Article 2. Creation, Alteration, and Termination of Condominiums (Recodification Draft #1)

	Hawaii Condominium Law Recodification Draft #1 **[Based on Comparison of UCIOA (1994), UCA (1980), and HRS Chapter 514A; organization follows Uniform Laws]**	**Hawaii's Present Condominium Law** **Chapter 514A, Hawaii Revised Statutes (HRS)** ***(Compare with Proposed Recodified Condominium Law in left-hand column)***
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	ARTICLE 2. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS	**PART II. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS**
	§ 2-101. Creation of Condominium.	
	(a) A condominium may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed. The declaration ~~must be recorded in every [county] in which any portion of the condominium is located, and~~ must be indexed [in the grantee's index] in the name of the condominium and the association and [in the grantor's index] in the name of each person executing the	**§514A-20 Condominium property regimes.** Whenever the sole owner or all of the owners including all of the lessees of a property expressly declare, through the execution and recordation of a master deed, together with a declaration, which declaration shall set forth the particulars enumerated by section 514A-11, the sole owner's or their desire to submit the property to the regime established by this chapter, there shall thereby be established a condominium property regime with

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	declaration.	respect to the property, and this chapter shall be applicable to the property. If the master deed is already recorded, the recordation of the declaration is sufficient to achieve the same result.
	(b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless: (1) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent licensed engineer, surveyor, or architect; or (2) the commission has approved the declaration or amendment in the manner prescribed in Section 5-103(b).	**§514A-12 Copy of the floor plans to be filed.** Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and, if construction of the building or buildings is completed, as approved by the county or city and county officer. If the plans do not include a statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, there shall be recorded within thirty days from the date of completion of the building or buildings as "date of completion" is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, which amendment shall require only the vote or written consent of the declarant or such other person or persons as are provided in the declaration. The plans shall be kept by the recording officer as provided by rules adopted by the department of land and natural resources, pursuant to chapter 91, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "apartment ownership," with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.
	UCA (1980) Comment [UCIOA (1994) Comment essentially same] 1. A condominium is created pursuant to this Act only by recording a declaration. As with any instrument affecting real estate, the declaration must be recorded in every recording district in which any portion of the condominium is located and must be indexed in the manner described in subsection (a). Specific indexing rules are suggested in brackets and should be used in those states where this result would not otherwise occur. For example, the declaration commonly has not been indexed in the grantee's index in the name of the condominium. Moreover, when multiple persons execute the declaration, the	**Condominium Recodification Attorney's Comment** 1. HRS §514A-12 is an example of statutory language in need of a rewrite. Many of its elements are covered – appropriately – elsewhere in the recodification/UCA/UCIOA [e.g., §2-109 (Plats and Plans)]. 2. As noted previously, there is no need to require recording in "every recording district," as Hawaii has only one statewide recording district. [The advisory working group will help to make sure that recodification language

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	declaration has often been indexed solely in the name of the declarant and not in the name, for example, of lenders and other persons who might have executed the declaration. Because it is important that the names of the association and all persons executing the declaration appear in the index in order to locate all instruments in the land records, that language is not included in brackets. 2. In Section 1-103, the Act defines the term "Declaration" as any instruments, however denominated, which create a condominium, and any amendments to those instruments. "Condominium," in turn, is defined as "real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions." [*UCIOA (1994) adds: "'Ownership of a unit' does not include 'holding a leasehold interest of less than 20 years in a unit, including renewal options.'"*] It is important to emphasize that other covenants, conditions or restrictions applicable to the real estate in the condominium might be recorded before or after the instruments are recorded which divide the real estate into units and common elements, thereby creating the condominium. Until the actual recordation of the document which accomplished that result, however, the condominium has not been created. 3. A condominium has not been lawfully created unless the requirements of this section have been complied with. Nevertheless, a project which meets the definition of "condominium" in Section 1-103(7) is subject to this Act even if this or other sections of the Act have not been complied with. 4. Mortgagees and other lienholders need not execute the declaration, and foreclosure of a mortgage or other lien will not, of itself, terminate the condominium. However, if that lien is prior to the declaration itself, the lienholder may exclude that real estate from the condominium. *See* Sections 2-118(i) and (j). Moreover, the declarant may wish to obtain agreements from mortgagees or other lienholders that they will give partial releases permitting lien-free conveyance of the condominium units. *See* Section 4-111(a). 5. Except when development proceeds pursuant to Section 5-103, this Act contemplates that two different stages of construction must be reached before (1) a condominium may be created or (2) a unit in the condominium may be conveyed. These stages are described, respectively, in subsection (b) and Section 4-120. [*UCIOA (1994) rephrases: "Except when development proceeds pursuant to Section 5-103, this Act contemplates that substantial completion must be reached before a unit may be conveyed. See Section 4-120."*] The purpose of imposing these requirements is to insure that a purchaser will in fact take title to a unit which may be used for its intended purpose. If a condominium were said to consist from the beginning of a certain number of units, even though some of those units had not yet been completed or even begun, serious problems would arise if the remaining units were never constructed and if no obligation to complete the construction could be enforced against any solvent person. If the insolvent owner of the unbuilt units failed to pay his common expense assessments for example, the unit owners' association might be left with no remedy except a lien of doubtful value against mere cubicles of airspace. Moreover, votes in the unit owners' association could be	regarding recordation is appropriate for Hawaii.] 3. Although UCA, UCIOA, and even HRS Chapter 514A (in some places) use the term "registered" or "professional" engineer, surveyor, or architect, the proper term for Hawaii's level of regulation is "licensed." *See*, HRS Chapter 464.

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	assigned to units, and those votes could be cast, even though the units were never built. The Act therefore requires that significant construction take place before units are assigned an interest in the common elements, a vote in the association, and a share of the common expense liabilities, and before units are conveyed. This requirement of substantial completion [or the alternative bonding procedure and other assurances required by Section 5-103] reduces the possibility that a failure to complete will upset the expectations of purchasers or otherwise harm their interests in case the declarant becomes insolvent and no solvent person has the obligation to complete the unit. 6. Section 2-101(b) requires that "all structural components and mechanical systems of all buildings containing or comprising any units" which will be created by recording a declaration, must be substantially completed in accordance with the plans. The intent of subsection (b) is that if any buildings are depicted on the plats and plans which are required by Section 2-109, and these buildings contain or comprise spaces which become units by virtue of recording the declaration, the structural components and mechanical systems of these buildings must be substantially complete before the declaration is recorded. This is required even though the plats and plans recorded pursuant to Section 2-109 depict only the boundaries of the buildings and the units created in those buildings, and not the structural components or mechanical systems (which need not be shown). If the boundaries of units are not depicted, of course, then no units are created. If the declarant fails to comply with this section, title is not affected. *See* Comment 8, below. The concept of "structural components and mechanical systems" is one commonly understood in the construction field and this comment is not intended as a comprehensive list of those components. For example, however, the term "structural components" is generally understood to include those portions of a building necessary to keep any part of the building from collapsing, and to maintain the building in a weathertight condition. This would include the foundations, bearing walls and columns, exterior walls, roof, floors and similar components. It would clearly not include such components as interior non-bearing partitions, surface finishes, interior doors, carpeting, and the like. Similarly, typical examples of "mechanical systems" include the plumbing, heating, air conditioning and other like systems. Whether or not "electrical systems" are included within the meaning of the term depends on local practice. 7. Section 4-120, requires that, before an individual unit is conveyed, the unit must be "substantially completed." "Substantial completion" is a well understood term in the construction industry. For example, the American Institute of Architects Document A201, General Conditions of the Contract for Construction (1976 Ed.) at para. 8.1.3, states: The Date of Substantial Completion of the Work . . . is the date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents (that is, the owner-contractor agreement, the conditions of the contract, and the specifications and all addenda and modifications), so the Owner can occupy or utilize the Work . . . for the use for which it is intended. This standard is also one often used by building officials in issuing certificates of occupancy. It does not suggest that the unit is "entirely completed" as that term is understood in the construction industry; lesser details, such as sticking doors, leaking	

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	windows, or some decorative items, might still remain, and the Act contemplates that they need not be completed prior to lawful conveyance. 8. Section 2-101(b) and 4-120 require that completion certificates be recorded, or local certificates of occupancy be issued, as evidence of the fact that the required levels of construction have been met. In the case of "substantial completion," issuance of "a certificate of occupancy authorized by law," as is commonly required by local ordinance or state building codes, will suffice. Once the certificates have been recorded, or issued, as the case may be, good title to the units may be conveyed in reliance on the record. It is possible, of course, that the declarant may have failed to complete the required levels of construction; [*UCIOA (1994) adds: "no certificate of completion may have been filed or"*] the architect, surveyor or engineer (whichever is appropriate in a particular jurisdiction) may have filed a false certificate. Such acts would create a cause of action in the purchaser under ~~Section 4-115~~ [*UCIOA (1994) correction: Section 4-117*], but would not affect the validity of the purchasers' title to the condominium. 9. The requirement of "substantial completion" does not mean that the declarant must complete all buildings in which all possible units would be located before creating the condominium. If only some of the buildings in which units which may ultimately be located have been "structurally" completed, the declarant may create a condominium in which he reserves particular development rights (Section 2-105(a)(8)). In such a project, only the completed units might be treated as units from the outset, and the development rights would be reserved to create additional units, either by adding additional real estate and units to the condominium, by creating new units on common elements, or by subdividing units previously created. The optional units may never be completed or added to the condominium; however, this will not affect the integrity of the condominium as originally created. 10. Requiring "substantial completion" of the structural components and mechanical systems in the buildings containing or comprising the units in a condominium may encourage creation of more phased condominiums under Section 2-105 in projects which once were in fact built in phases, but under a single nonexpandable declaration. Experience in the several states where significantly more rigorous requirements are imposed by statute, however, has shown that this does not create a difficult situation either for the developer or the lender. Moreover, it appears likely that the size of the initial phase of a multi-building project will be dictated largely by economics, as occurs in most jurisdictions today, rather than this Act. Finally, many lenders and developers are increasingly sensitive to the secondary mortgage market requirements particularly those of the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). Experience indicates that the pre-sale requirements imposed by FNMA and FHLMC frequently dictate that multi-building condominium projects be structured on a phased or expandable condominium basis. 11. The requirement of completion would be irrelevant in some types of condominiums, such as campsite condominiums or some subdivision condominiums where the units might consist of unimproved lots, and the airspace above them, within which each purchaser would be free to construct or not construct a residence. Any residence actually	

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	constructed would ordinarily become a part of the "unit" by the doctrine of fixtures, but nothing in this Act would require any residence to be built before the lots could be treated as units. 12. The term "independent" architect, surveyor or engineer in subsection (b) and elsewhere in the Act distinguishes any such professional person who acts as an independent contractor in his relationship to the declarant or lender.	
	§ 2-102. Unit Boundaries. Except as provided by the declaration:	
	(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.	
	(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.	
	(3) Subject to paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.	
	(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.	
	UCA (1980) Comment [UCIOA (1994) Comment essentially same] 1. It is important for title purposes [*UCIOA (1994) adds: ", for purposes of defining maintenance responsibilities,"*] and other reasons to have a clear guide as to precisely which parts of a condominium constitute the units and which parts constitute the common elements. This section fills the gap left when the declaration merely defines unit boundaries in terms of floor, ceilings, and perimetric walls. The provisions of this section may be varied, of course, to the extent that the declarant wishes to modify the details for a particular condominium. For example, in a townhouse project structured as a condominium, it may be desirable that the boundaries of the unit constitute the exterior surfaces of the roof and exterior walls, with the center line of the party walls constituting the perimetric boundaries of the units in that plane, and the undersurface of the bottom slab dividing the unit itself from the underlying land. Alternatively, the boundaries of the units at the party walls might be extended to include actual division of underlying land itself. In those cases it would not be appropriate for walls, floors and ceilings to be designated as boundaries, and the declaration would describe the boundaries in the above manner. The differentiations made clear here, in conjunction with the provisions of Section 3-107, will assist in minimizing disputes which have historically arisen in association administration with respect to liability for	**Condominium Recodification Attorney's Comment** UCA and UCIOA define "units" and "limited common elements" with precision; everything else falls under the definition of "common elements". (*See*, UCA/UCIOA §1-103.) We have adopted this approach in the recodification.

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	repair of such things as pipes, porches and other components of a building which unit owners may expect the association to pay for and which the association may wish to have repaired by unit owners. Problems which may arise as a result of negligence in the use of components – such as stoops and pipes – are resolved by Section 3-107, which imposes liability on the unit owner who causes damage to common elements, or under the broader provisions of Section 3-115(e), which permits the association to assess common expenses "caused by the misconduct of any unit owner" exclusively against that owner. This would include, of course, not only damages to common elements, but fines or unusual service fees, such as clean-up costs, incurred as a result of the unit owner's misuse of common elements. 2. The differentiation between components constituting common elements and components which are part of the units is particularly important in light of Section 3-107(a), which (subject to the exceptions therein mentioned) makes the association responsible for upkeep of common elements and each unit owner individually responsible for upkeep of his unit. 3. The differentiation between unit components and common element components may or may not be important for insurance purposes under this Act. While the common elements in a project must always be insured, the units themselves need not be insured by the association unless the project contains units divided by horizontal boundaries; *see* Section 3-113(b). In a "high rise" configuration, however, Section 3-113(a) contemplates that both will normally be insured by the association (exclusive of improvements and betterments in individual units) and that the cost of such insurance will be a common expense. That common expense may be allocated, however, on the basis of risk if the declaration so requires. *See* Section 3-115(c)(3).	
	§ 2-103. Construction and Validity of Declaration and By-Laws.	
	(a) All provisions of the declaration and bylaws are severable.	
	(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to Section 3-102(a)(1).	
	(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.	
	(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.	
	UCA (1980) Comment [UCIOA (1994) Comment essentially same] 1. Subsection (b) does not totally invalidate the rule against perpetuities as applied to condominiums. The language does provide that the rule against perpetuities is ineffective as to documents which would govern the condominium during the entire life of the project, regardless of how long that should be. With respect to deeds or devises of units, however, the policies underlying the rule against perpetuities continue to have validity and remain applicable under this Act.	**Condominium Recodification Attorney's Comment** 1. It may be desirable to explicitly adopt the position of the *Restatement of the Law, Third, Property (Servitudes)* regarding the validity of servitudes. Under the *Restatement*: A servitude is valid unless it is illegal or unconstitutional or violates public policy. Servitudes that are invalid because they violate public policy include, but are

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	2. In considering the effect of failures to comply with this Act on title matters, subsection (d) refers only to defects in the declaration – which includes the plats and plans – because the declaration is the instrument which creates and defines the units and common elements. No reference is made to other instruments, such as bylaws, because these instruments have no impact on title, whether or not recorded. However, in all cases of violations of the Act, a failure of the bylaws – or any other instrument – to comply with the Act, would entitle any affected persons to appropriate relief under Section 4-117. 3. No special prohibition against racial or other forms of discrimination is included in this Act because the provisions of generally applicable federal and state law apply as much to condominiums as to other forms of real estate. 4. Some examples may help to clarify what sorts of defects in the declaration are to be regarded as "insubstantial" within the meaning of the first sentence of subsection (d). Suppose the declaration allocates common element interests to all the units, but fails to indicate the formula for the allocation as required by Section 2-107. This would be a substantial defect if the assigned interests were unequal, but if all units were assigned identical interests it would be possible to infer that the basis of allocation was equality – and the failure of the declaration to say so would be an insubstantial defect. Were this to happen in a condominium where the right to add new units is reserved, however, it should be noted that a subsequent amendment to the declaration adding new units could not use any formula other than equality for reallocating the common element interests unless a different formula were specified pursuant to Section 2-107(b). Other examples of insubstantial defects that might occur include failure of the declaration to include the word "condominium" in the name of the project, as required by Section 2-105(a)(1), or failure of the plats and plans to comply satisfactorily with the requirement of Section 2-109(a) that they be "clear and legible," so long as they can at least be deciphered by persons with proper expertise. Failure to organize the unit owners' association at the time specified in Section 3-101 would not be a defect in the declaration at all, and would not affect the validity or marketability of titles in the condominium. It would, however, be a violation of this Act, and create a claim for relief under Section 4-117. 5. Each state has case or statutory law dealing with marketability of titles, and the question of whether substantial failures of the declaration to comply with the Act affect marketability of title should be determined by that law and not by this Act.	not limited to: (1) a servitude that is arbitrary, spiteful, or capricious; (2) a servitude that unreasonably burdens a fundamental constitutional right; (3) a servitude that imposes an unreasonable restraint on alienation; (4) a servitude that imposes an unreasonable restraint on trade or competition; and (5) a servitude that is unconscionable. (*See*, *Restatement* §3.1.) [*See also*, discussion under "Need for laws (and the courts) to support the fair and efficient functioning of condominium communities" above (Public Policy Considerations).] 2. Corrected citation in UCA's Comment #4 [from "Section 2-105(1)" to "Section 2-105(a)(1)"].
	§ 2-104. Description of Units. A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.	
	UCA (1980) Comment 1. The intent of this section is that no description of a unit in a deed, lease, deed of trust, mortgage, or any other instrument or document shall be subject to challenge for failure to meet any common law or other requirements so long as the requirements of this	**Condominium Recodification Attorney's Comment** 1. Used UCIOA's Comment #2 rather than UCA's Comment #2 since UCIOA is clearer.

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	section are satisfied, and so long as the declaration itself, together with the plats and plans which are a part of the declaration, provides a legally sufficient description. **UCIOA (1994) Comment** 2. The last sentence makes clear that an instrument which does meet those requirements includes all interests appurtenant to the unit. As a result, it will not be necessary under this Act to continue the practice, common in some jurisdictions, of describing in the instrument conveying title to a unit the common element interests, or limited common elements, that are appurtenant to that unit or make reference to surveys or subsequent amendments to declarations.	
	§ 2-105. Contents of Declaration.	**§514A-11 Recordation and contents of declaration.**
	(a) The declaration for a condominium must contain:	The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration to which section 514A-20 refers shall express the following particulars:
	(1) the names of the condominium, which must include the word "condominium" or be followed by the words "a condominium", and the association;	
	(2) the name of [~~every~~] the county in which [~~any part of~~] the condominium is situated;	
	(3) a legally sufficient description of the real estate included in the condominium;	(1) Description of the land, whether leased or in fee simple, on which the building or buildings and improvements are or are to be located;
	(4) a statement of the maximum number of units which the declarant reserves the right to create;	
	(5) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;	(2) Description of the building or buildings, stating the number of stories and basements, the number of apartments, and the principal materials of which it or they is or are constructed or to be constructed;
		(3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, immediate common element to which it has access, designated parking stall if considered a limited common element, and any other data necessary for its proper identification;
		(4) Description of the common elements;
	(6) a description of any limited common elements, other than those specified in Section 2-102(2) and (4), as provided in Section 2-109(b)(10);	(5) Description of the limited common elements, if any, stating to which apartments their use is reserved;
	(7) a description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in Section 2-102(2) and (4), together with a statement that they may be so allocated;	
	(8) a description of any development rights and other special declarant rights (Section 1-103) reserved by the declarant, together with a legally sufficient	[*See*, §514A-11 (12) below, which reads: "Description as to any additions, deletions, modifications, and reservations as to the property, including without

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	description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;	limitation provisions concerning the merger or addition of later phases of the project. To the extent provided in the declaration, an amendment to the declaration that is made to implement those additions, deletions, modifications, reservations, or merger provisions shall require the vote or written consent of only the declarant or such percentage of apartment owners as is provided in the declaration."]
	(9) if any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;	[*See*, §514A-11 (12) below]
	(10) any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse;	[*See*, §514A-11 (12) below]
	(11) an allocation to each unit of the allocated interests in the manner described in Section 2-107;	(6) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting;
	(12) any restrictions (i) on alienation of the units, including any restrictions on leasing which exceed the restrictions on leasing units which executive boards may impose pursuant to Section 3-102(c)(2), and (ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the condominium, or on termination of the condominium;	(7) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use;
	(13) the [recording data] for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and	
	(14) all matters required by Sections 2-106, 2-107, 2-107.1, 2-108, 2-109, 2-115, 2-116, and 3-103(d).	
		(8) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of the person which shall be within the county in which the property is located;
		(9) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, or restore the property in the event of damage or destruction of all or part of the property;
		(10) Any further details in connection with the property that the person executing the declaration may deem desirable to set forth consistent with this chapter;
		(11) The method by which the declaration may be amended, consistent with this chapter; provided that an amendment to the declarations of all condominium projects existing as of May 22, 1991, and all condominium projects created thereafter shall require a vote or written consent of seventy-five per cent of all apartment owners, except as otherwise provided in this chapter; provided further

	Hawaii Condominium Law Recodification Draft #1 **[Based on Comparison of UCIOA (1994), UCA (1980), and HRS Chapter 514A; organization follows Uniform Laws]**	**Hawaii's Present Condominium Law** **Chapter 514A, Hawaii Revised Statutes (HRS)** ***(Compare with Proposed Recodified Condominium Law in left-hand column)***
		that the declarations of condominium projects having five or fewer apartments may provide for the amendment thereof by a vote or written consent of more than seventy-five per cent of all apartment owners;
		(12) Description as to any additions, deletions, modifications, and reservations as to the property, including without limitation provisions concerning the merger or addition of later phases of the project. To the extent provided in the declaration, an amendment to the declaration that is made to implement those additions, deletions, modifications, reservations, or merger provisions shall require the vote or written consent of only the declarant or such percentage of apartment owners as is provided in the declaration; and
		(13) A declaration subject to the penalties set forth in section 514A-49(b) that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514A-1.6, and specifying in the case of a property which includes one or more existing structures being converted to condominium status: (A) Any variances which have been granted to achieve such compliance; and (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal non-conforming uses or structures; except that a property that is registered pursuant to section 514A-31 shall instead provide this declaration pursuant to [section] 514A-40.
	(b) The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.	[*See*, §514A-11 (10) above which reads: "Any further details in connection with the property that the person executing the declaration may deem desirable to set forth consistent with this chapter."]
		§514A-17 Contents of deeds or leases of apartments. Deeds or leases of apartments shall include the following particulars:
		(1) Description of the land as provided in section 514A-11, or incorporation by reference of the description in the declaration, or the post office address of the property, including in either case an appropriate reference to the recording of the declaration.
		(2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification.
		(3) Statement of the use for which the apartment is intended and restrictions on its use.
		(4) The common interest appertaining to the apartment.
		(5) All encumbrances on the apartment and any further details which the grantor and grantee, or lessor and lessee, deem desirable to set forth consistent with the declaration and this chapter.
	UCA (1980) Comment [with edits from UCIOA (1994)] 1. Many statutes and other regulatory schemes in the multi-owner project field do not	**Condominium Recodification Attorney's Comment** 1. Comment #1 at left is the UCA (1980) Comment with edits from UCIOA (1994)

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	separate the functions of a recorded declaration and an unrecorded public offering statements or disclosure documents. As a result, many of the developer's representations and assurances concerning his future plans must appear in the declaration as well as the public offering statement, even though they [~~may~~] have nothing to do with the legal structure or title of the project. [~~*See* e.g., Section 47-70, Conn.Gen.Stat. (1980).~~] This results in duplicative requirements and unnecessarily complex declarations. This Act [~~seeks functionally to distinguish~~] makes a functional distinction between the declaration and the public offering statement. It only requires the declaration to contain [~~only~~] those matters which affect the legal structure or title of the condominium. This includes the reserved powers of the declarant to exercise development rights within the condominium. A narrative description of those rights, however, and the possible consequences flowing from their exercise, are required to be disclosed only in the public offering statement and not in the declaration. Plats and plans are made part of the declaration by Section 2-109, and their content may in part provide some of the information required by this section. 2. This section requires a statement of the name of the association for the condominium as well as the name of the condominium itself, in order that the declaration may be indexed in the name of the association. *See* Section 2-101. 3. The Act requires that the declaration for a condominium situated in two or more recording districts be recorded in each of those districts. While the bracketed language refers to the "county" as the recording district in which the declaration is to be recorded, it would be appropriate in states where recording is done at the city, town, or parish level to amend the bracketed language accordingly. 4. Paragraph (a)(4) requires the declarant to state the largest number of units he reserves the right to build. Unlike many current condominium statutes, this Act imposes no time limit, measured by an absolute number of years, at the expiration of which the declarant must relinquish control of the association. Instead, declarant control ends when 75% of the maximum number of units which may be created by the declarant have been sold, or at the end of a 2-year period during which development is not proceeding. *See* Section 3-103(d). The flexibility afforded by this section may be important to a declarant as he responds to unanticipated future changes in his market. In theory, a declarant might overstate the maximum number of units in an attempt to artificially extend the period of declarant control, since the time might never come when a declarant had sold 75% of that number of units. As a practical matter, however, such a practice would not likely achieve long-term control. **EXAMPLE:** A declarant reserves the right to build 100 units, even though zoning would permit only 75 units on the site, and the declarant actually plans on building only 50 units. As a result of the reservation, the declarant would not lose control of the association under the 75% rule stated in Section 3-103(d)(i) even when all 50 units had been built and sold, because that percentage applies to all potential units, not units actually built. *See* Section 3-103(d)(i).	indicated in Ramseyer format and highlighted in yellow. It is an example of the types of clarifying edits made to Section 2-105's Comments in UCIOA (1994). Remaining edits are simply incorporated in the Uniform laws' comments (i.e., not using the Ramseyer format). 2. It is worth emphasizing that Recodification Draft #1 adopts the UCA/UCIOA approach in making a functional distinction between the declaration and the public offering statement. Consistent with UCA/UCIOA, it only requires the declaration to contain those matters which affect the legal structure or title of the condominium.

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	However, there are practical constraints on the declarant's decision in this matter. Substantial exaggeration of the future density of the development might tend to impede sales of units in that project. Moreover, such a statement might also produce negative governmental reaction to proposals which might require local approval. Even if the declarant did overstate the number of units to retain control, however, other limitations imposed by Section 3-103(d) will require turnover at an appropriate time. In the example, once the declarant had exercised the right to add the last of the 50 units which he intends to build, the 2-year period imposed by Section 3-103(d)(ii) and (iii) would begin to run, and the declarant would lose the right to control the association 2 years from the time the last units were added, even though he had reserved the right to add more units. 5. Paragraph (a)(5) requires that the boundaries of each unit created by the declaration be identified. The words "created by the declaration" emphasize that in an expandable project, new units may be created in the future by amendments to the declaration. Until those new units are actually added to the project by amending the declaration, however, they are not units within the meaning of that defined term, and they need not be described. 6. Section 2-102 makes it possible in many projects to satisfy paragraph (a)(5) of this section by merely providing the identifying number of the units and stating that each unit is bounded by its ceiling, floor, and walls. The plats and plans will show where those ceilings, floors, and perimetric walls are located, and Section 2-102 provides all other details, except to the extent the declaration may make additional or contradictory specifications because of the unique nature of the project. 7. Paragraph (a)(6) makes clear that the limited common elements described in Section 2-102(2) and (4) need not be described in the declaration. These limited common elements are typically porches, balconies, patios, or other amenities which may be included in a project. Such improvements are treated by the Act as limited common elements, rather than either common elements or parts of units, in order to minimize the attention which the documents need to give them, and to secure the result that would be desired in the usual case. Thus, if these improvements remain limited common elements, and no special provisions concerning them are included in the declaration, they may be used only by the units to which they are physically attached; maintenance of those improvements must be paid for by the association; and such improvements need not be specially referred to in the declaration. Porches, balconies and patios must be shown on the plats and plans (*see* Section 2-109(b)(10)), but other limited common elements described in Section 2-102(2) and (4) need not be shown. 8. Paragraph (a)(7) contemplates that the common elements in the project may be allocated as limited common elements at some future time, either by the declarant or the association. For example, a swimming pool might serve an entire project during early phases of development. At the outset, that pool might be a common element which all the unit owners may use. At a later time, with more units and additional pools built in subsequent phases, either the declarant or the association might determine that the first pool should become a limited common element reserved for the use only of units in the first phase, while the other pools should be reserved exclusively for units in the subsequent phases. Such a potential allocation should be described in the declaration pursuant to this	

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	section. The method of subsequent allocation is discussed in Section 2-108. 9. Paragraph (a)(8) requires that the declaration describe all development rights and other special declarant rights which the declarant reserves. The declaration must describe the real estate to which each right applies, and state the time limit within which each of those rights must be exercised. The Act imposes no maximum time limit for the exercise of those rights, and the particular language of a declaration will vary from project to project depending on the requirements of each project. This Act contemplates that those rights may be exercised after the period of declarant control terminates. 10. [*Note: Added in UCIOA (1994).*] Paragraph (a)(12)(ii) includes certain requirements which were not originally applicable to condominiums under UCA. Tracking MRECA, paragraph (a)(12)(ii) requires the declaration to include any information which restricts the amount for which a unit may be sold, or the amount to be received by a unit owner upon sale, condemnation, or casualty loss. Such restrictions are increasingly common in the development of "limited equity" condominiums or condominiums which are designed to minimize the increased value of the condominium upon resale in order to preserve housing for a particular income group. The Act in no way restricts the use of such provisions, but does require that explicit provisions concerning such restrictions appear in both the declaration and the Public Offering Statement. 11. Paragraph (a)(14) is a cross-reference to other sections of the Act which require the declaration to contain particular matters. Some of these sections, such as 2-107 on the allocations of allocated interests or 2-109 on plats and plans, will affect all projects. Others, such as 2-106 on leasehold condominiums, will apply only to particular kinds of projects. 12. Subsection (b) contemplates that, in addition to the content required by subsection (a), other matters may also be included in the declaration if the declarant or lender feel they are appropriate to the particular project. In particular, the draftsman should carefully consider any desired provisions which would vary any of the many sections of the Act where variation is permitted, including such matters as expanding or restricting the association's powers. A list of sections which may be varied appears in the comment to Section 1-104. 13. [*Note: Added in UCIOA (1994).*] The 1994 amendments to subsections (a)(12) and (b) of this section are part of the drafters' efforts to clarify the law of "use and occupancy" restrictions in common interest communities, and make that law more rational. Specifically, these amendments describe the pattern of what use and occupancy restrictions must appear in the declaration, what amendment procedures must be used to change those use and occupancy restrictions, what discretion the executive board has in enforcing such restrictions, and what protection the Act provides to unit owners, either to be free of regulation inside their units, or to be protected from new restrictions on a once permitted activity. This is a complex subject, and amendments in several sections of the Act were required. The amendments begin in Section 2-105. Previously, the Act **required** all use,	

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	occupancy, and alienation restrictions to appear in the declaration; *see* old Section 2-105(a)(12). No amendment to a "use" restriction was allowed, except with unanimous consent; *see* old Section 2-117(d). The Act was unclear as to whether or not such things as leasing restrictions or pet rules were "use" restrictions requiring unanimous consent. The 1994 amendment to this section makes two important changes. First, leasing restrictions which exceed the restrictions allowed by the secondary mortgage market, *see* Section 3-102(c)(2), still must appear in the declaration. No other use or occupancy restrictions must appear in the declaration, but any such restrictions may so appear. *See* Section 2-105(b). Presumably, a provision in the declaration pursuant to this subsection (b) could permit the executive board to develop evolving use restrictions, in its discretion. New subsection (b) also seeks generally to distinguish between "**uses** of a unit" and "the number or qualifications of persons who **occupy** units;" this distinction emphasizes that "occupancy" focuses on characteristics of individual persons while "use" focuses on the purposes to which the space is devoted. Amendments to other sections bear on these issues in important ways. *See*, *e.g.*, Section 2-117(d) and (f) and Section 3-102.	
	§ 2-106. Leasehold Condominiums.	
	(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size [, or a memorandum thereof,] must be recorded. Every lessor of those leases shall sign the declaration, and the declaration must state:	
	(1) the [recording data] for the lease [or a statement of where the complete lease may be inspected];	
	(2) the date on which the lease is scheduled to expire;	
	(3) a legally sufficient description of the real estate subject to the lease;	
	(4) any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;	
	(5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and	
	(6) any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.	
	(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.	
	(c) Acquisition of the leasehold interest of any unit owner by the owner of the	

Article 2. Creation, Alteration, and Termination of Condominiums (Recodification Draft #1)

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	reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.	
	(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests must be reallocated in accordance with Section 1-107(a) as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.	[*See also*, §514A-21(c) below, regarding effects of eminent domain proceedings on leasehold condominium projects]
	UCA (1980) Comment [UCIOA (1994) Comment essentially same] 1. Subsection (a) requires that the lessor of any lease, which upon termination will terminate the condominium or reduce its size, must sign the declaration. This requirement insures that the lessor has consented to use of his land as a condominium. 2. Subsection (a)(1) provides alternative bracketed language which should be considered by each state based on its practice. In any state where the recording acts do not specify the essential terms which must be included in a memorandum of lease, either this section should be supplemented to specify the essential terms or else the bracketed language relating to such memoranda should be deleted. 3. This section sets out requirements concerning leasehold condominiums which are not typically contained in the statutes of most states. In particular, it requires that the declaration describe the rights of the unit owners, or state that they have no rights concerning a variety of significant matters. The section also contains a number of other consumer protection provisions. However, in contrast to the result under some states' laws, unit owners have no statutory right to renewal of a lease upon termination. 4. The most significant matter of consumer protection in this section is subsection (b), which provides that unit owners who pay their share of the rent of the underlying lease may not be deprived of their enjoyment of the leasehold premises. Subsection (b) is intended to protect the "unit owner" regardless of whether he is a lessee, sublessee, or even further down in a chain of transfer of leasehold interests. Thus, for example, if the "unit owner" is a sublessee, the term "lessor (or) his successor in interest" includes not only the lessor, but also the lessee. Subsection (b) further protects the unit owner by assuring that he will not share with his fellow unit owners any collective obligations toward their common lessor. All obligations are instead fractionalized so that no unit owner can be made liable or otherwise penalized for a default by any of his fellows. Thus, a default by the association in payment of the rent due the lessor, in a case where the lease of common elements ran to the association, would not permit the lessor to terminate continued use of those common elements by those unit owners who then pay their share of the rent. [*Note: The remainder of Comment #4 was added in UCIOA (1994).*] Subsection (b) does not address the issue of whether a unit owner's tenant may cure a default by the unit owner under the unit owner's lease so as to prevent termination of the unit owner's lease.	**Condominium Recodification Attorney's Comment** [Check with advisory working group regarding Hawaii recording data and general practices regarding leasehold condos.]

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	Example: Assume that A leases 100 acres of land to B for 50 years. B, in turn, leases the same 100 acres to C, for the duration of the 50 year term. C creates a condominium on the leasehold land, and thereby becomes the declarant; thereafter, he leases a unit in the condominium to D, together with a lease of this allocated undivided interest in the leasehold underlying the unit, for the duration of the 50 year term. D then leases his unit to E for a term of five years. Both A and B must execute the declaration; *see* Section 2-106(a). So long as D meets his obligations to C – or any other persons – under the declaration and his sublease, D's interest in the leasehold may not be terminated by either A, B, or C; *see* Section 2-106. For that reason, A and B will likely take appropriate steps to protect their interests in the event that D makes timely payment to C, if called for in the declaration or lease, but C fails to meet his obligations to either A or B. If D fails to make timely payment to C – or to B or A if those persons have so required – then D's interest may be terminated by the person entitled to payment, unless E is entitled to cure. E may cure and thereby prevent default, however, only if other law of the State permits transferees of partial interests to cure defaults of his transferor. Since E is not a unit owner, he is not entitled to rights under this Act. 5. Subsection (d) considers the problems created when termination of a lease reduces the size of a condominium. In the event that some units are thereby withdrawn from the condominium, reallocation of the allocated interests would be required; the section describes how that reallocation would occur.	
	§ 2-106.1. Lease Rent Renegotiation. (a) Notwithstanding any provision in the declaration or bylaws of any condominium subject to this chapter, any lease or sublease of the real estate or of a unit, or an undivided interest in the real estate to a unit owner, whenever any lease or sublease of the real estate, a unit, or an undivided interest in the real estate to a unit owner provides for the periodic renegotiation of lease rent thereunder, the unit owners' association shall represent the unit owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent as a common expense of the association.	**[§514A-90.6] Lease rent renegotiation.** (a) Notwithstanding any provision in the declaration or bylaws of any property subject to this chapter, any lease or sublease of the property or of an apartment, or an undivided interest in the land to an apartment owner, whenever any lease or sublease of the property, an apartment, or an undivided interest in the land to an apartment owner provides for the periodic renegotiation of lease rent thereunder, the association of apartment owners shall represent the apartment owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent as a common expense of the association.
	(b) If some, but not all of the unit owners have purchased the leased fee interest appurtenant to their units, all costs and expenses of the renegotiation shall be assessed to the remaining lessees in the same proportion that the common interest appurtenant to each lessee's unit bears to the common interest appurtenant to all lessees' units. The unpaid amount of this assessment shall constitute a lien upon the lessee's unit, which may be collected in accordance with section 3-116 (Lien for Assessments) in the same manner as an unpaid common expense.	(b) If some, but not all of the apartment owners have purchased the leased fee interest appurtenant to their apartments, all costs and expenses of the renegotiation shall be assessed to the remaining lessees in the same proportion that the common interest appurtenant to each lessee's apartment bears to the common interest appurtenant to all lessees' apartments. The unpaid amount of this assessment shall constitute a lien upon the lessee's apartment, which may be collected in accordance with sections 514A-90 and 514A-94 in the same manner as an unpaid common expense.
		Condominium Recodification Attorney's Comment HRS §514A-90.6 was under Part V (Condominium Management) of Chapter 514A..

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		§514A-13 Common elements. (a) Each apartment shall have appurtenant thereto a common interest as expressed in the declaration.
		(b) The common interest appurtenant to each apartment as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded, except as provided in section 514A-11(12). An amendment which subdivides or consolidates apartments and reapportions the common interest appurtenant to the subdivided or consolidated apartment shall, to the extent provided in the declaration, require the vote or written consent of only the apartment owners of the subdivided or consolidated apartments, their mortgagees, and such other percentage of apartment owners as the declaration may provide. The common interest shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.
		(c) The common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as otherwise expressed in this chapter. Any provision to the contrary is void.
		(d) Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject to:
		(1) The right of the board of directors, upon the approval of the owners of seventy-five per cent of the common interests, to change the use of the common elements;
		(2) The right of the board of directors, on behalf of the association of apartment owners, to lease or otherwise use for the benefit of the association of apartment owners those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the board of directors; provided that unless the approval of the owners of seventy-five per cent of the common interest is obtained, any such lease shall not have a term exceeding five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice;
		(3) The right of the board of directors to lease or otherwise use for the benefit of the association of apartment owners those common elements not falling within paragraph (2) above, upon obtaining: (A) the approval of the owners of seventy-five per cent of the common elements, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on apartments with respect to which owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees; and

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		(4) The exclusive use of the limited common elements as provided in the declaration.
		(e) The operation of the property shall be carried out as provided herein and in the declaration and the bylaws.
		(f) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.
		(g) An undivided interest in the land included in the common elements equal to the apartment's common interest may be leased to the apartment owner and the apartment and other common elements may be deeded to the apartment owner with a right of removal; and, this shall not constitute a division or partition of the common elements, or a separation of the common interest from the apartment to which it appertains; nor shall any such deed be construed as conveying title to the land included in the common elements.
		(h) Lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar areas not located inside apartments intended for residential use or the conduct of a business shall constitute common elements unless designated as limited common elements by the declaration.
		Condominium Recodification Attorney's Comment 1. Recodification Draft #1 requires that units and limited common elements be precisely defined, with everything else being considered common elements. Hence, provisions such as HRS §514A-13(h) are not necessary. 2. The bulk of HRS §514A-13 sets forth what can be done with common elements, how such uses can be changed, and other condominium management matters. These provisions will be considered for incorporation in Article 3 – Management of Condominium. 3. Provisions of HRS §514A-13 affecting the legal structure or title of the condominium should be incorporated in this Article. (Most, if not all, already are. Still need to specifically cross-reference.)
		§514A-13.5 Remuneration to allow ingress and egress prohibited. Ingress and egress through lobby areas or walkways, whether common elements, limited common elements, or individually owned, shall not be denied to apartment owners seeking access to the apartments. No payment of any fee or other type of remuneration by individual owners singly, or collectively as part of an owners' association, shall be allowed. This section shall apply to condominium property regimes in existence on May 18, 1984, and those formed thereafter, except as to lobby areas or walkways which are limited common elements, or individually owned.

	Hawaii Condominium Law Recodification Draft #1 **[Based on Comparison of UCIOA (1994), UCA (1980), and HRS Chapter 514A; organization follows Uniform Laws]**	**Hawaii's Present Condominium Law** **Chapter 514A, Hawaii Revised Statutes (HRS)** ***(Compare with Proposed Recodified Condominium Law in left-hand column)***
		Condominium Recodification Attorney's Comment Recommend not including this provision in Recodification Draft #1. If it is included, it should be placed in Article 3 – Management of Condominium. (Include in new "Limitations" section – §3-102.1?)
		[§514A-13.6] Mailboxes for each dwelling required. Any: (1) Condominium: (A) Built; (B) Rehabilitated, reconstructed, or otherwise improved to the extent that the value of the work required equals at least one per cent of the appraised value of the building; or (2) Existing building converted to condominium status; after May 18, 1984, shall provide at least one mailbox for each dwelling unit.
		Condominium Recodification Attorney's Comment Recommend not including this provision in the recodification. If separate mailboxes are not to be provided, that fact should simply be disclosed to prospective purchasers in the public offering statement.
		§514A-14 Parking stalls. Notwithstanding any provision of the declaration, apartment owners shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the declaration and respective apartment leases or deeds involved. The amendment need only be signed and approved by the lessor (in the case of a leasehold project) and the owners (and their respective mortgagees if any) of the apartments whose parking stalls are being changed. The amendment shall be effective only upon recording or filing of the same of record with the bureau of conveyances.
		Condominium Recodification Attorney's Comment Incorporated as new §2-112.1.
		§514A-14.5 Ownership of parking stalls. (a) Owners of apartments intended for use for dwelling purposes shall have the right to own or have designated parking stalls to be appurtenant to their respective apartments. Where a developer or association of apartment owners owns parking stalls and rents parking stalls to the owners of the apartments, a majority of these apartment owners may request the appointment of an appraiser to establish a price for each parking stall which may then be negotiated for purchase by the respective owners.
		(b) The sales contract for any apartment, intended for use for dwelling purposes and newly constructed after April 29, 1986, shall include ownership of a parking stall or designate a stall to be appurtenant to the apartment as a limited common element.
		(c) This section does not apply:
		(1) To apartments developed under chapter 201G; and
		(2) To apartments in a mixed-use project developed under chapter 206E that

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		has a shared parking program approved by the Hawaii community development authority; provided that such a program shall require the availability of the use of not less than one parking space per apartment.
		Condominium Recodification Attorney's Comment Recommend not including this section in Recodification Draft #1. Parking requirements should be governed by state and county land use laws.
	§ 2-107. Allocation of Common Element Interests, Votes, and Common Expense Liabilities.	
	(a) The declaration must allocate to each unit: (1) a fraction or percentage of undivided interests in the common elements and in the common expenses of the association (Section 3-115(a)); and (2) a portion of the votes in the association.	**§514A-15 Common profits and expenses.** (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners, including the developer, in proportion to the common interest appurtenant to their respective apartments; provided that in a mixed-use project containing apartments for both residential and commercial use, such charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration; provided further that all limited common elements costs and expenses, including but not limited to, maintenance, repair, replacement, additions and improvements shall be charged to the owner of the apartment to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.
	(b) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.	
		(b) An apartment owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to his apartment at the time the certificate of occupancy relating to his apartment is issued by the appropriate county agency; provided that a developer may assume all the actual common expenses in a residential project containing no mixed commercial and residential use, by stating in the abstract as required by section 514A-61 that the apartment owner shall not be obligated for the payment of his respective share of the common expenses until such time the developer files an amended abstract with the commission which shall provide, that after a date certain, the respective apartment owner shall thereafter be obligated to pay for his respective share of common expenses that is allocated to his apartment. The amended abstract shall be filed at least thirty days in advance with the commission with a copy of the abstract being delivered either by mail or personal delivery after the filing to each of the apartment owners whose maintenance expenses were assumed by the developer.
	(c) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.	
	(d) The declaration may provide:	

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	(1) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (2) for cumulative voting only for the purpose of electing members of the executive board; and (3) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.	
	(e) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.	
	(f) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.	
	UCA (1980) Comment [with edits from UCIOA (1994)] 1. Most existing condominium statutes require a single common basis, usually related to the "value" of the units, to be used in the allocation of common element interests, votes in the association, and common expense liabilities. This Act departs radically from such requirements by permitting each of these allocations to be made on different bases, and by permitting allocations which are unrelated to value. Thus, all three allocations might be made equally among all units, or in proportion to the relative size of each unit, or on the basis of any other formula the declarant may select, regardless of the values of those units. Moreover, "size" might be used, for example, in allocating common expenses and common element interests, while equality is used in allocating votes in the association. This section does not require that the formulas used by the declarant be justified, but it does require that the formulas be explained. The sole restriction on the formulas to be used in these allocations is that they not discriminate in favor of the units owned by the declarant. Otherwise, each of the separate allocations may be made on any basis which the declarant chooses, and none of the allocations need be tied to any other allocation. 2. While the flexibility permitted in allocations is broader than that permitted by any present statutes, it is likely that the traditional bases for allocation will continue to be used, and that the allocations for all allocated interests will often be based on the same formulas. Most commonly, those bases include size, equality, or value of units. Each of these is discussed below. 3. If size is chosen as a basis of allocation, the declarant must choose between reliance	**Condominium Recodification Attorney's Comment** 1.

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on area or volume, and the choice must be indicated in the declaration. The declarant might further refine the formula by, for example, excluding unheated areas from the calculation or by partially discounting such areas by means of a ratio. Again, the declarant must indicate the choices he has made and explain the formulas he has chosen.

4. Most existing condominium statutes require that "value" be used as the basis of all allocations. Under this Act a declarant is free to select such a basis if he wishes to do so. For example, he might designate the "par value" of each unit as a stated number of dollars or points. However, the formula used to develop the par values of the various units would have to be explained in the declaration. For example, the declaration for a high-rise condominium might disclose that the par value of each unit is based on the relative area of each unit on the lower floors, but increases by specified percentages at designated higher levels. The formula for determining area in this example could be further refined in the manner suggested in Comment [~~2~~] 3, above, and any other factors (such as the direction in which a unit faces) could also be given weight so long as the weight given to each factor is explained in the declaration.

5. [*From UCIOA (1994).*] The purpose of subsection (c) is to require a comprehensive scheme for reallocation of allocated interests in a condominium subject to development rights, and afford some advance disclosure to purchasers of units in the first phase of an expandable condominium development of how allocated interests will be reallocated if additional units are added.

6. [*Note: This Comment is not included in UCIOA (1994).*] Subsection (e) means what it says when it states that a lien or encumbrance on a common element interest without the unit to which that common element interest is allocated is void. Thus, consider the case of a flexible condominium in which there are 50 units in the first phase, each of which initially has a 2 percent undivided interest in the common elements. The declarant borrows money by mortgaging additional real estate. When the declarant expands the condominium by adding phase 2 containing an additional 50 units, he reallocates the common element interests in the manner described in his original declaration, to give each of the 100 units a 1 percent undivided interest in the common elements in both phases of the condominium. At this point, the construction lender cannot have a lien on the undivided interest of phase 1 owners in the common elements of phase 2 because of the wording of the statute. Thus, the most that the construction lender can have is a lien on the phase 2 units together with their common element interests. The mortgage documents may be written to reflect the fact that upon the addition of phase 2 of the condominium, the lien on the additional real estate will be converted into a lien on the phase 2 units and on the common element interest as they pertain to those units in both phase 1 and phase 2; however, *see* Comment to Section 2-110.

Unless the lender also requires phase 2 to be designated as withdrawable real estate, the phase 2 portion may not be foreclosed upon other than as condominium units and the construction lender may not dispose of phase 2 other than as units which are a part of the condominium. In the event that phase 2 is designated as withdrawable land, then the construction lender may force withdrawal of phase 2 and dispose of it as he wishes, subject to the provisions of the declaration. If one unit in phase 2, however, has been sold to

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	anyone other than the declarant, then phase 2 ceases to be withdrawable land by operation of Section 2-110(d)(2). 7. [*Note: This Comment is not included in UCIOA (1994).*] If a unit owned only by the declarant – as opposed to the same unit if owned by another person – may be subdivided into 2 or more units but cannot be converted in whole or in part into common elements, it is still a unit that may be subdivided or converted into 2 or more units or common elements, within the meaning of the definition of development rights, and is not governed by Section 2-113 (Subdivision of Units). 8. Subsection (c) represents a significant departure from practice in most states concerning the allocation of votes. The usual rule is that a single allocation of votes is made to each unit, and that allocation applies to all matters on which those votes may be cast. This section recognizes that the increasingly complex nature of some projects requires different allocation on particular questions. It may be appropriate, for example, in a project where common expense liabilities, or questions concerning rules and regulations, affect different units differently. **EXAMPLE:** In a mixed commercial and residential project, the declaration might provide that each unit owner would have an equal vote for the election of the Board of Directors. However, on matters concerning ratification of the common expense budget, where the commercial unit owners paid a much larger share than their proportion of the total units, the vote of commercial unit owners would be increased to 3 times the number of votes the residential owners held. Alternatively, of course, it might be possible to treat this question as a class voting matter, but the draftsman is provided flexibility in this section to choose the most appropriate solution. 9. This section recognizes that there may be certain instances in which class voting in the association would be desirable. For example, in a mixed-use condominium consisting of both residential and commercial units, there may be certain kinds of issues upon which the residential or commercial unit owners should have a special voice, and the device described in Comment 9 was not desired. To prevent abuse of class voting by the declarant, subsection (c) permits class voting only with respect to specified issues directly affecting the designated class and only insofar as necessary to protect valid interests of the designated class. **EXAMPLE:** Owners of town house units, in a single project consisting of both town house and high-rise buildings, might properly constitute a separate class for purposes of voting on expenditures affecting just the town house units, but they might not be permitted to vote by class on rules for the use of facilities used by all the units. The subsection further provides that the declarant may not use the class voting device for the purpose of evading any limitation imposed on declarants by this Act (e.g., to maintain declarant control beyond the period permitted by Section 3-103). 10. The last clause of subsection (c) prohibits a practice common in the planned community or other non-condominium multi-ownership projects, where units owned by	

Article 2. Creation, Alteration, and Termination of Condominiums (Recodification Draft #1)

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	declarant constitute a separate class of units for voting and other purposes. Upon transfer of title, those units lose these more favorable voting rights. This section makes clear that the votes and other attributes of ownership of a unit may not change by virtue of the identity of the owner. In those circumstances which such classes were legitimately intended to address, principally control of the association, the Act provides other, more balanced devices for declarant control. *See* Section 3-103(d).	
		[§514A-15.1] Common expenses; prior late charges. No association of apartment owners shall deduct and apply portions of common expense payments received from an apartment owner to unpaid late fees (other than amounts remitted by an apartment owner in payment of late fees) unless it delivers or mails a written notice to such apartment owner, at least seven days prior to the first such deduction, which states that: (1) Failure to pay late fees will result in the deduction of late fees from future common expense payments, so long as a delinquency continues to exist. (2) Late fees shall be imposed against any future common expense payment which is less than the full amount owed due to the deduction of unpaid late fees from such payment.
		Condominium Recodification Attorney's Comment 1. *See*, Recodification Draft #1/UCA/UCIOA §3-102(11). 2. It should not be necessary to include a provision such as this in State law. However, if is included, it will be incorporated in either recodification §3-102(11) or new recodification "Limitations" §3-102.1.
	§ 2-107.1. Allocation of Expenses for Utilities in Mixed-Use Projects.	
	(a) Commercial units in mixed-use projects containing units for both residential and commercial use must have a separate meter, or calculations must be made, or both, to determine the use by the commercial units of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage and the cost of such utilities must be paid by the owners of such commercial units; provided that the apportionment of such charges among owners of commercial units shall be done in a fair and equitable manner as set forth in the declaration or bylaws.	**§514A-15.5 Metering of utilities.** (a) Notwithstanding the provisions of section 514A-15, commercial apartments in mixed-use projects containing apartments for both residential and commercial use, the construction of which commences after December 31, 1977, shall have a separate meter, or calculations shall be made, or both, to determine the use by the commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage and the cost of such utilities shall be paid by the owners of such commercial units; provided that the apportionment of such charges among owners of commercial apartments shall be done in a fair and equitable manner as set forth in the declaration or bylaws.
	(b) Subject to any approval requirements and spending limits contained in the declaration or bylaws of an association of unit owners, the executive board may authorize the installation of meters to determine the use by the residential and commercial units of utilities, including electricity, water, gas, fuel, oil, sewerage and drainage. The cost of metered utilities shall be paid by the owners of such units based on actual consumption and may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to these owners for the cost of metered utilities.	(b) Subject to any approval requirements and spending limits contained in the declaration or bylaws of an association of apartment owners, the board of directors may authorize the installation of meters to determine the use by the residential and commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage and drainage. The cost of metered utilities shall be paid by the owners of such apartments based on actual consumption and may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to these owners for the cost of metered utilities.

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		Condominium Recodification Attorney's Comment 1.
	§ 2-108. Limited Common Elements.	
	(a) Except for the limited common elements described in Section 2-102(2) and (4), the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.	
	(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment must be recorded in the names of the parties and the condominium.	
	(c) A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with Section 2-105(a)(7). The allocations must be made by amendments to the declaration.	
	UCA (1980) Comment [with edits from UCIOA (1994)] 1. Like all other common elements, limited common elements are owned in common by all unit owners. The use of a limited common element, however, is reserved to less than all of the unit owners. Unless the declaration provides otherwise, the association is responsible for the upkeep of a limited common element and the cost of such upkeep is assessed against all the units. *See* Sections 3-107(a) and 3-115(c)(1). This might include the costs of repainting all shutters, or balconies, for example, which are limited common elements pursuant to Section 2-102(4). Accordingly, there may be occasions where, to meet the expectations of owners and to have costs borne directly by those who benefit from those amenities, the declaration might provide that the costs will be borne, not by all unit owners as part of their common expense assessments, but only by the owners to which the limited common elements are assigned. 2. The use of common elements which are not "limited" within the meaning of this Act may nevertheless be restricted by the unit owners' association pursuant to the powers set forth in Section 3-102(6) and (10), unless that power is limited in the declaration. For example, the association might assign reserved parking spaces to designated unit owners, or even to persons who are not unit owners. Such a parking space would differ from a limited common element in that its use would be merely a personal right of the person to whom it is assigned and this section would not have to be complied with to allocate it or to reallocate it. 3. Because a mortgage, deed of trust, or security interest may restrict the borrower's right to transfer the use of a limited common element without the lender's consent, the terms of the encumbrance should be examined to determine whether the lender's consent or release is needed to transfer that right of use to another person.	

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	4. [*Note: Added in UCIOA (1994).*] *See* also Comments 7 and 8 to Section 2-105.	
	§ 2-109. Plats and Plans.	[*See*, §514A-12 "Copy of the floor plans to be filed" above]
	(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this chapter if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.	
	(b) Each plat must show or project:	
	(1) the name and a survey or general schematic map of the entire condominium;	[In pertinent part, §514A-12 reads: ". . . showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and, if construction of the building or buildings is completed, as approved by the county or city and county officer. "]
	(2) the location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;	
	(3) a legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;	
	(4) the extent of any encroachments by or upon any portion of the condominium;	
	(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;	
	(6) except as provided in subsection (h), the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;	
	(7) except as provided in subsection (h), the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;	
	(8) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate;"	
	(9) the distance between non-contiguous parcels of real estate comprising the condominium;	
	(10) the approximate location and dimensions of any porches, decks, balconies, garages, or patios allocated as limited common elements, and show or contain a narrative description of any other limited common elements; and	
	(11) in the case of real estate not subject to development rights, all other	

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	matters customarily shown on land surveys.	
	(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."	
	(d) Except as provided in subsection (h), to the extent not shown or projected on the plats, plans of the units must show or project:	
	(1) the approximate location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;	
	(2) the approximate location of any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and	
	(3) the approximate location of any units in which the declarant has reserved the right to create additional units or common elements (Section 2-110(c)), identified appropriately.	
	(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.	
	(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.	
	(g) Any certification of a plat or plan required by this section or Section 2-101(b) must be made by an independent licensed surveyor, architect, or engineer.	
	(h) Plats and plans need not show the location and dimensions of the units' boundaries or their limited common elements if:	
	(1) the plat shows the location and dimensions of all buildings containing or comprising the units; and	
	(2) the declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements allocated to those units.	
	UCA (1980) Comment 1. The terms "plat" or "plan" have been given a variety of meanings by custom and usage in the various jurisdictions. Under this Act, it is important to recognize that a "plat" need not mean a "survey" of the entire real estate constituting a project at the time the initial plat is recorded, although, through amendments to the plat as development proceeds, it ultimately becomes a survey of the entire project. As to "plan," the Act does not use that term to mean the actual building plans used for construction of the project. Instead, the required content of the plans in this Act is described in subsection (d). Essentially, the plans constitute a boundary survey of each	

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unit. Typically, the walls will be the vertical ("up and down" or "perimetric") boundaries, and the floors and ceilings will be the horizontal boundaries. Importantly, these boundaries need not be physically measured, but may instead be projected from the plat or from actual building construction plans. Thus, the plans under this Act are not conceived to be "as built" plans.

2. Subsection (c) permits, but does not require, the plats to show the location of contemplated improvements. Since construction of contemplated improvements by a declarant involves the exercise of development rights, a declarant may not create any improvement within real estate where no development rights have been reserved, unless the plats actually show that proposed improvement or unless the association (which the declarant may control) makes the improvement pursuant to Section 3-102(7). Should the association attempt that improvement, in the face of unit owner's objections, it may involve risk of challenge. Within land subject to development rights, of course, construction may take place in accordance with the reserved rights, even if no contemplated improvements are shown on the plats. As to the declarant's obligation to complete an improvement that is shown, *see* Section ~~4-118(a)~~ 4-119(a).

3. As noted in the Comments to Section 2-101, a condominium unit may consist of unenclosed ground and/or airspace, with no "building" involved. If this were true of all units in a particular condominium, the provisions of Section 2-109 relating to plans (but not plats) would be inapplicable.

4. In detailing the required contents of the plats, two different types of legal description are contemplated. First, in subsection (b)(1), the plat must show at least a general schematic map of the entire project. While this may be by survey, the Act recognizes that a survey may be unduly expensive or impractical in a large project, and accordingly permits a general schematic map of the entire project at the commencement of development. With respect to those portions of the project, however, where no future development may take place, the flexibility of a general schematic map is not necessary. At the same time, it becomes important for title purposes to be able to identify precisely that portion of the project which is essentially completed. Accordingly, as development ceases in particular phases, subsection (b)(2) contemplates that the locations and dimensions of that real estate will be identified. As this process continues, all of the real estate originally shown in a general schematic map will have been surveyed, and the location and dimensions of that real estate identified, at the expiration of development rights. In addition, subsection (2) contemplates that existing improvements must be shown within real estate where no further development will take place. This does not mean the units which may be within each building, but it does mean the external physical dimensions of the buildings themselves. As implied by subsection (11), the nature of "existing improvements" required to be surveyed under subsection (2) should be determined by local practices in the particular state.

5. [*Note: This Comment is not included in UCIOA (1994).*] Subsection (b)(3) requires that the real estate which is subject to development rights must be identified with a legally sufficient description, that is, either a metes and bounds description, or reference to the deeds of that real estate. Since different portions of the real estate may be subject to

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	differing development rights – for example, only a portion of the total real estate may be added as well as withdrawn from the project – the plat must identify the rights applicable to each portion of that real estate. The same reasoning applies to the legally sufficient description of easements affecting the condominium and any leasehold real estate. 6. Subsection (f) describes the amendments to the plats and plans which must be made as development rights are exercised. This section requires that the plats and plans be amended at each stage of development to reflect actual progress to date. If an original schematic map was initially recorded as required by subsection (b)(1), the survey required by (b)(2) would also constitute the amendments required by subsection (f). 7. The terms "horizontal" and "vertical" are now commonly understood in condominium parlance to refer, respectively, to "upper and lower" and "lateral or perimetric." Thus, Section 2-102 contemplates that the perimetric walls may be designated as the "vertical" boundaries of a unit and the floor and ceiling as its "horizontal" boundaries. That is the sense in which the words "horizontal" and "vertical" are to be understood in this section and throughout this Act. 8. Sections 4-118 and 4-119 reveal the effect of labeling an improvement "MUST BE BUILT" or "NEED NOT BE BUILT," as required by subsection (b)(3). **UCIOA (1994) Comment (relevant portions)** 9. The 1994 amendments to subsections (6), (7), and (10) seek to balance the need for disclosure and certainty in understanding what a unit owner "owns," with the practical limitations of the surveying profession. The balance struck in the 1994 amendments to this section requires that the plat or survey – as a minimum – actually show only the kinds of limited common elements that most people would understand to be an important appurtenance to their units. All other kinds of limited common elements – parking spaces, window boxes, etc., – may be either shown on the survey or simply described in words. 10. New subsection (h) eliminates the need for any unit boundary survey so long as the building location is shown on the project survey and a practical means exists by which the potential purchaser can understand the unit layout and its assigned common elements. This is a common practice in the sale of cooperative units.	
	§ 2-110. Exercise of Development Rights.	
	(a) To exercise any development right reserved under Section 2-105(a)(8), the declarant shall prepare, execute, and record an amendment to the declaration (Section 2-117) and comply with Section 2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 2-108 (Limited Common Elements).	
	(b) Development rights may be reserved within any real estate added to the	

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	condominium if the amendment adding that real estate includes all matters required by Section 2-105 or 2-106, as the case may be, and the plats and plans include all matters required by Section 2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to Section 2-105(a)(8).	
	(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:	
	(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (Section 1-107); and	
	(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.	
	(d) If the declaration provides, pursuant to Section 2-105(a)(8), that all or a portion of the real estate is subject to a right of withdrawal:	
	(1) if all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and	
	(2) if any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.	
	UCA (1980) Comment [with edits from UCIOA (1994)] 1. This section generally describes the method by which any development right may be exercised. Importantly, while new development rights may be reserved within new real estate which is added to the condominium, the original time limits on the exercise of these rights which the declarant must include in the original declaration may not be extended. Thus, the development process may continue only within the self-determined constraints originally described by the declarant. 2. The reservation and exercise of development rights is typically closely co-ordinated with financing for the project. As a result, lender review and control of that process is common, and the financing documents reflect the proposed development process. A typical construction loan mortgage on a portion of a phased condominium might provide that as soon as new units are built on new land to be added (or, if the portion is also designated withdrawable land, as soon thereafter as anyone other than the declarant becomes the unit owner of a unit in the withdrawable land) the mortgage on that land converts into a mortgage on all of the units located within that portion, together with their respective common element interests. The common element interest of those units will, of course, extend to the common elements in other sections of the condominium. However, failure of a construction loan mortgage to so provide is inconsequential, because conveyance of the units in that phase to the lender or to a purchaser at a foreclosure sale	

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	would automatically transfer all of those units' common element interests, as a result of the requirements of Sections 2-107(f) and 2-110(a). 3. A lender who holds a mortgage lien on one portion of a condominium may not cause that portion to be withdrawn from the condominium unless the portion constitutes withdrawable real estate in which there is no unit owner other than the declarant. Even then, the amendment effectuating the withdrawal must be executed by the declarant. Therefore, a lender may wish to require that an amendment withdrawing the portion on which he has a mortgage be executed by the declarant and placed in escrow at the time the loan is made in order to protect against a recalcitrant borrower. Alternatively, a lender after foreclosure under Section 2-118(k) may require an amendment from the association. Also a lender could itself execute the amendment if the lender buys in at a foreclosure sale or takes a deed in lieu of foreclosure and elects to become a declarant under Section 3-104(c) or (a). 4. As indicated in the Comments to Section 1-106, the withdrawal of real estate from a condominium may constitute a subdivision of land under the applicable subdivision ordinance. Under most subdivision ordinances, the owner of the real estate is regarded as the "subdivider." In the event of a withdrawal under this section, however, the declarant is in fact the subdivider because of his unique interest in and control over the real estate, even though the real estate, for title purposes, is a common element until withdrawn. Accordingly, he would bear the cost of compliance with any subdivision ordinance required to withdraw a part of the real estate from the condominium. 5. Subsection (c) deals with special problems surrounding allocated interests when the declarant subdivides or converts units which were originally created in the declaration into additional units, common elements or both. This development right permits the declarant to defer a final decision as to the size of certain units by permitting the subdivision of larger interior spaces into smaller units. The declarant may thus "build to suit" for purchasers' needs or to meet changing market demand. For example, a declarant of a 5-story office building condominium may have purchasers committed at the time of the filing of the condominium declaration but a lack of purchasers for the upper 2 floors. In such a circumstance, the declarant could designate the upper 2 floors as a unit, reserving to himself the right to subdivide or convert that unit into additional units, common elements or a combination of units and common elements as needed to suit the requirements of ultimate purchasers. If, at a later time, a purchaser wishes to purchase half of one floor as a unit, the declarant could exercise the development right to subdivide his 2-floor unit into 2 or more units. He may also wish to reserve a portion of the divided floor as a corridor which will constitute common elements. In that case, he would proceed pursuant to this subsection to reallocate the allocated interests among the units in the manner described in this section. Alternatively, the declarant may ultimately decide that the entire 2 floors should be turned over to the unit owners' association not as a unit but as common elements to be used perhaps as a cafeteria serving the balance of the building, or for retail space to be rented by the association. In that case, should he choose to make the entire 2 floors common	

Article 2. Creation, Alteration, and Termination of Condominiums (Recodification Draft #1)

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	elements, the provisions of paragraph (c)(1) would apply. *[Note: Added by UCIOA (1994).]* The declarant may state in his declaration any conditions or limitations on the time limits reserved for the exercise of development rights which would cause that development right to lapse before the time established in the declaration. It would, of course, be possible for a declarant to voluntarily relinquish those rights prior to the time that they automatically lapsed, and an instrument recorded by the declarant would be effective to cause that lapse, subject, of course, to any constraints imposed on voluntary relinquishment by the declarant's lender.	
	§ 2-111. Alterations of Units. Subject to the provisions of the declaration and other provisions of law, a unit owner:	
	(1) may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;	
	(2) may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association;	
	(3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.	
	UCA (1980) Comment [UCIOA (1994) Comment essentially same] 1. This section deals with permissible alterations of the interior of a unit, and impermissible alterations of the exterior of a unit and the common elements, in ways which reflect common practice. The stated rules, of course, may be varied by the declaration where desired. 2. Subsection (3) deals in a unique manner with the problem of creating access between adjoining units owned by the same person. The subsection provides a specific rule which would permit a door, stairwell, or removal of a partition wall between those units, so long as structural integrity is not impaired. That alteration would not be an alteration of boundaries, but would be an exception to the basic rule stated in subsection (2). 3. In considering permissible alteration of the interior of a unit, an example may be useful. A nail driven by a unit owner to hang a picture might enter a portion of the wall designated as part of the common elements, but this section would not be violated because structural integrity would not be impaired. Moreover, no trespass would be committed because each unit owner, as a part owner of the common elements, has a right to utilize them subject only to such restrictions as may be created by the Act, the declaration, bylaws, and the unit owners' association pursuant to Section 3-102. 4. Removal of a partition or the creation of an aperture between adjoining units would permit the units to be used as one, but they would not become one unit. They would	

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	continue to be separate units within the meaning of Section 1-104 and would continue to be treated separately for the purposes of this Act. 5. In addition to the restrictions placed on unit owners by this section, the declaration or bylaws may restrict a unit owner from altering the interior appearance of his unit. Although this might be an undue restriction if imposed upon the primary residence of a unit owner, it may be appropriate in the case of time-share or other condominiums.	
	§ 2-112. Relocation of Unit Boundaries.	
	(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and [in the grantee's index] in the name of the association.	
	(b) Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation and the fees and charges are assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate.	
	(c) The association shall prepare and record plats or plans necessary to show the altered boundaries of affected units, and their dimensions and identifying numbers.	
	UCA (1980) Comment 1. This section changes the effect of most current [condominium statutes] *[in UCIOA (1994), "declarations".]*, under which the boundaries between units may not be altered without unanimous or nearly unanimous consent of the unit owners. As the section makes clear, this result may be varied by restrictions in the declaration. 2. This section contemplates that, upon relocation of the unit boundaries, no reallocation of allocated interests will occur if none is specified in the application. If a reallocation is specified but the executive board deems it unreasonable, then the applicants	

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	have the choice of resubmitting the application with a reallocation more acceptable to the board, or going to court to challenge the board's finding as unreasonable. **UCIOA (1994) Comment (relevant portions)** 4. Experience under the original Act indicates that it does not adequately address the frequently occurring issue of new additions to existing units, which commonly encroach on the common elements. While the use of limited common elements is a possible device to address this question – and while this new subsection does not prohibit use of that device – the drafters believe that new subsection (b), added in the 1994 amendment, offers a more direct means to address this situation. While this section sets the default rule for such additions, local zoning and other rules would continue to limit its applicability. This revision provides a mechanism to alter the boundary between a unit and the common elements and sets out a default rule with respect to association action to accomplish that result. In the absence of this rule, Section 2-117(d) mandates that a change in a unit boundary requires unanimous consent of all owners. With this amendment, unanimity is no longer required. In addition, the Act contemplates that the declaration of a particular project may be drafted or amended in order to address the particular concerns of those unit owners most directly affected by such a relocation as a result of the addition's proximity, or by its aesthetic impact. Thus, for example, the declaration may state who is entitled to vote and what percentage of unit owners' approval is required. For instance, the declaration may provide for voting only by owners in a particular building or neighborhood, or it may delegate that decision to the executive board on a case by case basis. An amendment pursuant to this subsection may not, by itself, alter the allocated interests in the community; such a change may be made only pursuant to Section 2-117(d). As a consequence, a fee or charge described in the amendment will likely be in the nature of either a single one time fee or charge, or a recurring surcharge which is payable in addition to the periodic common expense charge originally set out in the declaration, or both. **Example**: The declaration might be amended to state that the owner of a unit with a 100 square foot addition shall, in addition to regularly calculated monthly common charges, pay a monthly fee of $10, increased each year by a percentage equal to the percentage increase in the association budget. 5. If the only common element being incorporated into a unit is a wall separating two adjoining units owned by different owners, the amendment should be made under Section 2-112(a), not (b). However, if one owner owns two adjoining units, the wall may be removed pursuant to Section 2-111 without altering the boundaries, and without the need for any amendment to the declaration.	
	§ 2-112.1. Parking Stalls. Notwithstanding any provision of the declaration, unit owners shall have the right to change the designation of parking stalls which are	**§514A-14 Parking stalls.** Notwithstanding any provision of the declaration, apartment owners shall have the right to change the designation of parking stalls

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	appurtenant to their respective units by amending the declaration and respective unit leases or deeds involved. The amendment need only be signed and approved by the lessor (in the case of a leasehold project) and the owners (and their respective mortgagees, if any) of the units whose parking stalls are being changed. The amendment shall be effective only upon recording or filing of the same with the bureau of conveyances.	which are appurtenant to their respective apartments by amendment of the declaration and respective apartment leases or deeds involved. The amendment need only be signed and approved by the lessor (in the case of a leasehold project) and the owners (and their respective mortgagees if any) of the apartments whose parking stalls are being changed. The amendment shall be effective only upon recording or filing of the same of record with the bureau of conveyances.
	§ 2-113. Subdivision of Units.	
	(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit.	
	(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.	
	UCA (1980) Comment 1. This section provides for subdivision of units by unit owners, thereby creating more and smaller units than were originally created. The underlying policy of this section is that the original development plan of the project must be followed, and the expectations of unit owners realized. Accordingly, unless subdivision of the units is expressly permitted by the original declaration, a unit may not be subdivided into 2 or more units unless the declaration is amended to permit it. A subdivision itself is accomplished by an amendment to the declaration. 2. At the same time, situations will often occur where future subdivision is appropriate, and this section permits the declaration to provide for it. Most state statutes do not presently provide for subdivision of units. 3. An analogous concept in the context of development rights is subdivision of units by a declarant. **UCIOA (1994) Comment (relevant portion)** 4. If a unit owned only by the declarant – as opposed to the same unit if owned by another person – may be subdivided into two or more units but cannot be converted in whole or in part into common elements, it is still a unit that may be subdivided or converted into two or more units or common elements, within the meaning of the definition of development rights. It is therefore governed by Section 2-110 and not by this section.	
	[ALTERNATIVE A] [**§ 2-114. Easement for Encroachments.** To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability	

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	for failure to adhere to any plats and plans.]	
	[ALTERNATIVE B] **[§ 2-114. Monuments as Boundaries.** The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans.]	
	UCA (1980) Comment [UCIOA (1994) Comment essentially same] Two approaches are presented here as alternatives, since uniformity on this issue is not essential, and various states have adopted one approach or the other. Both theories recognize the fact that the actual physical boundaries may differ somewhat from what is shown on the plats and plans, and the practical effect of both is the same. The easement approach of Alternative A creates easements for whatever discrepancies may arise, while the "monuments as boundaries" approach of Alternative B would make the title lines move to follow movement of the physical boundaries caused by such discrepancies or subsequent settling or shifting.	**Condominium Recodification Attorney's Comment** The advisory working group of practicing attorneys should agree upon the best approach for Hawaii.
	§ 2-115. Use for Sales Purposes. A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. This section is subject to the provisions of other state law and to local ordinances.	
	UCA (1980) Comment [UCIOA (1994) Comment essentially same] 1. This section prescribes the circumstances under which portions of the condominium – either units or common elements – may be used for sales offices, management offices, or models. The basic requirement is that the declarant must describe his rights to maintain such offices in the declaration. There are no limitations on that right, so that either units owned by the declarant or other persons, or the common elements themselves, may be used for that purpose. Typical common element uses might include a sales booth in the lobby of the building, or a trailer or temporary building located outside the buildings on the grounds of the property. 2. In addition, this section contains a permissive provision permitting advertising on the common elements. The declarant may choose to limit his rights in terms of the size,	

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	location, or other matters affecting the advertising. The Act, however, imposes no limitation. At the same time, the last sentence of the section recognizes that state or local zoning or other laws may limit advertising, both in terms of size and content of the advertising, or the use of the units or common elements for such purposes. This section makes it clear that local law would apply in those cases.	
	§ 2-116. Easement Rights. Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging the declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.	
	UCA (1980) Comment [UCIOA (1994) Comment essentially same] 1. This section grants to declarant an easement across the common elements, subject to any self-imposed restrictions on that easement contained in the declaration. At the same time, the easement is not an easement for all purposes and under all circumstances, but only a grant of such rights as may be reasonably necessary for the purpose of exercising the declarant's rights. Thus, for example, if other access were equally available to the land where new units are being created, which did not require the declarant's construction equipment to pass and repass over the common elements in a manner which significantly inconvenienced the unit owners, a court might apply the "reasonably necessary" test contained in this section to consider limitations on the declarant's easement. The rights granted by this section may be enlarged by a specific reservation in the declaration. 2. The declarant is also required to repair and restore any portion of the condominium used for the easement granted under this section. *See* Section 4-119(b).	
	§ 2-117. Amendment of Declaration.	
	(a) Except in cases of amendments that may be executed by a declarant under Section 2-109(f) or 2-110, or by the association under Section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, or by certain unit owners under Section 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as limited by subsection (d), the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67 percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.	
	(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.	
	(c) Every amendment to the declaration must be recorded ~~in every [county] in which any portion of the condominium is located,~~ and is effective only upon recordation. An amendment, except an amendment pursuant to Section 2-112(a), must be indexed [in the grantee's index] in the name of the condominium and the association and [in the grantor's index] in the name of the parties executing the	

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	amendment.	
	(d) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit or the allocated interests of a unit, in the absence of unanimous consent of the unit owners.	
	(e) Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.	
	(f) By vote or agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, or any larger percentage specified in the declaration, an amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units. The amendment must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.	
	(g) The time limits specified in the declaration pursuant to Section 2-105(a)(8) (Contents of the Declaration) within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the 30-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.	
	UCA (1980) Comment 1. This section recognizes that the declaration, as the perpetual governing instrument for the condominium, may be amended by various parties at various times in the life of the project. The basic rule, stated in subsection (a), is that the declaration, including the plats and plans, may only be amended by vote of 67% of the unit owners. The section permits a larger percentage to be required by the declaration, and also recognizes that, in an entirely non-residential condominium, a smaller percentage might be appropriate. In addition to that basic rule, subsection (a) lists those other instances where the declaration may be amended by the declarant alone without association approval, or by the association acting through its board of directors. 2. Section 1-104 does not permit the declarant to use any device, such as powers of attorney executed by purchasers at closings, to circumvent subsection (d)'s requirement of unanimous consent. This section does not supplant any requirements of common law or of other statutes with respect to conveyancing if title to real property is to be affected.	**Condominium Recodification Attorney's Comment** In relation to UCIOA (1994) Comment 5, *see* HRS §§514A-82.5 and 82.6 (both dealing with pets in condominiums.

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	3. Subsection (e) describes the mechanics by which amendments recorded by the association are filed, and resolves a number of matters often neglected by bylaws. **UCIOA (1994) Comment (relevant portions)** 4. The 1994 revision to subsection (d) deletes the prohibition on amendments which restrict the uses of units. Before 1994, Section 2-105(a)(12) required that the declaration specify all restrictions on use, occupancy, and alienation of units. The deleted provision in subsection (d) created the anomaly that unanimous consent was required to amend a use restriction but a lesser number could amend restrictions on occupancy or alienation of a unit. 5. New subsection (f), also adopted in 1994, responds to the growing belief that restrictions on use and occupancy which unit owners would like to impose after the declaration is recorded ought to be adopted only by a super majority and only after providing protection for those whose use or occupancy will be affected by the amendment. For example, a community may seek to prohibit pets after a number of owners have purchased and occupied their units in reliance on the absence of such a restriction. Under this amendment, if the community votes to impose the limitation, it can do so only with the vote of a high percentage of owners and only on such conditions as reasonably protect the interests of existing pet owners. Whether the amendment "grandfathers" the right of the existing pet to remain or the right of the current owner to have a pet is not determined by the language of the subsection but will depend on the circumstances of each community and its owners. 6. New subsection (g) addresses the possibility that development rights may be about to expire – and thus potentially halt completion of the project – at a time which neither the association nor the unit owners find desirable. This section allows extension of development rights, or creation of new rights, by a vote of the same percentage of unit owners as would be required to sell the common elements in the common interest community.	
	§ 2-117.1. Restatement of Declaration and Bylaws.	**[§514A-82.2] Restatement of declaration and bylaws.**
	(a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association of unit owners may at any time restate the declaration or bylaws of the association to set forth all amendments thereof by a resolution adopted by the board of directors. (b) An association of unit owners may at any time restate the declaration or bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority, by a resolution adopted by the board of directors. The restated declaration or bylaws shall be as fully effective for all purposes as if adopted by a vote or written consent of the unit owners. Any declaration or bylaws restated pursuant to this subsection must: (1) identify each portion so restated; (2) contain a statement that those portions have been restated solely for	(a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association of apartment owners may at any time restate the declaration of condominium property regime of the project or the bylaws of the association to set forth all amendments thereof by a resolution adopted by the board of directors. (b) An association of apartment owners may at any time restate the declaration of condominium property regime of the project or the bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, rule or regulation enacted by any governmental authority, by a resolution adopted by the board of directors, and the restated declaration or bylaws shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners; provided that any declaration of condominium property regime or bylaws restated pursuant to this subsection shall identify each portion so restated and shall contain

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	purposes of information and convenience; (3) identify the statute, ordinance, or rule implemented by the amendment; and (4) contain a statement that, in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, or rule. (c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated declaration or bylaws shall set forth all of the operative provisions of the declaration or bylaws, as amended, together with a statement that the restated declaration or bylaws correctly sets forth without change the corresponding provisions of the declaration bylaws, as amended, and that the restated declaration or bylaws supersede the original declaration or bylaws and all prior amendments thereto. (d) The restated declaration or bylaws must be recorded and, upon recordation, shall supersede the original declaration or bylaws and all prior amendments thereto. In the event of any conflict, the restated declaration or bylaws shall be subordinate to the original declaration of condominium property regime or bylaws and all prior amendments thereto.	a statement that those portions have been restated solely for purposes of information and convenience, identifying the statute, ordinance, rule, or regulation implemented by the amendment, and that in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, rule, or regulation. (c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated declaration of condominium property regime or bylaws shall set forth all of the operative provisions of the declaration of condominium property regime or bylaws, as amended, together with a statement that the restated declaration of condominium property regime or bylaws correctly sets forth without change the corresponding provisions of the declaration of condominium property regime or bylaws, as amended, and that the restated declaration of condominium property regime or bylaws supersede the original declaration of condominium property regime or bylaws and all prior amendments thereto. (d) The restated declaration of condominium property regime or bylaws shall be recorded in the manner provided in section 514A-11 or 514A-82 or both and upon recordation shall supersede the original declaration of condominium property regime or bylaws and all prior amendments thereto; provided that in the event of any conflict, the restated declaration of condominium property regime or bylaws shall be subordinate to the original declaration of condominium property regime or bylaws and all prior amendments thereto.
		Condominium Recodification Attorney's Comment Many practitioners have found HRS §514A-82.2 to be quite useful. It has been rewritten (and may be further refined) for clarity. At this point, consider it an "idea placeholder."
	§ 2-118. Termination of Condominium.	**§514A-21 Removal from provisions of this chapter.**
	(a) Except in the case of a taking of all the units by eminent domain (Section 1-107), a condominium may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to non-residential uses.	(a) If: (1) Apartment owners owning not less than eighty per cent in number of apartments in the aggregate, and owning apartments to which are appurtenant not less than eighty per cent of the common interests, execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of the apartments of the apartment owners executing such instrument consent thereto by instruments duly recorded, or
		(2) The common elements suffer substantial damage or destruction and such damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof or the apartment owners have earlier determined as provided in the declaration that such damage or destruction shall not be rebuilt, repaired, or restored,
		then, and in either event, the property shall be subject to an action for partition by any apartment owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered

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		as one fund and shall be divided among all the apartment owners in proportion to their respective common interests, provided that no payment shall be made to an apartment owner until there has first been paid off out of the owner's share of such net proceeds all liens on the owner's apartment. Upon such sale, the property ceases to be the subject of a condominium property regime or subject to this chapter.
	(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded ~~in every [county] in which a portion of the condominium is situated,~~ and is effective only upon recordation.	(b) All of the apartment owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto, by instruments duly recorded. Upon such removal from this chapter, the property, or the part of the property designated in the instrument, ceases to be the subject of a condominium property regime or subject to this chapter, and is deemed to be owned in common by the apartment owners in proportion to their respective common interests.
	(c) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the condominium must be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.	
	(d) In the case of a condominium containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale.	
	(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (h). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.	
	(f) If the real estate constituting the condominium is not to be sold following	[*See*, §514A-21(b) above, which in pertinent part reads: "Upon such removal from

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	termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.	this chapter, the property, or the part of the property designated in the instrument, ceases to be the subject of a condominium property regime or subject to this chapter, and is deemed to be owned in common by the apartment owners in proportion to their respective common interests."]
	(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were [recorded] [docketed] [(insert other procedures required under state law to perfect a lien on real estate as a result of a judgment)] before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.	
	(h) The respective interests of unit owners referred to in subsections (e), (f) and (g) are as follows:	
	(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.	
	(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.	
	(i) Except as provided in subsection (j), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not terminate, of itself, the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under Section 3-112, does not withdraw, of itself, that real estate from the condominium, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the condominium.	

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	(j) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.	
	UCA (1980) Comment [with edits from UCIOA (1994)] 1. While few condominiums have yet been terminated under present state law, a number of problems are certain to arise upon termination which have not been adequately addressed by most of those statutes. These include such matters as the percentage of unit owners which should be required for termination; the time frame within which written consents from all unit owners must be secured; the manner in which common elements and units should be disposed of following termination, both in the case of sale and non-sale of all of the real estate; the circumstances under which sale of units may be imposed on dissenting owners; the powers held by the Board of Directors on behalf of the association to negotiate a sales agreement; the practical consequences to the project from the time the unit owners approve the termination until the transfer of title and occupancy actually occurs; the impact of termination on liens on the units and common elements; distribution of sales proceeds; the effect of foreclosure or enforcement of liens against the entire condominium with respect to the validity of the project; and other matters. 2. Recognizing that unanimous consent from all unit owners would be impossible to secure as a practical matter on a project of any size, subsection (a) states a general rule that 80% consent of the unit owners would be required for termination of a project. The declaration may require a larger percentage of the unit owners and, in a non-residential project, it may also require a smaller percentage. Pursuant to Section 2-119 (Rights of Secured Lenders), lenders may require that the declaration specify a larger percentage of unit owner consent or, more typically, will require the consent of a percentage of the lenders before the project may be terminated. 3. As a result of subsection (a), unless the declaration requires unanimous consent for termination, the declarant may be able to terminate the condominium despite the unanimous opposition of other unit owners if the declarant owns units to which the requisite number of votes are allocated. Such a result might occur, for example, should a declarant be unable to continue sales in a project where some sales have been made. 4. Subsection (b) describes the procedure for execution of the termination agreement. It recognizes that not all unit owners will be able to execute the same instrument, and permits execution or ratification of the master termination agreement. Since the transfer of an interest in real estate is being accomplished by the agreements, each of the ratifications must be executed in the same manner as a deed. Importantly, the agreement must specify the time within which it will be effective; otherwise, the project might be indefinitely in "limbo" if ratifications had been signed by some, but not all, required unit owners, and the signing unit owners fail to revoke their agreements. Importantly, the agreement becomes effective only when it is recorded. 5. Subsections (c) and (d) deal with the question of when all the real estate in the	

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	condominium, or the common elements, may be sold without unanimous consent of the unit owners. The section reaches a different result based on the physical configuration of the project. Subsection (c) states that if a condominium contains only units having horizontal boundaries – a typical high rise building – the unit owners may be required to sell their units upon termination despite objection. Under subsection (d), however, if the project contains any units which do not have horizontal boundaries then the termination agreement may not force dissenting unit owners to sell their units unless the declaration as originally recorded provides otherwise. The reason for the rule stated in subsection (d) is that owners of units not having horizontal boundaries – single family homes, for example – may wish to terminate the condominium regime and sell the real estate which they supported with their common charges, but continue to own the homes which they occupy. Obviously, of course, if all the unit owners consent to the sale of the units, sale of the entire development would be possible. 6. Subsection (e) describes the powers of the association during the pendency of the termination proceedings. It empowers the association to negotiate for the sale, but makes the validity of any contract dependent on unit owner approval. This section also makes clear that, upon termination, title to the real estate shall be held by the association, so that the association may convey title without the necessity of each unit owner signing the deed. Finally, this section makes clear that, until the association delivers title to the condominium property, the project will continue to operate as it had prior to the termination, thus insuring that the practical necessities of operation of the real estate will not be impaired. 7. Subsection (f) contemplates the possibility that a condominium might be terminated but the real estate not sold. While this is not likely to be the usual case, it is important to provide for the possibility. 8. A complex series of creditors' rights questions may arise upon termination. Those questions involve competing claims of first mortgage holders on individual units, other secured and unsecured creditors of individual unit owners, judgment creditors of the association, creditors of the association to whom a security interest in the common elements has been granted, and unsecured creditors of the association. Subsection (g) attempts to establish general rules with respect to these competing claims, but leaves to state law the resolution of the priorities of those competing claims. The examples which follow illustrate the relative effects of several provisions set out in the Act, based on application of an assumed state lien priority rule of "first in time, first in right." In those instances, particularly involving mechanics' liens, where state law often establishes priorities at variance with that rule, that result is also indicated. **EXAMPLE 1:** [*Note: Examples 1A-H, 2, and 3, which are quite extensive, are not included in this draft.*] 9. Subsection (h) departs significantly from the usual result under most condominium acts. Under those acts the proceeds of the sale of the entire project are distributed upon termination to each unit owner in accordance with the common element interest which was allocated at the outset of the project. Of course, in an older development, those original	

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	allocations will bear little resemblance to the actual value of the units. For that reason, the Act adopts an appraisal procedure for distribution of the sales proceeds. As suggested in the examples on the distribution of proceeds, this appraisal may dramatically affect the amount of dollars actually received by unit owners. Accordingly, it is likely the appraisal will be required to be distributed prior to the time the termination agreement is approved, so that unit owners may understand the likely financial consequences of the termination. 10. Subsection (h)(2) is an exception to the "fair market value" rule. It provides that, if appraisal of any unit cannot be made, either through pictures or comparison with other units, so that any unit's appropriate share in the overall proceeds cannot be calculated, then the distribution will fall back on the only objective, albeit artificial, standard available, which is the common element interest allocated to each unit. 11. Foreclosure of a mortgage or other lien or encumbrance does not automatically terminate the condominium, but, if a mortgagee or other lienholder (or any other party) acquires units with a sufficient number of votes, that party can cause the condominium to be terminated pursuant to subsection (a) of this section. 12. A mortgage or deed of trust on a condominium unit may provide for the lien to shift, upon termination, to become a lien on what will then be the borrower's undivided interest in the whole property. However, such a shift would be deemed to occur even in the absence of express language, pursuant to the first sentence of subsection (d). 13. With respect to the association's role as trustee under subsection (c), see Section 3-117. 14. If an initial appraisal made pursuant to subsection (h) were rejected by vote of the unit owners, the association would be obligated to secure a new appraisal. 15. "Foreclosure" in subsection (i) includes deeds in lieu of foreclosure, and "liens" includes tax and other liens on real estate which may be converted or withdrawn from the project. 16. The termination agreement should adopt or contain any restrictions, covenants and other provisions for the governance and operation of the property formerly constituting the condominium which the owners deem appropriate. These might closely parallel the provisions of the declaration and bylaws. This is particularly important in the case of a condominium which is not to be sold pursuant to the terms of the termination agreement. In the absence of such provisions, the general law of the state governing tenancies in common would apply. 17. Subsection (j) recognizes the possibility that a pre-existing lien might not have been released prior to the time the condominium declaration was recorded. In the absence of a provision such as subsection (j), recordation of the declaration would constitute a changing of the priority of those liens; and it is contrary to all expectations that a prior lienholder may be involuntarily subjected to the condominium documents. For that reason, this section permits the nonconsenting prior lienholder upon foreclosure to exclude the real estate subject to his lien from the condominium. **UCIOA (1994) Comment (relevant portions**	

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	21. The 1994 amendment to subsection (k) clarifies the effect of foreclosure of a security interest in common elements which the association may have granted under Section 3-112.	
	§ 2-118.1. Same; Leasehold Condominiums. Notwithstanding section 2-118, if the unit leases for a leasehold project (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that: (1) The estate and interest of the unit owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the project; (2) The unit owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the unit owner's leasehold interest; (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor; (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the apartment owners of the buildings and improvements in accordance with their interests; and (5) The unit lease rents are reduced in proportion to the land so acquired or possessed; then, the lessor and the declarant shall file an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the unit owners or their respective mortgagees shall not be required, if the land so acquired or possessed constitutes no more than five per cent of the total land of the project. Upon the filing of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or this chapter. The lessor shall notify each unit owner in writing of the filing of the amendment and the rent abatement to which the apartment owner is entitled. The lessor shall provide the unit owners' association, through its executive board, with a copy of the amendment. For purposes of this section, the acquisition or right to possession may be effected: (1) By a taking or condemnation of property by the State or a county pursuant to chapter 101; (2) By the conveyance of property to the State or county under threat of condemnation; or (3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.	**§514A-21 Removal from provisions of this chapter.** . . . . (c) Notwithstanding subsections (a) and (b), if the apartment leases for a leasehold project (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that: (1) The estate and interest of the apartment owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the project; (2) The apartment owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the apartment owner's leasehold interest; (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor; (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the apartment owners of the buildings and improvements in accordance with their interests; and (5) The apartment lease rents are reduced in proportion to the land so acquired or possessed; then, the lessor and the declarant shall file an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the apartment owners or their respective mortgagees shall not be required, if the land so acquired or possessed constitutes no more than five per cent of the total land of the project. Upon the filing of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or this chapter. The lessor shall notify each apartment owner in writing of the filing of the amendment and the rent abatement to which the apartment owner is entitled. The lessor shall provide the association of apartment owners, through its board of directors, with a copy of the amendment. For purposes of this subsection, the acquisition or right to possession may be effected: (1) By a taking or condemnation of property by the State or a county pursuant to chapter 101; (2) By the conveyance of property to the State or county under threat of condemnation; or (3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.

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		Condominium Recodification Attorney's Comment [This provision needs to be refined. It has been copied over as an "idea placeholder."]
		§514A-22 Removal no bar to subsequent resubmission. The removal provided for in section 514A-21 shall in no way bar the subsequent resubmission of the property to this chapter.
		Condominium Recodification Attorney's Comment HRS §514A-22 seems to be unnecessary.
	§ 2-119. Rights of Secured Lenders.	
	(a) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to Section 3-113.	
	(b) A lender who has extended credit to an association secured by an assignment of income (Section 3-102(14)) or an encumbrance on the common elements (Section 3-112) may enforce its security agreement in accordance with its terms, subject to the requirements of this chapter and other law. Requirements that the association must deposit its periodic common charges before default with the lender to which the association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, do not violate the prohibitions on lender approval contained in subsection (a).	
	UCA (1980) Comment [with edits and additions from UCIOA (1994)] 1. In a number of instances, particularly sale or encumbrance of common elements, or termination of a condominium, a lender's security may be dramatically affected by acts of the association. For that reason this section permits the declaration to provide that lender ratification of specified actions of the association is a condition of their effectiveness. 2. There are three important limitations on the rights of lender consent. They are: (1) a prohibition on control over the general administrative affairs of the association; (2) restrictions on control over the association's powers during litigation or other proceedings; and (3) prohibition of receipt or distribution of insurance proceeds prior to application of those proceeds for rebuilding. 3. It is important that lenders not be able to step in and unilaterally act as receiver or trustee of the association. There may, of course, be occasions when a court of competent jurisdiction would order appointment of a receiver for an association. While this would be possible in a court proceeding, the Act prohibits private contractual granting of such a	

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	power. 4. Since it may well be that the association might find itself involved in litigation which would be adverse to the interests of the lender or the declarant, it is inappropriate for a secured party to be able to control the course of litigation in the absence of the consent of the other parties. In an appropriate case, of course, where the lenders' interests are affected, a lender might seek to intervene as a party in that proceeding. 5. Section 3-113 provides for the distribution of insurance proceeds in a particular manner. In particular, it prevents distribution of those proceeds to lenders until the intended purpose of the insurance has been met. For that reason, under this section the declaration may not provide the lender a right to receive insurance proceeds in any manner except the manner provided in Section 3-113. 6. In addition to the provision of the declaration, the provisions of individual deeds to units may require that unit owner to secure his lender's consent before taking particular actions. 7. The delegation of consent powers to the lenders may, of course, be limited to particular kinds or classes of lenders – such as holders of first security interests – and may also establish eligibility criteria. Such criteria may include, for example, notice requirements. It is possible, for example, to require that only those lenders who notify the association may have consent powers, or be for a specified period of time – say, during the period of declarant control. 8. The 1994 changes in subsections (a) and (b) are designed to resolve issues which lenders to associations have raised regarding their authority to require approval of association activities as conditions of the effectiveness of those actions, and to include otherwise standard lending requirements in their loan documents.	
	§ 2-119.1. Liens against Units; Removal from Lien; Effect of Part Payment. (a) Subsequent to substantial completion of the project and the recordation of the first conveyance or lease of a unit in the condominium to a bona fide purchaser, and thereafter while the property remains the subject of a condominium property regime, no lien shall arise or be created against the common elements. Following such completion and first recordation, liens may arise or be created only against the several units and their respective common interests. During such period while (1) The developer retains ownership of any unit other than: (A) The mere reservation of legal title under an agreement of sale to a bona fide purchaser; and (B) The unit in respect of which a binding contract of sale has been entered into with a bona fide purchaser but which has not, at the time of filing of the application of a mechanic's lien, closed escrow; or (2) Any other person retains ownership of any unit prior to the first conveyance or lease of such apartment to a bona fide purchaser, mechanics' and materialmen's liens may arise or be created for labor or material	**§514A-16 Liens against apartments; removal from lien; effect of part payment.** (a) Subsequent to substantial completion of the project and the recordation of the first conveyance or lease of an apartment in the project to a bona fide purchaser, and thereafter while the property remains the subject of a condominium property regime, no lien shall arise or be created against the common elements. Following such completion and first recordation, liens may arise or be created only against the several apartments and their respective common interests. During such period while (1) The developer retains ownership of any apartment other than: (A) The mere reservation of legal title under an agreement of sale to a bona fide purchaser; and (B) The apartment in respect of which a binding contract of sale has been entered into with a bona fide purchaser but which has not, at the time of filing of the application of a mechanic's lien, closed escrow; or (2) Any other person retains ownership of any apartment prior to the first conveyance or lease of such apartment to a bona fide purchaser,

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	furnished in project construction performed before the completion of construction, and such liens shall affect every unit and its respective common interests so retained until released or until the period for making application for such liens has expired without any such application having been filed. (b) Labor performed on or materials furnished to a unit shall not be the basis of a lien pursuant to part II of chapter 507 against the unit of any unit owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. No labor performed on or materials furnished to the common elements shall be the basis of a lien thereon.	mechanics' and materialmen's liens may arise or be created for labor or material furnished in project construction performed before the completion of construction, and such liens shall affect every apartment and its respective common interests so retained until released or until the period for making application for such liens has expired without any such application having been filed. (b) Labor performed on or materials furnished to an apartment shall not be the basis of a lien pursuant to part II of chapter 507 against the apartment of any apartment owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. No labor performed on or materials furnished to the common elements shall be the basis of a lien thereon.
		Condominium Recodification Attorney's Comment [This provision needs to be refined. It is copied over as an "idea placeholder."]
		§514A-18 Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance or lease. At the time of the first conveyance or lease of each apartment, every mortgage and other lien, except any improvement district or utility assessment, affecting both the apartment and any other apartment shall be paid and satisfied of record, or the apartment being conveyed or leased and its common interest shall be released therefrom by partial release duly recorded.
		Condominium Recodification Attorney's Comment 1. HRS §514A-18 will be considered for inclusion for inclusion in Recodification §4-111 (Release of Liens). 2. *See also*, Recodification §3-117 (Other Liens Affecting the Condominium).
	§ 2-120. Master Associations.	
	(a) If the declaration provides that any of the powers described in Section 3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation (or unincorporated association) that exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation (or unincorporated association), except as modified by this section.	
	(b) Unless it is acting in the capacity of an association described in Section 3-101, a master association may exercise the powers set forth in Section 3-102(a)(2) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.	
	(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.	

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	(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in Sections 3-103, 3-108, 3-109, 3-110, and 3-112 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.	
	(e) Even if a master association is also an association described in Section 3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:	
	(1) All unit owners of all condominiums subject to the master association may elect all members of the master association's executive board.	
	(2) All members of the executive boards of all condominiums subject to the master association may elect all members of the master association's executive board.	
	(3) All unit owners of each condominium subject to the master association may elect specified members of the master association's executive board.	
	(4) All members of the executive board of each condominium subject to the master association may elect specified members of the master association's executive board.	
	UCA (1980) Comment [UCIOA (1994) essentially same] 1. It is very common in large or multi-phased condominiums, particularly those developed under existing laws, for the declarant to create a master or umbrella association which provides management services or decision-making functions for a series of smaller condominiums. While it is expected that this phenomenon will be less necessary under this Act because of the permissible period of time for declarant control over the project, it is nonetheless possible in larger developments that this form of management will continue. Moreover, this section should be of significant benefit to the large number of condominiums created under prior law which have need for the benefits of a provision on master associations. 2. Subsection (a) states the general rule that the powers of a unit owners' association may only be exercised by, or delegated to, a master association by, the declaration for the condominium permits that result. The declaration may have originally provided for a master association; alternatively, the unit owners of several condominiums may amend their declarations in similar fashion to provide for this power. Subsection (a) makes it clear that, if any of the powers of the unit owners' association may be exercised by, or delegated to, a master association, all other provisions of this Act which apply to a unit owners' association apply to that master association except as modified by this section. Accordingly, such provisions on notice, voting, quorums, records, meetings, and other matters which apply to the unit owners' association would apply with equal validity to such	**Condominium Recodification Attorney's Comment** 1.

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	a master association. 3. Subsection (b) changes the usual presumption with respect to the powers of the unit owners' association, except in those cases where the master association is actually acting as the only association for one or more condominiums. In those cases where it is not so acting. However, the only powers of the unit owners' association which the master association may exercise are the ones expressly permitted in the declaration or in the delegation of power. This is in significant contrast with the rule of Section 3-102 that all of the powers described in that section may be exercised unless limited by the declaration. 4. Subsection (c) clarifies the liability of the members of the executive board of a unit owners' association when the condominium for which the unit owners' association acts has delegated some of its powers to a master association. In that instance, subsection (c) makes it clear that the members of the executive board of the unit owners' association have no liability for acts and omissions of the master association board; under subsection (a), that liability lies with the members of the master association. 5. Subsection (d) addresses the question of the rights and responsibilities of the unit owners in their dealings with the master board. A variety of sections enumerated in subsection (d) provide certain rights and powers to unit owners in their dealings with their association. In the affairs of the master association, however, it would be incongruous for the unit owners to maintain those same rights if those unit owners were not in fact electing the master board. Thus, for example, the question of election of directors, meetings, notice of meetings, quorums, and other matters enumerated in those sections would have little meaning if those sections were read literally when applied to a master board which was not elected by all members of the condominiums subject to the master board. For that reason, the rights of notice, voting, and other rights enumerated in the Act are available only to the persons who actually elect the board. 6. Subsection (e) recognizes that there may be reasons for a representative form of election of directors of the master association. Alternatively, there may be cases where at-large election is reasonable. For that reason, subsection (e) provides that, after the period of declarant control has terminated, there may be 4 ways of electing the master association board. Those four ways are: (1) at-large election of the master board among all the condominiums subject to the master association; (2) at-large election of the master board only among the members of the executive boards of all condominiums subject to the master association; (3) each condominium might have designated positions on the master board, and those spaces could be filled by an at-large election among all the members of each condominium; or (4) the designated positions could be filled by an election only among the members of the executive board of the unit owners' association for each condominium. It would only be in the case of an at-large election of the master board among all condominiums that subsection (d) would have no relevance.	
	§ 2-121. Merger or Consolidation of Condominiums.	**§514A-19 Merger of increments.**
	(a) Any two or more condominiums of the same form of ownership, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the	(a) Two or more condominium projects, whether or not adjacent to one another, but which are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common

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	agreement otherwise provides, the resultant condominium is the legal successor, for all purposes, of all of the pre-existing condominiums, and the operations and activities of all associations of the pre-existing condominiums are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all pre-existing associations.	elements of the projects by all the owners of the apartments in the merged projects. The merger documents may provide for a single association of apartment owners and board of directors for the merged projects and for a sharing of the common expenses of the projects among all the owners of the apartments in the merged projects.
	(b) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the pre-existing condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement ~~must be recorded in every [county] in which a portion of the condominium is located and~~ is not effective until recorded.	(b) Upon the recording in the office of the assistant registrar of the land court of the State of Hawaii of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the assistant registrar shall cancel all existing certificates of title for the apartments in the condominium projects being merged and shall issue new certificates of title for the apartments in the merged project, covering all of the land of the merged condominium projects. The new certificates of title for the apartments in the merged condominium project shall describe, among other things, the new undivided interest in the land appertaining to each apartment in the merged condominium projects. The certificate of merger shall at least set forth all of the apartments of the merged condominium projects, their new undivided interest, and their current certificate of title numbers in the common elements of the merged condominium projects.
	(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.	
	UCA (1980) Comment [UCIOA (1994) essentially same] 1. There may be circumstances where condominiums may wish to merge or consolidate their activities by the creation of a single condominium; this section provides for that possibility. Subsection (a) makes it clear that a merger or consolidation may occur by the same vote of the unit owners necessary to terminate the condominium. If 2 or more condominiums are merged or consolidated, the resulting condominium is for all purposes the legal successor of the pre-existing condominiums, with a single association for all purposes. In the event condominiums did not wish to completely merge or consolidate their affairs, it would also be possible for them to create a master association pursuant to Section 2-120. 2. Under subsection (b), the merger or consolidation agreement is treated for recording purposes as an amendment to the declaration, and the same requirements for approval are mandated as for termination. 3. Subsection (c) does not state a minimum requirement for the contents of a merger or consolidation agreement, and any additional clauses not inconsistent with subsection (c) may be included. The important point that subsection (c) makes is that the reallocation of	**Condominium Recodification Attorney's Comment** 1.

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	the common element interests, common expense liabilities and votes in the new association must be carefully stated. Subsection (c) states 2 alternative rules in this respect. First, the reallocations may be accomplished by stating specifically the allocation of common element interests, common expense liability, and votes in the association to each unit, or by stating the formulas by which those interests may be allocated to each unit in all of the pre-existing condominiums. Alternatively, the merger or consolidation agreement may state the percentage of overall common element interests, common expense liabilities, and votes in the association allocated to "all of the units comprising each of the pre-existing condominiums." The agreement might then also provide that the portion of the percentage allocated to each unit from among the shares allocated to each condominium will be equal to the percentage of common expense liability and votes in the association allocated to that unit by the declaration of the pre-existing condominium. An example of how this alternative formulation would operate may be useful. **EXAMPLE:** Assume that 2 adjoining condominiums wish to merge their activities into one condominium. Assume that the first condominium consists of 10 one-bedroom units, with an annual budget of $10,000. Assume further that each of the units, being identical, has a common element interest of 10%, equal common expense liability of 10%, and one vote per unit. The second condominium consists of 40 units, with 20 2-bedroom units and 20 3-bedroom units. The budget of the second condominium consists of $70,000 per year. Each of the 2-bedroom units has been allocated a 2% interest in the common elements and a 2% common expense liability, while each of the 3-bedroom units has been allocated a 3% interest in the common elements, and a 3% common expense liability. Finally, each of the units in the second condominium also has an equal vote. There is no provision in the Act which mandates a particular allocation among condominiums 1 and 2 as to either common element interest, common expense liabilities or votes. Should the unit owners wish to retain as much similarity to their previous common element interests and common expense liabilities, however, and should they wish to retain equal voting in a merged project, it would be possible for them, pursuant to subsection (c)(ii), to state "the percentage of overall allocated interests of the new condominium" as follows: as to common element interests and common expense liabilities, they might allocate 12.5% of those interests in the merged project to condominium 1, and 87.5% thereof to condominium 2. If the agreement further provided that "the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing condominium" as required by subsection (c), each unit in condominium 1 would then have allocated to it 1.25% of both the common element interests and common expense liabilities in the new condominium. It happens that 1.25% of the common expenses of a merged condominium which has a budget of $80,000 equals $1,000.	

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	Under the same rationale, if each of the 2-bedroom units in the second condominium to which were formerly allocated 2% of the common element interests and common expense liabilities, now has allocated 2% of the 87.5% allocated to the second condominium, each of those units would then have allocated to it 1.75% of the common element interest and common expense liabilities of the new condominium. 1.75% of $80,000 is $1,400. Similarly, each of the 3-bedroom units would then have allocated to it 2.625% of the common element interest and common expense liabilities in the merged condominium. That percentage of the common expense liabilities of $80,000 would yield an annual cost of $2,100, the same cost as previously obtained in this condominium. Further, the unit owners are free to allocate votes among the units in any way which they see fit. Of course, if they choose to allocate equal votes to all the units, which was the method previously used in both condominiums, this would have the effect of giving 20% of the votes to condominium 1, even though condominium 1 had only 12.5% of the common expense liabilities. It may be, however, that this tracks with the expectations of the unit owners in both condominiums. Alternatively, condominium 1 might be allocated 12.5% of the votes, which, when divided up among the 10 units, would give each one-bedroom unit a .125 vote. If 87.5% of the votes were allocated equally among the unit owners in the second condominium, then each of the unit owners in condominium 2 would have .21875 votes. If some other configuration was to be desired, then the allocations would of necessity be made pursuant to paragraphs (c)(i) rather than (c)(ii).	
	[~~§ 2-122. Addition of Unspecified Real Estate.~~] (Reserved)	
		Condominium Recodification Attorney's Comment This section does not appear to be applicable to condominiums.
	[~~§ 2-123. Master Planned Communities.~~] (Reserved)	
		Condominium Recodification Attorney's Comment This section does not appear to be applicable to condominiums.