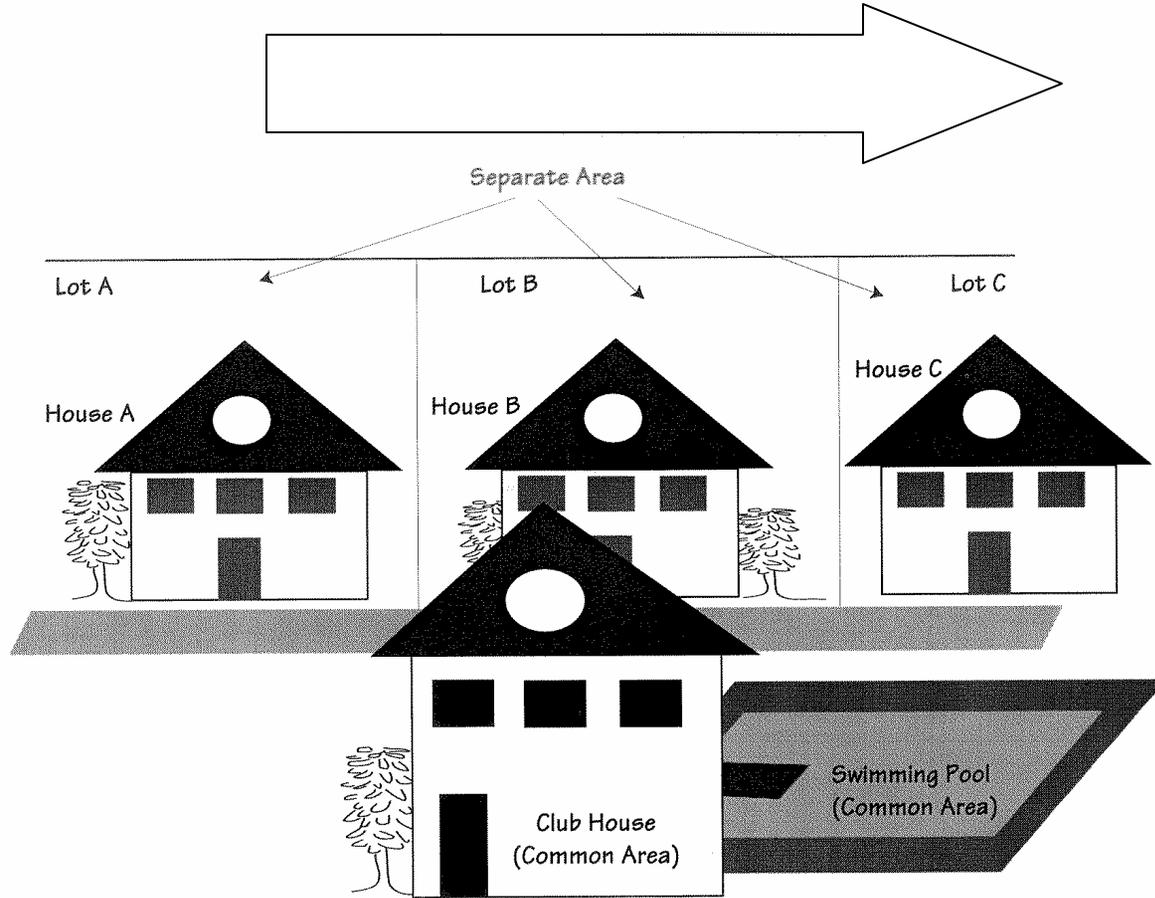
- Form of Ownership of real estate
- §514B-3, HRS "Condominium" means real estate, portions of which are designated for ***separate ownership*** and the remainder of which is designated for ***common ownership*** solely by the owners of those portions. Real estate is not a condominium unless the ***undivided interests*** in the common elements are vested in the unit owners.

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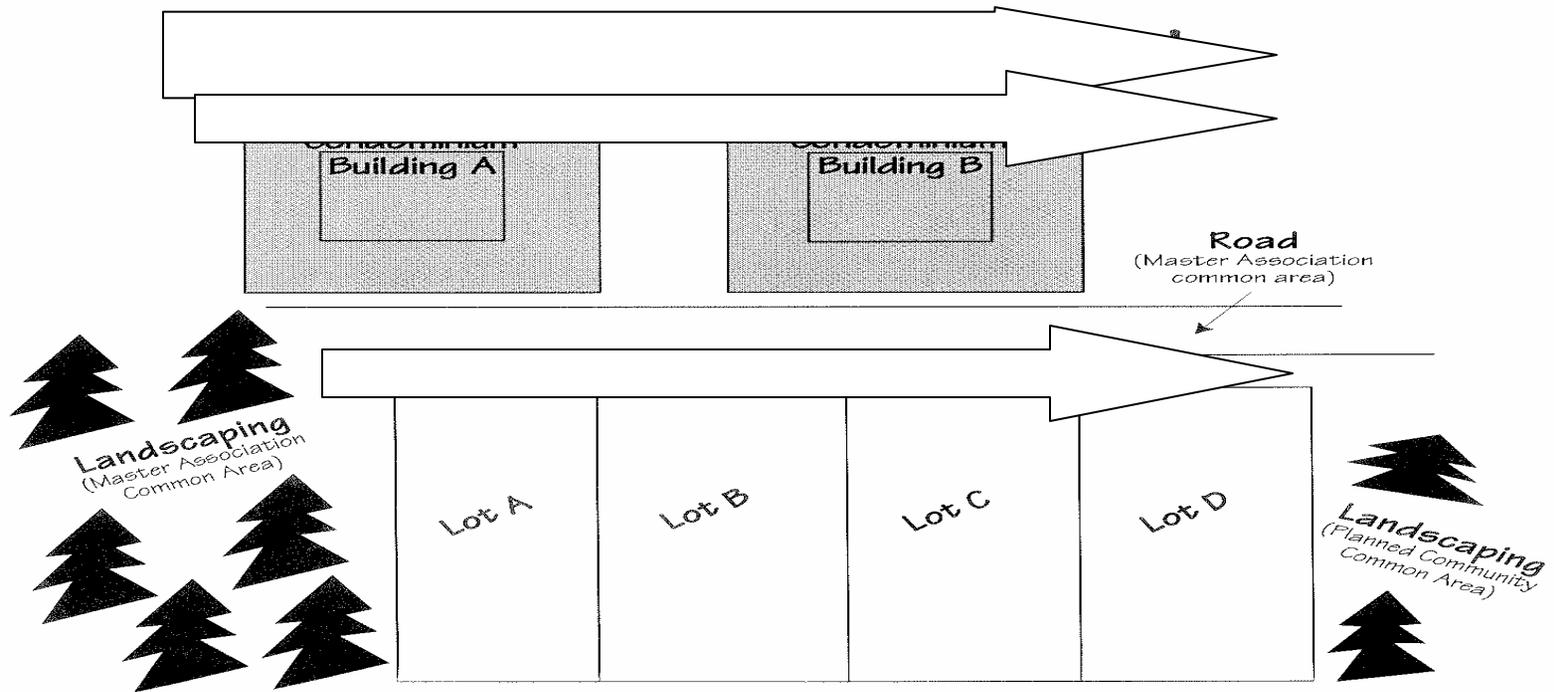


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New Condominium Law 514B, HRS



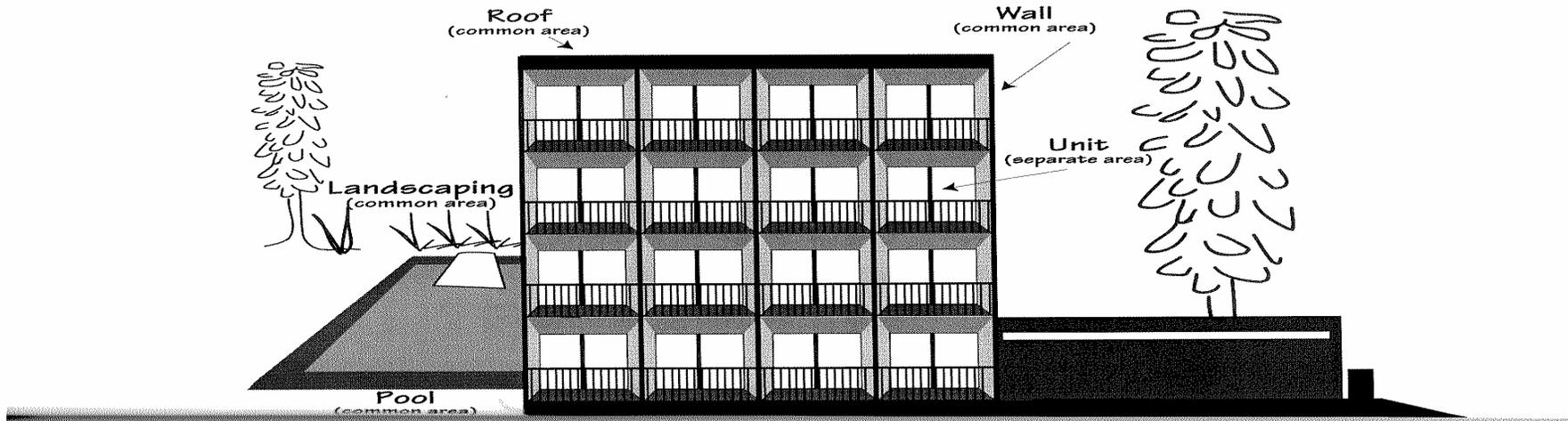
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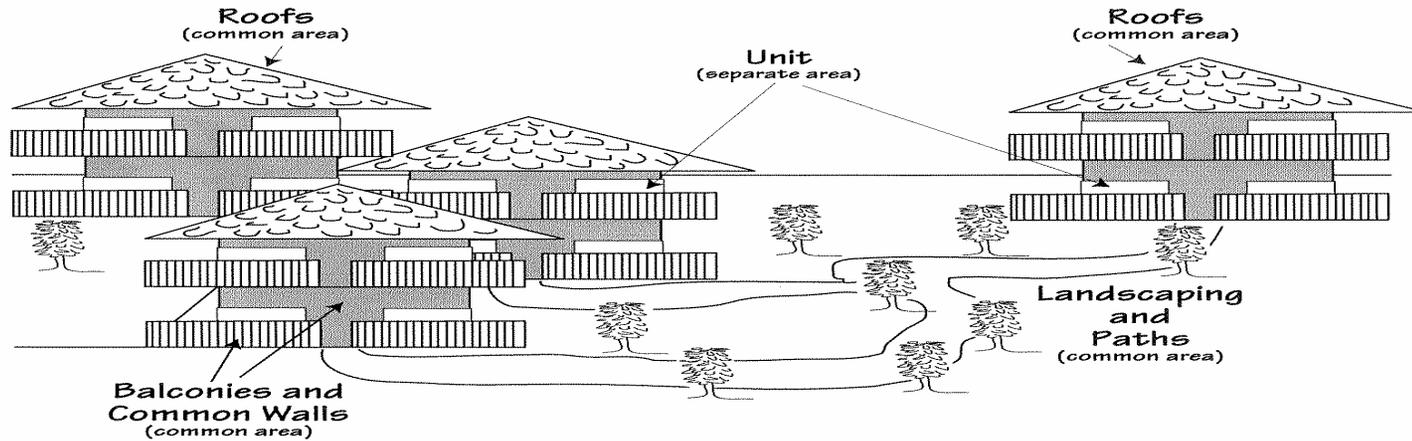
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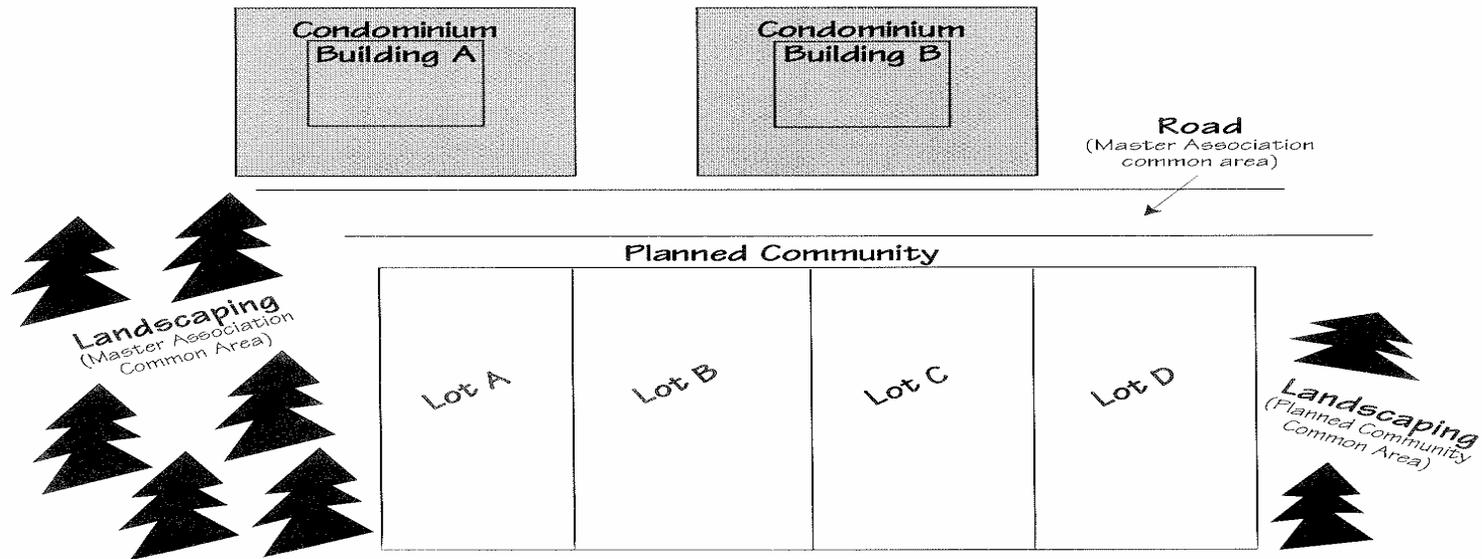
CONDOMINIUM (A)



CONDOMINIUM (B)

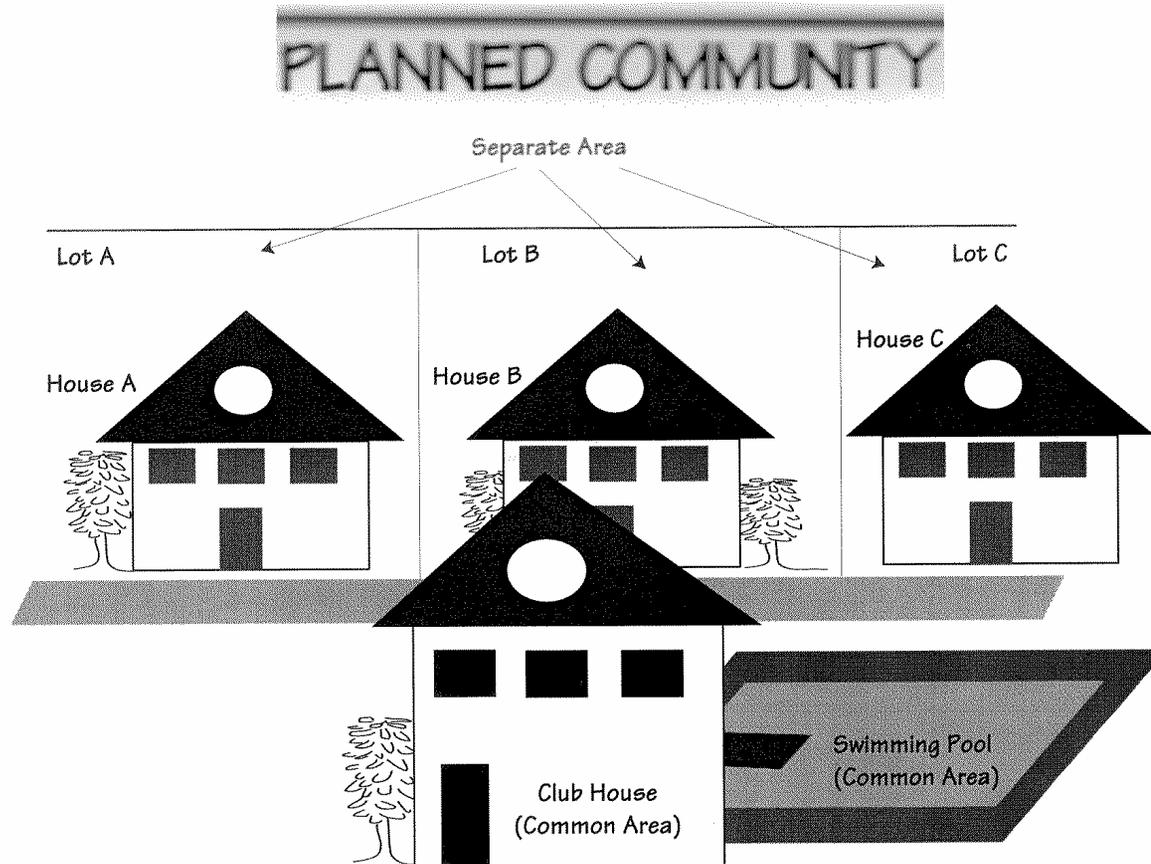


MASTER ASSOCIATION



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New Condominium Law 514B, HRS



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Misconceptions

- Real Estate Commission Enforces the Condominium Laws Including the Management Governance Provisions

–Reality

- Commission's authority is limited by the laws
- Basically Condominium Governance is self governance – owners supervise and oversee their boards and association

Misconceptions

- Real Estate Commission Approves Condominium Projects

– ***Reality***

- *Commission does not approve or disapprove condominium projects*
- *Developer's Disclosure Document*

- Real Estate Commission has authority over the whole Condominium Law

– ***Reality***

- *Has limited authority of 37 sections of 135 sections*
- *Of the 37 only 9 sections concern condominium association management (514A, HRS); only 7 sections in 514B, HRS*

Commission's Limited Authority Over Condominium Governance Areas

- Association Registration
- Managing Agents
- Management and contracts, developer, managing agent and association
- Association fiscal matters, handling and disbursement of funds
- Association records generally
- Association records to be maintained
- Association records, availability, disposal, prohibitions
- Developer's Public Reports – oversees registration

Mandatory Mediation

Issues / Disputes relating to:

- Association's Declaration
- Bylaws
- House Rules

Mandatory Arbitration Areas

- Interpretation, application or enforcement of
 - Association's Declaration
 - Bylaws
 - House Rules
 - Chapter 514B, HRS, Chapter 514A, HRS
- Dispute between one or more unit owners and association
 - Its board
 - Managing agent
 - One or more other unit owners

Condominium Dispute Resolution Hearings Before OAH Hearings Officer

- Pilot Program to end June 30, 2009
- Limited to :
 - Disputes not resolved by mediation
 - Board of directors of registered association
 - Unit owner or apartment owner of a registered association
 - Both parties must actually participate in mediation prior to filing with OAH, and
 - No more than 30 requests for hearing per year
- Filing fee \$25
- www.hawaii.gov/dcca/areas/oah

Complaints And Investigation About Commission's Limited Authority Areas Delegated To:

- Regulated Industries Complaints Office
 - Oahu 587-3222
 - Kauai 274-3200
 - Maui 243-5808
 - Hilo 933-8846
 - Kona 322-1908
 - <http://www.hawaii.gov/dcca/rico>

To Contact the Condominium Specialists

- Web address: www.hawaii.gov/hirec
- Email: hirec@dcca.hawaii.gov
- Telephone: (808) 586-2643 or toll free from the neighbor island of:
 - Kauai at 274-3141 ext. 62643
 - Maui at 984-2400 ext. 62643
 - Hawaii at 974-4000 ext. 62643

Legislature Recodified the Original Condominium Law (Ch. 514A, HRS) ...

- After directing the Commission to conduct a review of the original CPR law, formulate recommendations and develop draft legislation....since the original was
 - Well over 40 plus years old
 - Unorganized, obsolete in some areas, micromanaged associations
 - Overly regulatory, ignored technological changes
 - Constantly amended piecemeal resulting in:
 - Condominiums with varying governance documents
 - Older declarations and bylaws lack the benefits of new laws

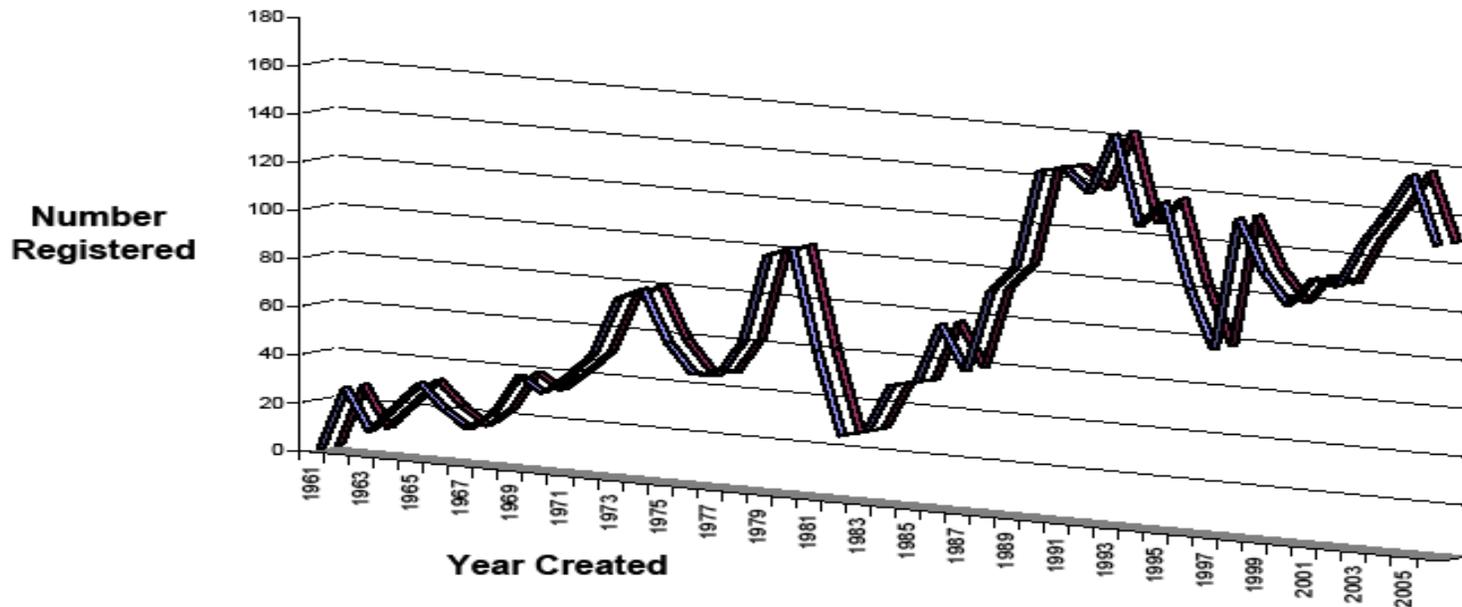
New Condominium Law 514B, HRS

Some Condominiums May Have Better Governance Provisions



To Illustrate Condominiums With Varying Governance Documents

**Registered Residential Condominium Projects By Year
Each With Its Own Declaration and Bylaws
Each Created Under Different Variations of 514A, HRS**



How the New Condominium Law Works

- A number of beneficial sections *subject to certain conditions* apply automatically to pre existing condominiums – those created before July 1, 2006
- Other beneficial sections of Chapter 514B, HRS, are not automatically applicable
 - Requires the vote or consent of the majority (51%) of the owners to adopt
- Some sections, although beneficial, may not apply at all because:
 - It invalidates/conflicts with existing provisions of the declaration, bylaws, condominium map, or other constituent documents of the condominium; and either
 - Invalidates a developer's reserved rights; or
 - Is an unreasonable impairment of contract

**Beneficial Sections Applying Automatically
*include . . .***

- §514B-3 Definitions (to the extent necessary to the interpretation of the following sections)
- §514B-4 Separate titles and taxation
- §514B-5 Conformance with county land use laws
- §514B-35 Unit boundaries

The Beneficial Sections Applying Automatically
Subject To include . . . continued

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

But The Automatic Application Applies Only

- To events and circumstances occurring on July 1, 2006 and thereafter;
 - For example, voting, amending the bylaws, electing directors on or after July 1, 2006
 - **And**
- The application does not conflict and invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents to the extent:
 - Such would invalidate developer's reserved rights; or
 - Is an unreasonable impairment of a unit owner's original purchase contract.

All Impairments Of Contracts Are Not All Unreasonable . . .

- Courts make the final interpretation
- ***Educated guesses*** of “a reasonable impairment” may be a new law changing:
 - The time period for giving notices of meetings, approving minutes
 - The way notices are sent out; regular mail replaced by email, fax
- Proponents of the non applicability of 514B provisions have the burden of proof

New Condominium Law

Governance Part VI Offer Benefits

- Levels the playing field for pre existing condominiums (those created prior to July 1, 2007)
- Declarations and bylaws become reflective of 21st Century management provisions
- Provides more clarity for common element and limited common element repairs, maintenance, upkeep
- More equitably allocates the cost for fixing common element property and individual unit owner damages

New Condominium Law 514B, HRS

New Condominium Law Governance

Part VI Offer Benefits. . . continued

- Provides Ways To Deal With Aging Condominiums
- Limits Associations Liabilities In Providing For Its “Elderly” Population
- Expands unit owners ability to transfer limited common elements to other owners
- Minimizes the red tape required to make nonmaterial alteration or additions to the common elements or units

New Condominium Law 514B, HRS

New Condominium Law Governance

Part VI Offer Benefits. . . continued

- Carries over and improves on the unit owners rights gained over the years
- Builds and improves on the governance lessons learned from the original law
- Expressly retains an owner's option to continue with the benefits and agreements of their original purchase contract
 - Contract Clause of the U.S. and State Constitution prohibits the government from passing laws that impair existing contracts

Beneficial Sections of Chapter 514B, HRS, Not Automatically Applicable

- **§514B-9** Requires associations, directors, owners, managing agents to carry out their respective duties and contracts imposed by the condominium law in good faith;
- **§514B-10** Requires the remedies provided by the new condominium law to be liberally administered; does not allow the award of punitive damage for any claim unless provided by the condominium law or rule; requires the governing document to be liberally construed to facilitate the operations and management of the condominium; allows the courts to enforce any right or obligation imposed by the condominium law;
- **§514B-32(11)** Requires the approval of at least 67% of the owners to amend the declaration (original law required 75%);

Beneficial Sections Of Chapter 514B, HRS, Not

Automatically Applicable *continued*

- **§514B-38** Subject to certain conditions as set forth in the declaration, allows owners to make minor additions to or alterations of the common elements for their exclusive use without obtaining 100% owner approval; same for changing open space or landscaped space to other uses does not require an amendment to the declaration
- **§514B-40** Allows owners to transfer or exchange a limited common element specifically assigned to another unit owner and record an amendment; previously limited to just parking stalls

Owner's Best Course of Action – Adopt 514B, HRS, by Majority Vote or Consent

- Takes advantage of the benefits of 514B, HRS
- Removes any doubt as to what provisions of 514B, HRS, applies
- Brings older and pre existing condominium governing documents into the 21st Century
- Forever keeps all condominium governing documents automatically updated with new laws as made each year
- Retains each owner's rights to oppose the automatic applicability of sections 514B, HRS

How To Adopt 514B, HRS

- Seek professional advice
 - Hawaii licensed attorneys versed in condominium matters
 - Managing agents
 - Others
- Obtain vote or written consent of a majority of the owners
 - Board or volunteer apartment owner's group can call special meeting to amend the **bylaws**
 - Review declarations and bylaws for the process and procedures
 - Amendments to **declarations** generally require 75% of all apartment owners
- Amend declaration, bylaws, condominium map or other constituent documents
- Record amendments to governing instruments

To Further Study the Issue

- Review the similarities and differences between your governing documents and Chapter 514B, HRS
- Use as a beginning study point this handout with its summary comparisons of selected sections of 514A, HRS and 514B, HRS (also available on the REB website)
- Seek the professional services and opinion of a Hawaii licensed attorney familiar with condominium law and documentation

**More About
The Automatic Application
Sections to Condominiums
in Existence
Prior to July 1, 2006
Provided . . .**

Selected Comparisons of 514A and 514B, HRS, Help To . . .

- Illustrates much of the 514A, HRS, the original law was
 - carried forward
 - improved upon
 - updated to include 21st Century developments
 - preserved; retained those rights of owners that were fought for over the last 40 plus years

Original vs New Law 514A, HRS vs 514B, HRS

- **§514A-3 Definitions**

- **Apartment**

- Any type of use or uses
- With exit to public street, highway, common element(s) leading to public street or highway

- **§514B-3 Definitions**

- **Unit**

- Any type of physical or spatial portion of the condominium
- With exit to public road or common element leading to public road
- Changed term from “apartment” to “unit”

**Original vs New Law
514A, HRS vs 514B, HRS . . . continued**

• **Apartment Owner**

- Person owning
 - Individually
 - Jointly
 - In common
 - Lessee per registered lease
 - Vendees under an Agreement of sale purchaser (subject to seller's security interests §514A-83)
 - Trustee of a trust
- Other legal entity

• **Unit Owner**

- Person owning
 - Individually
 - Jointly
 - In common
 - Lessee per registered lease
 - Vendees under an Agreement of sale purchaser (subject to seller's security interests §514B-107)
 - Trustee of a trust
- Other legal entity

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **Association of apartment owners**

- All apartment owners acting as group
- In accordance with declaration and bylaw

- **Association**

- Unit owner's association organized 514B-102 or
- under prior condominium property regime statutes
- Changed term from “association of apartment owners” to “association”

Original vs New Law 514A, HRS vs 514B, HRS . . . continued

- **Common elements**

- Unless otherwise provided in declaration means (8 listed groups)
 - Land, lease or in fee
 - Foundations, columns, girders, beams, supports
...
 - Basement, flat roof, yard, gardens, recreational facilities ...list goes on
 - . . . All other parts of the property necessary or convenient to its existence, maintenance, and safety or normally in common use

- **Common elements means**

- As used in this chapter, declaration and bylaws unless specifically provided otherwise or required by context:
 - all portions of condo other than units; and
 - any other interests in real estate subject to the declaration benefits unit owners

**Original vs New Law
514A, HRS vs 514B, HRS . . .**

Continued Common Elements

- **§514B-38 Amongst other provisions allows**
 - Each unit owner may use the common elements as permitted under the declaration, subject to owner's rights to amend the declaration to change use
 - Board without amending the declaration (subject to the provisions relating to solar energy devices):
 - Change open or landscaped common elements to other uses
 - Making minor changes to the common elements for the benefit of one owner that does not substantially impact the interest of other owners as the board determines

**Original vs New Law
514A, HRS vs 514B, HRS . . . continued**

• **Common expense
means and includes:**

- expenses of operation of the property; and
- designated common expenses pursuant to the condominium law, the declaration, or the bylaws
- reserves included in the definition of “operation of the property”

• **Common expenses
means**

- expenditures made by; or
- financial liabilities of the association for operation of the property
- *allocations to reserves* specifically provided as part of the definition

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **Common interests**

- Percentage of undivided interest in the common elements (expressed in the declaration); and
- Any specified percentage means such percentage of the undivided interest in the aggregate

- **Common interests**

- Percentage of undivided interest in the common elements (expressed in the declaration); and
- Any specified percentage means such percentage of the undivided interest in the aggregate

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **Common profits**

- Remaining balance of all income, rents, profits, and revenues from the common elements after deduction of the common expenses

- **Common profits**

- Remaining balance of all income, rents, profits, and revenues from the common elements *or other association owned property* after deduction of the common expenses

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **Condominium**

- Ownership of single units, with common element, located on property within the condominium property regime

- **Condominium**

- Real estate portion designated for separate ownership; and
- Remainder designated for common ownership solely by the owners of those portions
- Undivided interests in the common elements are vested in the unit owners

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **Declaration**

- Instrument by which the property is submitted to the Chapter (Condominium Property Act) and as from time to time amended

- **Declaration**

- Any instrument however denominated that creates a condominium including any amendment

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- Developer

- A person who undertakes to develop a real estate condominium project

- Developer

- A person who undertakes to develop a real estate condominium project; including
- A person who succeeds to the interest of the developer by acquiring a controlling interest in the developer

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **Development rights --Silent**

- **Development rights**

- Rights or combination of rights reserved by a developer in the declaration to:
- Add real estate to condominium
- Create units, common elements, or limited common element within a condominium
- Subdivide units, combine, or convert units into common elements
- Withdraw real estate from a condominium
- Merge projects or increments; or
- Otherwise alter the condominium

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- Limited common elements

- Common elements designated in the declaration as reserved for the use of a certain apartment(s) to the exclusion of other apartments; provided
- example include parking stalls, storage

- Limited common element

- A portion of the common elements designated by the declaration;
- or by section 514B-35 (unit boundaries) for the exclusive use of one or more but fewer than all of the units

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- Majority or majority of apartment owners
 - Owners of apartment to which are appurtenant more than 50% of common interests; and
 - Any specified percentage of the apartment owners mean the owners of apartment to which are appurtenant such percentage of common interests
- Majority or majority of *unit* owners
 - Owners of unit to which are appurtenant more than 50% of common interests; and
 - Any specified percentage of the unit owners mean the owners of units to which are appurtenant such percentage of common interests

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- Managing agent

- Any person employed or retained to manage the operation of the property

- “Master deed” or “master lease”

- Any deed or lease showing the person’s interest submitting the property to CPR

- Managing agent

- Any person retained, ***as an independent contractor***, for managing the operation of the property

- “Master deed” or “master lease”

- Any deed or lease showing the person’s interest submitting the property to CPR

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- Operation of the Property

- The administration, fiscal management, and physical operation of the property and includes maintenance, repair, and replacement of, and the making of any additions and improvements, to the common elements

- Operation of the Property

- The administration, fiscal management, and physical operation of the property and includes maintenance, repair, and replacement of, and the making of any additions and improvements, to the common elements

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- Person means

- Individual, firm, corporation, partnership, association, trust or other legal entity; or
- Any combination

- Person means

- Individual, firm, corporation, partnership, association, trust or other legal entity; or
- Any combination
- No change

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- Project

- A real estate condominium project; and
- Plan or project whereby a condominium of two or more apartments in the CPR are offered or proposed to be offered for sale

- Project

- A real estate condominium project;
- Plan or project whereby a condominium of two or more ***units*** in the CPR are ***created***

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **Property ...Includes**

- the land, contiguous or not and including more than one parcel located in the same vicinity, leasehold or fee , being submitted to the CPR
- the building's
- all improvements
- all structures thereon
- all easements, rights, appurtenances belonging thereto
- all personal property intended for use in connection therewith, being submitted or intended to be submitted to the regime established by this chapter

- **Property ...Includes**

- the land, contiguous or not and including more than one parcel located in the same vicinity, leasehold or fee, being submitted to the CPR,
- the building's
- all improvements
- all structures thereon
- all easements, rights, appurtenances belonging thereto
- all personal property intended for use in connection therewith, being submitted or intended to be submitted the regime established by this chapter
- ***parcels with or without upper or lower boundaries, and space that may be filled with air or water***

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- To record
 - Record in accordance with Chapter 502
 - Register in accordance with Chapter 501
- Record, recordation, recorded, or recording
 - Record in the bureau of conveyances in accordance with Chapter 502
 - Register in the land court in accordance with Chapter 501

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **Resident manager – Silent**

- **Unit -- Silent**

- **Resident manager**

- Any person retained as an employee to manage, on-site, the operation of the property

- **Unit**

- Any type of physical or Spatial Portion
- Designated for separate ownership or occupancy, boundaries of which are described in the declaration or pursuant to 514B-35 with exit to public road, or common element leading to public street or highway

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **514A-4 Status of Apartment**

- Each apartment with the common interest is real property
- may be conveyed, individually owned, sold . . .
- and interest are recordable

- **§514B-4 Separate Titles and Taxation**

- Reorganizes §514A-4, 5, 6 as §514B-4, HRS, with substantial same provisions
- Different only developer as only owner, taxes and assessment as provided by law

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **§514A-5 Ownership of apartments**

- Apartment owner is entitled to exclusive ownership and possession
- may be jointly or commonly owned by more than one person

- **§514B-4 Separate Titles and Taxation**

- Reorganizes §514A-4, 5, 6 as §514B-4, HRS, with substantially same provisions
- Different only developer as only owner, taxes and assessment as provided by law

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **§514A-15 Common profits and expenses**

- Limited common elements costs and expenses are charged to the limited common element owner
- Common profits are distributed among; and
- Common expenses are charged to the apartment owners

- **§514B- 41 (c) Common profits and expenses**

- Board can determine that a separate limited common element expense a common expense
- Justification must be determined that the extra cost to separately account is not justified

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **§514A-19 Merger of Increments**
 - Two or more condominium projects, part of the same incremental development plan in the same vicinity may be merged together
 - To permit the joint use of the common elements of the project
 - May provide for one single association, sharing of common expenses
- **§514B-46 Merger of Projects or Increments**
- Substantially similar provisions; **different only in**
 - Allows for the non merger of the common elements
 - conditions for implementing a merger
 - vote or consent per the declaration, reserved rights in the dec, or upon vote of 67% of the common interest

New Condominium Law 514B, HRS

Original vs New Law

514A, HRS vs 514B, HRS . . . continued

- **§514A-131
Condominium
management
education fund**

- Requires the Real Estate Commission to establish a condominium management education fund to be used for educational purposes

- **§514B-71
Condominium
education trust fund**

- Substantially same provisions
- Different in designating the previous "condominium management education fund" as the "Condominium education trust fund"

Highlights of Selected Provisions of Part VI, 514B HRS

*Management of Condominiums
Automatic*

*Application To Pre Existing
Condominiums Created Before
July 1, 2006*

Association Registration §514A-95.1 vs §514B-103

- **Requires condominium project or assn with six or more apartments to:**
 - Secure a fidelity bond \$500 multiplied by the number of apartments
 - Not less than \$20,000 nor greater than \$100,000
 - To cover all officers, directors, employees, and managing agent of the assn who handle, control, or have custody of the funds
- **Substantially the same provisions as 514A-95.1. Different only:**
 - Increases the maximum amount of the fidelity bond to \$200,000 up from \$100,000
 - Insurance coverage include “persons, including the managing agent and its *employees who control or disburse funds of the assn*”

Amendments to Governing Documents

- **Declarations §514A-11 (11)** vote or written consent of 75% of all apartment owners
 - Applies to all condominiums existing as of May 22, 1991
- **Declarations §514B-32(a)(11)** approval of the owners of at least 67% of the common interest
- **Bylaws §514A-82 (b)(2)** vote or written consent of 65% of all apartment owners
 - Applies to all condominiums existing as of January 1, 1988
- **Bylaws §514B-108 (e)** require the vote or written consent of at least 67% of all unit owners

Amendments By Volunteer Owners Group

- **§514A-82 (b)(2)(B)**
 - petition signed by not less than 25% of apartment owners
 - proposed bylaw and rationale shall be mailed within 30 days of receipt of the petition
 - vote or written consent must be obtained within 365 days after mailing
 - precludes the submittal of a similar bylaw proposal within a year
 - allows an apartment owner or volunteer apartment owner's committee to propose a bylaw amendment at any annual association meeting
- **§514B-108 (e)**
 - Except for the requirement that bylaws may be amended by the vote or written consent of at least 67% per cent of all unit owners, remaining provisions are substantially the same as provided in 514A-082(b)(2)

Assessments For Common Expenses

- **Board makes assessments based on an adopted annual budget - §514A-83.6**
 - Distribute or make available to apartment owners at least annually (30 days before annual meeting §16-107-74,HAR)
 - Not exceed its total operating budget by 20% except for emergency situations
- **Common expenses** shall be charged to the apartment owners including the developer in proportion to the common interest §514A-15
- **Board shall make assessments based on an adopted budget - §514B-144 (a)**
 - Distribute or make available to unit owners at least annually (30 days before annual meeting §16-107-74,HAR);
 - Not exceed its total operating budget by 20% except for emergency situations, ***or approval of the majority of the unit owners*** §514B-148 (e)
- **Common expenses** shall be assessed against all units in accordance with the allocation and common interest as provided in 514B-41 (§514B-144)

Assessments For Common Expenses . . .

continued

- **Past due common expense assessment – Silent**
- **Assessments to pay a judgment -- Silent**
- **Past due common expense assessment** bears interest at the rate established by the association but shall not exceed 18%
- **Assessments to pay a judgment** shall be made against the units in the condominium when the judgment was entered in proportion to the common expense allocations of 514B-144(c).

Assessments For Common Expenses . . .

continued

- assn may assess common expense exclusively – **Silent**
- reallocated common expense shall be recalculated -- **Silent**
- assn may assess common expense exclusively against the owner who caused the expense due to misconduct
- reallocated common expense shall be recalculated in accordance with the reallocated common expense liabilities

Assessments For Common Expenses . . .

continued

- “Regular monthly common assessments” -- **Silent**
- “Regular monthly common assessments” does not include:
 - Any other special assessment, except for special assessment imposed on all units as part of the budget
 - Late charges, fines, or penalties
 - Any lien arising out of the assessment; or
 - Any fees or costs related to the collection or enforcement of the assessment, including attorneys’ fees and court costs §514B-146 (c)

Assessments For Limited Common Element Expenses . . .

- Limited common element expenses separately assessed to owner
- *Limited common expenses may be assessed to all -- Silent*
- Limited common element expenses separately assessed to owner
- *Limited common expenses may be assessed to all owners if extra cost to separately assess not justified §514B-41 (c)*

More on Limited Common Elements

- **Parking stall §514A-14, 514A-14.5**
 - Specifically belongs or designated to the residential apartment (constructed after April 29, 1986)
 - Can transfer parking stalls between owners and record amendment
- **Parking stall §514B-40, 514B-39**
 - Expanded ability to transfer limited common elements between owners to more than parking stalls
 - **Note:** Parking stall may not specifically belong to a specific residential apartment – county requirements control

More on **Limited Common Elements**

- **Mailboxes**

- Specifically provides for mailboxes for each dwelling unit built or converted after May 18, 1984

- **Metering of utilities**

- Provides for separate metering of utilities in mixed use condos

- **Mailboxes**

- Silent on subject of mailboxes; county requirements apply

- **Metering of utilities**

- Appears to allow all condos to meter utilities as provided in declarations and bylaws

More on Limited Common Elements

- Limited common element amendments
 - Require consent of the owner or owners of the unit or units to which the limited common elements are reserved (§514A-3)
- Limited common element amendments
 - Require consent of the owner or owners of the unit or units to which the limited common elements are *appurtenant* (§514B-39)

Assessments Unpaid Become

- **§514A-90**
- Lien on the apartment
- Common expenses collectible from all unit owners except
 - Subsequent purchaser of delinquent unit from a mortgage holder obligated to pay up to \$1800 §514A-90
- Allows association alternatives to foreclosure with proper notices termination of access to common elements and termination of normal services (applies to owner occupied unit)
 - At a special or annual mtg majority of owners must approve written policy for termination of services
- **§514B-146**
- Lien on the unit
- Common expenses collectible from all unit owners except
 - Subsequent purchaser of delinquent unit from a mortgagee obligated to pay up to \$1800 §514B-146 (6 months limited priority lien)
- Allows association alternatives to foreclosure with proper notices termination of access to common elements and termination of normal services (applies to owner occupied unit)
 - At a special or annual mtg majority of owners must approve written policy for termination of services

Assessments Unpaid Owners Rights

- §514A-90 (c) and (d)
 - Requires disputing unit owner to first pay unpaid assessments
 - Can ask for a written statement of the assessments specifics
 - Can file in small claim court or require association to mediate; unresolved mediation can be arbitrated
- §514B-146 (c) and (d)
 - Requires disputing unit owner to first pay unpaid assessments
 - Can ask for a written statement of the assessments specifics
 - Can file in small claim court or require association to mediate; unresolved mediation can be arbitrated

Association Records Availability

- **§514A-83.5**
- The 514B related records section is a carry over of 514A provisions. Different in part:
 - Specifically provides the records be made available to unit owner's agents
 - Membership lists are property of the association and
 - Any managing agent's or resident manager's records which include any membership list and any use and distribution by the managing agent requires the prior approval of the board
- **§514B-152, 514B-153, 514B-154**
 - Be made reasonably available for examination by unit owner and agents
 - Stored on island condominium is located
 - Original records including invoices can be kept off island but copies shall be on island
 - Records and vouchers authorizing the payments and statements shall be kept and maintained at the address of the project or elsewhere within the state as the board determines

Association Records Availability Continued . . .

- Current financial statement and minutes of board's meeting, once approved, shall be provided to an interested owner at no cost or on 24 hours loan
- Minutes of meetings of the board and association for the current and prior year shall be available for examination within 15 days of request; copy provided; owner to pay cost of duplication and postage

Association Records Availability

Continued . . .

- Financial statements, general ledgers, accounts receivable, payable, check ledgers, insurance policies, contract and invoice of the association shall be available to condominium owners for the duration the records are kept by the association, subject to the owners providing an affidavit, payment of costs, etc.
- After association meeting, owners can examine proxies, tally sheets, ballots, owners' check-in lists, certificate of elections within 30 days

Association Records Availability

Continued . . .

- Managing agent, employee of association or designated board member required to provide copies of the requested records upon payment of reasonable fees
 - **included duplicating and administrative costs cannot exceed \$1 per page or portion thereof, except for pages exceeding 8½ x 14 inches**
- Owners may file written request to examine other documents with the board
- Association may comply with a request for information at the option of each unit owner by providing downloading through an **internet site**

Charging For Costs of Providing Information . . .

- **§514-92.5 Association, managing agent, or employees or agents can charge for providing apartment owner for legal or other information when it:**
 - Gives the apartment owner at least 10 days prior written notice of the costs of providing the information prior to incurring the costs
 - prior notice not required on delinquent assessment or enforcement of governing documents)
 - Apartment owner after being notified of the cost may withdraw request without charge
- **§514B-105 (d) Substantially the same provisions except costs are designated as “reasonable costs”**

Association Records Membership List

- Requires managing agent, resident manager, or board to keep accurate and current list of members of the association
- Available at cost to any member submitting an affidavit for purposes of soliciting votes or proxies or for providing information to other owners about association matters

Association Records Membership List

continued ...

- Membership lists are property of the association
- Any managing agent's or resident manager's records which include any membership list and any use and distribution by the managing agent requires the prior approval of the board
- Managing agent or resident manager prohibited from creating any separate list for purpose of evading the law

Managing Agents--Fiduciaries With Respect To Managed Property

- **§514A-95 Managing Agents Required to:**

- Be a currently licensed real estate broker or
- Authorized Trust Company under article 8 Chapter 412, HRS
- Register with the Real Estate Commission
 - Active licensed real estate brokers exempt from registration;

- **§514B-132 Managing Agents Required to:**

- Be a currently licensed real estate broker **or**
- Authorized Trust Company under article 8 Chapter 412, HRS
- Register with the Real Estate Commission
 - Active licensed real estate brokers exempt from registration;

Managing Agents Required to . . . Continued

- Obtain and keep current a fidelity bond in amounts not less than \$20,000 nor greater than \$100,000;
- Act promptly and diligently to recover from the fidelity bond for employees fraud or dishonesty
- Obtain and keep current a fidelity bond in amounts not less than **\$20,000** nor greater than **\$500,000**
- Act promptly and diligently to recover from the fidelity bond for employees fraud or dishonesty
- ***Distribute any commission-generated information, documents of the association, its board, or units owners, at the association's costs***

Managing Agent Duties Include --Keeping

- At its office accurate copy of:
 - declaration, bylaws, any house rules,
 - any master lease, sample original conveyance document,
 - all developer's public reports including amendments (§514-84.5)
- Detailed, accurate records, in chronological order of common element receipts and expenditures (§514A-85)
- Monthly statements indicating current delinquent amount of any unpaid assessments (§514A-85)
- At its office accurate copy of:
 - declaration, bylaws, any house rules,
 - any master lease, sample original conveyance document,
 - all developer's public reports including amendments
- Detailed, accurate records, in chronological order of common element receipts and expenditures
- Monthly statements indicating current delinquent amount of any unpaid assessments (§514B-153, §514B-154)

Managing Agent Duties Include --Keeping

- Written contract for managing the operation of the property expressing exact agreements of including:
 - Financial and accounting obligations
 - Services provided
 - Compensation (§514A-84)
 - Current list of members of the association with current addresses, names and addresses of agreement of sale vendees (§514A-83.3)
- Written contract for managing the operation of the property expressing exact agreements of including:
 - Financial and accounting obligations
 - Services provided
 - Compensation (§514B-153)
 - Current list of members of the association with current addresses, names and addresses of agreement of sale vendees (§514B-153)

New Condominium Law 514B HRS

Managing Agent Duties

Include – Keeping . . . Continued

- Provide owners, prospective purchasers and their prospective agents copies of association records that are required by law to be maintained
 - subject to payment of reasonable administrative charges
 - includes resale information and disclosures

Minutes

- **Meeting minutes §514A-83.4**
- **Board and association of apartment owners minutes:**
 - Available within 7 calendar days after approval
 - Approved at next succeeding meeting
 - Board minutes approved no later than second succeeding meeting
 - Unapproved final drafts available within 60 days
- **Association minutes §514B-122:**
 - Available within 7 calendar days after approval; (approved at next succeeding meeting ***or by the board within 60 days if authorized by owners at the annual meeting***)
 - ***Board approved minutes available within 30 days, owners given copies or notified of availability***
 - ***unapproved 60 days***
 - ***Allows owners to offer corrections to minutes at the meeting***

Minutes. ■ ■ Continued

- §514B-126
- **Board minutes (except executive session):**
 - Available within 7 calendar days after approval
 - approved no later than second succeeding regular meeting
 - Unapproved 60 days

Meetings

- **Association meetings §514A-82 (a)(2), (12), (17), (b)(1),(b)(2)(B),(b)(3):**
 - Bylaws provide method of calling meeting, what percentage constitutes a quorum if other than majority what percentage consistent with the law binds decision on all owners
 - First meeting held not later than 180 days after recordation of the first sale provided 40% sold and recorded; if 40% not sold, annual meeting called with 10% requesting a meeting
 - Conducted in accordance with Robert's Rules of Order
- **Association meetings 514B-121**
 - Explicitly requires association meeting shall be once a year
 - Allows a special meeting to be called by the president, majority of board, or by petition to the secretary or managing agent signed by not less than 25% of unit owners
 - Allows the owners to call for a special meeting by petition and send out notices if association does not send out the notices
 - Conducted in accordance with Robert's Rules of Order

Association Meetings continued . . .

- Held at the address of the condominium project or elsewhere in the State determined by the board
- Anyone of the board can be removed and successor then elected for the remainder of the term; removal requires majority
- Board or volunteer apartment owner's committee can propose bylaw amendment
- Notices of assn meetings or special meeting shall be sent 14 days prior to the meeting
- Held at the address of the condominium project or elsewhere in the State determined by the board
 - In case of natural disaster can meet outside the State
- Notices of assn meetings or special meeting shall be sent 14 days prior to the meeting
 - Permits the secretary or other association officer to give notice of an association meeting notice **by email** at the option of the owner (written)

Association Meetings continued . . .

- **Requires notices of association meeting contain:**
 - Date, time, and place of the meeting
 - Items on the agenda for the meeting; and
 - Standard proxy form authorized by the association if any
 - Removal of directors shall be scheduled, noticed and conducted in accordance with the bylaws
- **Requires notice of any meeting to state the:**
 - date, time, and meeting place
 - Items on the agenda
 - *Including the general nature and rationale of any proposed amendment to the declaration or bylaws*
 - Any proposal to remove a board member
 - Does not preclude unit owner from proposing any amendment to the declaration or bylaw or to remove a member of the board at any annual meeting

Board Meetings

- **514A-83.1:**

- Except for executive session open to all members
- Unless prohibited in the declaration and bylaws, board meeting may be conducted by any means allowing simultaneous hearing by all board members (i.e. telephone/video conference call)

- **514B-125:**

- Except for executive session open to all members
- Unless prohibited in the declaration and bylaws, board meeting may be conducted by any means allowing simultaneous hearing by all board members (i.e. telephone/video conference call)
- Provides for a definition of “Conflict of interest” prohibiting a director from voting
- *"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association,* 2006

Executive Session

... majority of the quorum may adjourn into, nature of business must first be announced

- §514A-83.1 executive session grounds:
 - personnel
 - litigation

- §514B-125 executive session grounds expanded to cover:
 - personnel
 - litigation
 - necessary to protect the attorney-client privilege
 - necessary to protect the interest of the association while negotiating contracts, leases, and other commercial transactions

Director's Duty

- 514A-82.4 Duty of Directors
 - Owes the association of apartment owners a fiduciary duty in the performance of their responsibilities
- §514B-106 Director's Duty. Members of the board and officers owe association a **fiduciary duty** and the degree of care and loyalty required of officers and directors of nonprofit corporations including:
 - Good faith
 - Care of ordinary prudent person
 - Best interest of the association
 - Reliance on information, opinions, reports, financial statements, etc., prepared by experts
 - Making available a copy of the budget to all unit owners within 30 days of adoption of any proposed budget (current before annual meeting)

Board Election and Removal

- At regular or special meeting of the association (**§514A-82(b)(1)**)
 - By vote of majority of the apartment owners
 - Done in accordance with by law requirements
 - Done at a special meeting called by the:
 - President; or
 - By petition of not less than 25% of the apartment owners
 - With scheduling and notice pursuant to the bylaws
 - Removal can also be done at any annual association meeting
- At regular or special meeting of the association (**§514B-106(f)**)
 - By vote of majority of the unit owners
 - Done in accordance with by law requirements
 - Done at a special meeting called by the:
 - President
 - *Majority of the Board or*
 - By petition of not less than 25% of the unit owners
 - With 14 days prior notice of any meeting
 - Removal can also be done at any annual association meeting

Running for the Board

Statement of Qualification

- §514A-82(b)(4)
 - Statement of owner's qualifications to serve on the board and reasons wanting to receive proxies shall not exceed 100 words
- **§514B-123 (h)(1)**
 - **One page 8 ½ x 11** statement of owner's qualifications to serve on the board or reasons for receiving proxies
 - Unit owner may vote using a proxy by mail or electronic transmission
 - Allow the bylaws to provide for cumulative voting

New Condominium Law 514B, 1988 **Pets**

- **§514A-82.5, §514A-82.6 Pets**
 - Allowed if bylaws permit, is silent no specific provision disallowing;
 - When bylaws amended to prohibit keeping pets, owners can continue to keep the pet acquired before the amendment made (replace pets too);
 - Tenants can keep pets where owners can subject to certain conditions;
 - Reasonable restrictions are allowed; must apply equally to owners and tenants

- **§514B-156 Pets**
 - Allowed if bylaws permit, is silent no specific provision disallowing
 - When bylaws amended to prohibit keeping pets, owners can continue to keep the pet acquired before the amendment made (replace pets too)
 - Tenants can keep pets where owners can subject to certain conditions
 - Reasonable restrictions are allowed; must apply equally to owners and tenants
 - *Association may immediately act to remove vicious animals to protect persons or property*

House Rules

- **§514A-82 (a)(9)
Administrative
Rules**
 - House rules generally regulate common elements use and operations
- **§514B-105 (b)
Association's Rules**
 - House rules may regulate use and behavior inside unit if impacts on declaration, bylaws, other units, insurance underwriting

Fines, Late Fees, Interest

- **§514A-82 (a)(18) Bylaws shall provide at least. ...:**
 - Penalties for violations of covenants, conditions, or restrictions as set forth in:
 - Declaration, bylaws, administrative rules
 - Method of determining violations
 - Manner of enforcing penalties, if any
- **§514B-104 Subject to declaration and bylaws and limitations in §514B-105, the association may:**
 - Per association's bylaws, impose charges, penalties (late fees and interest) for late payment of assessments and
 - Levy fines for violations bylaws, rules, and regulations

Fines, Late Fees, Interest ... Continued

- **Bylaws silent**, then by resolution establish fining procedure -- **Silent**
- **Bylaws silent**, then by resolution establish fining procedure allowing for an appeal to the board with notice and opportunity to be heard
 - Where fines is paid unit owner has the right to initiate dispute resolution process or may file a request for administrative hearing under DCCA's pilot program

Mandatory Mediation

- **§514A-121.5 Mediation** mandatory when an apartment owner or the board requests mediation of disputes involving interpretation or enforcement of the association of apartment owner's:
 - Declaration
 - Bylaws, or
 - House rules
- **§514B-161 Mediation** mandatory when an apartment owner or the board requests mediation of disputes involving interpretation or enforcement of the association of apartment owner's:
 - Declaration
 - Bylaws, or
 - House rules

Insurance

- **§514A-86 Insurance for the common elements**
 - **Reference to Property insurance – Silent.**
Required only fire in amounts to provide repair or replacement of common elements, and walls, floors, ceilings in accordance with as-built condominium plans
 - **Commercial general liability -- Silent**
- **§514B-143 Association Insurance.** Unless the declaration or bylaws provide otherwise, associations shall purchase and maintain:
 - **Property insurance** on the common elements; special form causes of loss, for not less than the full insurable replacement cost, less deductible, and increased costs of construction due to building code requirements
 - **Commercial general liability** insurance against claims and liabilities in connection with ownership, management (minimum amount \$1,000,000)

Insurance **continued**

- **Fidelity bond – substantially same requirement except for amount of coverage**
 - **Directors and officers liability – optional**
 - **Flood Insurance -- substantially same requirement**
 - **Other insurance -- silent**
- **Fidelity bond** (assn with more than 5 dwelling units) covering persons handling the funds, including managing agent
 - **Directors and officers liability** coverage limited by the declaration or bylaws
 - **Flood Insurance** if property is in special flood hazard area
 - Other insurance as required by the declaration, bylaws, or the board

Insurance continued

- **Owner's insurance for own apartment** – right of each apartment owner to insure
- **Unit owner's insurance.** The board with the vote or written consent of a majority of the owners may require unit owners to:
 - Obtain reasonable types and levels of insurance not covered by the association's insurance
 - Reimburse the association for insurance premium where the unit owner refuses to obtain the insurance

Insurance continued

- **Deductible for damage to unit or common elements -- Silent**
- **Deductible for damage to unit or common elements... board may:**
 - Pay the deductible as a common expense
 - Assess the deductible amount against the owner who caused the damage or from units the damage or cause of loss originated after notice and hearing
 - Require unit owners of units affect to pay deductible amount (§514B-143 (d))

Aging In Place

- **Aging in Place 514A-- Silent**
- **§514B-142 Aging in Place.** Without legal responsibility or liability, a board can act upon a report, observation, or complaint relating to an elderly (62 years and older) unit owner aging or aging in place and can:
 - Request a functional assessment of the condition of an elderly unit owner
 - Request recommendations for the services such may require to maintain a level of independence to continue to live in the condominium

Aging In Place . . . Continued

- No affirmative duty to make requests
- Assess problems relating to aging in place including inability to clean and maintain unit, mental confusion, abusing others, inability to care for one self; loneliness and neglect; inappropriate request of others for assistance

High Risk Components

- **Upkeep of condominium; high risk components -- Silent**
- **§514B-138 Upkeep of condominium; high risk components.** Board may determine after notice and opportunity to all unit owners for comment:
 - Determine certain portions of the units, objects, or appliance within the units, i.e. washing machine hoses, water heaters, pose a risk of damage to other units if not properly maintained, repaired or replace as “high risks components”

High Risk Components . . .

- Continued
- Require inspection and replacement at specified intervals whether or not component is defective or deteriorated
- Repair or replace the high risk components if owners fail to do so, the costs and expenses to be a lien on the unit; may enter unit to perform the repairs, replacement etc.

Liability

- **Tort and contract liability -- Silent**
- **§514B-141 Tort and contract liability, tolling of limitation period**
 - Actions arising out of the condition or use of the common elements, may be maintained only against the association not any unit owner
 - Association's right of action against a developer is tolled until the period of developer control terminates

New Condominium Act, §514B, FPO

Judicial Power To Excuse Compliance

- **Circuit Court's** may excuse certain provision -- **Silent**
- **§514B-111 Circuit Court's** may excuse certain provision in a declaration or bylaw if the provision unreasonably interferes with the association's ability to:
 - manage the common property
 - administer the condominium property regime
 - or carry out any other function set forth in the declaration or bylaws
 - and compliance is not necessary to protect the interests of the members or lenders
 - (require notice to owners of the court hearing)

Judicial Power To Excuse Compliance . . .

continued

- Certain provisions include
 - Assessment amount
 - Lender approval of amendment
 - 67% to amend the bylaws subject to certain provisions
 - Requirement that an amendment to the declaration be signed by unit owners
 - Quorum requirement for meetings of unit owners

In Conclusion Your Homework

- Conduct Further Study
- Review your association's declarations, bylaws, house rules and other governing documents
- Consider Adopting Chapter 514B, HRS