
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I.

2 SECTION 1. In 1961, Hawaii became the first state to pass a law
3 enabling the creation of condominiums.

4 The 1961 "Horizontal Property Regime" law consisted of thirty-three
5 sections covering a little more than three pages in the Revised Laws of
6 Hawaii. Since that time, the law has been amended constantly. Presently,
7 Hawaii's "Condominium Property Regime" law, chapter 514A, Hawaii Revised
8 Statutes, consists of over one hundred sections taking up over fifty pages.
9 As noted by the legislature in Act 213, Session Laws of Hawaii 2000, "[t]he
10 present law is the result of numerous amendments enacted over the years made
11 in a piecemeal fashion and with little regard to the law as a whole."

12 In 2000, the legislature recognized that "[Hawaii's] condominium
13 property regimes law is unorganized, inconsistent, and obsolete in some
14 areas, and micromanages condominium associations. The law is also overly
15 regulatory, hinders development, and ignores technological changes and the
16 present day development process." (Act 213, Session Laws of Hawaii 2000)

17 Consequently, the legislature directed the real estate commission
18 (commission) to conduct a review of Hawaii's condominium property regimes
19 law, make findings and recommendations for recodification of the law, and
20 develop draft legislation consistent with its review and recommendations for
21 submission to the legislature. This Act is the result of the commission's
22 three-year effort to recodify Hawaii's condominium law. The commission's
23 "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii
24 Revised Statutes (Condominium Property Regimes), in response to Act 213,
25 Section 4 (SLH 2000)", dated December 31, 2003, should be used as an aid in
26 understanding and interpreting this Act. The report may be viewed
27 electronically at <http://www.hawaii.gov/dcca/reports> or on the commission's
28 website at <http://www.hawaii.gov/hirec>.

29 The purpose of this part is to "update, clarify, organize, deregulate,
30 and provide for consistency and ease of use of the condominium property
31 regimes law", as directed by Act 213, Session Laws of Hawaii 2000.

32 SECTION 2. The Hawaii Revised Statutes is amended by adding a new
33 chapter to be appropriately designated and to read as follows:

34 "CHAPTER

35 CONDOMINIUMS

36 PART I. GENERAL PROVISIONS

37 § -1 **Short title.** This chapter may be cited as the Condominium
38 Property Act.

39 § -2 **Applicability.** Applicability of this chapter is governed by
40 part II.

2004 SB2210 CD1 (+ reserved)

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1 § -3 **Definitions.** As used in this chapter and in the declaration
2 and bylaws, unless specifically provided otherwise or required by the
3 context:

4 "Affiliate of a developer" means a person that directly or indirectly
5 controls, is controlled by, or is under common control with, the developer.

6 "Association" means the unit owners' association organized under
7 section -102.

8 "Board" or "board of directors" means the body, regardless of name,
9 designated in the declaration or bylaws to act on behalf of the association.

10 "Commission" means the real estate commission of the State.

11 "Common elements" means:

- 12 (1) All portions of a condominium other than the units; and
13 (2) Any other interests in real estate for the benefit of unit owners
14 that are subject to the declaration.

15 "Common expenses" means expenditures made by, or financial liabilities
16 of, the association for operation of the property, and shall include any
17 allocations to reserves.

18 "Common interest" means the percentage of undivided interest in the
19 common elements appurtenant to each unit, as expressed in the declaration,
20 and any specified percentage of the common interest means such percentage of
21 the undivided interests in the aggregate.

22 "Common profits" means the balance of all income, rents, profits, and
23 revenues from the common elements or other property owned by the association
24 remaining after the deduction of the common expenses.

25 "Completion of construction" means the earliest of:

- 26 (1) The issuance of a certificate of occupancy for the unit;
27 (2) The date of completion for the project, or the phase of the
28 project that includes the unit, as defined in section 507-43;
29 (3) The recordation of the "as built" amendment to the declaration
30 that includes the unit;
31 (4) The issuance of the architect's certificate of substantial
32 completion for the project, or the phase of the project that
33 includes the unit; or
34 (5) The date the unit is completed so as to permit normal occupancy.

35 "Condominium" means real estate, portions of which are designated for
36 separate ownership and the remainder of which is designated for common
37 ownership solely by the owners of those portions. Real estate is not a
38 condominium unless the undivided interests in the common elements are vested
39 in the unit owners.

40 "Condominium map" means a map or plan of the building or buildings
41 containing the information required by section -33.

42 "Converted" or "conversion" means the submission of a structure to a
43 condominium property regime more than twelve months after the completion of
44 construction; provided that structures used as sales offices or models for a
45 project and later submitted to a condominium property regime shall not be
46 considered to be converted structures.

1 "Declaration" means any instrument, however denominated, that creates a
2 condominium, including any amendments to the instrument.

3 "Developer" means a person who undertakes to develop a real estate
4 condominium project, including a person who succeeds to the interest of the
5 developer by acquiring a controlling interest in the developer or in the
6 project.

7 "Development rights" means any right or combination of rights reserved
8 by a developer in the declaration to:

- 9 (1) Add real estate to a condominium;
- 10 (2) Create units, common elements, or limited common elements within
11 a condominium;
- 12 (3) Subdivide units, combine units, or convert units into common
13 elements;
- 14 (4) Withdraw real estate from a condominium;
- 15 (5) Merge projects or increments of a project; or
- 16 (6) Otherwise alter the condominium.

17 "Limited common element" means a portion of the common elements
18 designated by the declaration or by operation of section -35 for the
19 exclusive use of one or more but fewer than all of the units.

20 "Majority" or "majority of unit owners" means the owners of units to
21 which are appurtenant more than fifty per cent of the common interests. Any
22 specified percentage of the unit owners means the owners of units to which
23 are appurtenant such percentage of the common interest.

24 "Managing agent" means any person retained, as an independent
25 contractor, for the purpose of managing the operation of the property.

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

29 "Material change" means any change that directly, substantially, and
30 adversely affects the use or value of:

- 31 (1) A purchaser's unit or appurtenant limited common elements; or
- 32 (2) Those amenities of the project available for the purchaser's use.

33 "Material fact" means any fact, defect, or condition, past or present,
34 that, to a reasonable person, would be expected to measurably affect the
35 value of the project, unit, or property being offered or proposed to be
36 offered for sale.

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

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

43 "Pertinent change" means, as determined by the commission, a change not
44 previously disclosed in the most recent public report that renders the
45 information contained in the public report or in any disclosure statement
46 inaccurate, including, but not limited to:

- 1 (1) The size, construction materials, location, or permitted use of a
2 unit or its appurtenant limited common element;
- 3 (2) The size, use, location, or construction materials of the common
4 elements of the project; or
- 5 (3) The common interest appurtenant to the unit.

6 A pertinent change does not necessarily constitute a material change.

7 "Project" means a real estate condominium project; a plan or project
8 whereby a condominium of two or more units located within the condominium
9 property regime are created.

10 "Property" means the land, whether or not contiguous and including more
11 than one parcel of land, but located within the same vicinity, the building
12 or buildings, all improvements and all structures thereon, and all easements,
13 rights, and appurtenances intended for use in connection with the
14 condominium, which have been or are intended to be submitted to the regime
15 established by this chapter. "Property" includes parcels with or without
16 upper or lower boundaries, and spaces that may be filled with air or water.

17 "Record", "recordation", "recorded", or "recording" means to record in
18 the bureau of conveyances in accordance with chapter 502, or to register in
19 the land court in accordance with chapter 501.

20 "Resident manager" means any person retained as an employee by the
21 association to manage, on-site, the operation of the property.

22 "Time share unit" means the actual and promised accommodations, and
23 related facilities, that are the subject of a time share plan as defined in
24 chapter 514E.

25 "Unit" means a physical or spatial portion of the condominium
26 designated for separate ownership or occupancy, the boundaries of which are
27 described in the declaration or pursuant to section -35, with an exit to a
28 public road or to a common element leading to a public road.

29 "Unit owner" means the person owning, or the persons owning jointly or
30 in common, a unit and its appurtenant common interest; provided that to such
31 extent and for such purposes as provided by recorded lease, including the
32 exercise of voting rights, a lessee of a unit shall be deemed to be the unit
33 owner.

34 § -4 **Separate titles and taxation.** (a) Each unit that has been
35 created, together with its appurtenant interest in the common elements,
36 constitutes, for all purposes, a separate parcel of real estate.

37 (b) If there is any unit owner other than a developer, each unit shall
38 be separately taxed and assessed, and no separate tax or assessment may be
39 rendered against any common elements. The laws relating to home exemptions
40 from state property taxes are applicable to individual units, which shall
41 have the benefit of home exemption in those cases where the owner of a
42 single-family dwelling would qualify. Property taxes assessed by the State
43 or any county shall be assessed and collected on the individual units and not
44 on the property as a whole. Without limitation of the foregoing, each unit
45 and its appurtenant common interest shall be deemed to be a "parcel" and
46 shall be subject to separate assessment and taxation for all types of taxes
47 authorized by law, including, but not limited to, special assessments.

48 (c) If there is no unit owner other than a developer, the real estate
49 comprising the condominium may be taxed and assessed in any manner provided
50 by law.

1 existing provisions of the declaration, bylaws, condominium map, or other
2 constituent documents of those condominiums.

3 For purposes of interpreting this chapter, the terms "condominium
4 property regime" and "horizontal property regime" shall be deemed to
5 correspond to the term "condominium"; the term "apartment" shall be deemed to
6 correspond to the term "unit"; the term "apartment owner" shall be deemed to
7 correspond to the term "unit owner"; and the term "association of apartment
8 owners" shall be deemed to correspond to the term "association".

9 § -23 **Amendments to governing instruments.** (a) The declaration,
10 bylaws, condominium map, or other constituent documents of any condominium
11 created before the effective date of this chapter may be amended to achieve
12 any result permitted by this chapter, regardless of what applicable law
13 provided before the effective date of this chapter.

14 (b) An amendment to the declaration, bylaws, condominium map or other
15 constituent documents authorized by this section shall be adopted in
16 conformity with any procedures and requirements for amending the instruments
17 specified by those instruments or, if there are none, in conformity with the
18 amendment procedures of this chapter. If an amendment grants to any person
19 any rights, powers, or privileges permitted by this chapter, all correlative
20 obligations, liabilities, and restrictions in this chapter also apply to that
21 person.

22 **PART III. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS (RESERVED)**

23 § -31 **Creation.** (a) To create a condominium, all of the owners of
24 the fee simple interest in land shall execute and record a declaration
25 submitting the land to the condominium property regime. Upon recordation of
26 the declaration, the condominium shall be deemed created.

27 (b) The condominium shall be subject to any right, title, or interest
28 existing when the declaration is recorded if the person who owns such right,
29 title, or interest does not execute or join in the declaration or otherwise
30 subordinate such right, title, or interest. A person with any other right,
31 title, or interest in the land may subordinate that person's interest to the
32 condominium by executing the declaration or by executing and recording a
33 document joining in or subordinating to the declaration.

34 § -32 **Contents of declaration.** (a) A declaration shall describe or
35 include the following:

- 36 (1) The land submitted to the condominium;
- 37 (2) The number of the condominium map filed concurrently with the
38 declaration;
- 39 (3) The number of units in the condominium;
- 40 (4) The unit number of each unit and common interest appurtenant to
41 each unit;
- 42 (5) The number of buildings in the condominium, and the number of
43 stories and units in each building;
- 44 (6) The permitted and prohibited uses of each unit;
- 45 (7) To the extent not shown on the condominium map, a description of
46 the location and dimensions of the horizontal and vertical
47 boundaries of any unit. Unit boundaries may be defined by
48 physical structures or, if a unit boundary is not defined by a
49 physical structure, by spatial coordinates;
- 50 (8) The condominium's common elements;

- 1 (9) The condominium's limited common elements, if any, and the unit
2 or units to which each limited common element is appurtenant;
- 3 (10) The total percentage of the common interest that is required to
4 approve rebuilding, repairing, or restoring the condominium if it
5 is damaged or destroyed;
- 6 (11) The total percentage of the common interest, and any other
7 approvals or consents, that are required to amend the
8 declaration. Except as otherwise specifically provided in this
9 chapter, and except for any amendments made pursuant to
10 reservations set forth in paragraph (12), the approval of the
11 owners of at least sixty-seven per cent of the common interest
12 shall be required for all amendments to the declaration;
- 13 (12) Any rights that the developer or others reserve regarding the
14 condominium, including, without limitation, any development
15 rights, and any reservations to modify the declaration or
16 condominium map. An amendment to the declaration made pursuant
17 to the exercise of those reserved rights shall require only the
18 consent or approval, if any, specified in the reservation; and
- 19 (13) A declaration, subject to the penalties set forth in section
20 -69(b), that the condominium property regime is in compliance
21 with all zoning and building ordinances and codes, and all other
22 permitting requirements pursuant to section -5, and specifying
23 in the case of a property which includes one or more existing
24 structures being converted to condominium status:

- 25 (A) Any variances that have been granted to achieve the
26 compliance; and
- 27 (B) Whether, as the result of the adoption or amendment of any
28 ordinances or codes, the project presently contains any
29 legal nonconforming conditions, uses, or structures; except
30 that a property that is registered pursuant to section
31 -51 shall instead provide this declaration pursuant to
32 section -54.

33 If a developer is converting a structure to condominium status
34 and the structure is not in compliance with all zoning and
35 building ordinances and codes, and all other permitting
36 requirements pursuant to section -5, and the developer intends
37 to use purchaser's funds pursuant to the requirements of section
38 -92 or -93 to cure the violation or violations, then the
39 declaration required by this paragraph may be qualified to
40 identify with specificity each violation and the requirement to
41 cure the violation.

42 (b) The declaration may contain any additional provisions that are not
43 inconsistent with this chapter.

44 § -33 Condominium map. (a) A condominium map shall be recorded
45 with the declaration. The condominium map shall contain the following:

- 46 (1) A site plan for the condominium, depicting the location and
47 layout and access to a public road of all buildings included in
48 the condominium, and depicting access for the units to a public
49 road or to a common element leading to a public road;
- 50 (2) Elevations and floor plans of all buildings in the condominium;
- 51 (3) The layout, location, boundaries, unit numbers, and dimensions of
52 the units;

- 1 (4) To the extent that there is parking in the condominium, a parking
2 plan for the condominium, showing the location, layout, and stall
3 numbers of all parking stalls included in the condominium;
- 4 (5) Unless specifically described in the declaration, the layout,
5 location, and numbers or other identifying information of the
6 limited common elements, if any; and
- 7 (6) A description in sufficient detail, as may be determined by the
8 commission, to identify any land area that constitutes a limited
9 common element.

10 (b) The condominium map may contain any additional information that is
11 not inconsistent with this chapter.

12 § -34 **Condominium map; certification of architect, engineer, or**
13 **surveyor.** (a) The condominium map shall bear the statement of a licensed
14 architect, engineer, or surveyor certifying that the condominium map is
15 consistent with the plans of the condominium's building or buildings filed or
16 to be filed with the government official having jurisdiction over the
17 issuance of permits for the construction of buildings in the county in which
18 the condominium is located. If the building or buildings have been built at
19 the time the condominium map is recorded, the certification shall state that,
20 to the best of the architect's, engineer's, or surveyor's knowledge, the
21 condominium map depicts the layout, location, dimensions, and numbers of the
22 units substantially as built. If the building or buildings, or portions
23 thereof, have not been built at the time the condominium map is recorded,
24 within thirty days from the completion of construction, the developer shall
25 execute and record an amendment to the declaration accompanied by a
26 certification of a licensed architect, engineer, or surveyor certifying that
27 the condominium map previously recorded, as amended by the revised pages
28 filed with the amendment, if any, fully and accurately depicts the layout,
29 location, boundaries, dimensions, and numbers of the units substantially as
30 built.

31 (b) If the condominium is a conversion and the government official
32 having jurisdiction over the issuance of permits for the construction of
33 buildings in the county in which the condominium is located is unable to
34 locate the original permitted construction plans, the certification need only
35 state that the condominium map depicts the layout, location, boundaries,
36 dimensions, and numbers of the units substantially as built. If there are no
37 buildings, no certification shall be required.

38 § -35 **Unit boundaries.** Except as provided by the declaration:

- 39 (1) If walls, floors, or ceilings are designated as boundaries of a
40 unit, all lath, furring, wallboard, plasterboard, plaster,
41 paneling, tiles, wallpaper, paint, finished flooring, and any
42 other materials constituting any part of the finished surfaces
43 thereof are a part of the unit, and all other portions of the
44 walls, floors, or ceilings, are a part of the common elements;
- 45 (2) If any chute, flue, duct, wire, conduit, or any other fixture
46 lies partially within and partially outside the designated
47 boundaries of a unit, any portion thereof serving only that unit
48 is a limited common element appurtenant solely to that unit, and
49 any portion thereof serving more than one unit or any portion of
50 the common elements is a part of the common elements;
- 51 (3) Subject to paragraph (2), all spaces, interior non-loadbearing
52 partitions, and other fixtures and improvements within the
53 boundaries of a unit are a part of the unit; and

- 1 (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches,
2 balconies, lanais, patios, and all exterior doors and windows or
3 other fixtures designed to serve a single unit, but which are
4 located outside the unit's boundaries, are limited common
5 elements appurtenant exclusively to that unit.

6 § -36 **Leasehold units.** An undivided interest in the land that is
7 subject to a condominium equal to a unit's common interest may be leased to
8 the unit owner, and the unit and its common interest in the common elements
9 exclusive of the land may be conveyed to the unit owner. The conveyance of
10 the unit with an accompanying lease of an interest in the land shall not
11 constitute a division or partition of the common elements, or a separation of
12 the common interest from its unit. Where a deed of a unit is accompanied by
13 a lease of an interest in the land, the deed shall not be construed as
14 conveying title to the land included in the common elements.

15 § -37 **Common interest.** Each unit shall have the common interest it
16 is assigned in the declaration. Except as provided in sections -32(a)(12)
17 and -46, and except as provided in the declaration, a unit's common
18 interest shall be permanent and remain undivided, and may not be altered or
19 partitioned without the consent of the owner of the unit and the owner's
20 mortgagee, expressed in a duly executed and recorded declaration amendment.
21 The common interest shall not be separated from the unit to which it
22 appertains, and shall be deemed to be conveyed or encumbered with the unit
23 even if the common interest is not expressly mentioned or described in the
24 conveyance or other instrument.

25 § -38 **Common elements.** Each unit owner may use the common elements
26 in accordance with the purposes permitted under the declaration, subject to:

- 27 (1) The rights of other unit owners to use the common elements;
28 (2) Any owner's exclusive right to use of the limited common elements
29 as provided in the declaration;
30 (3) The right of the owners to amend the declaration to change the
31 permitted uses of the common elements or to designate any portion
32 of the common elements as a limited common element;
33 (4) Any rights reserved in the declaration to amend the declaration
34 to change the permitted uses of the common elements;
35 (5) The right of the board, on behalf of the association, to lease or
36 otherwise use for the benefit of the association those common
37 elements that the board determines are not actually used by any
38 of the unit owners for a purpose permitted in the declaration.
39 Unless the lease is approved by the owners of at least sixty-
40 seven per cent of the common interest, any such lease shall have
41 a term of no more than five years and may be terminated by the
42 board or the lessee on no more than sixty days prior written
43 notice; and
44 (6) The right of the board, on behalf of the association, to lease or
45 otherwise use for the benefit of the association those common
46 elements that the board determines are actually used by one or
47 more unit owners for a purpose permitted in the declaration. Any
48 such lease or use must be approved by the owners of at least
49 sixty-seven per cent of the common interest, including all
50 directly affected unit owners that the board reasonably
51 determines actually use the common elements, and such owners'
52 mortgagees.

1 § -39 **Limited common elements.** If the declaration designates any
2 portion of the common elements as limited common elements, those limited
3 common elements shall be subject to the exclusive use of the owner or owners
4 of the unit or units to which they are appurtenant, subject to the provisions
5 of the declaration and bylaws. No amendment of the declaration affecting any
6 of the limited common elements shall be effective without the consent of the
7 owner or owners of the unit or units to which such limited common elements
8 are appurtenant.

9 § -40 **Transfer of limited common elements.** Except as provided in
10 the declaration, any unit owner may transfer or exchange a limited common
11 element that is assigned to the owner's unit to another unit. Such a
12 transfer may be made by execution and recordation of an amendment to the
13 declaration. Such an amendment need only be executed by the owner of the
14 unit whose limited common element is being transferred and the owner of the
15 unit receiving the limited common element; provided that unit mortgages and
16 leases may also require the consent of mortgagees or lessors, respectively,
17 of the units involved. A copy of any such amendment shall be promptly
18 delivered to the association.

19 § -41 **Common profits and expenses.** (a) The common profits of the
20 property shall be distributed among, and the common expenses shall be charged
21 to, the unit owners, including the developer, in proportion to the common
22 interest appurtenant to their respective units, except as otherwise provided
23 in the declaration or bylaws. In a mixed-use project containing units for
24 both residential and nonresidential use, the charges and distributions may be
25 apportioned in a fair and equitable manner as set forth in the declaration.
26 Except as otherwise provided in subsection (c) or the declaration or bylaws,
27 all limited common element costs and expenses, including but not limited to,
28 maintenance, repair, replacement, additions, and improvements, shall be
29 charged to the owner or owners of the unit or units to which the limited
30 common element is appurtenant in an equitable manner as set forth in the
31 declaration.

32 (b) A unit owner, including the developer, shall become obligated for
33 the payment of the share of the common expenses allocated to the owner's unit
34 at the time the certificate of occupancy relating to the owner's unit is
35 issued by the appropriate county agency; provided that a developer may assume
36 all the actual common expenses in a project by stating in the public report
37 required by section -54 that the unit owner shall not be obligated for the
38 payment of the owner's share of the common expenses until such time as the
39 developer sends the owners written notice that, after a specified date, the
40 unit owners shall be obligated to pay for the portion of common expenses that
41 is allocated to their respective units. The developer shall mail the written
42 notice to the owners, the association, and the managing agent, if any, at
43 least thirty days before the specified date.

44 (c) Unless otherwise provided in the declaration or bylaws, if the
45 board reasonably determines that the extra cost incurred to separately
46 account for and charge for the costs of maintenance, repair, or replacement
47 of limited common elements is not justified, the board may adopt a resolution
48 determining that certain limited common element expenses will be assessed in
49 accordance with the undivided common interest appurtenant to each unit. In
50 reaching its determination, the board shall consider:

- 51 (1) The amount at issue;
- 52 (2) The difficulty of segregating the costs;
- 53 (3) The number of units to which similar limited common elements are
- 54 appurtenant;

- 1 (4) The apparent difference between separate assessment and
2 assessment based on the undivided common interest; and
3 (5) Any other relevant factors, as determined by the board.

4 The resolution shall be final and binding in the absence of a determination
5 that the board abused its discretion.

6 (d) Unless made pursuant to rights reserved in the declaration and
7 disclosed in the public report, if an association amends its declaration or
8 bylaws to change the use of the condominium from residential to
9 nonresidential, all direct and indirect costs attributable to the newly
10 permitted nonresidential use shall be charged only to the unit owners using
11 or directly benefiting from the new nonresidential use, in a fair and
12 equitable manner as set forth in the amendment to the declaration or bylaws.

13 **§ -42 Metering of utilities.** (a) Units in a project that includes
14 units designated for both residential and nonresidential use shall have
15 separate meters, or calculations shall be made, or both, as may be
16 practicable, to determine the use by the nonresidential units of utilities,
17 including electricity, water, gas, fuel, oil, sewerage, air conditioning,
18 chiller water, and drainage, and the cost of such utilities shall be paid by
19 the owners of such nonresidential units; provided that the apportionment of
20 such charges among owners of nonresidential units shall be done in a fair and
21 equitable manner as set forth in the declaration or bylaws. The requirements
22 of this subsection shall not apply to projects for which construction
23 commenced before January 1, 1978.

24 (b) Subject to any approval requirements and spending limits contained
25 in a project's declaration or bylaws, an association's board may authorize
26 the installation of meters to determine the use by the individual units of
27 utilities, including electricity, water, gas, fuel, oil, sewerage, air
28 conditioning, chiller water, and drainage. The cost of metered utilities
29 shall be paid by the owners of such units based on actual consumption and, to
30 the extent not billed directly to the unit owner by the utility provider, may
31 be collected in the same manner as common expense assessments. Owners'
32 maintenance fees shall be adjusted as necessary to avoid any duplication of
33 charges to owners for the cost of metered utilities.

34 **§ -43 Liens against units.** (a) For purposes of this section,
35 "visible commencement of operations" shall have the meaning it has under
36 chapter 507, part II, and a "lien" as used herein means a lien created
37 pursuant to chapter 507, part II.

38 (b) If visible commencement of operations occurs prior to the creation
39 of the condominium, then, upon creation of the condominium, liens arising
40 from such work shall attach to all units in the condominium described in the
41 declaration and their respective undivided interests in the common elements,
42 but not to the common elements as a whole. If visible commencement of
43 operations occurs after creation of the condominium, then liens arising from
44 such work shall attach only to the unit or units described in the declaration
45 on which the work was performed in the same manner as other real property,
46 and shall not attach to the common elements.

47 (c) If the developer contracts for work on the common elements, either
48 on its behalf or on behalf of the association prior to the first meeting of
49 the association, then liens arising from such work may attach to all units
50 owned by the developer described in the declaration at the time of visible
51 commencement of operations.

52 (d) If the association contracts for work on the common elements after
53 the first meeting of the association, there shall be no lien on the common

1 elements, but the persons contracting with the association to perform the
2 work or supply the materials incorporated in the work shall have a
3 contractual right to payment by the association.

4 **§ -44 Contents of deeds or leases of units.** Deeds or leases of
5 units adequately describe the property conveyed or leased if they contain the
6 following information:

- 7 (1) The title and date of the declaration and the declaration's
8 bureau of conveyances or land court document number or liber and
9 page numbers;
- 10 (2) The unit number of the unit conveyed or leased;
- 11 (3) The common interest appurtenant to the unit conveyed or leased;
12 provided that the common interest shall be deemed to be conveyed
13 or encumbered with the unit even if the common interest is not
14 expressly mentioned in the conveyance or other instrument, as
15 provided in section -37;
- 16 (4) For a unit, title to which is registered in the land court, the
17 land court certificate of title number for the unit, if
18 available; and
- 19 (5) For a unit, title to which is not registered in the land court,
20 the bureau of conveyances document number or liber and page
21 numbers for the instrument by which the grantor acquired title.

22 Deeds or leases of units may contain such additional information and details
23 deemed desirable and consistent with the declaration and this chapter,
24 including, without limitation, a statement of any encumbrances on title to
25 the unit which are not listed in the declaration. The failure of a deed or
26 lease to include all of the information specified in this section does not
27 render it invalid.

28 **§ -45 Blanket mortgages and other blanket liens affecting a unit at**
29 **time of first conveyance or lease.** At the time of the first conveyance or
30 lease of each unit, every mortgage and other lien, except any improvement
31 district or utility assessment, affecting both the unit and any other unit
32 shall be paid and satisfied of record, or the unit being conveyed or leased
33 and its common interest shall be released therefrom by partial release duly
34 recorded.

35 **§ -46 Merger of projects or increments.** (a) Two or more projects,
36 or increments of a project, whether or not adjacent to one another, but which
37 are part of the same incremental plan of development and in the same
38 vicinity, may be merged together so as to permit the joint use of the common
39 elements of the projects by all the owners of the units in the merged
40 projects. A merger may be implemented with the vote or consent that the
41 declaration requires for a merger, pursuant to any reserved rights set forth
42 in the declaration, or upon vote of sixty-seven per cent of the common
43 interest.

44 (b) A merger becomes effective at the earlier of:

- 45 (1) A date certain set forth in the certificate of merger; or
46 (2) The date that the certificate of merger is recorded.

47 The certificate of merger may provide for a single association and board for
48 the merged projects and for a sharing of the common expenses of the projects
49 among all the owners of the units in the merged projects. The certificate of
50 merger may also provide for a merger of the common elements of the projects
51 so that each unit owner in the merged projects has an undivided ownership

1 interest in the common elements of the merged projects. In the event of such
2 a merger of common elements, the common interests of each unit in the merged
3 projects shall be adjusted in accordance with the merger provisions in the
4 projects' declarations so that the total common interests of all units in the
5 resulting merged project totals one hundred per cent. If the certificate of
6 merger does not provide for a merger of the common elements, the common
7 elements and common interests of the merged projects shall remain separate,
8 but they shall be subject to the provisions set forth in the respective
9 declarations with respect to merger.

10 (c) Upon the recording of a certificate of merger that indicates that
11 the fee simple title to the lands of the merged projects are merged, the
12 registrar shall cancel all existing certificates of title for the units in
13 the projects being merged and shall issue new certificates of title for the
14 units in the merged project, covering all of the land of the merged projects.
15 The new certificates of title for the units in the merged project shall
16 describe, among other things, each unit's new common interest. The
17 certificate of merger shall at least set forth all of the units of the merged
18 projects, their new common interests, and to the extent practicable, their
19 current certificate of title numbers in the common elements of the merged
20 projects.

21 (d) In the event of a conflict between declarations and bylaws upon
22 the merger of projects or increments, unless otherwise provided in the
23 certificate of merger, the provisions of the first declaration and bylaws
24 recorded shall control.

25 **§ -47 Removal from provisions of this chapter.** (a) If:

- 26 (1) Unit owners owning units to which are appurtenant at least eighty
27 per cent of the common interests execute and record an instrument
28 to the effect that they desire to remove the property from this
29 chapter, and the holders of all liens affecting any of the units
30 of the unit owners executing such instrument consent thereto by
31 instruments duly recorded; or
32 (2) The common elements suffer substantial damage or destruction and
33 the damage or destruction has not been rebuilt, repaired, or
34 restored within a reasonable time after the occurrence thereof,
35 or the unit owners have earlier determined as provided in the
36 declaration that the damage or destruction shall not be rebuilt,
37 repaired, or restored;

38 then, and in either event, the property shall be subject to an action for
39 partition by any unit owner or lienor as if owned in common, in which event
40 the sale of the property shall be ordered by the court and the net proceeds
41 of sale, together with the net proceeds of the insurance on the property, if
42 any, shall be considered as one fund and, except as otherwise provided in the
43 declaration, shall be divided among all the unit owners in proportion to
44 their respective common interests; provided that no payment shall be made to
45 a unit owner until there has first been paid in full out of the owner's share
46 of such net proceeds all liens on the owner's unit. Upon such sale, the
47 property ceases to be a condominium or subject to this chapter.

48 (b) All of the unit owners may remove a property, or a part of a
49 property, from this chapter by an instrument to that effect, duly recorded,
50 if the holders of all liens affecting any of the units consent thereto, by
51 instruments duly recorded. Upon such removal from this chapter, the
52 property, or the part of the property designated in the instrument, ceases to
53 be the subject of a condominium or subject to this chapter, and is deemed to

1 be owned in common by the unit owners in proportion to their respective
2 common interests.

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

7 (1) The estate and interest of the unit owner shall cease and
8 determine upon the acquisition, by an authority with power of
9 eminent domain of title and right to possession of any part of
10 the project;

11 (2) The unit owner shall not by reason of the acquisition or right to
12 possession be entitled to any claim against the lessor or others
13 for compensation or indemnity for the unit owner's leasehold
14 interest;

15 (3) All compensation and damages for or on account of any land shall
16 be payable to and become the sole property of the lessor;

17 (4) All compensation and damages for or on account of any buildings
18 or improvements on the demised land shall be payable to and
19 become the sole property of the unit owners of the buildings and
20 improvements in accordance with their interests; and

21 (5) The unit lease rents are reduced in proportion to the land so
22 acquired or possessed;

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

33 (d) For purposes of subsection (c), the acquisition or right to
34 possession may be effected:

35 (1) By a taking or condemnation of property by the State or a county
36 pursuant to chapter 101;

37 (2) By the conveyance of property to the State or county under threat
38 of condemnation; or

39 (3) By the dedication of property to the State or county if the
40 dedication is required by state law or county ordinance.

41 (e) The removal provided for in this section shall in no way bar the
42 subsequent resubmission of the property to this chapter.

43 **PART IV. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS (RESERVED)**

44 § -51 **Registration required; exceptions.** (a) A developer may not
45 offer for sale any units in a project unless the project is registered with
46 the commission and an effective date for the public report is issued by the
47 commission.

48 (b) The registration requirement of this section shall not apply to:

- 1 (1) The disposition of units exempted from public report requirements
2 pursuant to section -81(b);
- 3 (2) Projects in which all units are restricted to nonresidential uses
4 and all units are to be sold for \$1,000,000 or more; or
- 5 (3) The sale of units in bulk, i.e., where a developer undertakes to
6 develop and then sells all or a portion of the developer's entire
7 inventory of units to a purchaser who is a developer. The
8 registration requirements of this section and the developer's
9 amended public report requirements of section -56 shall apply
10 to any sale of units to the public following a sale of units in
11 bulk.

12 § -52 **Application for registration.** (a) An application for
13 registration of a project shall:

- 14 (1) Be accompanied by a nonrefundable fee as provided in rules
15 adopted by the director of commerce and consumer affairs pursuant
16 to chapter 91; and
- 17 (2) Contain such documents and information concerning the condominium
18 set forth in sections -54, -83, and -84, as applicable,
19 and as otherwise may be specified by the commission.

20 (b) The commission need not process any incomplete application and may
21 return an incomplete application to the developer and require that the
22 developer submit a new application, including fees. If an incomplete
23 application is not completed within six months of the date of the original
24 submission, it shall be deemed abandoned and registration of the project
25 shall require the submission of a new application, including fees.

26 (c) A developer shall promptly file amendments to report any actual or
27 expected pertinent change in any document or information contained in the
28 application.

29 § -53 **Inspection by commission.** (a) After appropriate notification
30 has been made or additional information has been received pursuant to this
31 part, an inspection of the project may be made by the commission.

32 (b) When an inspection is to be made of a project, the developer shall
33 be required to pay an amount estimated by the commission to be necessary to
34 cover the actual expenses of the inspection, not to exceed \$500 a day for
35 each day consumed in the examination of the project, plus reasonable
36 transportation expenses.

37 § -54 **Public report; requirements for issuance of effective date.**

38 (a) Prior to the issuance of an effective date for a public report, the
39 commission shall have received the following:

- 40 (1) Nonrefundable fees as provided in rules adopted by the director
41 of commerce and consumer affairs pursuant to chapter 91;
- 42 (2) The public report prepared by the developer disclosing the
43 information specified in section -83 and, if applicable,
44 section -84;
- 45 (3) A copy of the deed, master lease, agreement of sale, or sales
46 contract evidencing either that the developer holds the fee or
47 leasehold interest in the property or has a right to acquire the
48 same;
- 49 (4) Copies of the executed declaration, bylaws, and condominium map
50 that meet the requirements of sections -32, -33, and
51 -108;

- 1 (5) A specimen copy of the proposed contract of sale for units;
2 (6) An executed copy of an escrow agreement with a third party
3 depository for retention and disposition of purchasers' funds
4 that meets the requirements of section -91;
5 (7) As applicable, the documents and information required in section
6 -92 or -93;
7 (8) A declaration, subject to the penalties set forth in section
8 -69(b), that the project is in compliance with all county
9 zoning and building ordinances and codes, and all other county
10 permitting requirements applicable to the project, pursuant to
11 sections -5 and -32(a)(13); and
12 (9) Such other documents and information that the commission may
13 require.

14 (b) The public report shall not be used for the purpose of selling any
15 units in the project unless and until the commission issues an effective date
16 for the public report. The commission's issuance of an effective date for a
17 public report shall not be construed to constitute the commission's approval
18 or disapproval of the project, or the commission's representation that all
19 material facts concerning the project have been fully or adequately
20 disclosed, or the commission's judgment of the value or merits of the
21 project.

22 § -55 Public report; request for hearing by developer. If an
23 effective date for a public report is not issued within a reasonable time
24 after compliance with registration requirements, or if the developer is
25 materially grieved by the form or content of the public report, the
26 developer, in writing, may request and shall be given a hearing by the
27 commission within a reasonable time after receipt of such a request.

28 § -56 Public report; amendments. (a) After the effective date for
29 a public report has been issued by the commission, if there is any pertinent
30 change regarding the information contained in the public report, or if the
31 developer desires to update or change the information set forth in the public
32 report, the developer shall immediately submit to the commission an amendment
33 to the public report or an amended public report clearly reflecting the
34 change, together with such supporting information as may be required by the
35 commission, to update the information contained in the public report,
36 accompanied by a nonrefundable fee as provided in rules adopted by the
37 director of commerce and consumer affairs pursuant to chapter 91. Within a
38 reasonable period of time, the commission shall issue an effective date for
39 the amended public report or take other appropriate action under this part.

40 (b) The submission of an amendment to the public report or an amended
41 public report shall not require the developer to suspend sales, subject to
42 the power of the commission to order such sales to cease as set forth in
43 section -66; provided that the developer shall advise the appropriate real
44 estate broker or brokers, if any, of the change and disclose to purchasers
45 any change in the information contained in the public report pending the
46 issuance of an effective date for any amendment to the public report or
47 amended public report; provided further that if the amended public report is
48 not issued within thirty days after its submission to the commission, the
49 commission may order a suspension of sales pending the issuance of an
50 effective date for the amended public report. Nothing in this section shall
51 diminish the rights of purchasers under section -94.

52 (c) The developer shall provide all purchasers with a true copy of:

1 (1) The amendment to the public report, if the purchaser has received
2 copies of the public report and all prior amendments, if any; or

3 (2) A restated public report including all amendments.

4 (d) The filing of an amendment to the public report or an amended
5 public report shall not, in and of itself, be grounds for a purchaser to
6 cancel or rescind a sales contract. A purchaser's right to cancel or rescind
7 a sales contract shall be governed by sections -86 and -87, the terms
8 and conditions of the purchaser's contract for sale, and applicable common
9 law.

10 § -57 **Commission oversight of public report.** (a) The commission at
11 any time may require a developer to alter or supplement the form or substance
12 of a public report to assure adequate and accurate disclosure to prospective
13 purchasers.

14 (b) The public report shall not be used for any promotional purpose
15 before registration, and may be used after registration only if it is used in
16 its entirety. No person shall advertise or represent that the commission has
17 approved or recommended the condominium, the public report, or any of the
18 documents contained in the application for registration.

19 § -58 **Annual report.** (a) A developer shall file annually, within
20 thirty days after the anniversary date of the effective date for a public
21 report, a report to update the material contained in the public report. If
22 there is no change to the public report, the developer shall so state. This
23 subsection shall not relieve the developer of the obligation to file
24 amendments to the public report pursuant to section -56. Failure to file
25 the annual report required by this section may subject the developer to the
26 penalties set forth in section -69(b).

27 (b) The developer shall be relieved from filing annual reports
28 pursuant to this section if the developer has no ownership interest in any
29 unit in the project.

30 § -59 **Expiration of public reports.** Except as otherwise provided in
31 this chapter, upon issuance of an effective date for a public report or any
32 amendment, the public report and amendment or amendments shall not expire
33 until such time as the developer has sold all units in the project.

34 § -60 **No false or misleading information.** It shall be unlawful for
35 any person or person's agent to testify falsely or make a material
36 misstatement of fact before the commission or to file with the commission any
37 document required by this chapter that is false, contains a material
38 misstatement of fact, or contains forgery. All documents, including the
39 public report, prepared by or for the developer and submitted to the
40 commission in connection with the developer's registration of the project,
41 and all information contained in such documents, shall be true, complete, and
42 accurate in all respects, and shall not contain any misleading information,
43 or omit any pertinent change in the information or documents submitted to the
44 commission.

45 § -61 **General powers and duties of commission.** (a) The commission
46 may:

47 (1) Adopt, amend, and repeal rules;

48 (2) Assess fees;

49 (3) Issue orders consistent with and in furtherance of the objectives
50 of this chapter;

1 (4) Prescribe forms and procedures for submitting information to the
2 commission; and

3 (5) Prescribe the form and content of any documents required to be
4 submitted to the commission by this chapter.

5 (b) If it appears that any person has engaged, is engaging, or is
6 about to engage in any act or practice in violation of this part, part V,
7 section -103, -132, -134, -149, or -152 to -154, or any of
8 the commission's related rules or orders, the commission, without prior
9 administrative proceedings, may maintain an action in the appropriate court
10 to enjoin that act or practice or for other appropriate relief. The
11 commission is not required to post a bond or prove that no adequate remedy at
12 law exists in order to maintain such action.

13 (c) The commission may intervene in any action involving the powers or
14 responsibilities of a developer under this part, part V, section -103,
15 -132, -134, -149, or -152 to -154.

16 (d) The commission may accept grants-in-aid from any governmental
17 source and may contract with agencies charged with similar functions in this
18 or other jurisdictions, in furtherance of the objectives of this chapter.

19 (e) The commission may cooperate with agencies performing similar
20 functions in this and other jurisdictions to develop uniform filing
21 procedures and forms, uniform disclosure standards, and uniform
22 administrative practices, and may develop information that may be useful in
23 the discharge of the commission's duties.

24 (f) In issuing any cease and desist order or order rejecting or
25 revoking the registration of a condominium, the commission shall state the
26 basis for the adverse determination and the underlying facts.

27 (g) The commission, in its sound discretion, may require bonding (at
28 appropriate levels over time), escrow of portions of sales proceeds, or other
29 safeguards it may prescribe by its rules to assure completion of all
30 improvements that a developer is obligated to complete, or has represented
31 that it will complete.

32 § -62 **Deposit of fees.** Unless otherwise provided in this chapter,
33 all fees collected under this chapter shall be deposited by the director of
34 commerce and consumer affairs to the credit of the compliance resolution fund
35 established pursuant to section 26-9(o).

36 § -63 **Condominium specialists; appointment; duties.** The director of
37 commerce and consumer affairs may appoint condominium specialists, not
38 subject to chapter 76, to assist consumers with information, advice, and
39 referral on any matter relating to this chapter or otherwise concerning
40 condominiums. The director may also appoint secretaries, not subject to
41 chapter 76, to provide assistance in carrying out these duties. The
42 condominium specialists and secretaries shall be members of the employees'
43 retirement system of the State and shall be eligible to receive the benefits
44 of any state or federal employee benefit program generally applicable to
45 officers and employees of the State.

46 § -64 **Private consultants.** The director of commerce and consumer
47 affairs may contract with private consultants for the review of documents and
48 information submitted to the commission pursuant to this chapter. The cost
49 of such review by private consultants shall be borne by the developer.

50 § -65 **Investigative powers.** If the commission has reason to believe
51 that any person is violating or has violated this part, part V, section
52 -103, -132, -134, -149, or -152 to -154, or the rules of

1 the commission adopted pursuant thereto, the commission may conduct an
2 investigation of the matter and examine the books, accounts, contracts,
3 records, and files of all relevant parties. For purposes of this
4 examination, the developer and the real estate broker shall keep and maintain
5 records of all sales transactions and of the funds received by the developer
6 and the real estate broker pursuant thereto, and shall make the records
7 accessible to the commission upon reasonable notice and demand.

8 § -66 **Cease and desist orders.** In addition to its authority under
9 sections -67 and -68, whenever the commission has reason to believe
10 that any person is violating or has violated this part, part V, section
11 -103, -132, -134, -149, or -152 to -154, or the rules of
12 the commission adopted pursuant thereto, it may issue and serve upon the
13 person a complaint stating its charges in that respect and containing a
14 notice of a hearing at a stated place and upon a day at least thirty days
15 after the service of the complaint. The person served has the right to
16 appear at the place and time specified and show cause why an order should not
17 be entered by the commission requiring the person to cease and desist from
18 the violation of the law or the rules of the commission charged in the
19 complaint. If upon the hearing the commission is of the opinion that this
20 chapter or the rules of the commission have been or are being violated, it
21 shall make a report in writing stating its findings as to the facts and shall
22 issue and cause to be served on the person an order requiring the person to
23 cease and desist from the violations. The person, within thirty days after
24 service upon the person of the report or order, may obtain a review thereof
25 in the appropriate circuit court.

26 § -67 **Revocation of registration.** (a) The commission, after notice
27 and hearing, may issue an order revoking the registration of a condominium
28 upon determination that a developer or any officer or principal of a
29 developer, or any affiliate of the developer, has:

- 30 (1) Failed to comply with a cease and desist order issued by the
31 commission affecting that condominium;
- 32 (2) Concealed, diverted, or disposed of any funds or assets of any
33 person in a manner impairing rights of purchasers of units in
34 that condominium;
- 35 (3) Failed to perform any stipulation or agreement made to induce the
36 commission to issue an order relating to that condominium;
- 37 (4) Misrepresented or failed to disclose a material fact in the
38 application for registration; or
- 39 (5) Failed to meet any of the conditions described in this part
40 necessary to qualify for registration.

41 (b) A developer may not convey, cause to be conveyed, or contract for
42 the conveyance of any interest in a unit while an order revoking the
43 registration of the condominium is in effect, without the consent of the
44 commission.

45 (c) The commission may issue a cease and desist order in lieu of an
46 order of revocation where appropriate.

47 § -68 **Power to enjoin.** Whenever the commission believes from
48 satisfactory evidence that any person has violated this part, part V, section
49 -103, -132, -134, -149, or -152 to -154, or the rules of
50 the commission adopted pursuant thereto, it may conduct an investigation of
51 the matter and bring an action in the name of the people of the State in any
52 court of competent jurisdiction against the person to enjoin the person from

1 continuing the violation or engaging therein or doing any act or acts in
2 furtherance thereof.

3 **§ -69 Penalties.** (a) Any person who violates or fails to comply
4 with this part, part V, section -103, -132, -134, -149, or
5 -152 to -154, is guilty of a misdemeanor and shall be punished by a
6 fine not exceeding \$10,000, or by imprisonment for a term not exceeding one
7 year, or both. Any person who violates or fails, omits, or neglects to obey,
8 observe, or comply with any rule, order, decision, demand, or requirement of
9 the commission under this part, part V, section -103, -132, -134,
10 -149, or -152 to -154, shall be punished by a fine not exceeding
11 \$10,000.

12 (b) In addition to any other actions authorized by law, any person who
13 violates this part, part V, section -103, -132, -134, -149, or
14 -152 to -154, or the rules of the commission adopted pursuant thereto,
15 shall also be subject to a civil penalty not exceeding \$10,000 for any
16 violation. Each violation shall constitute a separate offense.

17 **§ -70 Limitation of actions.** No civil or criminal actions shall be
18 brought by the State pursuant to this chapter more than two years after the
19 discovery of the facts upon which the actions are based or ten years after
20 completion of the sales transaction involved, whichever has first occurred.

21 **§ -71 Condominium education trust fund.** (a) The commission shall
22 establish a condominium education trust fund that the commission may use for
23 educational purposes. Educational purposes shall include financing or
24 promoting:

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

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

34 **§ -72 Condominium education trust fund; payments by associations and**
35 **developers.** (a) Each project or association with more than five units shall
36 pay to the department of commerce and consumer affairs a fee on or before
37 June 30 of every odd-numbered year, or within thirty days of the
38 association's first meeting, or within one year after the recordation of the
39 purchase of the first unit, as prescribed by rules adopted by the director of
40 commerce and consumer affairs pursuant to chapter 91.

41 (b) Each developer shall pay to the department of commerce and
42 consumer affairs a fee for each unit in the project, as prescribed by rules
43 adopted by the director of commerce and consumer affairs pursuant to chapter
44 91. The project shall not be registered and no effective date for a public
45 report shall be issued until the payment has been made.

46 (c) Payments of any fees required under this section shall be due on
47 or before the registration due date and shall be nonrefundable. Failure to
48 pay the required fee by the due date shall result in a penalty assessment of
49 ten per cent of the amount due and the association shall not have standing to
50 bring any action to collect or to foreclose any lien for common expenses or
51 other assessments in any court of this State until the amount due, including
52 any penalty, is paid. Failure of an association to pay a fee required under

1 this section shall not impair the validity of any claim of the association
2 for common expenses or other assessments, or prevent the association from
3 defending any action in any court of this State.

4 (d) The department of commerce and consumer affairs shall allocate the
5 fees collected under this section to the condominium education trust fund
6 established pursuant to section -71.

7 § -73 **Condominium education trust fund; management.** (a) The sums
8 received by the commission for deposit in the condominium education trust
9 fund shall be held by the commission in trust for carrying out the purpose of
10 the fund.

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

16 (c) The moneys in the condominium education trust fund may be invested
17 and reinvested together with the real estate education fund established under
18 section 467-19 in the same manner as are the funds of the employees'
19 retirement system of the State. The interest from these investments shall be
20 deposited to the credit of the condominium education trust fund.

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

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

28 **PART V. PROTECTION OF CONDOMINIUM PURCHASERS (RESERVED)**

29 § -81 **Applicability; exceptions.** (a) This part applies to all
30 units subject to this chapter, except as provided in subsection (b).

31 (b) No public report is required in the case of:

- 32 (1) A gratuitous disposition of a unit;
33 (2) A disposition pursuant to court order;
34 (3) A disposition by a government or governmental agency;
35 (4) A disposition by foreclosure or deed in lieu of foreclosure; or
36 (5) The sale of units in bulk, as defined in section -51(b);
37 provided that the requirements of this part shall apply to any
38 sale of units to the public following the sale of units in bulk.

39 § -82 **Sale of units.** Except as provided in section -85, no sale
40 or offer of sale of units in a project by a developer shall be made prior to
41 the registration of the project by the developer with the commission, the
42 issuance of an effective date for the project's public report by the
43 commission, and except as provided by law with respect to time share units,
44 the delivery of the public report to prospective purchasers. Notwithstanding
45 any other provision to the contrary, where a time share project is duly
46 registered under chapter 514E and a disclosure statement is effective and
47 required to be delivered to the purchaser or prospective purchaser, the
48 public report need not be delivered to the purchaser or prospective
49 purchaser.

- 1 § -83 **Public report.** (a) A public report shall contain:
- 2 (1) The name and address of the project, and the name, address,
3 telephone number, and electronic mail address, if any, of the
4 developer or the developer's agent;
- 5 (2) A statement of the deadline, pursuant to section -89, for
6 completion of construction or, in the case of a conversion, for
7 the completion of any repairs required to comply with section
8 -5, and the remedies available to the purchaser, including,
9 but not limited to, cancellation of the sales contract, if the
10 completion of construction or repairs does not occur on or before
11 the completion deadline;
- 12 (3) A breakdown of the annual maintenance fees and the monthly
13 estimated cost for each unit, certified to have been based on
14 generally accepted accounting principles, and a statement
15 regarding when a purchaser shall become obligated to start paying
16 such fees pursuant to section -41(b);
- 17 (4) A description of all warranties for the individual units and the
18 common elements, including the date of initiation and expiration
19 of any such warranties, or a statement that no warranties exist;
- 20 (5) A summary of the permitted uses of the units and, if applicable,
21 the number of units planned to be devoted to a particular use;
- 22 (6) A description of any development rights reserved to the developer
23 or others;
- 24 (7) A declaration, subject to the penalties set forth in section
25 -69(b), that the project is in compliance with all county
26 zoning and building ordinances and codes, and all other county
27 permitting requirements applicable to the project, pursuant to
28 sections -5 and -32(a)(13); and
- 29 (8) Any other facts, documents, or information that would have a
30 material impact on the use or value of a unit or any appurtenant
31 limited common elements or amenities of the project available for
32 an owner's use, or that may be required by the commission.
- 33 (b) A developer shall promptly amend the public report to report any
34 pertinent change in the information required by this section.

35 § -84 **Public report; special types of condominiums.** (a) In
36 addition to the information required by section -83, the public report for
37 a project containing any existing structures being converted to condominium
38 status shall contain:

- 39 (1) Regarding units that may be occupied for residential use and have
40 been in existence for five years or more:
- 41 (A) A statement by the developer, based upon a report prepared
42 by a Hawaii licensed architect or engineer, describing the
43 present condition of all structural components and
44 mechanical and electrical installations material to the use
45 and enjoyment of the units;
- 46 (B) A statement by the developer of the expected useful life of
47 each item reported on in subparagraph (A) or a statement
48 that no representations are made in that regard; and
- 49 (C) A list of any outstanding notices of uncured violations of
50 building code or other county regulations, together with
51 the estimated cost of curing these violations;

- 1 (2) Regarding all projects containing converted structures, a
2 verified statement signed by an appropriate county official that:
- 3 (A) The structures are in compliance with all zoning and
4 building ordinances and codes applicable to the project at
5 the time it was built, and specifying, if applicable:
- 6 (i) Any variances or other permits that have been granted
7 to achieve compliance;
- 8 (ii) Whether the project contains any legal nonconforming
9 uses or structures as a result of the adoption or
10 amendment of any ordinances or codes; and
- 11 (iii) Any violations of current zoning or building
12 ordinances or codes and the conditions required to
13 bring the structure into compliance; or
- 14 (B) Based on the available information, the county official
15 cannot make a determination with respect to the matters
16 described in subparagraph (A); and
- 17 (3) Such other disclosures and information that the commission may
18 require.
- 19 (b) In addition to the information required by section -83, the
20 public report for a project on agricultural land shall disclose:
- 21 (1) Whether the structures and uses anticipated by the developer's
22 promotional plan for the project are in compliance with all
23 applicable state and county land use laws;
- 24 (2) Whether the structures and uses anticipated by the developer's
25 promotional plan for the project are in compliance with all
26 applicable county real property tax laws, and the penalties for
27 noncompliance; and
- 28 (3) Such other disclosures and information that the commission may
29 require.
- 30 (c) In addition to the information required by section -83, the
31 public report for a project containing any assisted living facility units
32 regulated or to be regulated pursuant to rules adopted under section 321-
33 11(10) shall disclose:
- 34 (1) Any licensing requirements and the impact of the requirements on
35 the costs, operations, management, and governance of the project;
- 36 (2) The nature and scope of services to be provided;
- 37 (3) Additional costs, directly attributable to the services, to be
38 included in the association's common expenses;
- 39 (4) The duration of the provision of the services;
- 40 (5) Any other information the developer deems appropriate to describe
41 the possible impacts on the project resulting from the provision
42 of such services; and
- 43 (6) Such other disclosures and information that the commission may
44 require.

45 § -85 Preregistration solicitation. (a) Prior to the registration
46 of the project by the developer with the commission, the issuance of an
47 effective date for the project's public report by the commission, and the
48 delivery of the public report to prospective purchasers, and subject to the

1 limitations set forth in subsection (b), the developer may solicit
2 prospective purchasers and enter into nonbinding preregistration agreements
3 with the prospective purchasers with respect to units in the project. As
4 used in this section, "solicit" means to advertise, to induce, or to attempt
5 in whatever manner to encourage a person to acquire a unit.

6 (b) Limitations:

- 7 (1) Prior to registration of the project with the commission and the
8 issuance of an effective date for the project's public report,
9 the developer shall not collect any moneys from prospective
10 purchasers or anyone on behalf of prospective purchasers, whether
11 or not such moneys are to be placed in an escrow account, or
12 whether or not such moneys would be refundable at the request of
13 the prospective purchaser; and
- 14 (2) The developer shall not require nor request that a prospective
15 purchaser execute any document other than a nonbinding
16 preregistration agreement. The preregistration agreement may,
17 but need not, specify the unit number of a unit in the project to
18 be reserved and may, but need not, include a price for the unit.
19 The preregistration agreement shall not incorporate the terms and
20 provisions of the sales contract for the unit and shall not, by
21 its terms, become a sales contract. Notwithstanding anything
22 contained in the preregistration agreement to the contrary, the
23 preregistration agreement may be canceled at any time by either
24 the developer or the prospective purchaser by written notice to
25 the other. The commission may prepare a form of preregistration
26 agreement for use pursuant to this section, and use of the
27 commission-prepared form shall be deemed to satisfy the
28 requirements of the preregistration agreement as provided in this
29 section.

30 § -86 Requirements for binding sales contracts; purchaser's right to
31 cancel. (a) No sales contract for the purchase of a unit from a developer
32 shall be binding on the developer or prospective purchaser until:

- 33 (1) The developer has delivered to the prospective purchaser:
- 34 (A) A true copy of the public report, including all amendments,
35 with an effective date issued by the commission;
- 36 (B) A copy of the recorded declaration and bylaws creating the
37 project, showing the document number or land court document
38 number, or both, as applicable; and
- 39 (C) A notice of the prospective purchaser's thirty-day
40 cancellation right on a form prescribed by the commission,
41 which the prospective purchaser can use to exercise the
42 right to cancel or waive the right to cancel; and
- 43 (2) The prospective purchaser has waived the right to cancel or is
44 deemed to have waived the right to cancel.

45 (b) Purchasers may cancel a sales contract at any time up to midnight
46 of the thirtieth day after:

- 47 (1) The date that the purchaser signs the contract; and
48 (2) All of the items specified in subsection (a)(1) have been
49 delivered to the purchaser.

50 (c) The prospective purchaser may waive the right to cancel, or shall
51 be deemed to have waived the right to cancel, by:

- 1 (1) Checking the waiver box on the cancellation notice and delivering
2 it to the developer;
- 3 (2) Doing nothing and letting the thirty-day cancellation period
4 expire; or
- 5 (3) Closing the purchase of the unit before the cancellation period
6 expires.
- 7 (d) The receipts, return receipts, or cancellation notices obtained
8 under this section shall be kept on file in possession of the developer and
9 shall be subject to inspection at any reasonable time by the commission or
10 its staff or agents for a period of three years from the date the receipt or
11 return receipt was obtained.

12 § -87 Rescission after sales contract becomes binding. (a)

13 Purchasers shall have a thirty-day right to rescind a binding sales contract
14 for the purchase of a unit from a developer if there is a material change in
15 the project. This rescission right shall not apply, however, in the event of
16 any additions, deletions, modifications and reservations including, without
17 limitation, the merger or addition or phasing of a project, made pursuant to
18 the terms of the declaration.

19 (b) Upon delivery to a purchaser of a description of the material
20 change on a form prescribed by the commission, the purchaser may waive the
21 purchaser's rescission right provided in subsection (a) by:

- 22 (1) Checking the waiver box on the option to rescind sales contract
23 instrument, signing it, and delivering it to the seller;
- 24 (2) Doing nothing and letting the thirty-day rescission period
25 expire; or
- 26 (3) Closing the purchase of the unit before the thirty-day rescission
27 period expires.

28 (c) In order to be valid, a rescission form must be signed by all
29 purchasers of the affected unit, and postmarked no later than midnight of the
30 day that is thirty calendar days after the date that the purchasers received
31 the rescission form from the seller. In the event of a valid exercise of a
32 purchaser's right of rescission pursuant to this section, the purchasers
33 shall be entitled to a prompt and full refund of any moneys paid.

34 (d) The rescission form obtained by the seller under this section
35 shall be kept on file in possession of the seller and shall be subject to
36 inspection at a reasonable time by the commission or its staff or agents, for
37 a period of three years from the date the receipt or return receipt was
38 obtained.

39 (e) This section shall not preclude a purchaser from exercising any
40 rescission rights pursuant to a contract for the sale of a unit or any
41 applicable common law remedies.

42 § -88 Delivery. In this part, delivery shall be made by:

- 43 (1) Personal delivery;
- 44 (2) Delivery by registered or certified mail with adequate postage,
45 to the recipient's address; provided that delivery shall be
46 considered made three days after deposit in the mail or on any
47 earlier date upon which the return receipt is signed;
- 48 (3) Facsimile transmission, if the recipient has provided a fax
49 number to the sender; provided that delivery shall be considered

1 made upon sender's receipt of automatic confirmation of
2 transmission; or

3 (4) Any other way prescribed by the commission.

4 **§ -89 Sales contracts before completion of construction.** If a sales
5 contract for a unit is signed before the completion of construction or, in
6 the case of a conversion, the completion of any repairs required to comply
7 with section -5, the sales contract shall contain an agreement of the
8 developer that the completion of construction shall occur on or before a
9 completion deadline, and the completion deadline shall be referenced in the
10 public report. The completion deadline may be a specific date, or the
11 expiration of a period of time after the sales contract becomes binding, and
12 may include a right of the developer to extend the completion deadline for
13 force majeure as defined in the sales contract. The sales contract shall
14 provide that the purchaser may cancel the sales contract at any time after
15 the specified completion deadline, if completion of construction does not
16 occur on or before the completion deadline, as the same may have been
17 extended. The sales contract may provide additional remedies to the
18 purchaser if the actual completion of construction does not occur on or
19 before the completion deadline as set forth in the contract.

20 **§ -90 Refunds upon cancellation or termination.** Upon any
21 cancellation under section -86 or -89, the purchaser shall be entitled
22 to a prompt and full refund of all moneys paid, less any escrow cancellation
23 fee and other costs associated with the purchase, up to a maximum of \$250.

24 **§ -91 Escrow of deposits.** All moneys paid by purchasers shall be
25 deposited in trust under a written escrow agreement with an escrow depository
26 licensed pursuant to chapter 449. An escrow depository shall not disburse
27 purchaser deposits to or on behalf of the developer prior to closing except:

28 (1) As provided in sections -92 and -93; or

29 (2) As provided in the purchaser's sales contract in the event the
30 sales contract is canceled.

31 An escrow depository shall not disburse a purchaser's deposits at closing
32 unless the escrow depository has received satisfactory assurances that all
33 blanket mortgages and liens have been released from the purchaser's unit in
34 accordance with section -45. Satisfactory assurances include a commitment
35 by a title insurer licensed under chapter 431 to issue the purchaser a title
36 insurance policy ensuring the purchaser that the unit has been conveyed free
37 and clear of such liens.

38 **§ -92 Use of purchaser deposits to pay project costs.** (a) Subject
39 to the conditions set forth in subsection (b), purchaser deposits that are
40 held in escrow pursuant to a binding sales contract may be disbursed before
41 closing to pay for costs of acquiring the project land and buildings, project
42 construction costs, including, in the case of a conversion, repairs necessary
43 to cure violations of county zoning and building ordinances and codes, and
44 architectural, engineering, finance, and legal fees, and other incidental
45 expenses of the project.

46 (b) Disbursement of purchaser deposits prior to closing shall be
47 permitted only if:

48 (1) The commission has issued an effective date for the project's
49 public report;

50 (2) The developer has recorded the project's declaration and bylaws;
51 and

52 (3) The developer has submitted to the commission:

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- (A) A project budget showing all costs that must be paid in order to complete the project, including land acquisition or lease payments, real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;
- (B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs that must be paid in order to complete the project, which may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds;
- (C) If purchaser funds are to be used to pay the cost of acquiring the project land or buildings, evidence satisfactory to the commission that the developer will, concurrently with the disbursement of purchaser funds, acquire title to the project land or buildings; and
- (D) If purchaser funds are to be disbursed prior to completion of construction of the project:
 - (i) A copy of the executed construction contract;
 - (ii) A copy of the building permit for the project; and
 - (iii) Satisfactory evidence of security for the completion of construction. Such evidence may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or such other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) A purchaser's deposits may be disbursed prior to closing only to pay costs set forth in the project budget submitted pursuant to subsection (b) (3) (A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, purchaser deposits may be disbursed prior to closing to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer.

(d) If purchaser deposits are to be disbursed prior to closing, the following notice shall be prominently displayed in the public report for the project:

1 **"Important Notice Regarding Your Deposits:** Deposits that you make
2 under your sales contract for the purchase of the unit may be disbursed
3 before closing of your purchase to pay for project costs, including costs of
4 acquiring the land and buildings, if any, construction costs, project
5 architectural, engineering, finance, and legal fees, and other incidental
6 expenses of the project. While the developer has submitted satisfactory
7 evidence that the project should be completed, it is possible that the
8 project may not be completed. If your deposits are disbursed to pay project
9 costs and the project is not completed, there is a risk that your deposits
10 will not be refunded to you. You should carefully consider this risk in
11 deciding whether to proceed with your purchase."

12 **§ -93 Early conveyance to pay project costs.** (a) Subject to the
13 conditions set forth in subsection (b), if units are conveyed or leased
14 before the completion of construction of the building or buildings for the
15 purpose of financing the construction, all moneys from the sale of the units,
16 including any payments made on loan commitments from lending institutions,
17 shall be deposited by the developer under an escrow arrangement into a
18 federally-insured, interest-bearing account designated solely for that
19 purpose, at a financial institution authorized to do business in the State.
20 Disbursements from the escrow account may be made to pay for project
21 construction costs, including, in the case of a conversion, repairs necessary
22 to cure violations of county zoning and building ordinances and codes, and
23 architectural, engineering, finance, and legal fees, and other incidental
24 expenses of the project.

25 (b) Conveyance or leasing of units before completion of construction
26 shall be permitted only if:

- 27 (1) The commission has issued an effective date for the project's
28 public report;
- 29 (2) The developer has recorded the project's declaration and bylaws;
30 and
- 31 (3) The developer has submitted to the commission:
- 32 (A) A project budget showing all costs that must be paid in
33 order to complete the project, including real property
34 taxes, construction costs, architectural, engineering and
35 legal fees, and financing costs;
- 36 (B) Evidence satisfactory to the commission of the availability
37 of sufficient funds to pay all costs that must be paid in
38 order to complete the project, which may include purchaser
39 funds, equity funds, interim or permanent loan commitments,
40 and other sources of funds;
- 41 (C) A copy of the executed construction contract;
- 42 (D) A copy of the building permit for the project; and
- 43 (E) Satisfactory evidence of security for the completion of
44 construction. Such evidence may include the following, in
45 forms and content approved by the commission: a completion
46 or performance bond issued by a surety licensed in the
47 State in an amount equal to one hundred per cent of the
48 cost of construction; a completion or performance bond
49 issued by a material house in an amount equal to one
50 hundred per cent of the cost of construction; an
51 irrevocable letter of credit issued by a federally-insured
52 financial institution in an amount equal to one hundred per
53 cent of the cost of construction; or such other

1 substantially similar instrument or security approved by
2 the commission. A completion or performance bond issued by
3 a surety or by a material house, an irrevocable letter of
4 credit, and any alternatives shall contain a provision that
5 the commission shall be notified in writing before any
6 payment is made to beneficiaries of the bond. Adequate
7 disclosures shall be made in the public report concerning
8 the developer's use of a completion or performance bond
9 issued by a material house instead of a surety, and the
10 impact of any restrictions on the developer's use of
11 purchaser's funds.

12 (c) Moneys from the conveyance or leasing of units before completion
13 of construction may be disbursed only to pay costs set forth in the project
14 budget submitted pursuant to subsection (b) (3) (A) that are approved for
15 payment by the project lender or an otherwise qualified, financially
16 disinterested person. In addition, such moneys may be disbursed to pay
17 construction costs only in proportion to the valuation of the work completed
18 by the contractor, as certified by a licensed architect or engineer. The
19 balance of any purchase price may be disbursed to the developer only upon
20 completion of construction of the project and the satisfaction of any
21 mechanics' and materialmen's liens.

22 (d) If moneys from the conveyance or leasing of units before
23 completion of construction are to be disbursed to pay for project costs, the
24 following notice shall be prominently displayed in the public report for the
25 project:

26 **"Important Notice Regarding Your Funds:** Payments that you make under
27 your sales contract for the purchase of the unit may be disbursed upon
28 closing of your purchase to pay for project costs, including construction
29 costs, project architectural, engineering, finance, and legal fees, and other
30 incidental expenses of the project. While the developer has submitted
31 satisfactory evidence that the project should be completed, it is possible
32 that the project may not be completed. If your payments are disbursed to pay
33 project costs and the project is not completed, there is a risk that your
34 payments will not be refunded to you. You should carefully consider this
35 risk in deciding whether to proceed with your purchase."

36 § -94 **Misleading statements and omissions; remedies.** (a) No
37 officer, agent, or employee of any company, and no other person may knowingly
38 authorize, direct, or aid in the publication, advertisement, distribution, or
39 circulation of any false statement or representation concerning any project
40 offered for sale or lease. No person may issue, circulate, publish, or
41 distribute any advertisement, pamphlet, prospectus, or letter concerning any
42 project which contains any written statement that is false or which contains
43 an untrue statement of a material fact or omits to state a material fact
44 necessary in order to make the statements therein made in the light of the
45 circumstances under which they are made not misleading.

46 (b) Every sale made in violation of this section is voidable at the
47 election of the purchaser; and the person making the sale and every director,
48 officer, or agent of or for the seller, if the director, officer, or agent
49 has personally participated or aided in any way in making the sale, is
50 jointly and severally liable to the purchaser in an action in any court of
51 competent jurisdiction upon tender of the units sold or of the contract made,
52 for the full amount paid by the purchaser, with interest, together with all
53 taxable court costs and reasonable attorneys' fees; provided that no action
54 shall be brought for the recovery of the purchase price after two years from
55 the date of the sale and provided further that no purchaser otherwise

1 entitled shall claim or have the benefit of this section who has refused or
2 failed to accept within thirty days an offer in writing of the seller to take
3 back the unit in question and to refund the full amount paid by the
4 purchaser, together with interest at six per cent on such amount for the
5 period from the date of payment by the purchaser down to the date of
6 repayment.

7 **PART VI. MANAGEMENT OF CONDOMINIUMS**

8 **A. POWERS, DUTIES, AND OTHER GENERAL PROVISIONS**

9 **§ -101 Applicability; exceptions.** (a) This part applies to all
10 condominiums subject to this chapter, except as provided in subsection (b).

11 (b) If so provided in the declaration or bylaws, this part shall not
12 apply to:

- 13 (1) Condominiums in which all units are restricted to nonresidential
14 uses; or
15 (2) Condominiums, not subject to any continuing development rights,
16 containing no more than five units;

17 provided that section -132 shall not be subject to these exceptions.

18 **§ -102 Association; organization and membership.** (a) The first
19 meeting of the association shall be held not later than one hundred eighty
20 days after recordation of the first unit conveyance; provided that forty per
21 cent or more of the project has been sold and recorded. If forty per cent of
22 the project is not sold and recorded at the end of one year after recordation
23 of the first unit conveyance, an annual meeting shall be called if ten per
24 cent of the unit owners so request.

25 (b) The membership of the association shall consist exclusively of all
26 the unit owners. Following termination of the condominium, the membership of
27 the association shall consist of all former unit owners entitled to
28 distributions of proceeds under section -47, or their heirs, successors,
29 or assigns.

30 **§ -103 Association; registration.** (a) Each project or association
31 having more than five units shall:

- 32 (1) Register with the commission through approval of a completed
33 registration application, payment of fees, and submission of any
34 other additional information set forth by the commission. The
35 registration shall be for a biennial period with termination on
36 June 30 of each odd-numbered year. The commission shall
37 prescribe a deadline date prior to the termination date for the
38 submission of a completed reregistration application, payment of
39 fees, and any other additional information set forth by the
40 commission. Any project or association that has not met the
41 submission requirements by the deadline date shall be considered
42 a new applicant for registration and be subject to initial
43 registration requirements. Any new project or association shall
44 register within thirty days of the association's first meeting.
45 If the association has not held its first meeting and it is at
46 least one year after the recordation of the purchase of the first
47 unit in the project, the developer or developer's affiliate or
48 the managing agent shall register on behalf of the association
49 and shall comply with this section, except for the fidelity bond
50 requirement for associations required by section -143(a)(3).
51 The public information required to be submitted on any completed
52 application form shall include but not be limited to evidence of

1 and information on fidelity bond coverage, names and positions of
2 the officers of the association, the name of the association's
3 managing agent, if any, the street and the postal address of the
4 condominium, and the name and current mailing address of a
5 designated officer of the association where the officer can be
6 contacted directly;

7 (2) Pay a nonrefundable application fee and, upon approval, an
8 initial registration fee, a reregistration fee upon
9 reregistration and the condominium education trust fund fee, as
10 provided in rules adopted by the director of commerce and
11 consumer affairs pursuant to chapter 91;

12 (3) Register or reregister and pay the required fees by the due date.
13 Failure to register or reregister or pay the required fees by the
14 due date shall result in the assessment of a penalty equal to the
15 amount of the registration or reregistration fee; and

16 (4) Report promptly in writing to the commission any changes to the
17 information contained on the registration or reregistration
18 application or any other documents required by the commission.
19 Failure to do so may result in termination of registration and
20 subject the project or the association to initial registration
21 requirements.

22 (b) The commission may reject or terminate any registration submitted
23 by a project or an association that fails to comply with this section. Any
24 association that fails to register as required by this section or whose
25 registration is rejected or terminated shall not have standing to maintain
26 any action or proceeding in the courts of this State until it registers. The
27 failure of an association to register, or rejection or termination of its
28 registration, shall not impair the validity of any contract or act of the
29 association nor prevent the association from defending any action or
30 proceeding in any court in this State.

31 **§ -104 Association; powers.** (a) Except as provided in section
32 -105, and subject to the provisions of the declaration and bylaws, the
33 association, even if unincorporated, may:

34 (1) Adopt and amend the declaration, bylaws, and rules and
35 regulations;

36 (2) Adopt and amend budgets for revenues, expenditures, and reserves
37 and collect assessments for common expenses from unit owners,
38 subject to section -148;

39 (3) Hire and discharge managing agents and other independent
40 contractors, agents, and employees;

41 (4) Institute, defend, or intervene in litigation or administrative
42 proceedings in its own name on behalf of itself or two or more
43 unit owners on matters affecting the condominium. For the
44 purposes of actions under chapter 480, associations shall be
45 deemed to be "consumers";

46 (5) Make contracts and incur liabilities;

47 (6) Regulate the use, maintenance, repair, replacement, and
48 modification of common elements;

49 (7) Cause additional improvements to be made as a part of the common
50 elements;

- 1 (8) Acquire, hold, encumber, and convey in its own name any right,
2 title, or interest to real or personal property; provided that
3 designation of additional areas to be common elements or subject
4 to common expenses after the initial filing of the declaration or
5 bylaws shall require the approval of at least sixty-seven per
6 cent of the unit owners; provided further that if the developer
7 discloses to the initial buyer in writing that additional areas
8 will be designated as common elements whether pursuant to an
9 incremental or phased project or otherwise, this requirement
10 shall not apply as to those additional areas; and provided
11 further that this paragraph shall not apply to the purchase of a
12 unit for a resident manager;
- 13 (9) Subject to section -38, grant easements, leases, licenses, and
14 concessions through or over the common elements and permit
15 encroachments on the common elements;
- 16 (10) Impose and receive any payments, fees, or charges for the use,
17 rental, or operation of the common elements, other than limited
18 common elements described in section -35(2) and (4), and for
19 services provided to unit owners;
- 20 (11) Impose charges and penalties, including late fees and interest,
21 for late payment of assessments and, after notice and an
22 opportunity to be heard, levy reasonable fines for violations of
23 the declaration, bylaws, rules, and regulations of the
24 association, either in accordance with the bylaws or, for
25 condominiums created after May 17, 1983, if the bylaws are
26 silent, pursuant to a resolution adopted by the board and
27 approved by sixty-seven per cent of all unit owners at an annual
28 meeting of the association or by the written consent of
29 sixty-seven per cent of all unit owners;
- 30 (12) Impose reasonable charges for the preparation and recordation of
31 amendments to the declaration, documents requested for resale of
32 units, or statements of unpaid assessments;
- 33 (13) Provide for cumulative voting;
- 34 (14) Provide for the indemnification of its officers, board, committee
35 members, and agents, and maintain directors' and officers'
36 liability insurance;
- 37 (15) Assign its right to future income, including the right to receive
38 common expense assessments, but only to the extent section
39 -105(e) expressly so provides;
- 40 (16) Exercise any other powers conferred by the declaration or bylaws;
- 41 (17) Exercise all other powers that may be exercised in this State by
42 legal entities of the same type as the association, except to the
43 extent inconsistent with this chapter;
- 44 (18) Exercise any other powers necessary and proper for the governance
45 and operation of the association; and
- 46 (19) By regulation, subject to sections -146, -161, and -162,
47 require that disputes between the board and unit owners or
48 between two or more unit owners regarding the condominium be
49 submitted to nonbinding alternative dispute resolution in the
50 manner described in the regulation as a prerequisite to
51 commencement of a judicial proceeding.

1 (b) If a tenant of a unit owner violates the declaration, bylaws, or
2 rules and regulations of the association, in addition to exercising any of
3 its powers against the unit owner, the association may:

- 4 (1) Exercise directly against the tenant the powers described in
5 subsection (a) (11);
- 6 (2) After giving notice to the tenant and the unit owner and an
7 opportunity to be heard, levy reasonable fines against the tenant
8 for the violation, provided that a unit owner shall be
9 responsible for the conduct of the owner's tenant and for any
10 fines levied against the tenant or any legal fees incurred in
11 enforcing the declaration, bylaws, or rules and regulations of
12 the association against the tenant; and
- 13 (3) Enforce any other rights against the tenant for the violation
14 which the unit owner as landlord could lawfully have exercised
15 under the lease, including eviction, or which the association
16 could lawfully have exercised directly against the unit owner, or
17 both.

18 (c) The rights granted under subsection (b) (3) may only be exercised
19 if the tenant or unit owner fails to cure the violation within ten days after
20 the association notifies the tenant and unit owner of that violation;
21 provided that no notice shall be required when the breach by the tenant
22 causes or threatens to cause damage to any person or constitutes a violation
23 of section 521-51(1) or 521-51(6).

24 (d) Unless a lease otherwise provides, this section does not:

- 25 (1) Affect rights that the unit owner has to enforce the lease or
26 that the association has under other law; or
- 27 (2) Permit the association to enforce a lease to which it is not a
28 party in the absence of a violation of the declaration, bylaws,
29 or rules and regulations.

30 **§ -105 Association; limitations on powers.** (a) The declaration and
31 bylaws may not impose limitations on the power of the association to deal
32 with the developer which are more restrictive than the limitations imposed on
33 the power of the association to deal with other persons.

34 (b) Unless otherwise permitted by the declaration, bylaws, or this
35 chapter, an association may adopt rules and regulations that affect the use
36 of or behavior in units that may be used for residential purposes only to:

- 37 (1) Prevent any use of a unit which violates the declaration or
38 bylaws;
- 39 (2) Regulate any behavior in or occupancy of a unit which violates
40 the declaration or bylaws or unreasonably interferes with the use
41 and enjoyment of other units or the common elements by other unit
42 owners; or
- 43 (3) Restrict the leasing of residential units to the extent those
44 rules are reasonably designed to meet underwriting requirements
45 of institutional lenders who regularly lend money secured by
46 first mortgages on units in condominiums or regularly purchase
47 those mortgages.

48 Otherwise, the association may not regulate any use of or behavior in units
49 by means of the rules and regulations.

50 (c) No association shall deduct and apply portions of common expense
51 payments received from a unit owner to unpaid late fees, legal fees, fines,

1 and interest (other than amounts remitted by a unit in payment of late fees,
2 legal fees, fines, and interest) unless the board adopts and distributes to
3 all owners a policy stating that:

4 (1) Failure to pay late fees, legal fees, fines, and interest may
5 result in the deduction of such late fees, legal fees, fines, and
6 interest from future common expense payments, so long as a
7 delinquency continues to exist; and

8 (2) Late fees may be imposed against any future common expense
9 payment that is less than the full amount owed due to the
10 deduction of unpaid late fees, legal fees, fines, and interest
11 from the payment.

12 (d) No unit owner who requests legal or other information from the
13 association, the board, the managing agent, or their employees or agents,
14 shall be charged for the reasonable cost of providing the information unless
15 the association notifies the unit owner that it intends to charge the unit
16 owner for the reasonable cost. The association shall notify the unit owner
17 in writing at least ten days prior to incurring the reasonable cost of
18 providing the information, except that no prior notice shall be required to
19 assess the reasonable cost of providing information on delinquent assessments
20 or in connection with proceedings to enforce the law or the association's
21 governing documents.

22 After being notified of the reasonable cost of providing the
23 information, the unit owner may withdraw the request, in writing. A unit
24 owner who withdraws a request for information shall not be charged for the
25 reasonable cost of providing the information.

26 (e) Subject to any approval requirements and spending limits contained
27 in the declaration or bylaws, the association may authorize the board to
28 borrow money for the repair, replacement, maintenance, operation, or
29 administration of the common elements and personal property of the project,
30 or the making of any additions, alterations, and improvements thereto;
31 provided that written notice of the purpose and use of the funds is first
32 sent to all unit owners and owners representing fifty per cent of the common
33 interest vote or give written consent to the borrowing. In connection with
34 the borrowing, the board may grant to the lender the right to assess and
35 collect monthly or special assessments from the unit owners and to enforce
36 the payment of the assessments or other sums by statutory lien and
37 foreclosure proceedings. The cost of the borrowing, including, without
38 limitation, all principal, interest, commitment fees, and other expenses
39 payable with respect to the borrowing or the enforcement of the obligations
40 under the borrowing, shall be a common expense of the project. For purposes
41 of this section, no lease shall be deemed a loan if it provides that at the
42 end of the lease the association may purchase the leased equipment for its
43 fair market value.

44 **§ -106 Board; powers and duties.** (a) Except as provided in the
45 declaration, the bylaws, subsection (b), or other provisions of this chapter,
46 the board may act in all instances on behalf of the association. In the
47 performance of their duties, officers and members of the board shall owe the
48 association a fiduciary duty and exercise the degree of care and loyalty
49 required of an officer or director of a corporation organized under chapter
50 414D.

51 (b) The board may not act on behalf of the association to amend the
52 declaration or bylaws (sections -32(a)(11) and -108(b)(7)), to remove
53 the condominium from the provisions of this chapter (section -47), or to
54 elect members of the board or determine the qualifications, powers and

1 duties, or terms of office of board members (subsection (e)); provided that
2 nothing in this subsection shall be construed to prohibit board members from
3 voting proxies (section -123) to elect members of the board; and provided
4 further that the board may fill vacancies in its membership to serve until
5 the next annual or special association meeting.

6 (c) Within thirty days after the adoption of any proposed budget for
7 the condominium, the board shall make available a copy of the budget to all
8 the unit owners and shall notify each unit owner that the unit owner may
9 request a copy of the budget.

10 (d) The declaration may provide for a period of developer control of
11 the association, during which a developer, or persons designated by the
12 developer, may appoint and remove the officers and members of the board.
13 Regardless of the period provided in the declaration, a period of developer
14 control terminates no later than the earlier of:

- 15 (1) Sixty days after conveyance of seventy-five per cent of the
16 common interest appurtenant to units that may be created to unit
17 owners other than a developer or affiliate of the developer;
- 18 (2) Two years after the developer has ceased to offer units for sale
19 in the ordinary course of business;
- 20 (3) Two years after any right to add new units was last exercised; or
- 21 (4) The day the developer, after giving written notice to unit
22 owners, records an instrument voluntarily surrendering all rights
23 to control activities of the association.

24 A developer may voluntarily surrender the right to appoint and remove
25 officers and members of the board before termination of that period, but in
26 that event the developer may require, for the duration of the period of
27 developer control, that specified actions of the association or board, as
28 described in a recorded instrument executed by the developer, be approved by
29 the developer before they become effective.

30 (e) Not later than the termination of any period of developer control,
31 the unit owners shall elect a board of at least three members; provided that
32 condominiums created after May 17, 1984, with one hundred individual units,
33 shall have an elected board of at least nine members unless at least
34 sixty-seven per cent of all unit owners vote by mail ballot, or at a special
35 or annual meeting, to reduce the number of directors; and provided further
36 that condominiums with more than one hundred individual units where at least
37 seventy-five per cent of the unit owners reside outside of the State may have
38 an elected board of at least three members. The board shall elect the
39 officers. Board members and officers shall take office upon election.

40 (f) At any regular or special meeting of the association, any member
41 of the board may be removed and successors shall be elected for the remainder
42 of the term to fill the vacancies thus created. The removal and replacement
43 shall be in accordance with all applicable requirements and procedures in the
44 bylaws for the removal and replacement of directors, including any provision
45 relating to cumulative voting, and, if removal and replacement is to occur at
46 a special meeting, section -121(b).

47 **§ -107 Board; limitations.** (a) Members of the board shall be unit
48 owners or co-owners, vendees under an agreement of sale, a trustee or
49 beneficiary of a trust which owns a unit, an officer of any corporate owner--
50 including a limited liability corporation--of a unit, or a representative of
51 any other legal entity which owns a unit. The partners in a general
52 partnership and the general partners of a limited partnership or limited
53 liability partnership shall be deemed to be the owners of a unit for the

1 purpose of serving on the board. There shall not be more than one
2 representative on the board from any one unit.

3 (b) No resident manager or employee of a condominium shall serve on
4 its board.

5 (c) An owner shall not act as a director of an association and an
6 employee of the managing agent retained by the association.

7 (d) Directors shall not expend association funds for their travel,
8 directors' fees, and per diem, unless owners are informed and a majority
9 approve of these expenses; provided that, with the approval of the board,
10 directors may be reimbursed for actual expenditures incurred on behalf of the
11 association. The minutes shall reflect in detail the items and amounts of
12 the reimbursements.

13 (e) Associations at their own expense shall provide all board members
14 with a current copy of the association's declaration, bylaws, house rules,
15 and, annually, a copy of this chapter with amendments.

16 (f) The directors may expend association funds, which shall not be
17 deemed to be compensation to the directors, to educate and train themselves
18 in subject areas directly related to their duties and responsibilities as
19 directors; provided that the approved annual operating budget shall include
20 these expenses as separate line items. These expenses may include
21 registration fees, books, videos, tapes, other educational materials, and
22 economy travel expenses. Except for economy travel expenses within the
23 State, all other travel expenses incurred under this subsection shall be
24 subject to the requirements of subsection (d).

25 § -108 **Bylaws.** (a) A true copy of the bylaws shall be recorded in
26 the same manner as the declaration. No amendment to the bylaws is valid
27 unless the amendment is duly recorded.

28 (b) The bylaws shall provide for at least the following:

- 29 (1) The number of members of the board and the titles of the officers
30 of the association;
- 31 (2) Election by the board of a president, treasurer, secretary, and
32 any other officers of the association the bylaws specify;
- 33 (3) The qualifications, powers and duties, terms of office, and
34 manner of electing and removing directors and officers and the
35 filling of vacancies;
- 36 (4) Designation of the powers the board or officers may delegate to
37 other persons or to a managing agent;
- 38 (5) Designation of the officers who may prepare, execute, certify,
39 and record amendments to the declaration on behalf of the
40 association;
- 41 (6) The compensation, if any, of the directors;
- 42 (7) Subject to subsection (d), a method for amending the bylaws; and
- 43 (8) The percentage, consistent with this chapter, that is required to
44 adopt decisions binding on all unit owners; provided that votes
45 allocated to lobby areas, swimming pools, recreation areas,
46 saunas, storage areas, hallways, trash chutes, laundry chutes,
47 and other similar common areas not located inside units shall not
48 be cast at any association meeting, regardless of their
49 designation in the declaration.

1 (c) The bylaws may provide for staggering the terms of directors by
2 dividing the total number of directors into groups. The terms of office of
3 the several groups need not be uniform.

4 (d) Subject to the provisions of the declaration, the bylaws may
5 provide for any other matters the association deems necessary and
6 appropriate.

7 (e) The bylaws may be amended at any time by the vote or written
8 consent of at least sixty-seven per cent of all unit owners. Any proposed
9 bylaws together with the detailed rationale for the proposal may be submitted
10 by the board or by a volunteer unit owners group. If submitted by that
11 group, the proposal shall be accompanied by a petition signed by not less
12 than twenty-five per cent of the unit owners as shown in the association's
13 record of ownership. The proposed bylaws, rationale, and ballots for voting
14 on any proposed bylaw shall be mailed by the board to the owners at the
15 expense of the association for vote or written consent without change within
16 thirty days of the receipt of the petition by the board. The vote or written
17 consent, to be valid, must be obtained within three hundred sixty-five days
18 after mailing for a proposed bylaw submitted by either the board or a
19 volunteer unit owners group. If the bylaw is duly adopted, the board shall
20 cause the bylaw amendment to be recorded. The volunteer unit owners group
21 shall be precluded from submitting a petition for a proposed bylaw that is
22 substantially similar to that which has been previously mailed to the owners
23 within three hundred sixty-five days after the original petition was
24 submitted to the board.

25 This subsection shall not preclude any unit owner or volunteer unit
26 owners group from proposing any bylaw amendment at any annual association
27 meeting.

28 **§ -109 Restatement of declaration and bylaws.** (a) Notwithstanding
29 any other provision of this chapter or of any other statute or instrument, an
30 association at any time may restate the declaration or bylaws of the
31 association to set forth all amendments thereto by a resolution adopted by
32 the board.

33 (b) Subject to section -23, an association at any time may restate
34 the declaration or bylaws of the association to amend the declaration or
35 bylaws as may be required in order to conform with the provisions of this
36 chapter or of any other statute, ordinance, or rule enacted by any
37 governmental authority, by a resolution adopted by the board. The restated
38 declaration or bylaws shall be as fully effective for all purposes as if
39 adopted by a vote or written consent of the unit owners.

40 Any declaration or bylaws restated pursuant to this subsection shall:

- 41 (1) Identify each portion so restated;
- 42 (2) Contain a statement that those portions have been restated solely
43 for purposes of information and convenience;
- 44 (3) Identify the statute, ordinance, or rule implemented by the
45 amendment; and
- 46 (4) Contain a statement that, in the event of any conflict, the
47 restated declaration or bylaws shall be subordinate to the cited
48 statute, ordinance, or rule.

49 (c) Upon the adoption of a resolution pursuant to subsection (a) or
50 (b), the restated declaration or bylaws shall set forth all of the operative
51 provisions of the declaration or bylaws, as amended, together with a
52 statement that the restated declaration or bylaws correctly sets forth

1 without change the corresponding provisions of the declaration or bylaws, as
2 amended, and that the restated declaration or bylaws supersede the original
3 declaration or bylaws and all prior amendments thereto.

4 (d) The restated declaration or bylaws must be recorded and, upon
5 recordation, shall supersede the original declaration or bylaws and all prior
6 amendments thereto. In the event of any conflict, the restated declaration
7 or bylaws shall be subordinate to the original declaration or bylaws and all
8 prior amendments thereto.

9 **§ -110 Bylaws amendment permitted; mixed use property;**

10 **representation on board.** (a) The bylaws of an association may be amended to
11 provide that the composition of the board reflect the proportionate number of
12 units for a particular use, as set forth in the declaration. For example, an
13 association may provide that for a nine-member board where two-thirds of the
14 units are for residential use and one-third is for nonresidential use, sixty-
15 six and two-thirds per cent of the nine-member board, or six members, shall
16 be owners of residential use units and thirty-three and one-third per cent,
17 or three members, shall be owners of nonresidential use units.

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

20 (1) A majority vote of the board; or

21 (2) A submission of the proposed bylaw amendment to the board from a
22 volunteer unit owners group accompanied by a petition from
23 twenty-five per cent of the unit owners of record.

24 (c) Within thirty days of a decision by the board or receipt of a
25 petition to initiate a bylaw amendment, the board shall mail a ballot with
26 the proposed bylaw amendment to all of the unit owners of record. For
27 purposes of this section only, the bylaws may initially be amended by a vote
28 or written consent of the majority of the unit owners; and thereafter by at
29 least sixty-seven per cent of all unit owners; provided that each of the
30 requirements set forth in this section shall be embodied in the bylaws.

31 (d) The bylaws, as amended pursuant to this section, shall be
32 recorded.

33 (e) Election of the new board in accordance with an amendment adopted
34 pursuant to this section shall be held at the next regular meeting of the
35 association or at a meeting called in accordance with section -121(b) for
36 this purpose.

37 (f) As permitted in the declaration or bylaws, the vote of a
38 nonresidential unit owner shall be cast and counted only for the
39 nonresidential seats available on the board and the vote of a residential
40 unit owner shall be cast and counted only for the residential seats available
41 on the board.

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

46 (h) This section shall not preclude the removal and replacement of any
47 one or more members of the board pursuant to section -106(f). Any removal
48 and replacement shall not affect the proportionate composition of the board
49 as prescribed in the bylaws as amended pursuant to this section.

50 **§ -111 Judicial power to excuse compliance with requirements of**

51 **declaration or bylaws.** (a) The circuit court of the judicial circuit in
52 which a condominium is located may excuse compliance with any of the

1 following provisions in a declaration or bylaws if it finds that the
2 provision unreasonably interferes with the association's ability to manage
3 the common property, administer the condominium property regime, or carry out
4 any other function set forth in the declaration or bylaws, and that
5 compliance is not necessary to protect the legitimate interests of the
6 members or lenders holding security interests:

- 7 (1) A provision limiting the amount of any assessment that can be
8 levied against individually owned property;
- 9 (2) A provision requiring that an amendment to the declaration or
10 bylaws be approved by lenders;
- 11 (3) A provision requiring approval of at least sixty-seven per cent
12 of the common interest to adopt an amendment pursuant to section
13 -32(a)(11) or section -108(e); provided that the amendment
14 does not:
- 15 (A) Prohibit or materially restrict the use or occupancy of, or
16 behavior within, individually owned units;
- 17 (B) Change the basis for allocating voting rights or
18 assessments among unit owners; or
- 19 (C) Apply to less than all of the unit owners;
- 20 (4) A requirement that an amendment to the declaration be signed by
21 unit owners; or
- 22 (5) A quorum requirement for meetings of unit owners.
- 23 (b) The board, on behalf of the association, shall by certified mail
24 provide all unit owners with notice of the date, time, and place of any court
25 hearing to be held pursuant to this section.

26 § -112 **Condominium community mutual obligations.** (a) All unit
27 owners, tenants of owners, employees of owners and tenants, or any other
28 persons that may in any manner use property or any part thereof submitted to
29 this chapter are subject to this chapter and to the declaration and bylaws of
30 the association adopted pursuant to this chapter.

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

34 (c) Each unit owner, tenants and employees of an owner, and other
35 persons using the property shall comply strictly with the covenants,
36 conditions, and restrictions set forth in the declaration, the bylaws, and
37 the house rules adopted pursuant thereto. Failure to comply with any of the
38 same shall be grounds for an action to recover sums due, for damages or
39 injunctive relief, or both, maintainable by the managing agent, resident
40 manager, or board on behalf of the association or, in a proper case, by an
41 aggrieved unit owner.

42 B. GOVERNANCE - ELECTIONS AND MEETINGS

43 § -121 **Association meetings.** (a) A meeting of the association
44 shall be held at least once each year.

45 (b) Special meetings of the association may be called by the
46 president, a majority of the board, or by a petition to the secretary or
47 managing agent signed by not less than twenty-five per cent of the unit
48 owners as shown in the association's record of ownership; provided that if
49 the secretary or managing agent fails to send out the notices for the special
50 meeting within fourteen days of receipt of the petition, the petitioners

1 shall have the authority to set the time, date, and place for the special
2 meeting and to send out the notices and proxies for the special meeting in
3 accordance with the requirements of the bylaws and of this part.

4 (c) Not less than fourteen days in advance of any meeting, the
5 secretary or other officer specified in the bylaws shall cause notice to be:

6 (1) Hand-delivered;

7 (2) Sent prepaid by United States mail to the mailing address of each
8 unit or to any other mailing address designated in writing by the
9 unit owner; or

10 (3) At the option of the unit owner, expressed in writing, by
11 electronic mail to the electronic mailing address designated in
12 writing by the unit owner.

13 The notice of any meeting must state the date, time, and place of the meeting
14 and the items on the agenda, including the general nature and rationale of
15 any proposed amendment to the declaration or bylaws, and any proposal to
16 remove a member of the board; provided that this subsection shall not
17 preclude any unit owner from proposing an amendment to the declaration or
18 bylaws or to remove a member of the board at any annual association meeting.

19 (d) All association meetings shall be conducted in accordance with the
20 most recent edition of Robert's Rules of Order Newly Revised. If so provided
21 in the declaration or bylaws, meetings may be conducted by any means that
22 allow participation by all unit owners in any deliberation or discussion.

23 (e) All association meetings shall be held at the address of the
24 condominium or elsewhere within the State as determined by the board;
25 provided that in the event of a natural disaster, such as a hurricane, an
26 association meeting may be held outside the State.

27 § -122 **Association meetings; minutes.** (a) Minutes of meetings of
28 the association shall be approved at the next succeeding regular meeting or
29 by the board, within sixty days after the meeting, if authorized by the
30 owners at an annual meeting. If approved by the board, owners shall be given
31 a copy of the approved minutes or notified of the availability of the minutes
32 within thirty days after approval.

33 (b) Minutes of all meetings of the association shall be available
34 within seven calendar days after approval, and unapproved final drafts of the
35 minutes of a meeting shall be available within sixty days after the meeting.

36 (c) An owner shall be allowed to offer corrections to the minutes at
37 an association meeting.

38 § -123 **Association meetings; voting; proxies.** (a) If only one of
39 several owners of a unit is present at a meeting of the association, that
40 owner is entitled to cast all the votes allocated to that unit. If more than
41 one of the owners is present, the votes allocated to that unit may be cast
42 only in accordance with the agreement of a majority in interest of the
43 owners, unless the declaration expressly provides otherwise. There is
44 majority agreement if any one of the owners casts the votes allocated to that
45 unit without protest being made by any of the other owners of the unit to the
46 person presiding over the meeting before the polls are closed.

47 (b) Votes allocated to a unit may be cast pursuant to a proxy duly
48 executed by a unit owner. A unit owner may vote by mail or electronic
49 transmission through a duly executed directed proxy. If a unit is owned by
50 more than one person, each owner of the unit may vote or register protest to
51 the casting of votes by the other owners of the unit through a duly executed
52 proxy. A unit owner may revoke a proxy given pursuant to this section only

1 by actual notice of revocation to the secretary of the association or the
2 managing agent. A proxy is void if it purports to be revocable without
3 notice.

4 (c) No votes allocated to a unit owned by the association may be cast
5 for the election or reelection of directors.

6 (d) A proxy, to be valid, shall:

7 (1) Be delivered to the secretary of the association or the managing
8 agent, if any, no later than 4:30 p.m. on the second business day
9 prior to the date of the meeting to which it pertains;

10 (2) Contain at least the name of the association, the date of the
11 meeting of the association, the printed names and signatures of
12 the persons giving the proxy, the unit numbers for which the
13 proxy is given, the names of persons to whom the proxy is given,
14 and the date that the proxy is given; and

15 (3) If it is a standard proxy form authorized by the association,
16 contain boxes wherein the owner has indicated that the proxy is
17 given:

18 (A) For quorum purposes only;

19 (B) To the individual whose name is printed on a line next to
20 this box;

21 (C) To the board as a whole and that the vote is to be made on
22 the basis of the preference of the majority of the
23 directors present at the meeting; or

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

26 The proxy form shall also contain a box wherein the owner may
27 indicate that the owner wishes to obtain a copy of the annual
28 audit report required by section -150.

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

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

38 (g) Nothing in this section shall affect the holder of any proxy under
39 a first mortgage of record encumbering a unit or under an agreement of sale
40 affecting a unit.

41 (h) With respect to the use of association funds to distribute
42 proxies:

43 (1) Any board that intends to use association funds to distribute
44 proxies, including the standard proxy form referred to in
45 subsection (d) (3), shall first post notice of its intent to
46 distribute proxies in prominent locations within the project at
47 least twenty-one days before its distribution of proxies. If the
48 board receives within seven days of the posted notice a request
49 by any owner for use of association funds to solicit proxies

1 accompanied by a statement, the board shall mail to all owners
2 either:

3 (A) A proxy form containing the names of all owners who have
4 requested the use of association funds for soliciting
5 proxies accompanied by their statements; or

6 (B) A proxy form containing no names, but accompanied by a list
7 of names of all owners who have requested the use of
8 association funds for soliciting proxies and their
9 statements.

10 The statement, which shall be limited to black text on white
11 paper, shall not exceed one single-sided 8-1/2" x 11" page,
12 indicating the owner's qualifications to serve on the board or
13 reasons for wanting to receive proxies; and

14 (2) A board or member of the board may use association funds to
15 solicit proxies as part of the distribution of proxies. If a
16 member of the board, as an individual, seeks to solicit proxies
17 using association funds, the board member shall proceed as a unit
18 owner under paragraph (1).

19 (i) No managing agent or resident manager, or their employees, shall
20 solicit, for use by the managing agent or resident manager, any proxies from
21 any unit owner of the association that retains the managing agent or employs
22 the resident manager, nor shall the managing agent or resident manager cast
23 any proxy vote at any association meeting except for the purpose of
24 establishing a quorum.

25 (j) No board shall adopt any rule prohibiting the solicitation of
26 proxies or distribution of materials relating to association matters on the
27 common elements by unit owners; provided that a board may adopt rules
28 regulating reasonable time, place, and manner of the solicitations or
29 distributions, or both.

30 **§ -124 Association meetings; purchaser's right to vote.** The
31 purchaser of a unit pursuant to a recorded agreement of sale shall have all
32 the rights of a unit owner, including the right to vote; provided that the
33 seller may retain the right to vote on matters substantially affecting the
34 seller's security interest in the unit, including but not limited to, the
35 right to vote on:

- 36 (1) Any partition of all or part of the project;
37 (2) The nature and amount of any insurance covering the project and
38 the disposition of any proceeds thereof;
39 (3) The manner in which any condemnation of the project shall be
40 defended or settled and the disposition of any award or
41 settlement in connection therewith;
42 (4) The payment of any amount in excess of insurance or condemnation
43 proceeds;
44 (5) The construction of any additions or improvements, and any
45 substantial repair or rebuilding of any portion of the project;
46 (6) The special assessment of any expenses;
47 (7) The acquisition of any unit in the project;
48 (8) Any amendment to the declaration or bylaws;

- 1 (9) Any removal of the project from the provisions of this chapter;
2 and
3 (10) Any other matter that would substantially affect the security
4 interest of the seller.

5 § -125 **Board meetings.** (a) All meetings of the board, other than
6 executive sessions, shall be open to all members of the association, and
7 association members who are not on the board may participate in any
8 deliberation or discussion, other than executive sessions, unless a majority
9 of a quorum of the board votes otherwise.

10 (b) The board, with the approval of a majority of a quorum of its
11 members, may adjourn a meeting and reconvene in executive session to discuss
12 and vote upon matters:

- 13 (1) Concerning personnel;
14 (2) Concerning litigation in which the association is or may become
15 involved;
16 (3) Necessary to protect the attorney-client privilege of the
17 association; or
18 (4) Necessary to protect the interests of the association while
19 negotiating contracts, leases, and other commercial transactions.

20 The general nature of any business to be considered in executive session
21 shall first be announced in open session.

22 (c) All board meetings shall be conducted in accordance with the most
23 recent edition of Robert's Rules of Order Newly Revised. Unless otherwise
24 provided in the declaration or bylaws, a board may permit any meeting to be
25 conducted by any means of communication through which all directors
26 participating may simultaneously hear each other during the meeting. A
27 director participating in a meeting by this means is deemed to be present in
28 person at the meeting. If permitted by the board, any unit owner may
29 participate in a meeting conducted by a means of communication through which
30 all participants may simultaneously hear each other during the meeting,
31 provided that the board may require that the unit owner pay for the costs
32 associated with the participation.

33 (d) The board shall meet at least once a year. Notice of all board
34 meetings shall be posted by the managing agent, resident manager, or a member
35 of the board, in prominent locations within the project seventy-two hours
36 prior to the meeting or simultaneously with notice to the board.

37 (e) A director shall not vote by proxy at board meetings.

38 (f) A director shall not vote at any board meeting on any issue in
39 which the director has a conflict of interest. A director who has a conflict
40 of interest on any issue before the board shall disclose the nature of the
41 conflict of interest prior to a vote on that issue at the board meeting, and
42 the minutes of the meeting shall record the fact that a disclosure was made.

43 "Conflict of interest", as used in this subsection, means an issue in
44 which a director has a direct personal or pecuniary interest not common to
45 other members of the association.

46 § -126 **Board meetings; minutes.** (a) Minutes of meetings of the
47 board shall include the recorded vote of each board member on all motions
48 except motions voted on in executive session.

49 (b) Minutes of meetings of the board shall be approved no later than
50 the second succeeding regular meeting.

1 (c) Minutes of all meetings of the board shall be available within
2 seven calendar days after approval, and unapproved final drafts of the
3 minutes of a meeting shall be available within sixty days after the meeting;
4 provided that the minutes of any executive session may be withheld if their
5 publication would defeat the lawful purpose of the executive session.

6 C. OPERATIONS

7 § -131 **Operation of the property.** The operation of the property
8 shall be governed by this chapter and the declaration and bylaws.

9 § -132 **Managing agents.** (a) Every managing agent shall:

10 (1) Be a:

11 (A) Licensed real estate broker in compliance with chapter 467
12 and the rules of the commission. With respect to any
13 requirement for a corporate managing agent in any
14 declaration or bylaws recorded before the effective date of
15 this chapter, any managing agent organized as a limited
16 liability company shall be deemed to be organized as a
17 corporation for the purposes of this paragraph, unless the
18 declaration or bylaws are expressly amended after the
19 effective date of this chapter to require that the managing
20 agent be organized as a corporation and not as a limited
21 liability company; or

22 (B) Corporation authorized to do business under article 8 of
23 chapter 412;

24 (2) Register with the commission prior to conducting managing agent
25 activity through approval of a completed registration
26 application, payment of fees, and submission of any other
27 additional information set forth by the commission. The
28 registration shall be for a biennial period with termination on
29 December 31 of an even-numbered year. The commission shall
30 prescribe a deadline date prior to the termination date for the
31 submission of a completed reregistration application, payment of
32 fees, and any other additional information set forth by the
33 commission. Any managing agent who has not met the submission
34 requirements by the deadline date shall be considered a new
35 applicant for registration and subject to initial registration
36 requirements. The information required to be submitted with any
37 application shall include the name, business address, phone
38 number, and names of associations managed;

39 (3) Obtain and keep current a fidelity bond in an amount equal to
40 \$500 multiplied by the aggregate number of units of the
41 association managed by the managing agent; provided that the
42 amount of the fidelity bond shall not be less than \$20,000 nor
43 greater than \$500,000. Upon request by the commission, the
44 managing agent shall provide evidence of a current fidelity bond
45 or a certification statement from an insurance company authorized
46 by the insurance division of the department of commerce and
47 consumer affairs certifying that the fidelity bond is in effect
48 and meets the requirements of this section and the rules adopted
49 by the commission. The managing agent shall permit only
50 employees covered by the fidelity bond to handle or have custody
51 or control of any association funds, except any principals of the
52 managing agent that cannot be covered by the fidelity bond. The
53 fidelity bond shall protect the managing agent against the loss
54 of any association's moneys, securities, or other properties

1 caused by the fraudulent or dishonest acts of employees of the
2 managing agent. Failure to obtain or maintain a fidelity bond in
3 compliance with this chapter and the rules adopted pursuant
4 thereto, including failure to provide evidence of the fidelity
5 bond coverage in a timely manner to the commission, shall result
6 in nonregistration or the automatic termination of the
7 registration, unless an approved exemption or a bond alternative
8 is presently maintained. A managing agent who is unable to
9 obtain a fidelity bond may seek an exemption from the fidelity
10 bond requirement from the commission;

11 (4) Act promptly and diligently to recover from the fidelity bond, if
12 the fraud or dishonesty of the managing agent's employees causes
13 a loss to an association, and apply the fidelity bond proceeds,
14 if any, to reduce the association's loss. If more than one
15 association suffers a loss, the managing agent shall divide the
16 proceeds among the associations in proportion to each
17 association's loss. An association may request a court order
18 requiring the managing agent to act promptly and diligently to
19 recover from the fidelity bond. If an association cannot recover
20 its loss from the fidelity bond proceeds of the managing agent,
21 the association may recover by court order from the real estate
22 recovery fund established under section 467-16, provided that:

23 (A) The loss is caused by the fraud, misrepresentation, or
24 deceit of the managing agent or its employees;

25 (B) The managing agent is a licensed real estate broker; and

26 (C) The association fulfills the requirements of sections 467-
27 16 and 467-18 and any applicable rules of the commission;

28 (5) Pay a nonrefundable application fee and, upon approval, an
29 initial registration fee, and subsequently pay a reregistration
30 fee, as prescribed by rules adopted by the director of commerce
31 and consumer affairs pursuant to chapter 91. A compliance
32 resolution fee shall also be paid pursuant to section 26-9(o) and
33 the rules adopted pursuant thereto; and

34 (6) Report immediately in writing to the commission any changes to
35 the information contained on the registration application or any
36 other documents provided for registration. Failure to do so may
37 result in termination of registration and subject the managing
38 agent to initial registration requirements.

39 (b) The commission may deny any registration or reregistration
40 application or terminate a registration without hearing if the fidelity bond
41 and supporting documents fail to meet the requirements of this chapter and
42 the rules adopted pursuant thereto.

43 (c) Every managing agent shall be considered a fiduciary with respect
44 to any property managed by that managing agent.

45 (d) The registration requirements of this section shall not apply to
46 active real estate brokers in compliance with and licensed under chapter 467.

47 (e) If a managing agent receives a request from the commission to
48 distribute any commission-generated information, printed material, or
49 documents to the association, its board, or unit owners, the managing agent
50 shall make the distribution within a reasonable period of time after
51 receiving the request. The requirements of this subsection apply to all
52 managing agents, including unregistered managing agents.

1 **§ -133 Association employees; background check; prohibition.** (a)

2 The board, managing agent, or resident manager, upon the written
3 authorization of an applicant for employment as a security guard or resident
4 manager or for a position that would allow the employee access to the keys of
5 or entry into the units in the condominium or access to association funds,
6 may conduct a background check on the applicant or direct another responsible
7 party to conduct the check. Before initiating or requesting a check, the
8 board, managing agent, or resident manager shall first certify that the
9 signature on the authorization is authentic and that the person is an
10 applicant for such employment. The background check, at a minimum, shall
11 require the applicant to disclose whether the applicant has been convicted in
12 any jurisdiction of a crime which would tend to indicate that the applicant
13 may be unsuited for employment as an association employee with access to
14 association funds or the keys of or entry into the units in the condominium,
15 and the judgment of conviction has not been vacated.

16 For purposes of this section, the criminal history disclosure made by
17 the applicant may be verified by the board, managing agent, resident manager,
18 or other responsible party, if so directed by the board, managing agent, or
19 resident manager, by means of information obtained through the Hawaii
20 criminal justice data center. The applicant shall provide the Hawaii
21 criminal justice data center with personal identifying information, which
22 shall include, but not be limited to, the applicant's name, social security
23 number, date of birth, and gender. This information shall be used only for
24 the purpose of conducting the criminal history record check authorized by
25 this section. Failure of an association, managing agent, or resident manager
26 to conduct or verify or cause to have conducted or verified a background
27 check shall not alone give rise to any private cause of action against an
28 association, managing agent, or resident manager for acts and omissions of
29 the employee hired.

30 (b) An association's employees shall not engage in selling or renting
31 units in the condominium in which they are employed, except association-owned
32 units, unless such activity is approved by sixty-seven per cent of the unit
33 owners.

34 **§ -134 Management and contracts; developer, managing agent, and**
35 **association.** (a) Any developer or affiliate of the developer or a managing
36 agent, who manages the operation of the property from the date of recordation
37 of the first unit conveyance until the organization of the association, shall
38 comply with the requirements of sections -72, -103, and -149.

39 (b) The developer or affiliate of the developer, board, and managing
40 agent shall ensure that there is a written contract for managing the
41 operation of the property, expressing the agreements of all parties
42 including, but not limited to, financial and accounting obligations, services
43 provided, and any compensation arrangements, including any subsequent
44 amendments. Copies of the executed contract and any amendments shall be
45 provided to all parties to the contract. Prior to the organization of the
46 association, any unit owner may request to inspect as well as receive a copy
47 of the management contract from the entity that manages the operation of the
48 property.

49 **§ -135 Termination of contracts and leases of developer.** (a) If
50 entered into before the board elected by the unit owners pursuant to section
51 -106(e) takes office:

- 52 (1) Any management contract, employment contract, or lease of
53 recreational or parking areas or facilities;

- 1 (2) Any other contract or lease between the association and a
2 developer or an affiliate of a developer; or
- 3 (3) Any contract or lease that is not bona fide or was unconscionable
4 to the unit owners at the time entered into under the
5 circumstances then prevailing;

6 may be terminated without penalty by the association within a period of one
7 hundred eighty days after the board elected by the unit owners pursuant to
8 section -106(e) takes office, upon not less than ninety days notice to the
9 other party.

10 (b) This section does not apply to:

- 11 (1) Any lease or other agreement the termination of which would
12 terminate the condominium or reduce its size, unless the real
13 estate subject to that lease was included in the condominium for
14 the purpose of avoiding the right of the association to terminate
15 a lease under this section; or
- 16 (2) A proprietary lease.

17 **§ -136 Transfer of developer rights.** (a) A developer right created
18 or reserved under this chapter may be transferred only by a recorded
19 instrument evidencing the transfer. The instrument is not effective unless
20 executed by the transferee.

21 (b) Upon transfer of any developer right, the liability of a
22 transferor developer is as follows:

- 23 (1) A transferor is not relieved of any obligation or liability
24 arising before the transfer, and remains liable for warranty
25 obligations imposed upon the transferor by this chapter, if any.
26 Lack of privity does not deprive any unit owner of standing to
27 maintain an action to enforce any obligation of the transferor;
- 28 (2) If a successor to any developer right is an affiliate of a
29 developer, the transferor is jointly and severally liable with
30 the successor for any obligations or liabilities of the successor
31 relating to the condominium;
- 32 (3) If a transferor retains any developer rights, but transfers other
33 developer rights to a successor who is not an affiliate of the
34 developer, the transferor is liable for any obligations or
35 liabilities imposed on a developer by this chapter or by the
36 declaration relating to the retained developer rights and arising
37 after the transfer; and
- 38 (4) A transferor has no liability for any act or omission or any
39 breach of a contractual or warranty obligation arising from the
40 exercise of a developer right by a successor developer who is not
41 an affiliate of the transferor.

42 (c) Unless otherwise provided in a mortgage instrument or other
43 agreement creating a security interest, in case of foreclosure of a security
44 interest, sale by a trustee under an agreement creating a security interest,
45 tax sale, judicial sale, or sale under bankruptcy code or receivership
46 proceedings, of any units owned by a developer or real estate in a
47 condominium subject to development rights, a person acquiring title to all
48 the property being foreclosed or sold, but only upon request, succeeds to all
49 developer rights related to that property held by that developer. The
50 judgment or instrument conveying title must provide for the transfer of only
51 the developer rights requested.

1 (d) Upon foreclosure of a security interest, sale by a trustee under
2 an agreement creating a security interest, tax sale, judicial sale, or sale
3 under bankruptcy code or receivership proceedings, of all interests in a
4 condominium owned by a developer:

- 5 (1) The developer ceases to have any developer rights; and
6 (2) The period of developer control under section -106(d)
7 terminates unless the judgment or instrument conveying title
8 provides for transfer of all developer rights held by that
9 developer to a successor developer.

10 (e) The liabilities and obligations of a person who succeeds to
11 developer rights are as follows:

- 12 (1) A successor to any developer right who is an affiliate of a
13 developer is subject to all obligations and liabilities imposed
14 on the transferor by this chapter or by the declaration;
15 (2) A successor to any developer right, other than a successor
16 described in paragraph (3) or (4) or a successor who is an
17 affiliate of a developer, is subject to the obligations and
18 liabilities imposed by this chapter or the declaration:
19 (A) On a developer which relate to the successor's exercise or
20 nonexercise of developer rights; or
21 (B) On the transferor, other than:
22 (i) Misrepresentations by any previous developer;
23 (ii) Warranty obligations on improvements made by any
24 previous developer, or made before the condominium
25 was created;
26 (iii) Breach of any fiduciary obligation by any previous
27 developer or the developer's appointees to the board;
28 or
29 (iv) Any liability or obligation imposed on the transferor
30 as a result of the transferor's acts or omissions
31 after the transfer;
32 (3) A successor to only a right reserved in the declaration to
33 maintain models, sales offices, and signs, and who may not
34 exercise any other developer right, is not subject to any
35 liability or obligation as a developer, except the obligation to
36 provide a public report, any liability arising as a result
37 thereof, and the obligations under part IV; and
38 (4) A successor to all developer rights held by a transferor who
39 succeeded to those rights pursuant to a deed or other instrument
40 of conveyance in lieu of foreclosure or a judgment or instrument
41 conveying title under subsection (c), may declare in a recorded
42 instrument the intention to hold those rights solely for transfer
43 to another person. Thereafter, until transferring all developer
44 rights to any person acquiring title to any unit or real estate
45 subject to development rights owned by the successor, or until
46 recording an instrument permitting exercise of all those rights,
47 that successor may not exercise any of those rights other than
48 any right held by the transferor to control the board in
49 accordance with section -106(d) for the duration of any period
50 of developer control, and any attempted exercise of those rights
51 is void. So long as a successor developer may not exercise

1 developer rights under this subsection, the successor developer
2 is not subject to any liability or obligation as a developer
3 other than liability for the developer's acts and omissions under
4 section -106(d).

5 (f) Nothing in this section subjects any successor to a developer
6 right to any claims against or other obligations of a transferor developer,
7 other than claims and obligations arising under this chapter or the
8 declaration.

9 § -137 **Upkeep of condominium.** (a) Except to the extent provided by
10 the declaration or bylaws, the association is responsible for the operation
11 of the property, and each unit owner is responsible for maintenance, repair,
12 and replacement of the owner's unit. Each unit owner shall afford to the
13 association and the other unit owners, and to their agents or employees,
14 during reasonable hours, access through the owner's unit reasonably necessary
15 for those purposes. If damage is inflicted on the common elements or on any
16 unit through which access is taken, the unit owner responsible for the
17 damage, or the association, if it is responsible, is liable for the prompt
18 repair thereof; provided that the association shall not be responsible to pay
19 the costs of removing any finished surfaces or other barriers that impede its
20 ability to maintain and repair the common elements.

21 (b) The association shall have the irrevocable right, to be exercised
22 by the board, to have access to each unit at any time as may be necessary for
23 making emergency repairs to prevent damage to the common elements or to
24 another unit or units.

25 § -138 **Upkeep of condominium; high-risk components.** (a) The board,
26 after notice to all unit owners and an opportunity for owner comment, may
27 determine that certain portions of the units, or certain objects or
28 appliances within the units such as washing machine hoses and water heaters,
29 pose a particular risk of damage to other units or the common elements if
30 they are not properly inspected, maintained, repaired, or replaced by owners.
31 Those items determined by the board to pose a particular risk are "high-risk
32 components" for the purposes of this section.

33 (b) With regard to items designated as high-risk components, the board
34 may require any or all of the following:

35 (1) Inspection:

36 (A) At specified intervals; or

37 (B) Upon replacement or repair by the association or by
38 inspectors designated by the association;

39 (2) Replacement or repair at specified intervals whether or not the
40 component is deteriorated or defective; and

41 (3) Replacement or repair:

42 (A) Meeting particular standards or specifications established
43 by the board;

44 (B) Including additional components or installations specified
45 by the board; or

46 (C) Using contractors with specific licensing, training, or
47 certification approved by the board.

48 (c) The imposition of requirements by the board under subsection (b)
49 shall not relieve unit owners of obligations regarding high-risk components
50 as set forth in the declaration or bylaws including, without limitation, the
51 obligation to maintain, repair, and replace the components.

1 (d) If a unit owner fails to follow requirements imposed by the board
2 pursuant to this section, the association, after reasonable notice, shall
3 enter the unit to perform the requirements with regard to such high-risk
4 components at the sole cost and expense of the unit owner, which costs and
5 expenses shall be a lien on the unit as provided in section -146. Nothing
6 in this section shall be deemed to limit the remedies of the association for
7 damages, or injunctive relief, or both.

8 **§ -139 Upkeep of condominium; disposition of unclaimed possessions.**

9 (a) When personalty in or on the common elements of a project has been
10 abandoned, the board may sell the personalty in a commercially reasonable
11 manner, store the personalty at the expense of its owner, donate the
12 personalty to a charitable organization, or otherwise dispose of the
13 personalty in its sole discretion; provided that no sale, storage, or
14 donation shall occur until sixty days after the board complies with the
15 following:

16 (1) The board notifies the owner in writing of:

17 (A) The identity and location of the personalty; and

18 (B) The board's intent to so sell, store, donate, or dispose of
19 the personalty.

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

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

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

34 **§ -140 Additions to and alterations of condominium.** (a) No unit
35 owner shall do any work that may jeopardize the soundness or safety of the
36 property, reduce the value thereof, or impair any easement, as reasonably
37 determined by the board.

38 (b) Subject to the provisions of the declaration, no unit owner may
39 make or allow any material addition or alteration, or excavate an additional
40 basement or cellar, without first obtaining the written consent of sixty-
41 seven per cent of the unit owners, the consent of all unit owners whose units
42 or appurtenant limited common elements are directly affected, and the
43 approval of the board, which shall not unreasonably withhold such approval.
44 The declaration may limit the board's ability to approve or condition a
45 proposed addition or alteration; provided that the board shall always have
46 the right to disapprove a proposed addition or alteration that the board
47 reasonably determines could jeopardize the soundness or safety of the
48 property, impair any easement, or interfere with or deprive any nonconsenting
49 owner of the use or enjoyment of any part of the property.

50 (c) Subject to the provisions of the declaration, nonmaterial
51 additions to or alterations of the common elements or units, including,
52 without limitation, the installation of solar energy devices, or additions to
53 or alterations of a unit made within the unit or within a limited common

1 element appurtenant to and for the exclusive use of the unit, shall require
2 approval only by the board, which shall not unreasonably withhold such
3 approval, and such percentage, number, or group of unit owners as may be
4 required by the declaration or bylaws.

5 "Nonmaterial additions and alterations", as used in this subsection,
6 means an addition to or alteration of the common elements or a unit that does
7 not jeopardize the soundness or safety of the property, reduce the value
8 thereof, impair any easement, detract from the appearance of the project,
9 interfere with or deprive any nonconsenting owner of the use or enjoyment of
10 any part of property, or directly affect any nonconsenting owner.

11 "Solar energy device", for purposes of this subsection, means any new
12 identifiable facility, equipment, apparatus, or the like which makes use of
13 solar energy for heating, cooling, or reducing the use of other types of
14 energy dependent upon fossil fuel for its generation; provided that if the
15 equipment sold cannot be used as a solar device without its incorporation
16 with other equipment, it shall be installed in place and be ready to be made
17 operational in order to qualify as a "solar energy device".

18 (d) Notwithstanding any other provisions to the contrary in this
19 chapter or in any declaration or bylaws:

20 (1) Regarding the installment of telecommunications equipment:

21 (A) The board shall have the authority to install or cause the
22 installation of antennas, conduits, chases, cables, wires,
23 and other television signal distribution and
24 telecommunications equipment upon the common elements of
25 the project; provided that the same shall not be installed
26 upon any limited common element without the consent of the
27 owner or owners of the unit or units for the use of which
28 the limited common element is reserved; and

29 (B) The installation of antennas, conduits, chases, cables,
30 wires, and other television signal distribution and
31 telecommunications equipment upon the common elements by
32 the board shall not be deemed to alter, impair, or diminish
33 the common interest, common elements, and easements
34 appurtenant to each unit, or to be a structural alteration
35 or addition to any building constituting a material change
36 in the plans of the project filed in accordance with
37 sections -33 and -34; provided that no such
38 installation shall directly affect any nonconsenting unit
39 owner; and

40 (2) Regarding the abandonment of telecommunications equipment:

41 (A) The board shall be authorized to abandon or change the use
42 of any television signal distribution and
43 telecommunications equipment due to technological or
44 economic obsolescence or to provide an equivalent function
45 by different means or methods; and

46 (B) The abandonment or change of use of any television signal
47 distribution or telecommunications equipment by the board
48 due to technological or economic obsolescence or to provide
49 an equivalent function by different means or methods shall
50 not be deemed to alter, impair, or diminish the common
51 interest, common elements, and easements appurtenant to
52 each unit or to be a structural alteration or addition to
53 any building constituting a material change in the plans of

1 the project filed in accordance with sections -33 and
2 -34.

3 As used in this subsection:

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

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

11 **§ -141 Tort and contract liability; tolling of limitation period.**

12 (a) A unit owner is not liable, solely by reason of being a unit owner, for
13 any injury or damage arising out of the condition or use of the common
14 elements. Neither the association nor any unit owner except the developer is
15 liable for that developer's torts in connection with any part of the
16 condominium that that developer has the responsibility to maintain.

17 (b) An action alleging a wrong done by the association, including an
18 action arising out of the condition or use of the common elements, may be
19 maintained only against the association and not against any unit owner. If
20 the wrong occurred during any period of developer control and the association
21 gives the developer reasonable notice of and an opportunity to defend against
22 the action, the developer who then controlled the association is liable to
23 the association or to any unit owner for:

24 (1) All tort losses not covered by insurance suffered by the
25 association or that unit owner; and

26 (2) All costs that the association would not have incurred but for a
27 breach of contract or other wrongful act or omission, as the same
28 may be established through adjudication.

29 Whenever the developer is liable to the association under this section, the
30 developer is also liable for all expenses of litigation, including reasonable
31 attorneys' fees, incurred by the association.

32 (c) Any statute of limitation affecting the association's right of
33 action against a developer under this chapter is tolled until the period of
34 developer control terminates. A unit owner is not precluded from maintaining
35 an action contemplated by this section because the unit owner is a unit owner
36 or a member or officer of the association. Liens resulting from judgments
37 against the association are governed by section -147.

38 **§ -142 Aging in place; limitation on liability.** (a) The

39 association, its directors, unit owners, and their agents and tenants, acting
40 through the board, shall not have any legal responsibility or legal
41 liability, with respect to any actions and recommendations the board takes on
42 any report, observation, or complaint made, or with respect to any
43 recommendation or referral given, which relates to an elderly unit owner who,
44 may require services and assistance to maintain independent living in the
45 unit in which the elderly unit owner resides so that the elderly unit owner
46 will not pose any harm to self or to others, and will not be disruptive to
47 the condominium community because of the following problems of aging and
48 aging in place:

49 (1) The inability to clean and maintain an independent unit;

50 (2) Mental confusion;

51 (3) Abusing others;

- 1 (4) Inability to care for oneself;
- 2 (5) Inability to arrange for home care;
- 3 (6) Loneliness and neglect; or
- 4 (7) Inappropriate requests of others for assistance.

5 For purposes of this section, "elderly" means age sixty-two and older.

6 (b) Upon a report, observation, or complaint relating to an elderly
7 unit owner aging or aging in place which notes a problem similar in nature to
8 the problems enumerated in subsection (a), the board, in good faith, and
9 without legal responsibility or liability, may request a functional
10 assessment regarding the condition of an elderly unit owner as well as
11 recommendations for the services which the elderly unit owner may require to
12 maintain a level of independence that enables the owner to avoid any harm to
13 self or to others, and to avoid disruption to the condominium community. The
14 board, upon request or unilaterally, and without legal responsibility or
15 liability, may recommend available services to an elderly unit owner which
16 might enable the elderly unit owner to maintain a level of independent living
17 with assistance, enabling in turn, the elderly unit owner to avoid any harm
18 to self or others, and to avoid disruption to the condominium community.

19 (c) There is no affirmative duty on the part of the association, its
20 board, the unit owners, or their agents or tenants to request or require an
21 assessment and recommendations with respect to an elderly unit owner when the
22 elderly unit owner may be experiencing the problems related to aging and
23 aging in place enumerated in subsection (a). The association, its board,
24 unit owners, and their agents and tenants shall not be legally responsible or
25 liable for not requesting or declining to request a functional assessment of,
26 and recommendations for, an elderly unit owner regarding problems relating to
27 aging and aging in place.

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

34 (e) Costs and fees for assessments, recommendations, and actions
35 contemplated in this section shall be as set forth in the declaration or
36 bylaws.

37 (f) This section shall not be applicable to any condominium that seeks
38 to become licensed as an assisted living facility pursuant to chapter 90,
39 title 11, Hawaii Administrative Rules, as amended.

40 **§ -143 Insurance.** (a) Unless otherwise provided in the declaration
41 or bylaws, and to the extent reasonably available, the association shall
42 purchase and at all times maintain the following:

- 43 (1) Property insurance:
 - 44 (A) On the common elements;
 - 45 (B) Providing coverage for special form causes of loss; and
 - 46 (C) In a total amount of not less than the full insurable
47 replacement cost of the insured property, less deductibles,
48 but including coverage for the increased costs of
49 construction due to building code requirements, at the time
50 the insurance is purchased and at each renewal date;

1 (2) Commercial general liability insurance against claims and
2 liabilities arising in connection with the ownership, existence,
3 use, or management of the property in a minimum amount of
4 \$1,000,000, or a greater amount deemed sufficient in the judgment
5 of the board, insuring the board, the association, the management
6 agent, and their respective employees and agents and all persons
7 acting as agents. The developer shall be included as an
8 additional insured in its capacity as a unit owner, managing
9 agent or resident manager, board member, or officer. The unit
10 owners shall be included as additional insured parties but only
11 for claims and liabilities arising in connection with the
12 ownership, existence, use, or management of the common elements.
13 The insurance shall cover claims of one or more insured parties
14 against other insured parties.

15 (3) A fidelity bond, as follows:

16 (A) An association with more than five dwelling units shall
17 obtain and maintain a fidelity bond covering persons,
18 including the managing agent and its employees who control
19 or disburse funds of the association, in an amount equal to
20 \$500 multiplied by the number of units; provided that the
21 amount of the fidelity bond required by this paragraph
22 shall not be less than \$20,000 nor greater than \$200,000;

23 (B) All management companies that are responsible for the funds
24 held or administered by the association shall be covered by
25 a fidelity bond as provided in section -132(a)(3). The
26 association shall have standing to make a loss claim
27 against the bond of the managing agent as a party covered
28 under the bond; and

29 (C) The board shall obtain directors and officers liability
30 coverage at a level deemed reasonable by the board, if not
31 otherwise established by the declaration or bylaws.
32 Directors and officers liability coverage shall extend to
33 all contracts and other actions taken by the board in their
34 official capacity as directors and officers, but shall
35 exclude actions for which the directors are not entitled to
36 indemnification under chapter 414D or the declaration and
37 bylaws.

38 (b) If a building contains attached units, the insurance maintained
39 under subsection (a)(1), to the extent reasonably available, shall include
40 the units, the limited common elements, except as otherwise determined by the
41 board, and the common elements. The insurance need not cover improvements
42 and betterments to the units installed by unit owners, but if improvements
43 and betterments are covered, any increased cost may be assessed by the
44 association against the units affected.

45 For the purposes of this section, "improvements and betterments" means
46 all decorating, fixtures, and furnishings installed or added to and located
47 within the boundaries of the unit, including electrical fixtures, appliances,
48 air conditioning and heating equipment, water heaters, or built-in cabinets
49 installed by unit owners.

50 (c) If a project contains detached units, then notwithstanding the
51 requirement that associations obtain the requisite coverage, the insurance to
52 be maintained under subsection (a)(1) may be obtained separately for each
53 unit by the unit owners; provided that the requirements of subsection (a)(1)
54 shall be met; and provided further that evidence of such insurance coverage

1 shall be delivered annually to the association. In such event, the
2 association shall be named as an additional insured.

3 (d) The board, in the case of a claim for damage to a unit or the
4 common elements, may:

- 5 (1) Pay the deductible amount as a common expense;
6 (2) After notice and an opportunity for a hearing, assess the
7 deductible amount against the owners who caused the damage or
8 from whose units the damage or cause of loss originated; or
9 (3) Require the unit owners of the units affected to pay the
10 deductible amount.

11 (e) The declaration or bylaws may require the association to carry any
12 other insurance, including workers' compensation, employment practices,
13 environmental hazards, and equipment breakdown, that the board considers
14 appropriate to protect the association, the unit owners, or officers,
15 directors, or agents of the association. Flood insurance shall also be
16 maintained if the property is located in a special flood hazard area as
17 delineated on flood maps issued by the Federal Emergency Management Agency.
18 The flood insurance policy shall comply with the requirements of the National
19 Flood Insurance Program and the Federal Insurance Administration.

20 (f) Insurance policies carried pursuant to subsections (a) and (b)
21 shall include each of the following provisions:

- 22 (1) Each unit owner and secured party is an insured person under the
23 policy with respect to liability arising out of the unit owner's
24 interest in the common elements or membership in the association;
25 (2) The insurer waives its right to subrogation under the policy
26 against any unit owner of the condominium or members of the unit
27 owner's household and against the association and members of the
28 board; and
29 (3) The unit owner waives the unit owner's right to subrogation under
30 the association policy against the association and the board.

31 (g) If at the time of a loss under the policy there is other insurance
32 in the name of a unit owner covering the same property covered by the policy,
33 the association's policy shall be the primary insurance.

34 (h) Any loss covered by the property policy under subsection (a) (1)
35 shall be adjusted by and with the association. The insurance proceeds for
36 that loss shall be payable to the association, or to an insurance trustee
37 designated by the association for that purpose. The insurance trustee or the
38 association shall hold any insurance proceeds in trust for unit owners and
39 secured parties as their interests may appear. The proceeds shall be
40 disbursed first for the repair or restoration of the damaged common elements,
41 the bare walls, ceilings, and floors of the units, and then to any
42 improvements and betterments the association may insure. Unit owners shall
43 not be entitled to receive any portion of the proceeds unless there is a
44 surplus of proceeds after the common elements and units have been completely
45 repaired or restored or the association has been terminated as trustee.

46 (i) The board, under the declaration or bylaws, may require unit
47 owners to obtain reasonable levels of insurance covering their personal
48 liability and compensatory but not consequential damages to another unit
49 caused by the negligence of the owner or the owner's guests, tenants, or
50 invitees, or regardless of any negligence originating from the unit. The
51 personal liability of a unit owner shall include the deductible of the owner
52 whose unit was damaged, any damage not covered by insurance required by this

1 subsection, as well as the decorating, painting, wall and floor coverings,
2 trim, appliances, equipment, and other furnishings.

3 If the unit owner does not purchase or produce evidence of insurance
4 requested by the board, the directors may, in good faith, purchase the
5 insurance coverage and charge the reasonable premium cost back to the unit
6 owner. In no event is the board liable to any person either with regard to
7 its decision not to purchase the insurance, or with regard to the timing of
8 its purchase of the insurance or the amounts or types of coverages obtained.

9 (j) Contractors and vendors, except public utilities doing business
10 with an association, shall provide certificates of insurance naming the
11 association, its board, and its managing agent as additional insured parties.

12 (k) The provisions of this section may be varied or waived in the case
13 of a condominium community in which all units are restricted to
14 nonresidential use.

15 (l) Any insurer defending a liability claim against an association
16 shall notify the association of the terms of the settlement no less than ten
17 days before settling the claim. The association may not veto the settlement
18 unless otherwise provided by contract or statute.

19 **§ -144 Association fiscal matters; assessments for common expenses.**

20 (a) Except as provided in section -41, until the association makes a
21 common expense assessment, the developer shall pay all common expenses.
22 After an assessment has been made by the association, assessments shall be
23 made at least annually, based on a budget adopted and distributed or made
24 available to unit owners at least annually by the board.

25 (b) Except for assessments under subsections (c), (d), and (e), all
26 common expenses shall be assessed against all the units in accordance with
27 the allocations under section -41. Any past due common expense assessment
28 or installment thereof shall bear interest at the rate established by the
29 association, provided that the rate shall not exceed eighteen per cent per
30 year.

31 (c) Assessments to pay a judgment against the association under
32 section -147(a) may be made only against the units in the condominium at
33 the time the judgment was entered, in proportion to their common expense
34 allocations under section -41.

35 (d) If any common expense is caused by the misconduct of any unit
36 owner, the association may assess that expense exclusively against such
37 owner's unit.

38 (e) If common expense liabilities are reallocated, common expense
39 assessments and any installment thereof not yet due shall be recalculated in
40 accordance with the reallocated common expense liabilities.

41 (f) In the case of a voluntary conveyance, the grantee of a unit shall
42 be jointly and severally liable with the grantor for all unpaid assessments
43 against the latter for the grantor's share of the common expenses up to the
44 time of the grant or conveyance, without prejudice to the grantee's right to
45 recover from the grantor the amounts paid by the grantee therefor. Any such
46 grantor or grantee is, however, entitled to a statement from the board,
47 either directly or through its managing agent or resident manager, setting
48 forth the amount of the unpaid assessments against the grantor, and except as
49 to the amount of subsequently dishonored checks mentioned in such statement
50 as having been received within the thirty-day period immediately preceding
51 the date of such statement, the grantee is not liable for, nor is the unit
52 conveyed subject to a lien for, any unpaid assessments against the grantor in
53 excess of the amount therein set forth.

1 (g) No unit owner may exempt the unit owner from liability for the
2 unit owner's contribution towards the common expenses by waiver of the use or
3 enjoyment of any of the common elements or by abandonment of the unit owner's
4 unit. Subject to such terms and conditions as may be specified in the
5 bylaws, any unit owner, by conveying the unit owner's unit and common
6 interest to the board on behalf of all other unit owners, may exempt the unit
7 owner's self from common expenses thereafter accruing.

8 (h) The board, either directly or through its managing agent or
9 resident manager, shall notify the unit owners in writing of maintenance fee
10 increases at least thirty days prior to such an increase.

11 **§ -145 Association fiscal matters; collection of unpaid assessments**
12 **from tenants.** (a) If the owner of a unit rents or leases the unit and is in
13 default for thirty days or more in the payment of the unit's share of the
14 common expenses, the board, for as long as the default continues, may demand
15 in writing and receive each month from any tenant occupying the unit, an
16 amount sufficient to pay all sums due from the unit owner to the association,
17 including interest, if any, but the amount shall not exceed the tenant's rent
18 due each month. The tenant's payment under this section shall discharge that
19 amount of payment from the tenant's rent obligation, and any contractual
20 provision to the contrary shall be void as a matter of law.

21 (b) Before taking any action under this section, the board shall give
22 to the delinquent unit owner written notice of its intent to collect the rent
23 owed. The notice shall:

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

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

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

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

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

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

1 (g) Before the board may take the actions permitted under subsection
2 (a), the board shall adopt a written policy providing for the actions and
3 have the policy approved by a majority vote of the unit owners at an annual
4 or special meeting of the association or by the written consent of a majority
5 of the unit owners.

6 **§ -146 Association fiscal matters; lien for assessments.** (a) All
7 sums assessed by the association but unpaid for the share of the common
8 expenses chargeable to any unit shall constitute a lien on the unit with
9 priority over all other liens, except:

10 (1) Liens for taxes and assessments lawfully imposed by governmental
11 authority against the unit; and

12 (2) All sums unpaid on any mortgage of record that was recorded prior
13 to the recordation of a notice of a lien by the association, and
14 costs and expenses including attorneys' fees provided in such
15 mortgages.

16 The lien of the association may be foreclosed by action or by nonjudicial or
17 power of sale foreclosure procedures set forth in chapter 667, by the
18 managing agent or board, acting on behalf of the association, in like manner
19 as a mortgage of real property. In any such foreclosure, the unit owner
20 shall be required to pay a reasonable rental for the unit, if so provided in
21 the bylaws, and the plaintiff in the foreclosure shall be entitled to the
22 appointment of a receiver to collect the rental owed. The managing agent or
23 board, acting on behalf of the association, unless prohibited by the
24 declaration, may bid on the unit at foreclosure sale, and acquire and hold,
25 lease, mortgage, and convey the unit. Action to recover a money judgment for
26 unpaid common expenses shall be maintainable without foreclosing or waiving
27 the lien securing the unpaid common expenses owed.

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

40 (1) Thirty-six days after the order confirming the sale to the
41 purchaser has been filed with the court;

42 (2) Sixty days after the hearing at which the court grants the motion
43 to confirm the sale to the purchaser;

44 (3) Thirty days after the public sale in a nonjudicial power of sale
45 foreclosure pursuant to section 667-5; or

46 (4) Upon the recording of the instrument of conveyance;

47 whichever occurs first; provided that the mortgagee of record or other
48 purchaser of the unit shall not be deemed to acquire title under paragraph
49 (1), (2), or (3), if transfer of title is delayed past the thirty-six days
50 specified in paragraph (1), the sixty days specified in paragraph (2), or the
51 thirty days specified in paragraph (3), when a person who appears at the
52 hearing on the motion or a party to the foreclosure action requests
53 reconsideration of the motion or order to confirm sale, objects to the form

1 of the proposed order to confirm sale, appeals the decision of the court to
2 grant the motion to confirm sale, or the debtor or mortgagor declares
3 bankruptcy or is involuntarily placed into bankruptcy. In any such case, the
4 mortgagee of record or other purchaser of the unit shall be deemed to acquire
5 title upon recordation of the instrument of conveyance.

6 (c) No unit owner shall withhold any assessment claimed by the
7 association. A unit owner who disputes the amount of an assessment may
8 request a written statement clearly indicating:

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

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

26 (d) A unit owner who pays an association the full amount claimed by
27 the association may file in small claims court or require the association to
28 mediate to resolve any disputes concerning the amount or validity of the
29 association's claim. If the unit owner and the association are unable to
30 resolve the dispute through mediation, either party may file for arbitration
31 under section -162; provided that a unit owner may only file for
32 arbitration if all amounts claimed by the association are paid in full on or
33 before the date of filing. If the unit owner fails to keep all association
34 assessments current during the arbitration, the association may ask the
35 arbitrator to temporarily suspend the arbitration proceedings. If the unit
36 owner pays all association assessments within thirty days of the date of
37 suspension, the unit owner may ask the arbitrator to recommence the
38 arbitration proceedings. If the owner fails to pay all association
39 assessments by the end of the thirty-day period, the association may ask the
40 arbitrator to dismiss the arbitration proceedings. The unit owner shall be
41 entitled to a refund of any amounts paid to the association which are not
42 owed.

43 (e) In conjunction with or as an alternative to foreclosure
44 proceedings under subsection (a), where a unit is owner-occupied, the
45 association may authorize its managing agent or board to, after sixty days'
46 written notice to the unit owner and to the unit's first mortgagee of the
47 nonpayment of the unit's share of the common expenses, terminate the
48 delinquent unit's access to the common elements and cease supplying a
49 delinquent unit with any and all services normally supplied or paid for by
50 the association. Any terminated services and privileges shall be restored
51 upon payment of all delinquent assessments but need not be restored until
52 payment in full is received.

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

6 (g) Subject to this subsection, and subsections (h) and (i), the board
7 may specially assess the amount of the unpaid regular monthly common
8 assessments for common expenses against a person who, in a judicial or
9 nonjudicial power of sale foreclosure, purchases a delinquent unit; provided
10 that:

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

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

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

34 (i) For purposes of subsections (g) and (h), the following definitions
35 shall apply, unless the context requires otherwise:

36 "Completion" means:

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

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

41 "Regular monthly common assessments" does not include:

42 (1) Any other special assessment, except for a special assessment
43 imposed on all units as part of a budget adopted pursuant to
44 section -148;

45 (2) Late charges, fines, or penalties;

46 (3) Interest assessed by the association;

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

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

1 (j) The cost of a release of any lien filed pursuant to this section
2 shall be paid by the party requesting the release.

3 **§ -147 Association fiscal matters; other liens affecting the**
4 **condominium.** (a) Except as provided in subsection (b), a judgment for money
5 against the association, if recorded, is not a lien on the common elements,
6 but is a lien in favor of the judgment lienholder against the common expense
7 funds of the association. No other property of a unit owner is subject to
8 the claims of creditors of the association.

9 (b) Whether perfected before or after the creation of the condominium,
10 if a lien, other than a mortgage (including a judgment lien or lien
11 attributable to work performed or materials supplied before creation of the
12 condominium), becomes effective against two or more units, the unit owner of
13 an affected unit may pay to the lienholder the amount of the lien
14 attributable to the owner's unit, and the lienholder, upon receipt of
15 payment, shall promptly deliver a release of the lien covering that unit.
16 The amount of the payment shall be proportionate to the ratio which that unit
17 owner's common expense liability bears to the common expense liabilities of
18 all unit owners whose units are subject to the lien. After payment, the
19 association may not assess or have a lien against that unit owner's unit for
20 any portion of the common expenses incurred in connection with that lien.

21 (c) A judgment against the association shall be indexed in the name of
22 the condominium and the association and, when so indexed, is notice of the
23 lien against the units.

24 **§ -148 Association fiscal matters; budgets and reserves.** (a) The
25 budget required under section -144(a) shall include at least the
26 following:

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

45 (b) The association shall assess the unit owners to either fund a
46 minimum of fifty per cent of the estimated replacement reserves or fund one
47 hundred per cent of the estimated replacement reserves when using a cash flow
48 plan; provided that a new association need not collect estimated replacement
49 reserves until the fiscal year which begins after the association's first
50 annual meeting. For each fiscal year, the association shall collect the
51 amount assessed to fund the estimated replacement for that fiscal year
52 reserves, as determined by the association's plan.

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

5 (1) Adjustments for revenues which will be received and expenditures
6 which will be made before the beginning of the fiscal year to
7 which the budget relates; and

8 (2) Separate, designated reserves for each part of the property for
9 which capital expenditures or major maintenance will exceed
10 \$10,000. Parts of the property for which capital expenditures or
11 major maintenance will not exceed \$10,000 may be aggregated in a
12 single designated reserve.

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

17 (e) Except in emergency situations or with the approval of a majority
18 of the unit owners, a board may not exceed its total adopted annual operating
19 budget by more than twenty per cent during the fiscal year to which the
20 budget relates. Before imposing or collecting an assessment under this
21 subsection that has not been approved by a majority of the unit owners, the
22 board shall adopt a resolution containing written findings as to the
23 necessity of the extraordinary expense involved and why the expense was not
24 or could not have been reasonably foreseen in the budgeting process, and the
25 resolution shall be distributed to the members with the notice of assessment.

26 (f) The requirements of this section shall override any requirements
27 in an association's declaration, bylaws, or any other association documents
28 relating to preparation of budgets, calculation of reserve requirements,
29 assessment and funding of reserves, and expenditures from reserves with the
30 exception of:

31 (1) Any requirements in an association's declaration, bylaws, or any
32 other association documents which require the association to
33 collect more than fifty per cent of reserve requirements; or

34 (2) Any provisions relating to upgrading the common elements, such as
35 additions, improvements, and alterations to the common elements.

36 (g) Subject to the procedures of section -157 and any rules adopted
37 by the commission, any unit owner whose association board fails to comply
38 with this section may enforce compliance by the board. In any proceeding to
39 enforce compliance, a board that has not prepared an annual operating budget
40 and reserve study shall have the burden of proving it has complied with this
41 section.

42 (h) As used in this section:

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

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

1 "Emergency situation" means any extraordinary expenses:

- 2 (1) Required by an order of a court;
- 3 (2) Necessary to repair or maintain any part of the property for
4 which the association is responsible where a threat to personal
5 safety on the property is discovered;
- 6 (3) Necessary to repair any part of the property for which the
7 association is responsible that could not have been reasonably
8 foreseen by the board in preparing and distributing the annual
9 operating budget;
- 10 (4) Necessary to respond to any legal or administrative proceeding
11 brought against the association that could not have been
12 reasonably foreseen by the board in preparing and distributing
13 the annual operating budget; or
- 14 (5) Necessary for the association to obtain adequate insurance for
15 the property which the association must insure.

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

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

23 **§ -149 Association fiscal matters; handling and disbursement of**
24 **funds.** (a) The funds in the general operating account of the association
25 shall not be commingled with funds of other activities such as lease rent
26 collections and rental operations, nor shall a managing agent commingle any
27 association funds with the managing agent's own funds.

28 (b) For purposes of subsection (a), lease rent collections and rental
29 operations shall not include the rental or leasing of common elements that is
30 conducted on behalf of the association or the collection of ground lease
31 rents from individual unit owners of a project and the payment of such ground
32 lease rents to the ground lessor if:

- 33 (1) The collection is allowed by the provisions of the declaration,
34 bylaws, master deed, master lease, or individual unit leases of
35 the project;
- 36 (2) A management contract requires the managing agent to collect
37 ground lease rents from the individual unit owners and pay the
38 ground lease rents to the ground lessor;
- 39 (3) The system of lease rent collection has been approved by a
40 majority vote of all unit owners at a meeting of the association;
41 and
- 42 (4) The managing agent or association does not pay ground lease rent
43 to the ground lessor in excess of actual ground lease rent
44 collected from individual unit owners.

45 (c) All funds collected by an association, or by a managing agent for
46 any association, shall be:

- 47 (1) Deposited in a financial institution, including a federal or
48 community credit union, located in the State, pursuant to a
49 resolution adopted by the board, and whose deposits are insured
50 by an agency of the United States government;

- 1 (2) Held by a corporation authorized to do business under article 8
2 of chapter 412;
- 3 (3) Held by the United States Treasury; or
- 4 (4) Purchased in the name of and held for the benefit of the
5 association through a securities broker that is registered with
6 the Securities and Exchange Commission, that has an office in the
7 State, and the accounts of which are held by member firms of the
8 New York Stock Exchange or National Association of Securities
9 Dealers and insured by the Securities Insurance Protection
10 Corporation; provided that deposits and certificates of deposit
11 shall not be purchased through a securities broker.

12 (d) All funds collected by an association, or by a managing agent for
13 any association, shall be invested only in:

- 14 (1) Deposits, investment certificates, savings accounts, and
15 certificates of deposit, of an institution as defined in
16 subsection (c) (1);
- 17 (2) Obligations of the United States government, the State of Hawaii,
18 or their respective agencies; provided that those obligations
19 shall have stated maturity dates no more than ten years after the
20 purchase date unless approved otherwise by a majority vote of the
21 unit owners at an annual or special meeting of the association or
22 by written consent of a majority of the unit owners; or
- 23 (3) Mutual funds comprised solely of investments in the obligations
24 of the United States government, the State of Hawaii, or their
25 respective agencies; provided that those obligations shall have
26 stated maturity dates no more than ten years after the purchase
27 date unless approved otherwise by a majority vote of the unit
28 owners at an annual or special meeting of the association or by
29 written consent of a majority of the unit owners;

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

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

41 (e) A managing agent or board shall not, by oral instructions over the
42 telephone, transfer association funds between accounts, including but not
43 limited to the general operating account and reserve fund account.

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

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

51 **§ -150 Association fiscal matters; audits, audited financial**
52 **statement.** (a) The association shall require an annual audit of the

1 association financial accounts and no less than one annual unannounced
2 verification of the association's cash balance by a public accountant;
3 provided that if the association is comprised of less than twenty units, the
4 annual audit and the annual unannounced cash balance verification may be
5 waived by a majority vote of all unit owners taken at an association meeting.

6 (b) The board shall make available a copy of the annual audit to each
7 unit owner at least thirty days prior to the annual meeting which follows the
8 end of the fiscal year. The board shall not be required to submit a copy of
9 the annual audit report to an owner if the proxy form issued pursuant to
10 section -123(d) is not marked to indicate that the owner wishes to obtain
11 a copy of the report. If the annual audit has not been completed by that
12 date, the board shall make available:

13 (1) An unaudited year end financial statement for the fiscal year to
14 each unit owner at least thirty days prior to the annual meeting;
15 and

16 (2) The annual audit to all owners at the annual meeting, or as soon
17 as the audit is completed, but not later than six months after
18 the annual meeting.

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

24 **§ -151 Association fiscal matters; lease rent renegotiation.** (a)
25 Notwithstanding any provision in the declaration or bylaws, any lease or
26 sublease of the real estate or of a unit, or of an undivided interest in the
27 real estate to a unit owner, whenever any lease or sublease of the real
28 estate, a unit, or an undivided interest in the real estate to a unit owner
29 provides for the periodic renegotiation of lease rent thereunder, the
30 association shall represent the unit owners in all negotiations and
31 proceedings, including but not limited to appraisal or arbitration, for the
32 determination of lease rent; provided that the association's representation
33 in the renegotiation of lease rent shall be on behalf of at least two
34 lessees. All costs and expenses incurred in such representation shall be a
35 common expense of the association.

36 (b) Notwithstanding subsection (a), if some, but not all of the unit
37 owners have already purchased the leased fee interest appurtenant to their
38 units at the time of renegotiation, all costs and expenses of the
39 renegotiation shall be assessed to the remaining lessees in the same
40 proportion that the common interest appurtenant to each lessee's unit bears
41 to the common interest appurtenant to all lessees' units. The unpaid amount
42 of this assessment shall constitute a lien upon the lessee's unit, which may
43 be collected in accordance with section -146 in the same manner as an
44 unpaid common expense.

45 (c) In any project where the association is a lessor or sublessor, the
46 association shall fulfill its obligations under this section by appointing
47 independent counsel to represent the lessees in the negotiations and
48 proceedings related to the rent renegotiation. The lessees' counsel shall
49 act on behalf of the lessees in accordance with the vote or written consent
50 of a majority of the lessees casting ballots or submitting written consents
51 as determined by the ratio that the common interest appurtenant to each
52 lessee's unit bears to the total common interest appurtenant to the units of
53 participating lessees. Nothing in this subsection shall be interpreted to
54 preclude the lessees from making a decision (by the vote or written consent

1 of a majority of the lessees as described above) to retain other counsel or
2 additional professional advisors as may be reasonably necessary or
3 appropriate to complete the negotiations and proceedings. In the event of a
4 deadlock among the lessees or other inability to proceed with the rent
5 renegotiation on behalf of the lessees, the lessees' counsel may apply to the
6 circuit court of the judicial circuit in which the condominium is located for
7 instructions. The association shall not instruct or direct the lessees'
8 counsel or other professional advisors. All costs and expenses incurred
9 under this subsection shall be assessed by the association to the lessees as
10 provided in subsection (a) or (b), as may be applicable.

11 **§ -152 Association records; generally.** The association shall keep
12 financial and other records sufficiently detailed to enable the association
13 to comply with requests for information and disclosures related to resale of
14 units. Except as otherwise provided by law, all financial and other records
15 shall be made reasonably available for examination by any unit owner and the
16 owner's authorized agents. Association records shall be stored on the island
17 on which the association's project is located; provided that if original
18 records, including but not limited to invoices, are required to be sent off-
19 island, copies of the records shall be maintained on the island on which the
20 association's project is located.

21 **§ -153 Association records; records to be maintained.** (a) An
22 accurate copy of the declaration, bylaws, house rules, if any, master lease,
23 if any, a sample original conveyance document, all public reports and any
24 amendments thereto, shall be kept at the managing agent's office.

25 (b) The managing agent or board shall keep detailed, accurate records
26 in chronological order, of the receipts and expenditures affecting the common
27 elements, specifying and itemizing the maintenance and repair expenses of the
28 common elements and any other expenses incurred. The managing agent or board
29 shall also keep monthly statements indicating the total current delinquent
30 dollar amount of any unpaid assessments for common expenses.

31 (c) Subject to section -152, all records and the vouchers
32 authorizing the payments and statements shall be kept and maintained at the
33 address of the project, or elsewhere within the State as determined by the
34 board.

35 (d) The developer or affiliate of the developer, board, and managing
36 agent shall ensure that there is a written contract for managing the
37 operation of the property, expressing the agreements of all parties including
38 but not limited to financial and accounting obligations, services provided,
39 and any compensation arrangements, including any subsequent amendments.
40 Copies of the executed contract and any amendments shall be provided to all
41 parties to the contract.

42 (e) The managing agent or resident manager or board shall keep an
43 accurate and current list of members of the association and their current
44 addresses, and the names and addresses of the vendees under an agreement of
45 sale, if any. The list shall be maintained at a place designated by the
46 board, and a copy shall be available, at cost, to any member of the
47 association as provided in the declaration or bylaws or rules and regulations
48 or, in any case, to any member who furnishes to the managing agent or
49 resident manager or the board a duly executed and acknowledged affidavit
50 stating that the list:

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

1 (2) Shall not be used by the owner or furnished to anyone else for
2 any other purpose.

3 A board may prohibit commercial solicitations.

4 **§ -154 Association records; availability; disposal; prohibitions.**

5 (a) The association's most current financial statement and minutes of the
6 board's meetings, once approved, shall be provided to any interested unit
7 owner at no cost or on twenty-four hour loan, at a convenient location
8 designated by the board.

9 (b) Minutes of meetings of the board and the association for the
10 current and prior year shall be available for examination by unit owners at
11 convenient hours at a place designated by the board. A copy of meeting
12 minutes shall be provided to any owner upon the owner's request provided that
13 the owner pays a reasonable fee for duplication and postage.

14 (c) Financial statements, general ledgers, the accounts receivable
15 ledger, accounts payable ledgers, check ledgers, insurance policies,
16 contracts, and invoices of the association for the current and prior year and
17 delinquencies of ninety days or more shall be available for examination by
18 unit owners at convenient hours at a place designated by the board; provided
19 that:

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

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

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

30 (d) After any association meeting, and not earlier, unit owners shall
31 be permitted to examine proxies, tally sheets, ballots, owners' check-in
32 lists, and the certificate of election; provided that:

33 (1) Owners shall make a request to examine the documents within
34 thirty days after the association meeting;

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

39 (3) Owners shall pay for administrative costs in excess of eight
40 hours per year.

41 If there are no requests to examine proxies and ballots, the documents
42 may be destroyed thirty days after the association meeting. If there are
43 requests to examine proxies and ballots, the documents shall be kept for an
44 additional sixty days, after which they may be destroyed. Copies of tally
45 sheets, owners' check-in lists, and the certificates of election from the
46 most recent association meeting shall be provided to any owner upon the
47 owner's request, provided that the owner pays a reasonable fee for
48 duplicating, postage, stationery, and other administrative costs associated
49 with handling the request.

50 (e) The managing agent shall provide copies of association records
51 maintained pursuant to this section and sections -152 and -153 to

1 owners, prospective purchasers and their prospective agents during normal
2 business hours, upon payment to the managing agent of a reasonable charge to
3 defray any administrative or duplicating costs. If the project is not
4 managed by a managing agent, the foregoing requirements shall be undertaken
5 by a person or entity, if any, employed by the association, to whom this
6 function is delegated.

7 (f) Prior to the organization of the association, any unit owner shall
8 be entitled to inspect as well as receive a copy of the management contract
9 from the entity that manages the operation of the property.

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

14 (h) An association may comply with this part by making information
15 available to unit owners, at the option of each unit owner, and at no cost,
16 for downloading the information through an Internet site.

17 (i) A managing agent retained by one or more associations may dispose
18 of the records of any association which are more than five years old, except
19 for tax records, which shall be kept for seven years, without liability if
20 the managing agent first provides the board of the association affected with
21 written notice of the managing agent's intent to dispose of the records if
22 not retrieved by the board within sixty days, which notice shall include an
23 itemized list of the records proposed to be disposed.

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

28 **§ -155 Association as trustee.** With respect to a third person
29 dealing with the association in the association's capacity as a trustee, the
30 existence of trust powers and their proper exercise by the association may be
31 assumed without inquiry. A third person shall not be bound to inquire
32 whether the association has power to act as trustee or is properly exercising
33 trust powers. A third person, without actual knowledge that the association
34 is exceeding or improperly exercising its powers, shall be fully protected in
35 dealing with the association as if it possessed and properly exercised the
36 powers it purports to exercise. A third person shall not be bound to assure
37 the proper application of trust assets paid or delivered to the association
38 in its capacity as trustee.

39 **§ -156 Pets.** (a) Any unit owner who keeps a pet in the owner's
40 unit pursuant to a provision in the bylaws which allows owners to keep pets
41 or in the absence of any provision in the bylaws to the contrary, upon the
42 death of the animal, may replace the animal with another and continue to do
43 so for as long as the owner continues to reside in the owner's unit or
44 another unit subject to the same bylaws.

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

50 (c) The bylaws may include reasonable restrictions or prohibitions
51 against excessive noise or other problems caused by pets on the property and
52 the running of pets at large in the common areas of the property. No animals

1 described as pests under section 150A-2, or animals prohibited from
2 importation under section 141-2, 150A-5, or 150A-6 shall be permitted.

3 (d) Whenever the bylaws do not prohibit unit owners from keeping
4 animals as pets in their units, the bylaws shall not prohibit the tenants of
5 the unit owners from keeping pets in the units rented or leased from the
6 owners; provided that:

7 (1) A unit owner consents in writing to allow the unit owner's tenant
8 to keep a pet in the unit;

9 (2) A tenant keeps only those types of pets that may be kept by unit
10 owners.

11 The bylaws may allow each owner or tenant to keep only one pet in the unit.

12 (e) Any amendments to the bylaws that provide for exceptions to pet
13 restrictions or prohibitions for preexisting circumstances shall apply
14 equally to unit owners and tenants.

15 (f) Nothing in this section shall prevent an association from
16 immediately acting to remove vicious animals to protect persons or property.

17 **§ -157 Attorneys' fees, delinquent assessments, and expenses of**
18 **enforcement.** (a) All costs and expenses, including reasonable attorneys'
19 fees, incurred by or on behalf of the association for:

20 (1) Collecting any delinquent assessments against any owner's unit;

21 (2) Foreclosing any lien thereon; or

22 (3) Enforcing any provision of the declaration, bylaws, house rules,
23 and this chapter, or the rules of the real estate commission;

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

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

37 (1) The owner first shall have demanded and allowed reasonable time
38 for the board to pursue such enforcement; or

39 (2) The owner demonstrates to the satisfaction of the court that a
40 demand for enforcement made to the board would have been
41 fruitless.

42 If any claim by an owner is not substantiated in any court action
43 against an association, any of its officers or directors, or its board to
44 enforce any provision of the declaration, bylaws, house rules, or this
45 chapter, then all reasonable and necessary expenses, costs, and attorneys'
46 fees incurred by an association shall be awarded to the association, unless
47 before filing the action in court the owner has first submitted the claim to
48 mediation, or to arbitration under subpart D, and made a good faith effort to
49 resolve the dispute under any of those procedures.

D. ALTERNATIVE DISPUTE RESOLUTION

§ -161 **Mediation.** (a) At the request of any party to a dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules, the parties to the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

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

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or
- (4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties.

§ -162 **Arbitration.** (a) At the request of any party, any dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and of chapter 658A; provided that the rules of the arbitration service conducting the arbitration shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658A, chapter 658A shall prevail; and provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

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

- (1) The real estate commission;

- 1 (2) The mortgagee of a mortgage of record;
- 2 (3) The developer, general contractor, subcontractors, or design
3 professionals for the project; provided that when any person
4 exempted by this paragraph is also a unit owner, a director, or
5 managing agent, such person in those capacities, shall be subject
6 to the provisions of subsection (a);
- 7 (4) Actions seeking equitable relief involving threatened property
8 damage or the health or safety of unit owners or any other
9 person;
- 10 (5) Actions to collect assessments which are liens or subject to
11 foreclosure; provided that a unit owner who pays the full amount
12 of an assessment and fulfills the requirements of section -146
13 shall have the right to demand arbitration of the owner's
14 dispute, including a dispute about the amount and validity of the
15 assessment;
- 16 (6) Personal injury claims;
- 17 (7) Actions for amounts in excess of \$2,500 against an association, a
18 board, or one or more directors, officers, agents, employees, or
19 other persons, if insurance coverage under a policy or policies
20 procured by the association or its board would be unavailable
21 because action by arbitration was pursued; or
- 22 (8) Any other cases which are determined, as provided in subsection
23 (c), to be unsuitable for disposition by arbitration.

24 (c) At any time within twenty days of being served with a written
25 demand for arbitration, any party so served may apply to the circuit court in
26 the judicial circuit in which the condominium is located for a determination
27 that the subject matter of the dispute is unsuitable for disposition by
28 arbitration.

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

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

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

49 (d) In the event of a dispute as to whether a claim shall be excluded
50 from mandatory arbitration under subsection (b) (7), any party to an

1 arbitration may file a complaint for declaratory relief against the involved
2 insurer or insurers for a determination of whether insurance coverage is
3 unavailable due to the pursuit of action by arbitration. The complaint shall
4 be filed with the circuit court in the judicial circuit in which the
5 condominium is located. The insurer or insurers shall file an answer to the
6 complaint within twenty days of the date of service of the complaint and the
7 issue shall be disposed of by the circuit court at a hearing to be held at
8 the earliest available date; provided that the hearing shall not be held
9 within twenty days from the date of service of the complaint upon the insurer
10 or insurers.

11 (e) Notwithstanding any provision in this chapter to the contrary, the
12 declaration, or the bylaws, the award of any costs, expenses, and legal fees
13 by the arbitrator shall be in the sole discretion of the arbitrator and the
14 determination of costs, expenses, and legal fees shall be binding upon all
15 parties.

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

30 (g) Findings of fact and conclusions of law, as requested by any party
31 prior to the arbitration hearing, shall be promptly provided to the
32 requesting party upon payment of the reasonable cost thereof.

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

37 **§ -163 Trial de novo and appeal.** (a) The submission of any dispute
38 to an arbitration under section -162 shall in no way limit or abridge the
39 right of any party to a trial de novo.

40 (b) Written demand for a trial de novo by any party desiring a trial
41 de novo shall be made upon the other parties within ten days after service of
42 the arbitration award upon all parties and the trial de novo shall be filed
43 in circuit court within thirty days of the written demand. Failure to meet
44 these deadlines shall preclude a party from demanding a trial de novo.

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

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

1 SECTION 3. Section 521-3, Hawaii Revised Statutes, is amended to read
2 as follows:

3 "[+]§521-3[+] **Supplementary general principles of law, other laws,**
4 **applicable.** (a) Unless displaced by the particular provisions of this
5 chapter, the principles of law and equity, including the law relative to
6 capacity to contract, principal and agent, real property, public health,
7 safety and fire prevention, estoppel, fraud, misrepresentation, duress,
8 coercion, mistake, bankruptcy, or other validating or invalidating cause
9 supplement its provisions.

10 (b) Every legal right, remedy, and obligation arising out of a rental
11 agreement not provided for in this chapter shall be regulated and determined
12 under chapter 666, and in the case of conflict between any provision of this
13 chapter and a provision of chapter 666, this chapter shall control.

14 (c) Nothing in this chapter shall be applied to interfere with any
15 right, obligation, duty, requirement, or remedy of a landlord or tenant which
16 is established as a condition or requirement of any program receiving subsidy
17 from the government of the United States. To the extent that any provision
18 of this chapter is inconsistent with such a federal condition or requirement
19 then as to such subsidized project the federal condition or requirement shall
20 control.

21 (d) A unit owners' association under chapter _____ shall have standing
22 to initiate and prosecute a summary proceeding for possession against a
23 tenant residing in the condominium project who repeatedly violates the
24 association's governing documents or the rights of other occupants to quiet
25 enjoyment and whose landlord refuses to act; provided that in such cases, the
26 landlord shall be named as an additional party defendant."

27 PART II

28 *[Except for sections 24, 25, and 26, conforming amendments deleted.]*

29 SECTION 24. Section 521-38, Hawaii Revised Statutes, is amended to
30 read as follows:

31 "**§521-38 Tenants subject to rental agreement; notice of conversions.**
32 When a period of tenancy is pursuant to any rental agreement and where a
33 landlord contemplates conversion to condominium property regime under chapter
34 [514A,], the landlord[+]

35 ~~(1) Shall]~~ shall provide notice to the tenant at least one hundred
36 twenty days in advance of the termination of the rental
37 agreement[~~, and~~

38 ~~(2) Shall comply with the provisions relating to such conversions~~
39 ~~provided in section 514A-105]."~~

40 SECTION 25. Section 521-71, Hawaii Revised Statutes, is amended by
41 amending subsection (c) to read as follows:

42 "(c) Before a landlord terminates a month-to-month tenancy where the
43 landlord contemplates voluntary demolition of the dwelling units, conversion
44 to a condominium property regime under chapter [514A,], or changing the
45 use of the building to transient vacation rentals, the landlord shall provide
46 notice to the tenant at least one hundred twenty days in advance of the
47 anticipated demolition or anticipated termination[~~, and shall comply with the~~
48 ~~provisions relating to conversions provided in section 514A-105, if~~
49 ~~applicable]. If notice is revoked or amended and reissued, the notice period~~
50 shall begin from the date it was reissued or amended. Any notice provided,
51 revoked, or amended and reissued shall be in writing. When the landlord
52 provides notification of termination pursuant to this subsection, the tenant

1 may vacate at any time within the one-hundred-twenty-day period between the
2 notification and the termination date, but the tenant shall notify the
3 landlord of the date the tenant will vacate the dwelling unit and shall pay a
4 prorated rent for that period of occupation."

5 SECTION 26. Parts I, V, and VII of chapter 514A, Hawaii Revised
6 Statutes, are repealed.

7 PART III.

8 SECTION 27. The legislature finds that the existing procedures to
9 resolve condominium association management disputes need improvement. The
10 existing procedures to resolve disputes include the self-governance
11 procedures within each association of apartment owners, mediation,
12 arbitration, minimal government intervention, and actions through the courts.
13 The legislature therefore finds that there is a need for an expeditious, less
14 costly, uniform, and uncomplicated procedure to handle certain simple
15 statutory issues. The purpose of this part is to initiate a two-year pilot
16 program by the office of administrative hearings, department of commerce and
17 consumer affairs, with partial funding by the condominium management
18 education fund.

19 SECTION 28. Section 514A-121.5, Hawaii Revised Statutes, is amended to
20 read as follows:

21 "§514A-121.5 Mediation[-]; condominium management dispute resolution;
22 request for hearing; hearing. (a) If an apartment owner or the board of
23 directors requests mediation of a dispute involving the interpretation or
24 enforcement of the association of apartment owners' declaration, bylaws, or
25 house rules, or involving section 514A-82(b) (1) to (13), 514A-82.1, 514A-
26 82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2, 514A-
27 83.3, 514A-83.4, 514A-83.5, 514A-84, [~~or~~] 514A-84.5, or 514A-92.5, the other
28 party in the dispute shall be required to participate in mediation. Each
29 party shall be wholly responsible for its own costs of participating in
30 mediation; unless at the end of the mediation process, both parties agree
31 that one party shall pay all or a specified portion of the mediation costs.
32 If an apartment owner or the board of directors refuses to participate in the
33 mediation of a particular dispute, a court may take this refusal into
34 consideration when awarding expenses, costs, and attorney's fees in
35 accordance with section 514A-94.

36 (b) If a dispute is not resolved by mediation as provided in
37 subsection (a), in addition to any other legal remedies that may be
38 available, any party that participated in the mediation may file a request
39 for a hearing with the office of administrative hearings, department of
40 commerce and consumer affairs as follows:

- 41 (1) The party requesting the hearing must be a board of directors of
42 a duly registered association of apartment owners, or an
43 apartment owner that is a member of a duly registered association
44 pursuant to section 514A-95.1;
- 45 (2) The request for hearing must be filed within thirty days from the
46 final day of mediation;
- 47 (3) The request for hearing must name one or more parties that
48 participated in the mediation as an adverse party and identify
49 the statutory provisions in dispute; and
- 50 (4) No dispute arising out of section 514A-82(b) (1) to (13), section
51 514A-82.3, section 514A-82.5, section 514A-82.6, section 514A-
52 83.1(b), section 514A-83.4(c), or relating to the interpretation
53 or application of any association of owners' declaration, bylaws,

1 or house rules may be the subject of any request for hearing
2 under this section.

3 (c) For purposes of the pilot program, the office of administrative
4 hearing for the department of commerce and consumer affairs shall accept no
5 more than thirty requests for hearing per fiscal year under this section.

6 (d) The party requesting the hearing shall pay a filing fee of \$25 to
7 the department of commerce and consumer affairs, and the failure to do so
8 shall result in the request for hearing being rejected for filing. All other
9 parties shall file a response, accompanied by a filing fee of \$25 to the
10 department of commerce and consumer affairs, within twenty days of being
11 served with the request for hearing.

12 (e) The hearings officers appointed by the director of commerce and
13 consumer affairs pursuant to section 26-9(f) shall have jurisdiction to
14 review any request for hearing filed under subsection (b). The hearings
15 officers shall have the power to issue subpoenas, administer oaths, hear
16 testimony, find facts, make conclusions of law, and issue written decisions
17 that shall be final and conclusive, unless a party adversely affected by the
18 decision files an appeal in the circuit court under section 91-14.

19 (f) Chapter 16-201, Hawaii Administrative Rules, shall govern all
20 proceedings brought under this section. The burden of proof, including the
21 burden of producing the evidence and the burden of persuasion, shall be upon
22 the party initiating the proceeding. Proof of a matter shall be by a
23 preponderance of the evidence.

24 (g) Hearings to review and make determinations upon any requests for
25 hearings filed under subsection (b) shall commence within sixty days
26 following the receipt of the request for hearing. The hearing officer shall
27 issue written findings of fact, conclusions of law, and an order as
28 expeditiously as practicable after the hearing has been concluded.

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

31 (i) Any party to a proceedings under this section who is aggrieved by
32 a final decision of a hearings officer may apply for judicial review of that
33 decision pursuant to section 91-14; provided that any party seeking judicial
34 review pursuant to section 91-14 shall be responsible for the costs of
35 preparing the record on appeal, including the cost of preparing the
36 transcript of the hearing.

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

40 SECTION 29. The director of commerce and consumer affairs shall
41 prepare and submit to the legislature, twenty days prior to the convening of
42 the 2005 and 2006 regular sessions, a report containing the director's
43 evaluation of the operation and effect of the pilot program established by
44 this part. The report shall include a summary of the requests for hearing
45 brought under the pilot program, the disposition of such requests for
46 hearing, an appraisal of the effectiveness of the pilot program, and
47 recommendations for changes, modifications or repeal of the pilot program or
48 parts thereof with accompanying reasons and data.

49 SECTION 30. There is appropriated out of the condominium management
50 education fund the sum of \$25,000, or so much thereof as may be necessary for
51 fiscal year 2004-2005, to defray the operational expenses of this pilot
52 program.

1 SECTION 31. The sum appropriated shall be expended by the department
2 of commerce and consumer affairs for the purposes of this Act.

3 PART IV.

4 SECTION 32. There is appropriated out of the condominium management
5 education fund the sum of \$150,000, or so much thereof as may be necessary
6 for fiscal year 2004-2005, to conduct post-bill passage educational
7 activities, including the continuation of one full-time temporary condominium
8 specialist position in the department of commerce and consumer affairs (with
9 the option of hiring a person as either an employee of the department or a
10 consultant to the department), and other current expenses.

11 SECTION 33. The sum appropriated shall be expended by the department
12 of commerce and consumer affairs for the purposes of this Act.

13 PART V.

14 SECTION 34. Statutory material to be repealed is bracketed and
15 stricken. New statutory material is underscored.

16 SECTION 35. This Act shall take effect on July 1, 2005; provided that:

- 17 (1) Section -146 in part I of this Act shall be repealed on
18 December 31, 2007, and reenacted in the form in which it read, as
19 section 514A-90, Hawaii Revised Statutes, on the day before the
20 approval of Act 39, Session Laws of Hawaii 2000, but with the
21 amendments to section 514A-90, Hawaii Revised Statutes, made by
22 Act 53, Session Laws of Hawaii 2003;
- 23 (2) Section -161 in part I of this Act, relating to mediation
24 shall take effect on July 1, 2006;
- 25 (3) Section 28 of this Act shall take effect on July 1, 2004, and
26 shall be repealed on June 30, 2006;
- 27 (4) Sections 30 to 33 of this Act shall take effect on July 1, 2004;
28 and
- 29 (5) If provisions regarding the creation, alteration, termination,
30 registration, and administration of condominiums, and the
31 protection of condominium purchasers, are not adopted effective
32 July 1, 2005, parts I and II of this Act shall be repealed on
33 June 30, 2005.

34
35 **NOTE: Still need to reincorporate HRS Chapter 514A Part VI (Sales to Owner-**
36 **Occupants).**