PROGRESS REPORT TO THE LEGISLATURE

RECODIFICATION OF CHAPTER 514A, HAWAII REVISED STATUTES (CONDOMINIUM PROPERTY REGIMES)

IN RESPONSE TO ACT 213, SECTION 4 (SLH 2000)

DECEMBER 26, 2002

Submitted by:

HAWAII REAL ESTATE COMMISSION
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

LINDA LINGLE
GOVERNOR

JAMES AIONA
LIEUTENANT GOVERNOR

NOE NOE TOM
ACTING DIRECTOR

STATE OF HAWAII
REAL ESTATE BRANCH
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
250 SOUTH KING STREET, ROOM 702
HONOLULU, HAWAII 96813
http://www.state.hi.us/dcca
hirec@dcca.state.hi.us

December 26, 2002

We are pleased to present this progress report on the Hawaii Real Estate Commission's ("Commission") efforts to recodify of Hawaii's condominium law.

Act 213, Session Laws of Hawaii 2000, requires the Commission to conduct a review of Hawaii's condominium property regimes law (Chapter 514A, Hawaii Revised Statutes), present findings and recommendations for recodification of the law (including draft legislation consistent with its review and recommendations), and submit progress reports to the Legislature for the regular sessions of 2001, 2002, and 2003.

This report does not contain final findings and recommendations or a final proposed draft of the recodified condominium property regimes law. The Commission does, however, submit recommendations for action by the 2003 Legislature.

Pursuant to Act 231, Session Laws of Hawaii 2001, the report may be viewed electronically at http://www.state.hi.us/dcca/reports as well as the Commission's website at http://www.state.hi.us/hirec/. The Commission's website contains additional information, including an updated workplan, research references, and the first draft of the recodification (posted January 2002).

The Commission is grateful for the Administration's and the Legislature's continued support and commitment to its condominium programs.

Sincerely,

John Ohama
Chair, Real Estate Commission

Mitchell Imanaka
Chair, Condominium Review Committee

TABLE OF CONTENTS

Appendices

I. Introduction

A. What is the Problem We're Trying to Fix?

In 1961, Hawaii became the first state to pass a law enabling the creation of condominiums.[1]

The 1961 "Horizontal Property Regime" law consisted of 33 sections covering a little more than 3 pages in the Revised Laws of Hawaii. Since that time, the law has been amended constantly. Entering the 2003 legislative session, Hawaii's "Condominium Property Regime" law consisted of 120 sections taking up 100 pages in the Hawaii Revised Statutes. As noted by the 2000 Legislature, "[t]he present law is the result of numerous amendments enacted over the years made in piecemeal fashion and with little regard to the law as a whole."[2]

The 2000 Legislature recognized that "[Hawaii's] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations . . . [t]he law is also overly regulatory, hinders development, and ignores technological changes and the present day development process."[3] Consequently, the Legislature directed the Real Estate Commission of the State of Hawaii (Commission) to conduct a review of Hawaii's condominium property regimes law, and to submit draft legislation to the 2003 Legislature that will "update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law."[4]

In January 2001, the Commission embarked on its ambitious effort to rewrite Hawaii's Condominium Property Act (HRS Chapter 514A).[5]

---

[1] Kerr, William; "Condominium – Statutory Implementation," 38 St. John's L. Rev. 1 (1963) (hereinafter, "Kerr"), at page 5. *See also*, Act 180, Session Laws of Hawaii (SLH) 1961; codified as Chapter 170A, Revised Laws of Hawaii (RLH). In 1968, RLH Chapter 170A was redesignated Chapter 514, Hawaii Revised Statutes (HRS) (Act 16, SLH 1968). In 1977, HRS Chapter 514 was re-enacted as a restatement without substantive change and redesignated HRS Chapter 514A (Act 98, SLH 1977).

[2] Act 213, SLH 2000, attached to this report as Appendix A.

[3] *Id.*

[4] *Id.*

[5] The recodification workplan and timetable is attached to this report as Appendix B. It is also available on the Commission's website – http://www.state.hi.us/hirec/ – along with our base working document (a comparison of the 1994 Uniform Common Interest Ownership Act (UCIOA), 1980 Uniform Condominium Act (UCA), and HRS

B. Why Should We Care?

1. Prevalence of condominium ownership in Hawaii

25% of Hawaii's housing units are held in condominium ownership. For decades, Hawaii has had the highest percentage of condominium housing units in the United States of America.[6] This alone makes the recodification project extremely important for the citizens of Hawaii.

2. Importance to more efficient use of Hawaii's limited land resources

As a very flexible form of real estate ownership, condominiums (especially traditional ones going up rather than out), have helped policymakers to discourage sprawl while still providing home ownership opportunities for many in our urban areas. Consistent with State and local government land use policies, the condominium form of ownership is a valuable tool in helping to develop higher density/lower per-unit cost homeownership opportunities (i.e., creating more affordable housing). Of course, condominiums encompass the entire spectrum of homeownership opportunities – from affordable to luxury units. All of this is important for an island state with limited land area.

3. Importance to Hawaii's housing stock and growth policies (e.g., private provision of "public" facilities and services)

The rapid growth of common interest ownership communities (condominiums, cooperatives, and planned communities) since 1960 goes hand in hand with government policy for much of the past 30-40 years dictating that new development "pay its own way." Condominiums and other common interest ownership communities (with their regimes of privately enforceable use restrictions and financial obligations paying for formerly "public facilities" such as roads, trash collection, and recreational areas) have become a critical part of

---

Chapter 514A), drafts of the recodified condominium law, and other recodification materials. Recodification status is reflected in the "Comments" section of the workplan.

[6] Community Associations Factbook, by Clifford J. Treese (1999) (hereinafter, "CAI Factbook"), at page 18.

our land use fabric. Indeed, virtually all new development in Hawaii consists of common interest ownership communities.

Given the importance of condominiums to the quality of life of Hawaii's people, it is important that we recodify our condominium law in ways that improve life for those who build, sell, buy, manage, and live in condominiums.

C. What is in this Report?

This report consists of the following:

Part I presents introductory material explaining the genesis and importance of the Hawaii Real Estate Commission's ambitious effort to rewrite Hawaii's Condominium Property Act (HRS Chapter 514A).

Part II covers background information to help readers understand the complexity and limitations of the condominium law recodification.

Part III discusses the actual recodification efforts.

Part IV contains findings and recommendations.

Part V concludes the report and is followed by various appendices.

II. Background

A. Brief History of the Condominium

Someone once said that "history is argument without end." That is certainly true of the debate over the origin of condominiums. Some commentators have traced the first existence of condominiums to the ancient Hebrews in the Fifth Century B.C. Others have attributed the concept to the ancient Romans. Still others believe that Roman law was antithetical to condominium development and that the first proto-condominiums appeared in the Germanic states during the late Middle Ages. Suffice to say that the condominium property concept has a long, possibly ancient, history.[7]

While their first existence in fact is widely disputed, condominiums were first afforded statutory recognition by the Code of Napoleon in 1804.[8] The first sophisticated statute to authorize condominiums in the United States or its territories was the Puerto Rico Horizontal Property Act (so named because it contemplated a property regime of horizontally, as opposed to vertically, divided properties) in 1958.[9] The United States Congress recognized condominiums in 1961 when it amended the National Housing Act to provide for federal insurance on condominium mortgages whenever state law recognized condominium ownership. With Hawaii leading the way, every state in the union had a statute authorizing the condominium form of ownership by 1968.[10]

B. Basic Concepts

Preliminarily, it is useful to understand exactly what a "condominium property regimes law" is – and what it isn't. A condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a community *governance* law. It is not a land *use*

[7] Kerr, *supra* note 1, at 3-4; CAI Factbook, *supra* note 6, at 5-6; Natelson, Robert G., Law of Property Owners Associations, (1989), at 3-35.
[8] Kerr, *supra* note 1, at 3.
[9] Kane, Richard J.; "The Financing of Cooperatives and Condominiums: A Retrospective," 73 St. John's L. Rev. 101 (Winter 1999), at 102.
[10] Schriefer, Donald L.; "Judicial Action and Condominium Unit Owner Liability: Public Interest Considerations," 1986 U. Ill. L. Rev. 255 (1986), at note 2.

law (i.e., it does not govern what structures may be built on real property; separate state and county land use laws control – or should control – land use matters).

A condominium property regimes law is essentially an *enabling* law, allowing people to:

- Own real estate under the condominium form of property ownership (i.e., a form of real property ownership where each individual member holds title to a specific unit and an undivided interest as a "tenant-in-common" with other unit owners in common elements such as the exterior of buildings, structural components, grounds, amenities, and internal roads and infrastructure);

- Protect purchasers through adequate disclosures; and

- Manage the ongoing affairs of the condominium community.

The ability to build, sell, buy, borrow/lend money, insure title, insure property, and more are all part of real property ownership and, therefore, part of condominium law.

The 1961 Hawaii State Legislature expressly recognized that the condominium property regime law was "an enabling vehicle" that primarily "(a) sets forth the legal basis for a condominium, and (b) spells out the means of recordation."[11] [Note: In 1968, the Hawaii Supreme Court commented that, although the original condominium property regime law was viewed as an enabling act, condominiums might have been cognizable under common law.[12]

The Legislature was also concerned about protecting Hawaii's consumers, noting that:

> The citizens of Honolulu have suffered during the past one or two years several unfortunate experiences in cooperative apartment buying. When several millions of dollars were lost through loose handling of funds representing down-payments on individual apartment units, it became clear that controls had to be developed in order (a) to protect the buying

[11] Standing Committee Report 622, House Bill No. 1142 (1961).
[12] State Savings & Loan Association v. Kauaian Development Company, Inc., et al., 50 Haw. 540, 547 (1968).

> public, and (b) through a bolstering of public confidence, to create for the developer a better reception for his product.[13]

To that end, the 1961 Legislature added a part providing for the regulation of condominium projects by the Hawaii Real Estate License Commission (including the registration of projects by developers and requiring the issuance of public reports before offering any condominium units for sale).

Finally, the 1961 Legislature provided for the internal administration of condominium projects. The 1961 condominium management provisions were minimized, however, because the Legislature believed that: 1) many details would more properly be included in by-laws to be passed by the council of co-owners; and 2) some details may have been contrary to F.H.A. regulations or to policies of lending institutions, making it impossible for prospective unit-purchasers to secure financing.[14]

Hawaii's "Horizontal Property Regimes" law of the early 1960s was typical of most "first generation" condominium laws. In the decades that followed, however, "[a]s the condominium form of ownership became widespread, . . . many states realized that these early statutes were inadequate to deal with the growing condominium industry. . . . In particular, many states perceived a need for additional consumer protection, as well as a need for more flexibility in the creation and use of condominiums."[15]

[13] Standing Committee Report 622, House Bill No. 1142 (1961).
[14] *Id*.
[15] Prefatory Note, Uniform Condominium Act, 1980. As noted by the Hawaii State Senate Judiciary Committee Vice-Chair in 1976: "[The condominium property regime law] was originally intended to be a highly technical, legal vehicle for placing certain lands in the horizontal property regimes. It is becoming through our actions … a consumer protection section of the law. Anyone trying to use it in its technical sense will have extreme difficulty …" Standing Committee Report 939-76, Senate Resolution No. 439 (1976).

III. Recodification of Chapter 514A, Hawaii Revised Statutes

A. Evolving Approach to the Recodification of Hawaii's Condominium Law

1. Recodification Draft #1

In January 2002, the Commission completed its initial draft of the recodification (statutory text and explanatory commentary).[16] The 1980 Uniform Condominium Act (UCA), with appropriate changes incorporated from the 1994 Uniform Common Interest Ownership Act (UCIOA), served as the basis for the first draft of our recodified condominium law. Where appropriate, the Commission also incorporated provisions of HRS Chapter 514A,[17] other jurisdictions' laws, and the Restatement of the Law, Third, Property (Servitudes).

Recodification Draft #1 provided a starting point and framework from which to: 1) work on specific problems, and 2) continue our discussions on improving Hawaii's condominium law. Some portions are more complete than others, with Article 3 (Management of Condominium) needing a lot more work integrating provisions of HRS Chapter 514A and suggestions from stakeholders.

2. Recodification PRELIMINARY Draft #2

A Blue Ribbon advisory committee reviewed Recodification Draft #1.[18] Based on feedback the Commission received from the advisory committee, realtors, property managers, and others, HRS Chapter 514A (rather than the uniform laws) is used as the base for most of the recodification preliminary draft #2 (i.e., general provisions; creation, alteration, and termination of condominiums; protection of purchasers; administration and registration of condominiums; and condominium management education fund). The Uniform Condominium Act and Uniform Common Interest Ownership Act – along with appropriate provisions of HRS Chapter 514A, other jurisdictions' laws, and the Restatement of the Law, Third,

[16] Recodification Draft #1 is available on the Commission's website – http://www.state.hi.us/hirec/.
[17] Every provision of HRS Chapter 514A was analyzed for possible inclusion within the structure of the UCA.
[18] Members of the Blue Ribbon Recodification Advisory Committee are listed in Appendix C of this report.

Property (Servitudes) – remain as the base for condominium governance matters.[19]

The Commission intends to: 1) work with affected members of the community to refine Recodification Preliminary Draft #2, and 2) take the resulting draft to public hearing in each of Hawaii's counties. After the public hearings, the Commission will incorporate appropriate changes and submit a final draft of the proposed condominium law recodification to the 2004 Legislature.

B. Scope of Recodification

The Commission considered expanding the scope of the recodification to include other Hawaii common interest ownership communities under a UCIOA-like law. [This would have included HRS Chapters 421H (Limited Equity Housing Cooperatives), 421I (Cooperative Housing Corporations), and 421J (Planned Community Associations).] The Commission quickly decided, however, that recodification of HRS Chapter 514A (Condominium Property Regimes) alone makes the most practical sense at this time.

Condominium issues, in general, are substantially different from those of single-family detached units in planned communities. The unit owner mindsets, problems, and solutions are quite different for each type of common interest ownership community.

A Florida court once observed that:

> [I]nherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners . . . each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property.[20]

Single-family detached unit homeowners in planned communities generally have different expectations than condominium owners regarding the degree of freedom they must give up when they buy their respective units. This is one of the factors that make it

[19] Recodification Preliminary Draft #2 is attached to this report as Appendix D. As a work in progress, it is not currently available on the Commission's website.
[20] Hidden Harbour Estates, Inc. v. Norman, 309 So.2d 180, 181-182 (Fla. Dist. Ct. App. 1975).

exceedingly difficult to reconcile the varying interests of unit owners in different forms of common interest ownership communities.[21]

Although condominiums can take many physical forms – from high-rise developments to townhouses to single-family detached units – the common perception that a condominium is a tall building consisting of many individual units within a common structure ("horizontal property regime") makes it easier for average people to understand the interdependence of unit owners in condominiums (as opposed to single-family detached homeowners in planned communities).

Therefore, the Commission will limit its efforts to recodifying Hawaii's condominium property regimes law.

C. Selected Public Policy Considerations

1. Need for laws (and the courts) to support the fair and efficient functioning of condominium communities

Given the importance of condominiums to the quality of life of Hawaii's people, laws must support the fair and efficient functioning of our condominium communities (and other common interest ownership communities).

However, there is a troubling line of recent Hawaii Supreme Court cases dealing with restrictive covenants/equitable servitudes.[22]

In Hiner, defendants-appellants ("Hoffmans") constructed a three story house on a lot which was (along with 118 other lots) subject to a restrictive covenant prohibiting any dwelling "which exceeds two stories in height." The Hoffmans had actual knowledge of the restrictive covenant. After warning the Hoffmans of their violation of the restrictive covenant, neighboring homeowners and the

[21] *See, e.g.*, the California Law Revision Commission's (CLRC) efforts to recodify California's common interest development law – the Davis-Stirling Act. You can access the CLRC Study H-850 online at: ftp://clrc.ca.gov/pub/Study-H-RealProperty/H850-CommonInterestDevel/.

[22] *See*, Hiner v. Hoffman, 90 Haw. 188, 977 P.2d 878 (1999); Fong v. Hashimoto, 92 Haw. 568, 994 P.2d 500 (2000).

community association sued to have the Hoffmans remove the third story of their house.

At the trial court level, the Hoffmans argued that their house consisted of "two stories and a basement." The trial court rejected the Hoffmans' argument and ordered them to remove the third (top) story of their house.

On appeal, the Hoffmans changed their argument and claimed that the term "two stories in height" was ambiguous. In a 3-2 decision, the Hawaii Supreme Court ruled that the term "two stories in height" was ambiguous since it did not provide any dimensions for the term "story" and was therefore unenforceable in light of the restrictive covenant's undisputed purpose (to protect views by restricting the height of homes within the neighborhood). The majority on the Court stated that it was following a "long-standing policy favoring the unrestricted use of property" when construing "instruments containing restrictions and prohibitions as to the use of property." Finally, the majority noted that "such 'free and unrestricted use of property' is favored only to the extent of applicable State land use and County zoning regulations."

In so doing, the majority ignored the massive growth of servitude regimes over the past forty years and the corresponding importance of ensuring the fair and efficient functioning of such communities (whether they be condominiums or, as in this case, planned communities). As noted by the dissent in Hiner, "where one hundred or more homeowners in the Pacific Palisades community have limited their own property rights in reliance that their neighbors will duly reciprocate, . . . it [is] manifestly unjust to sanction the Hoffmans' willful non-compliance based on the 'policy favoring the unrestricted use of property.'" The dissent concluded with the observation that "the majority opinion over-emphasizes the rights of the Hoffmans without due regard to the rights of their neighbors."

Eight and a half months after deciding Hiner, the Hawaii Supreme Court in Fong invalidated as ambiguous a restrictive covenant limiting certain houses to "one-story in height." (The Court also found that there was no common scheme to

support an equitable servitude and that the restrictive covenant was unenforceable since it was improperly created.)

The archaic body of servitudes law from which the Hawaii Supreme Court fashioned its decisions in Hiner and Fong evolved from rules developed to govern relatively small groupings of property owners (compared to today's condominium and planned development communities) in contexts largely unrelated to modern common interest ownership communities.[23]

Contrast the Hawaii Supreme Court's current approach regarding servitudes in common interest ownership communities with that of the *Restatement of the Law, Third, Property (Servitudes)*. As stated in the *Restatement's* introductory note to Chapter 6 – Common-Interest-Communities:

> The primary assumption underlying Chapter 6 is that common-interest communities provide a socially valuable means of providing housing opportunities in the United States. The law should facilitate the operation of common-interest communities at the same time as it protects their long-term attractiveness by protecting the legitimate expectations of their members.

To guide the courts in resolving disputes over servitudes in condominiums (and, at least by analogy, other common interest ownership communities), we should incorporate the *Restatement's* position on servitudes in our recodification of Hawaii's condominium law.

An earlier incarnation of the Hawaii Supreme Court said it well. In State Savings & Loan Association v. Kauaian Development Company, Inc., et al., the Court stated that:

> The [Horizontal Property Regimes Act] has profound social and economic overtones, not only in Hawaii but also in every densely populated area of the United States. Our construction of such

[23] The *Restatement of the Law, Third, Property (Servitudes)* defines "servitude" as "a legal device that creates a right or an obligation that runs with land or an interest in land." This covers "easements, profits, and covenants that run with the land," and encompasses both "restrictive covenants" and "equitable servitudes."

> legislation must be imaginative and progressive rather than restrictive.
>
> . . . .
>
> This court will not follow a common law rule relating to property where to do so would constitute a quixotic effort to conform social and economic realities to the rigid concepts of property law which developed when jousting was a favorite pastime.[24]

2. Need to support the fair and efficient functioning of senior living/assisted living condominium communities

One of the new century's major challenges for condominium associations nationwide is the aging of populations within condominium units and the problems that accompany diminishing health and capacity. Recent controversies in a condominium with assisted living facility services helped to direct the Commission's attention to this issue.[25]

More broadly, however, in addition to assisted living facilities in condominiums, a growing number of senior citizens are choosing to remain in their homes and familiar surroundings rather than moving to traditional retirement destinations. This trend is creating what has become known as "Naturally Occurring Retirement Communities" (NORCs). [26]

Regardless of whether a condominium is an assisted living facility or NORC, does "self-governance" truly work for aged and infirm condominium owners? Does Hawaii's condominium law need to specifically address these issues, or would they be better handled in the governing documents of condominiums? These are just some of the questions being examined by the Commission at this time.

---

[24] State Savings & Loan Association v. Kauaian Development Company, Inc., et al., *supra* note 13, at 552 and 555.

[25] *See*, "Raising Cane – Complaints fly at condo for seniors," Honolulu Star-Bulletin, Sunday, July 14, 2002. The article, by Rob Perez, details the problems of One Kalakaua, the condominium at the center of a number of disputes. (http://starbulletin.com/2002/07/14/news/perez.html)

[26] de Haan, Ellen Hirsch; "Aging in Place – Naturally Occurring Retirement Communities and Condominium Living," Law Offices of Becker & Poliakoff website (2000). (http://www.association-law.net/publications/article/aging_in_place.htm) It appears that this article was first published in Elder's Advisor, The Journal of Elder Law and Post Retirement Planning, Volume 1, Number 2, (Fall 1999). The article contains a number of suggestions regarding legal and management issues in this area.

3. Need to conform to underlying land use laws

There appears to be quite a bit of confusion over the fact that condominium property is a land *ownership*, as opposed to a land *use*, concept. In response to the Commission's request for comments from the community, various parties asked that Hawaii's condominium property regime law be used to ensure compliance with land *use* laws (e.g., HRS Chapter 205 and county zoning, subdivision, and building ordinances). The suggestions of two of these parties – the State Department of Business, Economic Development & Tourism (DBEDT) and the County of Hawaii – are described below.

Hawaii's counties (particularly the Neighbor Island counties) have long complained that developers were using HRS Chapter 514A to circumvent underlying county land use laws. However, the counties have always had the power to regulate the *uses* of land pursuant to their police powers (i.e., their powers to protect the public health and safety – the legal basis for zoning laws) under HRS Chapter 46.[27] HRS §514A-1.6, passed by the Legislature in 2000, simply made this explicit in the condominium property regime law.[28]

a. DBEDT's Suggestions

DBEDT has suggested that: 1) the statutory language of HRS §514A-1.6 be retained; 2) HRS §514A-1.6 be amended to add language requiring conformance of condominium property regimes with HRS Chapter 205; 3) the statutory language of HRS §514A-45 be retained; 4) counties be afforded the opportunity to review condominium property regime site or parcel plans/maps prior to recordation so that any questions as to conformance with county codes can be examined prior to recordation and the establishment of ownership interests in the units created under a

[27] *See*, HRS §§46-1.5(13) and 46-4.

[28] The Commission incorporated HRS §514A-1.6 in Recodification Draft #1, §1-106(c). While it is somewhat duplicative of Recodification Draft #1, §1-106(b), HRS §514A-1.6 contains specific references to requirements for condominium conversion projects which should probably be included in the recodification. The Commission also added language to Recodification Draft #1 requiring that condominium property regime projects conform to HRS Chapter 205 (State Land Use Law).

condominium property regime; and 5) the Commission carefully examine how to effectively manage condominium property regimes on agricultural lands, and how State or county laws or codes should be amended to best address the issue.[29]

b. County of Hawaii's Suggestions

The County of Hawaii initially suggested that Hawaii's condominium law be amended to: 1) require county certification of compliance with applicable codes for all condominium projects before final public reports may be issued (not just condominium conversions, as is currently the case under HRS §514A-40); 2) require minimum value for condominium apartments (to prevent "toolshed" apartments); 3) explicitly require that condominium property regimes follow county subdivision codes; and 4) ensure that county planning departments are allowed to comment on notice of intention for all condominium projects, at an early stage.[30]

Ultimately, in September 2002, the County of Hawaii passed an ordinance purporting to "regulate CPRs that are the equivalent of subdivisions of land."[31] Whether the ordinance can survive legal and practical challenges remains to be seen.[32]

c. Analysis

DBEDT-OP, the County of Hawaii, and others have raised legitimate concerns over the current interplay between HRS Chapter 514A and state and county land use laws. The question remains how to properly address the problem. In crafting a provision to prevent abuse of the condominium property regimes law as it relates to underlying land use laws, the

[29] September 20, 2001 letter from DBEDT – Office of Planning to Gordon M. Arakaki.
[30] May 29, 2001 letter from County of Hawaii Planning Department to Mitchell A. Imanaka and Gordon M. Arakaki.
[31] Ordinance 02 111 (effective 9/25/02).
[32] In a series of meetings, e-mail, and letters, the Commission attempted to educate the County of Hawaii about condominium property regimes. However, many of our cautions went unheeded.

Commission (and ultimately the Legislature) should take the following factors into consideration:

- Purpose of Condominium Property Regime Law. As previously noted, a condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a community *governance* law. It is not a land *use* law (i.e., it does not govern what structures may be built on real property; separate state and county land use laws control – or should control – land use matters). (*See*, "Basic Concepts" discussion above.) As a consumer protection law, the primary purpose of Hawaii's current condominium property regimes law is to make sure that buyers know what they are buying. Theoretically, if a sophisticated buyer wants to take a chance on being able to get government approval to build a structure that is not allowed under State or county land use laws at the time of purchase, that should be the buyer's choice. The key is to give the buyer a chance to make an informed decision.

- Purpose of the Real Estate Commission. The Real Estate Commission is a consumer protection body established under HRS Chapter 467 (Real Estate Brokers and Salespersons) to regulate real estate licensees. The purpose of HRS Chapter 467 (and the Commission) is to protect the general public in its real estate transactions. Pursuant to HRS §467-3, the Real Estate Commission consists of nine members, at least four of whom must be licensed real estate brokers.

- Need for Appropriate and Consistent Lines of Authority. All parties need to make sure that the appropriate governmental entities enforce the appropriate laws. County land use agencies – i.e., planning and permitting departments – have the responsibility for ensuring that all proposed development projects comply with county land use laws. County councils have the authority to pass laws giving county land use

agencies the tools to ensure that any proposed condominium development complies with county land use laws.

- Timing. Under Hawaii's current law, condominiums are created upon proper filing with Bureau of Conveyances or Land Court. The Real Estate Commission's involvement begins when condominium units are offered for sale.

As the Commission continues its efforts to recodify Hawaii's condominium law, it has tried to keep the condominium law (and the Real Estate Commission) true to its purpose while making it clear that HRS Chapter 205 and county land use laws control land use matters.[33]

[33] Although ultimately not incorporated by the Commission, the overall approach taken by UCA/UCIOA (upon which Recodification Draft #1 is based) appeared to solve the problem. The Acts appear to contemplate that all condominium projects go through appropriate land use processes before recordation and sale unless, based on specific criteria, the Commission determines that a declaration may be recorded and units registered. UCA/UCIOA §2-101(b) prohibits the recordation (hence, creation) of a condominium declaration unless:

1) "[A]ll 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 (registered) engineer, surveyor, or architect;" or

2) "[T]he agency has approved the declaration or amendment in the manner prescribed in Section 5-103(b)."

UCA/UCIOA §5-103 allows a developer to record a condominium declaration for the purpose of creating a condominium in which the units are not substantially completed *if* the agency (i.e., the Real Estate Commission) determines, "on the basis of the material submitted by the declarant and any other information available to the agency, that there is a *reasonable basis to expect that the units to be conveyed will be completed by the declarant following conveyance*." [Emphasis added; *see*, UCA/UCIOA §5-103(c)] To help the Commission determine whether there is a "reasonable basis to expect that the units to be conveyed will be completed . . . following conveyance," UCA/UCIOA §5-103(b) requires the developer to submit the following:

(1) a verified statement showing all costs involved in completing the buildings containing those units;

(2) a verified estimate of the time of completion of construction of the buildings containing those units;

(3) satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;

(4) a copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;

(5) a 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;

(6) plans for the units conforming to the requirements of Section 2-109(c);

(7) if purchasers' funds are to be utilized for the construction of the condominium, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state which provides that:

(i) disbursements of purchasers' funds may be made from time to time to pay for construction of the condominium, architectural, engineering finance, and legal fees, and other costs for the completion of the condominium in proportion to the value of the work completed by the contractor as certified by an independent (registered) architect or engineer, or bills submitted and approved by the lender of construction funds or the escrow agent;

It does not appear to be necessary or appropriate in the recodified Hawaii condominium law to have blanket requirements that: 1) make the recordation of all condominium property regime declarations (and other applicable documents) contingent upon county certification of compliance with county land use laws, or 2) make the sale of any condominium units (currently allowed upon the Commission's issuance of an effective date for a project's preliminary, contingent final, or final public report) contingent upon county certification of compliance with county land use laws.

Finally, consistent with the principle that physically identical developments should be treated equally, the counties can simply draft land use ordinances governing the development of condominiums.[34] The ordinances should hold condominium developments to the same standards as physically identical developments under different forms of ownership.[35] In other words, the ordinances should require that condominium developments follow the same physical requirements (density, bulk, height, setbacks, water, sewerage, etc.) as physically identical

---

(ii) disbursement of the balance of purchasers' funds remaining after completion of the condominium shall be made only when the escrow agent or lender receives satisfactory evidence that the period for filing mechanic's and materialman's liens has expired, or that the right to claim those liens has expired, or that the right to claim those liens has been waived, or that adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and

(iii) any other restriction relative to the retention and disbursement of purchasers' funds required by the agency; and

(8) any other materials or information the agency may require by its rules.

[Note: These requirements are similar to those of HRS §514A-40 (Final Reports).]

[34] DBEDT – Office of Planning and the county planning directors object to the principal that physically identical developments should be treated equally (incorporated in §1-106(a) of Recodification Draft #1). *See*, September 19, 2002 letter from DBEDT – Office of Planning to Mitchell Imanaka and Gordon Arakaki. *See also*, County of Hawaii's Ordinance 02 111 (effective 9/25/02).

[35] An exception to the general rule that physically identical developments should be treated equally is the City and County of Honolulu's prohibition on condominiumizing Ohana units created pursuant to HRS §46-4. *See*, Revised Ordinances of Honolulu §21-8.20. An Ohana unit is a second home permitted on a lot where the underlying zoning normally allows only one house. Infrastructure adequacy and other conditions determine whether an Ohana unit may be built, and an applicant for an Ohana building permit must file a restrictive covenant agreeing *not* to register the property as a condominium and to abide by a family occupancy requirement. Ohana units are the result of the State Legislature's attempt to address a shortage of affordable housing by essentially forcing the counties to accept housing densities double that allowed by county zoning. Under this circumstance, it is appropriate for the counties to have the power to prohibit the condominiumization of Ohana units. The counties' authority to do so should be made clear in HRS §46-4, however, *not* the condominium property regime law.

developments under existing land use requirements (e.g., zoning, subdivision, building code, and cluster development laws). If a particular development proposal is inconsistent with state and county land use laws under forms of real estate ownership other than condominium ownership, the condominium property regimes law does not and will not somehow allow the project to be built.

Land *use* laws should control land *use* matters. The condominium property regimes law should continue to encompass and control land *ownership*, *consumer protection*, and condominium *community governance* matters. And just as it would be inappropriate for the Real Estate Commission to control land *use* matters, it would be inappropriate for land use agencies to control condominium property regime matters.

D. Public Outreach

The Commission has attempted to make the recodification process as accessible and transparent as possible for everyone affected by Hawaii's condominium property regimes law. We want to make sure that everyone can understand what we are doing and why at every step in the process.

To that end, the Commission has posted its recodification work plan and timetable, list of relevant laws, resource list, base working document (a comparison of the UCIOA, UCA, and HRS Chapter 514A), drafts of the recodified condominium law, and other related documents on our website (http://www.state.hi.us/hirec/). Wherever possible, we have provided hyperlinks to our source materials for easy access by any interested parties. We hope that this will help people understand how and why the recodification takes its ultimate form.

The Commission's Condominium Review Committee Chair and Recodification Attorney have also briefed and solicited input from many groups on the recodification, including the Hawaii State Bar Association Real Property & Financial Services Section Board of Directors, Condominium Council of Maui, Land Use Research Foundation of Hawaii,

Community Associations Institute – Hawaii Chapter, Lambda Alpha International – Aloha Chapter (an honorary land economics society), Mortgage Bankers Association of Hawaii, Appraisal Institute – Hawaii Chapter, realtor organizations, and more. (*See*, Appendix B: HRS Chapter 514A Recodification Plan, at pages 7 - 9.) The Condominium Review Chair and Recodification Attorney have also met and talked with over a hundred interested individuals, and will continue to do so throughout the recodification process.

The Commission plans to widen the breadth of our community reviewing the recodification with each successive draft.

Once draft #2 of the Hawaii condominium law recodification is completed and in an easily reviewable form, as noted in Part III. A. 2. above, the Commission will hold public hearings on the proposal in each of Hawaii's counties. After the public hearings, the Commission will incorporate appropriate changes and submit a final draft of the proposed condominium law recodification to the 2004 Legislature.

IV. Findings and Recommendations

A. Extension of HRS Chapter 514A Recodification Project

Many people have worked very hard over the past twenty-three months to get the recodification of Hawaii's condominium law to this point. The Commission particularly thanks the volunteers of the Blue Ribbon Recodification Advisory Committee for the hundreds of hours they have spent on this project.

In order to craft a law with the best chance of meeting its many (sometimes competing) goals, however, the Commission believes that more time is necessary to work on refining preliminary draft #2 of the condominium law recodification with a broader representation of our community. As the recodification has evolved, the complexity of the issues involved and the number of competing interests requiring resolution all indicate that the Commission should take additional time to produce a final recommendation to the Legislature.

Therefore, the Commission recommends that the position and funding authorized by Act 213 (SLH, 2000) for the HRS Chapter 514A recodification project be extended to complete the recodification project. A bill to do so has been drafted and attached as Appendix D.1. Thereafter, proposed recodification legislation should be submitted to the Regular Session of the 2004 Legislature. To conduct post-bill passage educational activities, the 2004 proposed recodification legislation should also contain provisions to extend the position and funding authorized by Act 213 (SLH 2000).

B. Extension of Act 39, SLH 2000

Act 39, SLH 2000, gives condominium associations a limited lien priority for common expense assessment liens under certain circumstances and with a number of limitations. Unless extended, the law expires on December 31, 2003, and the old provisions of HRS §514A-90 will automatically be reenacted.

Although at least 15 states have provisions giving limited lien priority for common expense assessment liens,[36] it is a controversial area with mortgage lending institutions on one side and condominium and community associations on the other.[37] The Commission continues to study this issue and has not yet reached a final conclusion on how to resolve it in the recodified condominium law.

Both the mortgage lending and condominium association communities have had two-and-a-half years of experience working under the current limited lien priority provisions of HRS §514A-90 and no major problems have been reported. It would not make sense to allow the law – and all of the processes developed to comply with the law – to expire, only to be resurrected in some form upon the adoption of the recodified condominium law.

Therefore, the Commission recommends extending the provisions of Act 39, SLH 2000, for a period of time to be determined by the Legislature.

C. Recodification PRELIMINARY Draft #2

Recodification PRELIMINARY Draft #2 is attached to this report as Appendix D.2.[38] Although it is premature to enact legislation on the draft, the Comments to almost every section of the draft provide a wealth of information about the source of the statutory language, what problems are meant to be addressed, and how the language should be interpreted. The Comments are essentially the Commission's section-by-section "findings and recommendations."

[36] Alaska, Colorado, Connecticut, Florida, Hawaii, Massachusetts, Minnesota, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, Washington, Washington D.C., and West Virginia have such community association assest protection lien provisions.
[37] For an excellent discussion of the issues involved with the UCA/UCIOA limited lien priority, *see*, Winokur, James L., "Meaner Lienor Community Associations: The 'Super Priority' Lien and Related Reforms Under the Uniform Common Interest Ownership Act," 27 Wake Forest L. Rev. 353 (1992).
[38] Recodification Draft #1, statutory text plus commentary, is available on the Commission's website at http://www.state.hi.us/hirec/.

IV. Conclusion

The Commission appreciates the commitment of time, interest, and energy that many people and organizations have put into this important effort. With everyone's help and cooperation, we look forward to crafting a condominium property law that we can all live and work with for at least the next 40 years.

Appendix A

ACT 213 H.B. NO. 2222

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Condominium property regimes currently play a major role in Hawaii's housing and will play an even larger role in the next century. Act 180, Session Laws of Hawaii 1961, was the initial law relating to condominium property regimes. The condominium property regimes law, chapter 514A, Hawaii Revised Statutes, is now approximately thirty-nine years old. The present law is the result of numerous amendments enacted over the years made in a piecemeal fashion and with little regard to the law as a whole.

Those who live and work with the law report that the condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micro-manages condominium associations. The law is also overly regulatory, hinders development, and ignores technological changes and the present day development process. However, the desire to modernize the law must be balanced by the need to protect the public and to allow the condominium community to govern itself.

Accordingly, the purpose of this Act is to update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law. This Act appropriates funds for a review of the condominium property regimes law and related laws and issues.

SECTION 2. The real estate commission shall conduct a review of Hawaii's condominium property regimes law, make findings and formulate recommendations for recodification of the law, and develop draft legislation consistent with its review and recommendations. The review shall include an examination of the condominium and common interest laws of other states, the Uniform Common Interest Act, and other related laws and issues, such as those related to zoning, use of agricultural lands for condominiums, and subdivision of land. In addition, the commission shall:

(1) Consult with public and private organizations and individuals whose duties and interests are affected by the condominium property regimes

law, including the department of commerce and consumer affairs, and other state, county, and private agencies and individuals; and

(2) Conduct a public hearing for the purpose of receiving comments and input on the condominium property regimes law and related laws and issues.

SECTION 3. The funds appropriated by this Act shall be expended to establish a temporary full-time condominium specialist position, exempt from chapters 76 and 77, Hawaii Revised Statutes, that shall be filled by a licensed attorney. The condominium specialist shall have legal, professional, administrative, and analytical work experience, preferably in condominium law, statutory drafting, and dealing effectively with diverse organizations, and shall have demonstrated ability to plan and coordinate activities and deal effectively with others. The funds appropriated by this Act shall also be expended for administration, equipment, and supplies related to the review.

SECTION 4. The real estate commission shall submit a progress report, including any draft legislation to the legislature no later than twenty days prior to the convening of the regular sessions of 2001 and 2002. The real estate commission shall submit a final report of the review, including findings and recommendations of the commission, and draft legislation to the legislature no later than twenty days prior to the convening of the regular session of 2003.

SECTION 5. There is appropriated out of the condominium management education fund the sum of $85,000 or so much thereof as may be necessary for fiscal year 2000-2001 to conduct a comprehensive review of the condominium property regimes law, including the establishment of one full-time temporary condominium specialist position in the department of commerce and consumer affairs, and other current expenses.

SECTION 6. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

Appendix B

HRS Chapter 514A Recodification Plan

I. Purpose of Recodification

Pursuant to Act 213, Session Laws of Hawaii (SLH) 2000, the purpose of recodifying Hawaii Revised Statutes (HRS) Chapter 514A is to "update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law."

II. Act 213, SLH 2000 – Basic Requirements

A. Review laws and uniform acts for guidance in the recodification process.

1. Examine condominium and common interest community laws of other jurisdictions.

2. Examine the Uniform Common Interest Ownership Act, the Uniform Condominium Act, the Uniform Planned Community Act, and other uniform laws that may be helpful in pursuing recodification.
[Note: Members of state and national organizations will be consulted about their practical experience with the uniform common interest community laws.]

3. Examine other related laws and issues, such as those related to mandatory seller disclosures, zoning, use of agricultural lands for condominiums, and subdivision of land.

B. Solicit input from organizations and individuals affected by Hawaii's condominium property regimes (CPR) law.

1. Consult with public and private organizations and individuals whose duties and interests are affected by the CPR law (i.e., stakeholders), including the Department of Commerce and Consumer Affairs, and other state, county, and private agencies and individuals.

2. Conduct a public hearing for the purpose of receiving comments and input on the CPR law and related laws and issues.
[Note: The Real Estate Commission plans to conduct a series of public hearings, rather than the single public hearing required by Act 213, to better solicit input from stakeholders – particularly those on the Neighbor Islands.]

III. Additional Guidelines

A. Balance the desire to modernize Hawaii's CPR law with the need to protect the public and to allow the condominium community to govern itself.

B. Understand the historical perspective regarding the development of Hawaii's CPR law, and use that perspective to help fashion the new law.

C. Engage the participation of stakeholders early in the recodification process.

IV. Practical/Operational Considerations

A. Staffing

1. Act 213, SLH 2000, authorized the establishment of one full-time temporary condominium specialist position to conduct the CPR law recodification. The position was not filled until December 19, 2000.

2. The position and funding authorized by Act 213, SLH 2000, should be extended to complete the recodification project and cover post-passage educational activities.

B. Timeframe

1. Act 213, SLH 2000, requires the Real Estate Commission to submit a final report on the CPR law review and draft legislation to the Legislature at least 20 days before the convening of the 2003 regular session.

2. A first draft of the recodified condominium law based on the Uniform Condominium and Uniform Common Interest Ownership Acts was completed in January 2002. However, based on feedback the Commission received from a Blue Ribbon Recodification Advisory Committee, realtors, property managers, and others, HRS Chapter 514A (rather than the uniform laws) is used as the base for most of the preliminary draft #2 of the recodification (i.e., general provisions; creation, alteration, and termination of condominiums; protection of purchasers; administration and registration of condominiums; and condominium management education fund). The Uniform Condominium Act and Uniform Common Interest Ownership Act – along with appropriate provisions of HRS Chapter 514A, other jurisdictions' laws, and the Restatement of the Law, Third, Property (Servitudes) – remain as the base for condominium governance matters. Since most condominium property regime stakeholders have not had the opportunity to review and comment on preliminary draft #2, the Commission believes that it should take additional time to work with the public on the recodification in its present form.

Goals/Actions to be Taken	Target Dates	Comments
Goal I: Research Laws of Other Jurisdictions, Uniform Acts, and Commentary to gain an Understanding of Relevant Issues and Approaches to CPR Regulation		
A. Examine condominium and common interest community laws of other jurisdictions; compare with HRS Chapter 514A.	1/2/01 – 3/1/01; ongoing	See Attachment #1, "Relevant Laws"

Goals/Actions to be Taken	Target Dates	Comments
B. Examine the Uniform Common Interest Ownership Act (UCIOA), Uniform Condominium Act (UCA), Uniform Planned Community Act (UCPCA); compare with HRS Chapter 514A.	1/2/01 – 3/1/01	Websites: http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ucioa94.htm http://www.law.upenn.edu/bll/ulc/fnact99/1980s/uca80.htm http://www.law.upenn.edu/bll/ulc/fnact99/1980s/upca80.htm *Section by section comparison of UCIOA, UCA, and HRS Chpt. 514A completed. (✓3/8/01; Word document)*
1. Examine other jurisdictions' practical experience with the uniform common interest community laws.	ongoing	Consult with representatives from state and national organizations having practical experience with the uniform common interest community laws. *Attended Community Associations Institute National Conferences and Forums 5/3-5/5/01, 10/18-10/20/01, and 5/2-5/4/02. Met with experts and practitioners from many other jurisdictions.*
C. Examine other related laws (including case law) and issues, such as those related to mandatory seller disclosures, zoning, use of agricultural lands for condominiums, and subdivision of land.	1/2/01 – 3/1/01; ongoing	See Attachment #1, Relevant Laws"
D. Research the policy basis for HRS 514A and its amendments.	1/2/01 – 3/1/01; ongoing	See Attachment #1, "Relevant Laws"
E. Examine Attorney General's opinions relating to various sections of HRS Chapter 514A.	1/2/01 – 3/1/01	*Hard copy of AG opinions (8/8/77-present) in REC files reviewed. (✓2/20-2/21/01)* *Eventually, the Commission should scan and post AG opinions as part of its virtual bookshelf. Currently, only formal AG opinions are posted on the AG's website (1992-2000, http://www.state.hi.us/ag/optable/table.htm) and the Hawaii State Bar Association's website (1987-1992, http://hsba.org/Hawaii/Admin/Ag/agindex.htm). None of these formal opinions specifically relate to HRS Chapter 514A.* *✓2/7/02 – Hard copy of AG opinions (8/8/77-3/5/98) in REC files summarized and photocopied for distribution to Blue Ribbon Recodification Advisory Committee. Both the summary and actual AG opinions should be posted on the REC website.*
F. Research treatises, articles, commentary, and other such materials to gain insight into alternative approaches to CPR regulation.	1/2/01 – 3/1/01; ongoing	See Attachment #2, "Resource List"

Goals/Actions to be Taken	Target Dates	Comments
Goal II: Determine and Prioritize Areas of Focus		Answer the question: What do we want to see in the recodified Hawaii CPR law?
A. Review relevant literature.	12/19/00 – 6/1/01; ongoing	See Attachment #2, "Resource List"
B. Determine initial areas of focus; prioritize.	12/19/00 – 3/1/01	The 1995 Real Estate Commission's report to the Legislature on "A Plan to Recodify Chapter 514A, Hawaii Revised Statutes, Condominium Property Regime" identified (as a "partial listing") the following areas for research/statutory amendments:
		1. Registration Issues: Definition of "apartment;" definition of "developer;" contents of Declaration; circumstances requiring registration of a condominium project; exemptions from registration; circumstances requiring the issuance of public reports; disclosures on resales of apartments; agricultural condominiums and the respective county codes; performance bond.
		2. Management Issues: Association mailouts and notices of meetings (i.e., in removal of directors, board elections, proxy solicitations); retroactivity of certain statute provisions (i.e., bylaw requirements); bylaw amendments; managing agents competencies real estate brokers license requirement; directors' duties; directors' liability; voting in conflict of interests situations; budgeting and reserves (board's power to assess); election and removal of directors; renting common elements; proxy forms and solicitation; Robert's Rules of Order – Uniform Application; officers' requirements; owner's access to association records not specifically enumerated in the statute; financial controls and handling of association funds.
C. Work with DCCA management and staff, Real Estate Commission members, and other stakeholders to refine areas of focus and priorities. • Meet regularly with DCCA Real Estate Branch Supervising Executive Officer and/or Senior Condominium Specialist.	12/19/00 – 6/1/01 12/19/00 – 6/30/04	Make initial determinations, then adjust as necessary throughout the recodification process. Daily meetings for first six months. Meet as appropriate after that.

Goals/Actions to be Taken	Target Dates	Comments
• Meet regularly with Real Estate Commission Condominium Review Committee (CRC) Chair.	12/19/00 – 6/30/04	Bi-weekly meetings with CRC Chair for first six months. Meet as appropriate after that. Discussed possible additional goals: Examine interplay of Hawaii's CPR law with new technologies (e.g., Internet sales of timeshares); improve on-line capabilities in the condominium arena.
• Meet with deputy attorney generals (past and present) regarding their experience with HRS Chapter 514A.	12/19/00 – 6/1/01; ongoing	Spoke informally with past and present deputy attorney generals. Will intensify discussions after second draft is completed.
Goal III: Get input from organizations and individuals affected by the CPR law (i.e., stakeholders)		
A. Compile list of organizations and individuals to be contacted regarding recodification of HRS Chapter 514A.	1/2/01; ongoing updates	The 1995 Real Estate Commission's report to the Legislature on "A Plan to Recodify Chapter 514A, Hawaii Revised Statutes, Condominium Property Regime" identified (as a "partial listing") the following "interested stakeholders who should be consulted on the recodification": 1. Regulators directly involved with Chapter 514A (Real Estate Commission members, Real Estate Commission staff involved with condominium governance and project registration, DCCA Director, Professional and Vocational Licensing Division Administrator and staff who may be impacted by the recodification, Regulated Industries Complaints Office). 2. Other State and county agencies' regulators directly or indirectly involved with Chapter 514A (State and county departments including Planning and Land Utilization – now combined under Planning and Permitting, State Bureau of Conveyances, Hawaii Housing Authority – now combined under Housing and Development Corporation of Hawaii, other 49 state regulators (where applicable) involved with condominium governance and project registration. 3. Legislators (chairs of Senate and House Consumer Protection Committees, Housing Committees, Judiciary Committees, and Finance/Ways and Means Committees).

Goals/Actions to be Taken	Target Dates	Comments
		4. Representatives from various groups and organizations involved with condominium project registration and governance matters (Real Estate Commission's Condominium Project Review Consultants, Hawaii State Bar Association Real Property and Financial Services Section, Hawaii Chapter of the Community Association Institute, Hawaii Council of Association of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners Association, Hawaii Real Estate Research and Education Center, Hawaii member of the National Conference of Commissioners on Uniform State Laws, Hawaii member of the Restatement of the Law of Property 3rd, Hawaii Association of Realtors® including its island boards, State lending institutions, mortgage companies, escrow companies, insurance companies). To the stakeholders listed by the Real Estate Commission in its 1995 recodification plan, we should add other representatives of state professional, industry, and trade organizations, such as the Building Industry Association, Land Use Research Foundation, Mortgage Bankers Association, Hawaii Bankers Association, Hawaii Developers Council, Condominium Council of Maui, and more.
B. Request comments of those organizations and individuals listed above regarding existing condominium law and practices and suggestions for change.	3/31/01; ongoing	This "request for comments" will be in addition to the input regularly solicited by the Real Estate Commission Condominium Review Committee as part of its monthly public meetings. ✓ *4/16/01, request for comments mailed out to condominium law recodification stakeholders.* *[See also, under Goal IV.E. below, various speaking engagements.]* Recodification of HRS Chapter 514A is (and has been for some time) a permanent agenda item for the Condominium Review Committee's meetings. The Committee continues to accept comments on the recodification from any organizations or individuals wishing to address the Committee at its regular meetings. In addition, comments are routinely requested in the *Hawaii Condominium Bulletin* and the *Hawaii Real Estate Commission Bulletin*.
C. Conduct public hearings to receive comments and input on the CPR law and related laws and issue.	Between 3/1/03 and 4/30/03	In addition to the single public hearing required by Act 213, SLH 2000, the Real Estate Commission plans to conduct public hearings on each of the Neighbor Islands. This may be done in conjunction with

Goals/Actions to be Taken	Target Dates	Comments
		regularly scheduled Commission meetings.
Goal IV: Keep stakeholders informed of progress on the recodification of Hawaii's CPR law		
A. Use the Real Estate Commission's website as the primary means of keeping stakeholders informed of progress on recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	Website: http://www.state.hi.us/hirec/
B. Develop printed material for those who do not have access to the Internet.	1/2/01 – 6/30/04	Address the "digital divide" issue.
C. Use the *Hawaii Condominium Bulletin* as another vehicle for keeping stakeholders informed of progress on the recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	*February 2001 issue at page 5* *June 2001 issue at page 5* *September 2001 issue at pages 1 and 7* *December 2001 issue at page 1* *March 2002 issue at page 1* *July 2002 issue at pages 1 and 6* *October 2002 issue at pages 1 and 7*
C.1 Use the *Hawaii Real Estate Commission Bulletin* as another vehicle for keeping stakeholders informed of progress on the recodification of HRS Chapter 514A.	1/2/01 – 6/30/04	*February 2001 issue at page 11* *March 2002 issue at page 8*
D. Develop articles and opinion/editorial pieces for local newspapers when appropriate.	1/2/01 – 6/30/04	*"Rewriting Hawaii's Condominium Property Act," Ka Nu Hou – The Newsletter of the Real Property & Financial Services Section of the Hawaii State Bar Association, March 2001 at pages 1-2* *"Industry makes move to redefine 1960s condo law," Pacific Business News, June 8, 2001 at page 40* *"Commissioner's Corner – Condominium Recodification and New Condo Laws," Hawaii REALTOR® Journal, September 2002, at page 2*
E. Use the Real Estate Commission Condominium Review Committee's monthly public meetings, Condominium Speakership Program, Condominium Specialists Office for the Day (on Neighbor Islands) Program, and Interactive Participation with Organizations Program as means to keep stakeholders informed of progress on the recodification of HRS Chapter 514A.	Ongoing programs	*2/16/01 – Speak with Hawaii State Bar Association Real Property & Financial Services Section Board of Directors (approximately 20 regular attendees) [Note: Continue to sit in on monthly HSBA-RPFS Board meetings]* *3/28/01 – Speak at Condominium Council of Maui's Annual Meeting (approximately 120 attendees)* *7/2/01 – Speak at Land Use Research Foundation Board Meeting*

Goals/Actions to be Taken	Target Dates	Comments
		(approximately 35 attendees) *7/13/01 – Speak at West Oahu Realty, Inc. Meeting (approximately 15 attendees)* *7/19/01 – Speak at Community Associations Institute – Hawaii Chapter Seminar (approximately 100 attendees)* *7/24/01 – Speak at Chun, Kerr, Dodd, Beaman & Wong in-house meeting (approximately 8 attendees)* *9/7/01 – Speak at Lambda Alpha International – Aloha Chapter (an honorary land economics society) Meeting (approximately 35 attendees)* *9/11/01 – Speak at Waianae Realtor/Lender Educational Presentation sponsored by Title Guaranty, Waipahu Branch (approximately 40 attendees)* *9/26/01 – Speak at Mortgage Bankers Association of Hawaii Meeting (approximately 10 attendees)* *9/28/01 – Speak at Herbert K. Horita Realty, Inc. Meeting (approximately 25 attendees)* *11/27/01 – Speak at Mortgage Bankers Association of Hawaii Meeting (approximately 50 attendees)*
		1/4/02 – Speak at Real Estate Commission Community Outreach Meeting (and earlier committee meetings) on Maui (approximately 15 attendees) *3/22/02 – Speak at Condominium Council of Maui's Annual Meeting (approximately 100 attendees) [Note: Wrote article for Condominium Council of Maui's Summer 2002 Newsletter]* *5/23/02 – Speak at Business Development Meeting sponsored by City Bank (approximately 35 attendees)* *6/14/02 – Speak at Real Estate Commission Community Outreach Meeting on Kauai (approximately 10 attendees)* *6/24/02 – Speak at meeting with Land Use Commission, Dept. of Business, Economic Development, & Tourism – Office of Planning, and County Planning Directors (approximately 10 attendees)* *7/18/02 – Speak at Community Associations Institute – Hawaii*

Goals/Actions to be Taken	Target Dates	Comments
		Chapter Seminar (approximately 80 attendees) *8/5/02 – Speak at Hawaii Developers Council Meeting (approximately 30 attendees) [Note: Primarily small developers]* *11/12/02 – Speak at Appraisal Institute-Hawaii Chapter Meeting (approximately 30 attendees)* *(Also met with, and will continue to meet and talk with, various interested individuals.)*
Goal V: Draft Recodification Legislation for 2004 Regular Session		
A. Begin actual drafting – recodification of HRS Chapter 514A	7/1/01	The Commission is targeting production of a series of HRS Chapter 514A recodification drafts. Each draft will be posted/circulated for comment among stakeholders until a final draft is submitted to the Legislature. *[Note: The Commission has decided to submit proposed legislation to the 2004 Legislature.]*
B. Circulate first draft of recodified HRS Chapter 514A.	1/1/02	Note: As initial drafts of individual sections are completed, they should be circulated among the DCCA Real Estate Branch Supervising Executive Officer, Senior Condominium Specialist, and CRC Chair for comment/revision. The draft should then be reviewed by the CRC and Real Estate Commission for approval to circulate/post as an initial "working draft." *✓1/31/02 – First draft of recodification posted on Real Estate Commission website.*
C. Convene Blue Ribbon Recodification Advisory Committee to review and revise drafts of HRS Chapter 514A recodification.	1/15/02 – 12/31/02; ongoing	The Commission plans to tap into our community's collective expertise by asking various individuals to carefully and critically review our drafts of the HRS Chapter 514A recodification. The first step in this process is the convening of a Blue Ribbon Recodification Advisory Committee (comprised of attorneys whose practices, collectively, cover the full spectrum of condominium law) to review and revise drafts of the recodification. The Blue Ribbon Recodification Advisory Committee will meet monthly from January through at least December 2002. The Commission plans to widen the breadth of our community reviewing the recodification with each successive draft.

Goals/Actions to be Taken	Target Dates	Comments
		✓ *1/31/02-present – The Blue Ribbon Recodification Advisory Committee and separate subject matter subcommittees have met at least once-a-month. In the month of October 2002, members met twice-a-week for half-day sessions to work on the second draft of the recodification.* *Note: The Uniform Condominium Act (1980), with appropriate changes incorporated from the Uniform Common Interest Ownership Act (1994), served as the basis for the first draft of the recodification. Where appropriate, we also incorporated provisions from HRS Chapter 514A, other jurisdictions' laws, and the Restatement of the Law, Third, Property (Servitudes). However, based on feedback the Commission received from the advisory committee, realtors, property managers, and others, HRS Chapter 514A (rather than the uniform laws) is used as the base for most of the recodification preliminary draft #2 (i.e., general provisions; creation, alteration, and termination of condominiums; protection of purchasers; administration and registration of condominiums; and condominium management education fund). The Uniform Condominium Act and Uniform Common Interest Ownership Act – along with appropriate provisions of HRS Chapter 514A, other jurisdictions' laws, and the Restatement of the Law, Third, Property (Servitudes) – remain as the base for condominium governance matters.*
C.1 Public Hearings on second draft of HRS Chapter 514A recodification.	3/1/03 – 4/30/03	The Real Estate Commission plans to hold public hearings on the second draft of the HRS Chapter 514A recodification in each of the counties. Further review, revision, and refinement will follow.
D. Seek Attorney General's Office review of draft #3, HRS Chapter 514A recodification.	8/1/03	If the Commission's condominium law recodification is to be submitted to the Governor for inclusion in the Administration's legislative package, this review by the Attorney General's Office would be to flag any problems the Administration may have with the recodification. *[Note: The Commission may choose to submit the proposed legislation independently – directly to the Legislature.]*
E. Submit draft legislation to Governor for inclusion in Administration's 2004 legislative package.	10/1/03	The Attorney General's Office, the Department of Budget and Finance, and the Governor's executive staff will review the proposed legislation. They may suggest revisions. *[Note: The Commission may choose to submit the proposed legislation independently – directly to the Legislature.]*

Relevant Laws

(Partial list – to be updated throughout recodification process)
("Point and click" hyperlinks to websites are available on electronic versions of this document.)

Hawaii Laws – State

Chapter 514A, Hawaii Revised Statutes – Condominium Property Regimes (http://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0514A/)

Hawaii Administrative Rules, Title 16, Chapter 107, Proposed Rules Relating to Condominium Property Regimes

Chapter 414D, Hawaii Revised Statutes – Nonprofit Corporation Act (effective7/1/02) (http://www.capitol.hawaii.gov/hrscurrent/Vol08_Ch0401-0429/HRS0414D/)

Chapter 415B, Hawaii Revised Statutes – Nonprofit Corporation Act (effective until 6/30/02) (http://www.capitol.hawaii.gov/hrscurrent/Vol08_Ch0401-0429/HRS0415B/)

Chapter 421I, Hawaii Revised Statutes – Cooperative Housing Corporations (http://www.capitol.hawaii.gov/hrscurrent/Vol08_Ch0401-0429/HRS0421I/)

Chapter 421J, Hawaii Revised Statutes – Planned Community Associations (http://www.capitol.hawaii.gov/hrscurrent/Vol08/hrs421j/)

Chapter 484, Hawaii Revised Statutes – Uniform Land Sales Practices Act (http://www.capitol.hawaii.gov/hrscurrent/Vol11_Ch0476-0490/HRS0484/)

Chapter 508D, Hawaii Revised Statues – Mandatory Seller Disclosures in Real Estate Transactions (http://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0508D/)

Chapter 514E, Hawaii Revised Statutes – Time Shares (http://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0514E/)

Act 180 (Session Laws of Hawaii, 1961) – (condominium enabling law, Chapter 170A, Revised Laws of Hawaii)

Act 101 (Session Laws of Hawaii, 1963) – (incorporated into Hawaii's Horizontal Property Act provisions recommended by the Federal Housing Administration condominium model state statute and recommendations from New York legislation)

Act 16 (Session Laws of Hawaii, 1968) – (condominium law renumbered to Chapter 514)

Act 98 (Session Laws of Hawaii, 1977) – (condominium law restatement without substantive change to Chapter 514; renumbered to Chapter 514A)

Act 116 (Session Laws of Hawaii, 1979) – (amended definition of "apartment owner")

Act 213 (Session Laws of Hawaii, 1984) – (added section regarding "managing agents")

Act 65 (Session Laws of Hawaii, 1988) – (condominium law renamed "Condominium Property Act")

Act 185 (Session Laws of Hawaii, 1995) – (Legislature directs Hawaii Real Estate Commission to establish a plan for recodifying condominium law to make it easier to understand and follow)

Act 303 (Session Laws of Hawaii, 1996) – (prohibiting restrictions on the use of residential property as family child care homes; exempts condominiums, coops, certain townhouses, etc.; directs Attorney General to submit report to 1997 Legislature

discussing tort liability, Americans with Disabilities Act, and any constitutional concerns regarding exemptions)

Act 132 (Session Laws of Hawaii, 1997) – (establishing Hawaii's planned community associations law)

Act 135 (Session Laws of Hawaii, 1997) – (allowing for contingent final public reports)

Act 39 (Session Laws of Hawaii, 2000) – (giving condominium associations a limited lien priority for common expense assessment liens)

Act 251 (Session Laws of Hawaii, 2000) – (requiring condominiums to conform to county land use laws)

Act 105 (Session Laws of Hawaii, 2001) – (adopting new Hawaii Nonprofit Corporations Act, effective 7/1/2002)

Act 232 (Session Laws of Hawaii, 2001) – (requiring mediation of certain condominium disputes)

Act 265 (Session Laws of Hawaii, 2001) – (adopting Uniform Arbitration Act)

Act 17 (Session Laws of Hawaii, 2002) – (amending flood insurance requirements)

Act 129 (Session Laws of Hawaii, 2002) – (reducing requirements for managing agents who hold active real estate brokers licenses under HRS Chapter 467)

Act 137 (Session Laws of Hawaii, 2002) – (adding provisions for telecommunications equipment)

Act 140 (Session Laws of Hawaii, 2002) – (requiring prior written notice of assessments for cost of providing information)

Act 141 (Session Laws of Hawaii, 2002) – (allowing 365 days for bylaws amendments proposed by either boards of directors or volunteer apartment owners' committees)

Act 142 (Session Laws of Hawaii, 2002) – (clarifying responsibility for mediation costs)

Act 204 (Session Laws of Hawaii, 2002) – (various amendments related to condominium units held as timeshares)

Hawaii Laws – Counties

City & County of Honolulu

Revised Ordinances of the City & County of Honolulu 1990 (ROH) (Note that 1990 does not represent the frequency of update; it refers to the last time the ordinances were reorganized and reformatted.) – (http://www.co.honolulu.hi.us/refs/roh/index.htm)

ROH Chapter 21 – Land Use Ordinance (http://www.co.honolulu.hi.us/refs/roh/21_990.htm)

ROH Chapter 22 – Subdivision of Land (http://www.co.honolulu.hi.us/refs/roh/22.htm)

ROH Chapter 38 – Residential Condominium, Cooperative Housing and Residential Planned Development Leasehold (http://www.co.honolulu.hi.us/refs/roh/38.htm)

Hawaii County

1983 Hawaii County Code – Revised and Republished 1995 – (http://www.co.hawaii.hi.us/countycode/haw-toc.html) (website current through November 2000)

Ordinance No. 02-111 (effective 9/25/02; attempts to regulate condominium property regimes)

Kauai County

Kauai County Code 1987, as amended

Maui County

Maui County Code – (http://ordlink.com/codes/maui/index.htm) (website current through August 2002)

Uniform Laws

Uniform Common Interest Ownership Act – (http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ucioa94.htm)

Uniform Condominium Act – (http://www.law.upenn.edu/bll/ulc/fnact99/1980s/uca80.htm)

Uniform Planned Community Act – (http://www.law.upenn.edu/bll/ulc/fnact99/1980s/upca80.htm)

Hawaii Caselaw

Aquarian Foundation v. AOAO of Waikiki Park Heights, 2001 Haw. LEXIS 97 (2001)

Arbitration of the Board of Directors of the AOAO of Tropicana Manor v. Jeffers, 73 Haw. 201, 830 P.2d 503 (1992)

Arthur v. Sorensen, 80 Haw. 159, 907 P.2d 745 (1995)

AOAO of the Magellan v. Sequito, 6 Haw.App. 284, 719 P.2d 746 (1986)

Association of Owners of Kukui Plaza v. City and County of Honolulu, 7 Haw. App. 60, 742 P.2d 974 (1987)

Board of Directors of the AOAO of the Discovery Bay Condominium v. United Pacific Insurance Co., et al., 77 Haw. 358, 884 P.2d 1134 (1994)

Dilsaver v. AOAO of Kona Coffee Villas, 92 Haw. 206, 990 P.2d 104 (1999)

DiSandro v. Makahuena Corp., 588 F.Supp. 889 (D.Hawaii 1984)

Fong v. Hashimoto, 92 Haw. 637, 994 P.2d 569 (Haw. Ct. App. 1998)

Fong v. Hashimoto, 92 Haw. 568, 994 P.2d 500 (2000)

Hiner v. Hoffman, 90 Haw. 188, 977 P.2d 878 (1999)

Kole v. Amfac, Inc., 69 Haw. 530, 750 P.2d 929 (1988)

Nakamura v. Kalapaki Assocs., 68 Haw. 488, 718 P.2d 1092 (1986) [Note: Based on HRS §514A-66, which was repealed by Act 58 (SLH, 1984)]

Pelosi v. Wailea Ranch Estates, 91 Haw. 522, 985 P.2d 1089 (Haw. Ct. App. 1999)

Penny v. AOAO of Hale Kaanapali, 70 Haw. 469, 776 P.2d 393 (1989)

Reefshare, Ltd., and AOAO of Kona Reef v. Nagata, et al., 70 Haw. 93, 762 P.2d 169 (1988)

Sandstrom v. Larson, 59 Haw. 491, 583 P.2d 971 (1978)

Schmidt v. The Board of Directors of the AOAO of the Marco Polo Apartments, et al., 73 Haw. 526, 836 P.2d 479 (1992)

State Savings & Loan Association, A Corporation v. Kauaian Development Company, Inc., Kauaian Land Company, Inc., et al., 50 Haw. 540, 445 P.2d. 109 (1968)

State Savings & Loan Association, A Corporation v. Kauaian Development Company, Inc., Kauaian Land Company, Inc., et al., 62 Haw. 188, 613 P.2d 1315 (1980)

Other Jurisdictions' Laws

Arizona

Generally, *see* Title 33, Arizona Revised Statutes – Property (http://www.azleg.state.az.us/ars/33/title33.htm)

Title 33, Chapter 9, Arizona Revised Statutes – Condominiums

Title 33, Chapter 16, Arizona Revised Statutes – Planned Communities

California

Generally, *search* California Codes – (http://www.leginfo.ca.gov/calaw.html)

(Note: The full text of all 29 California codes is available at this site. The primary statutes governing common interest developments in California are the Davis-Stirling Act (Civil Code §§1350-1376), the Nonprofit Corporation Law, and the Subdivided Lands Act. Do keyword searches to find other laws related to condominiums. In order to download the entire code, you would retrieve groupings of code sections based on the table of contents code structure.)

Florida

Generally, *see* Title XL, The 2000 Florida Statutes – Real and Personal Property (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Index&Title_Request=XL#TitleXL)

Chapter 718, The 2000 Florida Statutes – Condominium Act (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0718/titl0718.htm)

Chapter 719, The 2000 Florida Statutes – Cooperatives (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0719/titl0719.htm&StatuteYear=2000&Title=%2D%3E2000%2D%3EChapter%20719)

Chapter 720, The 2000 Florida Statutes – Homeowners' Associations (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0720/titl0720.htm&StatuteYear=2000&Title=%2D%3E2000%2D%3EChapter%20720)

Illinois

Generally, *see* Chapter 765, Illinois Compiled Statutes – Property (http://www.legis.state.il.us/ilcs/ch765/ch765actstoc.htm)

Chapter 765, ILCS 605, Illinois Compiled Statutes – Condominium Property Act (http://www.legis.state.il.us/ilcs/ch765/ch765act605.htm)

Maryland

Generally, Generally, *search* Maryland Code – (http://mlis.state.md.us/cgi-win/web_statutes.exe)

(Note: The full text of the Maryland Code is available at this site. Do keyword searches to find laws related to condominiums.)

Nevada

Generally, *see* Title 10, Nevada Revised Statutes – Property Rights and Transactions

Chapter 116, Nevada Revised Statutes – Common-Interest Ownership (Uniform Act) (http://www.leg.state.nv.us/NRS/NRS-116.html)

Chapter 117, Nevada Revised Statutes – Condominiums (http://www.leg.state.nv.us/NRS/NRS-117.html)

New York

Generally, *see* Chapter 50, New York State Consolidated Laws – Real Property Law (http://assembly.state.ny.us/cgi-bin/claws?law=99&art=1)

Article 9-B, New York State Consolidated Laws – Condominium Act (http://assembly.state.ny.us/cgi-bin/claws?law=99&art=12)

Virginia

Generally, *see* Title 55, Code of Virginia – Property and Conveyances (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5500000)

Also, *search* Code of Virginia – (http://leg1.state.va.us/000/src.htm) (Results of "condominium" word search: http://leg1.state.va.us/000/lst/LS102369.HTM)

(Note: Virginia's condominium law served as a model law for UCIOA)

Title 55, Chapter 4.1, Code of Virginia – Horizontal Property Act (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000040000010000000)

Title 55, Chapter 4.2, Code of Virginia – Condominium Act (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000040000020000000)

Title 55, Chapter 26, Code of Virginia – Property Owners' Association Act (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000260000000000000)

Title 55, Chapter 27, Code of Virginia – Virginia Residential Property Disclosure Act (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000270000000000000)

Title 55, Chapter 29, Code of Virginia – Common Interest Community Management Information Fund (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC550000000290000000000000)

Washington

(Note: You will probably need to copy and paste the links to Title 64, Chapters 64.32, 64.34, and 64.38 into the address line of your web browser. The website address' use of certain characters caused problems establishing a hyperlink in this document. It may be easier simply to click on the link to the entire Revised

Code of Washington at: http://www.leg.wa.gov/pub/rcw/ and navigate your way to Title 64, Chapters 64.32 et seq.)

Generally, *see* Title 64, Revised Code of Washington – Real Property and Conveyances (http://www.leg.wa.gov/pub/rcw/rcw%20%2064%20%20TITLE/rcw%20%2064%20%20%20TITLE/rcw%20%2064%20%20%20%20TITLE.htm)

Chapter 64.32, Revised Code of Washington – Horizontal Property Regimes Act (http://search.leg.wa.gov/wslrcw/RCW%20%2064%20%20TITLE/RCW%20%2064%20.%2032%20%20CHAPTER/RCW%20%2064%20.%2032%20%20chapter.htm)

Chapter 64.34, Revised Code of Washington – Condominium Act (http://search.leg.wa.gov/wslrcw/RCW%20%2064%20%20TITLE/RCW%20%2064%20.%2034%20%20CHAPTER/RCW%20%2064%20.%2034%20%20chapter.htm)

Chapter 64.38, Revised Code of Washington – Homeowners' Associations (http://search.leg.wa.gov/wslrcw/RCW%20%2064%20%20TITLE/RCW%20%2064%20.%2038%20%20CHAPTER/RCW%20%2064%20.%2038%20%20chapter.htm)

Resource List

(Alphabetical, by Author)
(Partial list – to be updated throughout recodification process)
("Point and click" hyperlinks to websites are available on electronic versions of this document.)

Behrens, Peter C.; *Condominium Management in Hawaii: The Role of the Management Agreement*, Hawaii Real Estate Research and Education Center, University of Hawaii at Manoa (December 1990).

Bruce, Jon W.; "The Role Uniform Real Property Acts Have Played in the Development of American Land Law: Some General Observations," 27 Wake Forest L. Rev. 331 (1992).

California Law Revision Commission, Study H-850.
(ftp://clrc.ca.gov/pub/Study-H-RealProperty/H850-CommonInterestDevel/)

California Law Revision Commission; French, Susan F.; *Background Study: Scope of Study of Laws Affecting Common Interest Developments*, Study H-850 (November 2000).
(ftp://clrc.ca.gov/pub/Study-H-RealProperty/H850-CommonInterestDevel/BKST-811-French-CID-Scope.pdf)

California Research Bureau, California State Library; Dunstan, Roger; Swenson, Jennifer; *Construction Defect Litigation and the Condominium Market* (November 1999).
(http://www.library.ca.gov/crb/99/notes/v6n7.pdf)
(Generally: http://www.library.ca.gov/html/statseg2a.cfm)

California Research Bureau, California State Library; Roland, Helen E.; *Residential Common Interest Developments: An Overview* (March 1998).
(http://www.library.ca.gov/CRB/98/06/98006.pdf)

Chong, Kenneth; *A Study on Hawaii Agricultural Condominiums – Their Background; Legislative and Legal Investigations; Possible Public and Consumer Concerns; Findings and Recommended Action* (May 1988).

Community Associations Institute; Treese, Clifford J.; *Community Associations Factbook* (1999).
(Generally: http://www.caionline.org/)

Community Associations Institute; Treese, Clifford J.; Rosenberry, Katharine N.; *GAP Report #4 – Community Association Insurance* (1997).

Community Associations Institute; Treese, Clifford J.; *GAP Report #25 – Community Association Risk Management* (1998).

Ferrer, Alberto; Stecher, Karl; *Law of Condominium, with Forms, Statutes, and Regulations*, Oxford, N. H., Equity Pub. Corp. (1967).

Fierro, Michael R.; "Condominium Association Remedies Against a Recalcitrant Unit Owner," 73 St. John's L. Rev. (Winter 1999).

Franzese, Paula A.; "Evolving Voices in Land Use Law: A Festschrift in Honor of Daniel R. Mandelker," 3 Wash. U. J. L. & Pol'y 663 (2000).

French, Susan F.; "The Constitution of a Private Residential Government Should Include a Bill of Rights," 27 Wake Forest L. Rev. 331 (1992).

Geis, Norman; "Escape from the 15th Century: The Uniform Land Security Interest Act," 30 Real Prop. Prob. & Tr. J. 289 (Summer 1995).

Geis, Norman; "Preface to Symposium on the Uniform Real Property Acts," 27 Wake Forest L. Rev. 325 (1992).

Hawaii Department of Commerce and Consumer Affairs, Hawaii Real Estate Commission; *Condominium Board Members: Powers and Duties based upon the Hawaii Revised Statutes and amendments through 1991* (Honolulu: August 1991).

Hawaii Department of Commerce and Consumer Affairs, Hawaii Real Estate Commission; *Condominium Management: Manager Regulation and Licensing and Education of Board Members* (Honolulu: December 1991).

Hawaii Department of Commerce and Consumer Affairs, Hawaii Real Estate Commission; *Condominium Owner Rights and Responsibilities based upon the Hawaii Revised Statutes and amendments through 1991* (Honolulu: August 1991).

Hawaii Housing Finance and Development Corporation; *A Guide to Hawaii's Residential Leasehold – Single Family Residences* (Honolulu: 1989). (1990?)

Hawaii Legislative Reference Bureau; Carter-Yamauchi, Charlotte A.; *Condominium Governance – An Examination of Some Issues*, Honolulu: Legislative Reference Bureau (March 1989). (Generally: http://www.state.hi.us/lrb/)

Hawaii Legislative Reference Bureau; Martin, Pamela; *Fighting Battles in Modern American Castles: Condominium Dispute Resolution*, Honolulu: Legislative Reference Bureau (December 1996).

Hawaii Office of Consumer Protection; Hawaii Legislative Reference Bureau; Hawaii Real Estate Commission; *A Study of Problems in the Condominium Owner-Developer Relationship* (Honolulu: December 1976).

Hawaii Real Estate Commission; *Board of Directors' Guide* series ("Fiduciary Duty," January 1994; "Proxies," June 1994; "Sense of Community," April 1995; "Condominium Insurance – Including Fidelity Bonds," March 1996; "An Introduction to Condominium Living in Hawaii," March 1998; "Preventing Housing Discrimination in Hawaii Condominiums," May 1998).

Hawaii Real Estate Commission; *Consumer Guide Series* ("New Rights to Fair Housing in Hawaii," May 1994).

Hawaii Real Estate Commission; *Interim Report to the Legislature by the Condominium Specialist* (Honolulu: 1989).

Hawaii Real Estate Commission; *Report to the Legislature Relating to Condominium Property Regime Report – I. Report on the Condominium Specialist Act 278 (SLH, 1988); II. Report on the Condominium Management Education Fund* (Honolulu: December 1990).

Hawaii Real Estate Commission; *Report to the Legislature: A Fidelity Bond Study on CMAs and Self-Managed Associations* (1988).

Hawaii Real Estate Commission; Hawaii Association of Realtors; Hawaii State Bar Association; *Interim Study on Methods to Simplify Condominium Public Reports – Submitted in response to S.R. No. 156, S.D.1 (1985)* (December 1985).

Hawaii Real Estate Commission; Naito, Yukio; *Report of the Study Group on Condominium and Cooperative Issues* (Honolulu: January 1988).

Hawaii Real Estate Commission; Naito, Yukio; *Report to the Legislature on Issues relating to Condominiums and Cooperatives* (Honolulu: February 1988).

Hawaii Real Estate Research and Education Center; *Condominium Reserves Reference Manual* (Honolulu: October 1992).

Hawaii Real Estate Research and Education Center; *A Plan to Recodify Chapter 514A, Hawaii Revised Statutes, Condominium Property Regimes* (Honolulu: December 1995).

Hyatt, Wayne S.; "Common Interest Communities: Evolution and Reinvention," 31 J. Marshall L. Rev. 303 (Winter 1998).

Hyatt, Wayne S.; Downer, Philip S.; *Condominium and Homeowner Association Litigation: Community Association Law*, New York, John Wiley & Sons (1987-1991).

Hyatt, Wayne S.; *Condominium and Homeowner Association Practice: Community Association Law*, Professional Education (1988 2d ed.)

Imanaka, Mitchell A.; "Chapter Twenty-Two: Condominiums, Coops and Planned Unit Developments," *Hawaii Real Estate Law Manual* (200_).

Imanaka, Mitchell A.; *Report on the Registration of Out-of-State Condominium Projects in Hawaii*, two volumes (1993).

Kane, Richard J.; "The Financing of Cooperatives and Condominiums: A Retrospective," 73 St. John's L. Rev. 101 (Winter 1999).

Kanemaru, Donna Y.; Neeley, Joyce Y.; *Hawaii Condominium Law*, Eau Claire, WI, National Business Institute (1996).

Kerr, William; "Condominium – Statutory Implementation," 38 St. John's L. Rev. 1 (1963).

Kiefer, Richard; "1997 Act 135's Amendments to Hawaii's Condominium Development and Marketing Laws," *Ka Nu Hou* (January 1998:2-5).

Korngold, Gerald; "Resolving the Flaws of Residential Servitudes and Owners Associations: For Reformation Not Termination," 1990 Wis. L. Rev. 513 (March/April 1990).

Lefcoe, George; "How Buyers and Sellers of Development Land Deal with Regulatory Risk," 32 Real Prop. Prob. & Tr. J. 301 (Summer 1997).

Lohman, Judith S.; Coppolo, George; *Tenant Protections During Conversion to a Condominium or Cooperative*, Hartford: Connecticut Office of Legislative Research (May 1984).

Longhini, Gregory; Lauber, Daniel; *Condominium Conversion Regulations: Protecting Tenants*, Chicago: American Planning Association (September 1979).

Morris, John A.; *Director's Guide to Hawaii Condominium Law: and the complete text of Hawaii's condominium statute*, Chaney, Brooks & Company in cooperation with Motooka, Goto & Morris (1993).

Morris, John A.; *The 1999 Director's Guide to Hawaii Community Association – Including updates from the 1999 Legislative Session*, Iwai & Morris (1999).

Morris, John A.; *The 2001 Director's Guide to Hawaii Community Association – Including updates from the 2001 Legislative Session*, Ashford & Wriston (2001).

Natelson, Robert G.; *Law of Property Owners Associations*, Boston and Toronto (1989).

National Conference of Commissioners on Uniform State Laws; *Amendments to Uniform Common Interest Ownership Act*, Chicago, Illinois (July 29-August 5, 1994).
(Generally: http://www.nccusl.org/nccusl/default.asp)

Orton, Jerry C.M.; Zacharia, John H.; "Allocation of Damages for Tort Liability in Common Interest Communities," 31 Real Prop. Prob. & Tr. J. 647 (Winter 1997).

Pear, Charles E. Jr.; Sakai, Hiroshi; Littman, Bernice; Dinman, Bruce C.; Alston, Paul D.; *Current Issues in Condominium Law* (Honolulu, 1985).

Pedowitz, James M.; "Condominium Unit Title Insurance," 73 St. John's L. Rev. 183 (Winter 1999).

Restatement of the Law Third, Property (Servitudes), Chapter 6 – Common-Interest Communities, The American Law Institute (2000).
(Generally: http://www.ali.org/)

Rohan, Patrick J.; Reskin, Melvin A.; *Condominium Law and Practice, Forms*, Albany, N.Y., Matthew Bender (1965+).

Rosenberry, Katharine N.; Sproul, Curtis J.; "Common Interest Development Communities: Part I: A Comparison of California Common Interest Development Law and the Uniform Common Interest Ownership Act," 38 Santa Clara L. Rev. 1009 (1998).

Rosenberry, Katharine N.; "Home Businesses, Llamas and Aluminum Siding: Trends in Covenant Enforcement," 31 J. Marshall L. Rev. 443 (Winter 1998).

Rosenberry, Katharine N.; Treese, Clifford J.; "Purchasing Insurance for the Common Interest Community," 27 Wake Forest L. Rev. 331 (1992).

Schriefer, Donald L.; "Judicial Action and Condominium Unit Owner Liability: Public Interest Considerations," 1986 U. Ill. L. Rev. 255 (1986).

Tanaka, Gregory K.; *Condominium Dispute Resolution – Philosophical Considerations and Structural Alternatives* (January 1991).

Treese, Clifford J.; *Conference Paper – Historical Development of Community Associations in the United States*, International Conference – Housing in Transition, Piran, Slovenia (September 3-5, 1997).

Whitman, Dale A.; "Mortgage Drafting: Lessons from the Restatement of Mortgages," 33 Real Prop. Prob. & Tr. J. 415 (Fall 1998).

Winokur, James L.; "Critical Assessment: The Financial Role of Community Associations," 38 Santa Clara L. Rev. 1135 (1998).

Winokur, James L.; "Meaner Lienor Community Associations: The 'Super Priority' Lien and Related Reforms Under the Uniform Common Interest Ownership Act," 27 Wake Forest L. Rev. 353 (1992).

Winokur, James L.; "The Mixed Blessings of Promissory Servitudes: Toward Optimizing Economic Utility, Individual Liberty, and Personal Identity," 1989 Wis. L. Rev. 1 (January/February 1989).

Winokur, James L.; "Reforming Servitude Regimes: Toward Associational Federalism and Community," 1990 Wis. L. Rev. 537 (March/April 1990).

Additional References (Hawaii Real Estate Commission website): http://www.state.hi.us/hirec/

Appendix C

BLUE RIBBON RECODIFICATION ADVISORY COMMITTEE (2002)

Chair

Mitchell A. Imanaka, Esq.
Imanaka Kudo & Fujimoto
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813

Members

Richard T. Asato, Jr., Esq.
Imanaka Kudo & Fujimoto
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813

Gail O. Ayabe, Esq.
Goodsill Anderson Quinn & Stifel
1099 Alakea Street, Suite 1800
Honolulu, Hawaii 96813

Randy Brooks, Esq.
Brooks Tom Porter & Quitiquit
841 Bishop Street, Suite 2125
Honolulu, Hawaii 96813

Andy Bunn, Esq.
Chun Kerr Dodd Beaman & Wong
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813

Deb Chun, Esq.
Oshima Chun Fong & Chung
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

Lorrin B. Hirano, Esq.
Title Guaranty of Hawaii, Inc.
235 Queen Street, 7th Floor
Honolulu, Hawaii 96813

Rick Kiefer, Esq.
Carlsmith Ball
One Main Plaza
2200 Main Street, Suite 400
Wailuku, Hawaii 96793

Bernice Littman, Esq.
Cades Schutte Fleming & Wright
1000 Bishop Street
Suite 1200
Honolulu, Hawaii 96813

John A. Morris, Esq.
Ashford & Wriston
1099 Alakea Street, Suite 1400
Honolulu, Hawaii 96813

Joyce Y. Neeley, Esq.
Neeley & Anderson
733 Bishop Street, Suite 2301
Honolulu, Hawaii 96813

Kimberley Yoshimoto, Esq.
Imanaka Kudo & Fujimoto
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813

BLUE RIBBON RECODIFICATION ADVISORY COMMITTEE (2002)

Condo Consultant Advisors

Mr. Kenneth Chong
1021 Smith Street, Suite 225
Honolulu, Hawaii 96817

Galen Leong, Esq.
Ashford & Wriston
1099 Alakea Street, Suite 1400
Honolulu, Hawaii 96813

Senior Advisors

Ray Iwamoto, Esq.
Goodsill Anderson Quinn & Stifel
1099 Alakea Street, Suite 1800
Honolulu, Hawaii 96813

Hiroshi Sakai, Esq.
201 Merchant Street
Suite 902
Honolulu, Hawaii 96813

Land Use Advisor

David Callies, Esq.
William S. Richardson School of Law
2515 Dole Street
Honolulu, Hawaii 96822

RECO Staff Member

Ms. Cynthia Yee
Real Estate Commission
250 S. King Street
7th Floor
Honolulu, Hawaii 96813

Official Recorder

Mr. Gordon Arakaki
Real Estate Commission
250 S. King Street
7th Floor
Honolulu, Hawaii 96813

Appendix D-1

Appendix D-1

__.B. NO._____

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

SECTION 1. In 2000, the legislature by Act 213, Session Laws of Hawaii 2000, recognized that the condominium property regimes law, chapter 514A, Hawaii Revised Statutes, needed to be updated, clarified, organized, deregulated, and made more consistent and easier to use. Accordingly, the legislature directed the real estate commission to conduct a review of Hawaii's condominium property regimes law, make findings and formulate recommendations for recodification of the law, and develop draft legislation consistent with its review and recommendations.

The purpose of this Act is to extend the time period, position, and funding for the real estate commission's review and recommended recodification of Hawaii's condominium property regimes law.

SECTION 2. Act 213, Session Laws of Hawaii 2000, is amended by amending section 4 to read as follows:

"SECTION 4. The real estate commission shall submit a progress report, including any draft legislation to the legislature no later than twenty days prior to the convening of the regular sessions of 2001 [~~and~~], 2002, and 2003. The real estate commission shall submit a final report of the review, including findings and recommendations of the commission, and draft legislation to the legislature no later than twenty days prior to the convening of the regular session of [~~2003~~] 2004."

SECTION 3. There is appropriated out of the condominium management education fund the sum of $95,000 or so much thereof as may be necessary for fiscal year 2003-2004 to complete its comprehensive review of the condominium property regimes law, including the continuation of one full-time temporary condominium specialist position in the department of commerce and consumer affairs, and other current expenses.

SECTION 4. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2003.

INTRODUCED BY: _____

Appendix D-2

Part I. General Provisions (Recodification PRELIMINARY Draft #2)
(HRS Chapter 514A, Part I) (UCA/UCIOA/Recod Draft #1, Article 1)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	BRRAC's [Real Estate Commission's] Prefatory Comment [To be refined: This prefatory comment should also be incorporated as a "purpose" subsection in draft legislation that will eventually be part of the session laws text (but not part of HRS).] **A. What is the Problem We're Trying to Fix?** In 1961, Hawaii became the first state to pass a law enabling the creation of condominiums.[1] The 1961 "Horizontal Property Regime" law consisted of 33 sections covering a little more than 3 pages in the Revised Laws of Hawaii. Since that time, the law has been amended constantly. Entering the 2003 legislative session, Hawaii's "Condominium Property Regime" law consisted of 120 sections taking up 100 pages in the Hawaii Revised Statutes. As noted by the 2000 Legislature, "[t]he present law is the result of numerous amendments enacted over the years made in piecemeal fashion and with little regard to the law as a whole."[2] The 2000 Legislature recognized that "[Hawaii's] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations . . . [t]he law is also overly regulatory, hinders development, and ignores technological changes and the present day development process."[3] Consequently, the Legislature directed the Real Estate Commission of the State of Hawaii (Commission) to conduct a review of Hawaii's condominium property regimes law, and to submit draft legislation to the 2003 Legislature that will "update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law."[4] In January 2001, the Commission embarked on its ambitious effort to rewrite Hawaii's Condominium Property Act (HRS Chapter 514A).[5] **B. Why Should We Care?** **1. Prevalence of condominium ownership in Hawaii** 25% of Hawaii's housing units are held in condominium ownership. For decades, Hawaii has had the highest percentage of condominium housing units in the United States of America.[6] This alone makes the recodification project extremely important for the citizens of Hawaii.	

[1] Kerr, William; "Condominium – Statutory Implementation," 38 St. John's L. Rev. 1 (1963) (hereinafter, "Kerr"), at page 5. *See also*, Act 180, Session Laws of Hawaii (SLH) 1961; codified as Chapter 170A, Revised Laws of Hawaii (RLH). In 1968, RLH Chapter 170A was redesignated Chapter 514, Hawaii Revised Statutes (HRS) (Act 16, SLH 1968). In 1977, HRS Chapter 514 was re-enacted as a restatement without substantive change and redesignated HRS Chapter 514A (Act 98, SLH 1977).
[2] Act 213, SLH 2000, attached to this report as Appendix A.
[3] *Id.*
[4] *Id.*
[5] The recodification workplan and timetable is attached to this report as Appendix B. It is also available on the Commission's website – http://www.state.hi.us/hirec/ – along with our base working document (a comparison of the 1994 Uniform Common Interest Ownership Act (UCIOA), 1980 Uniform Condominium Act (UCA), and HRS Chapter 514A), drafts of the recodified condominium law, and other recodification materials. Recodification status is reflected in the "Comments" section of the workplan.
[6] Community Associations Factbook, by Clifford J. Treese (1999) (hereinafter, "CAI Factbook"), at page 18.
[7] Kerr, *supra* note 1, at 3-4; CAI Factbook, *supra* note 6, at 5-6; Natelson, Robert G., Law of Property Owners Associations, (1989), at 3-35.
[8] Kerr, *supra* note 1, at 3.
[9] Kane, Richard J.; "The Financing of Cooperatives and Condominiums: A Retrospective," 73 St. John's L. Rev. 101 (Winter 1999), at 102.
[10] Schriefer, Donald L.; "Judicial Action and Condominium Unit Owner Liability: Public Interest Considerations," 1986 U. Ill. L. Rev. 255 (1986), at note 2.
[11] Standing Committee Report 622, House Bill No. 1142 (1961).
[12] State Savings & Loan Association v. Kauaian Development Company, Inc., et al., 50 Haw. 540, 547 (1968).

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	2. Importance to more efficient use of Hawaii's limited land resources As a very flexible form of real estate ownership, condominiums (especially traditional ones going up rather than out), have helped policymakers to discourage sprawl while still providing home ownership opportunities for many in our urban areas. Consistent with State and local government land use policies, the condominium form of ownership is a valuable tool in helping to develop higher density/lower per-unit cost homeownership opportunities (i.e., creating more affordable housing). Of course, condominiums encompass the entire spectrum of homeownership opportunities – from affordable to luxury units. All of this is important for an island state with limited land area. **3. Importance to Hawaii's housing stock and growth policies (e.g., private provision of "public" facilities and services)** The rapid growth of common interest ownership communities (condominiums, cooperatives, and planned communities) since 1960 goes hand in hand with government policy for much of the past 30-40 years dictating that new development "pay its own way." Condominiums and other common interest ownership communities (with their regimes of privately enforceable use restrictions and financial obligations paying for formerly "public facilities" such as roads, trash collection, and recreational areas) have become a critical part of our land use fabric. Indeed, virtually all new development in Hawaii consists of common interest ownership communities. Given the importance of condominiums to the quality of life of Hawaii's people, it is important that we recodify our condominium law in ways that improve life for those who build, sell, buy, manage, and live in condominiums. **C. Brief History of the Condominium** Someone once said that "history is argument without end." That is certainly true of the debate over the origin of condominiums. Some commentators have traced the first existence of condominiums to the ancient Hebrews in the Fifth	

[13] Standing Committee Report 622, House Bill No. 1142 (1961).
[14] *Id*.
[15] Prefatory Note, Uniform Condominium Act, 1980. As noted by the Hawaii State Senate Judiciary Committee Vice-Chair in 1976: "[The condominium property regime law] was originally intended to be a highly technical, legal vehicle for placing certain lands in the horizontal property regimes. It is becoming through our actions … a consumer protection section of the law. Anyone trying to use it in its technical sense will have extreme difficulty …" Standing Committee Report 939-76, Senate Resolution No. 439 (1976).
[16] Recodification Draft #1 is available on the Commission's website – http://www.state.hi.us/hirec/.
[17] Every provision of HRS Chapter 514A was analyzed for possible inclusion within the structure of the UCA.
[18] Members of the Blue Ribbon Recodification Advisory Committee are listed in Appendix C of this report.
[19] Recodification Preliminary Draft #2 is attached to this report as Appendix D. As a work in progress, it is not currently available on the Commission's website.
[20] Hidden Harbour Estates, Inc. v. Norman, 309 So.2d 180, 181-182 (Fla. Dist. Ct. App. 1975).
[21] *See, e.g.*, the California Law Revision Commission's (CLRC) efforts to recodify California's common interest development law – the Davis-Stirling Act. You can access the CLRC Study H-850 online at: ftp://clrc.ca.gov/pub/Study-H-RealProperty/H850-CommonInterestDevel/.
[22] *See*, Hiner v. Hoffman, 90 Haw. 188, 977 P.2d 878 (1999); Fong v. Hashimoto, 92 Haw. 568, 994 P.2d 500 (2000).
[23] The *Restatement of the Law, Third, Property (Servitudes)* defines "servitude" as "a legal device that creates a right or an obligation that runs with land or an interest in land." This covers "easements, profits, and covenants that run with the land," and encompasses both "restrictive covenants" and "equitable servitudes."
[24] State Savings & Loan Association v. Kauaian Development Company, Inc., et al., *supra* note 13, at 552 and 555.
[25] *See*, "Raising Cane – Complaints fly at condo for seniors," Honolulu Star-Bulletin, Sunday, July 14, 2002. The article, by Rob Perez, details the problems of One Kalakaua, the condominium at the center of a number of disputes. (http://starbulletin.com/2002/07/14/news/perez.html)
[26] de Haan, Ellen Hirsch; "Aging in Place – Naturally Occurring Retirement Communities and Condominium Living," Law Offices of Becker & Poliakoff website (2000). (http://www.association-law.net/publications/article/aging_in_place.htm) It appears that this article was first published in Elder's Advisor, The Journal of Elder Law and Post Retirement Planning, Volume 1, Number 2, (Fall 1999). The article contains a number of suggestions regarding legal and management issues in this area.

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes

Century B.C. Others have attributed the concept to the ancient Romans. Still others believe that Roman law was antithetical to condominium development and that the first proto-condominiums appeared in the Germanic states during the late Middle Ages. Suffice to say that the condominium property concept has a long, possibly ancient, history.[7]

While their first existence in fact is widely disputed, condominiums were first afforded statutory recognition by the Code of Napoleon in 1804.[8] The first sophisticated statute to authorize condominiums in the United States or its territories was the Puerto Rico Horizontal Property Act (so named because it contemplated a property regime of horizontally, as opposed to vertically, divided properties) in 1958.[9] The United States Congress recognized condominiums in 1961 when it amended the National Housing Act to provide for federal insurance on condominium mortgages whenever state law recognized condominium ownership. With Hawaii leading the way, every state in the union had a statute authorizing the condominium form of ownership by 1968.[10]

D. Basic Concepts

Preliminarily, it is useful to understand exactly what a "condominium property regimes law" is – and what it isn't. A condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a community *governance* law. It is not a land *use* law (i.e., it does not govern what structures may be built on real property; separate state and county land use laws control – or should control – land use matters).

A condominium property regimes law is essentially an *enabling* law, allowing people to:

- Own real estate under the condominium form of property ownership (i.e., a form of real property ownership where each individual member holds title to a specific unit and an undivided interest as a "tenant-in-common" with other unit owners in common elements such as the exterior of buildings, structural components, grounds, amenities, and internal roads and infrastructure);
- Protect purchasers through adequate disclosures; and
- Manage the ongoing affairs of the condominium community.

The ability to build, sell, buy, borrow/lend money, insure title, insure property, and more are all part of real property ownership and, therefore, part of condominium law.

The 1961 Hawaii State Legislature expressly recognized that the condominium property regime law was "an enabling vehicle" that primarily "(a) sets forth the legal basis for a condominium, and (b) spells out the means of recordation."[11] [Note: In 1968, the Hawaii Supreme Court commented that, although the original condominium property regime law was viewed as an enabling act, condominiums might have been cognizable under common law.[12]

The Legislature was also concerned about protecting Hawaii's consumers, noting that:

> The citizens of Honolulu have suffered during the past one or two years several unfortunate experiences in cooperative apartment buying. When several millions of dollars were lost through loose handling of funds representing down-payments on individual apartment units, it became clear that controls had to be developed in order (a) to protect the buying public, and (b) through a bolstering of public confidence, to create for the developer a better reception for his product.[13]

To that end, the 1961 Legislature added a part providing for the regulation of condominium projects by the Hawaii Real Estate License Commission (including the registration of projects by developers and requiring the issuance of public reports before offering any condominium units for sale).

Finally, the 1961 Legislature provided for the internal administration of condominium projects. The 1961 condominium management provisions were minimized, however, because the Legislature believed that: 1) many details would more properly be included in by-laws to be passed by the council of co-owners; and 2) some details may have

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes

been contrary to F.H.A. regulations or to policies of lending institutions, making it impossible for prospective unit-purchasers to secure financing.[14]

Hawaii's "Horizontal Property Regimes" law of the early 1960s was typical of most "first generation" condominium laws. In the decades that followed, however, "[a]s the condominium form of ownership became widespread, . . . many states realized that these early statutes were inadequate to deal with the growing condominium industry. . . . In particular, many states perceived a need for additional consumer protection, as well as a need for more flexibility in the creation and use of condominiums."[15]

E. Evolving Approach to the Recodification of Hawaii's Condominium Law

1. Recodification Draft #1

In January 2002, the Commission completed its initial draft of the recodification (statutory text and explanatory commentary).[16] The 1980 Uniform Condominium Act (UCA), with appropriate changes incorporated from the 1994 Uniform Common Interest Ownership Act (UCIOA), served as the basis for the first draft of our recodified condominium law. Where appropriate, the Commission also incorporated provisions of HRS Chapter 514A,[17] other jurisdictions' laws, and the Restatement of the Law, Third, Property (Servitudes).

Recodification Draft #1 provided a starting point and framework from which to: 1) work on specific problems, and 2) continue our discussions on improving Hawaii's condominium law. Some portions are more complete than others, with Article 3 (Management of Condominium) needing a lot more work integrating provisions of HRS Chapter 514A and suggestions from stakeholders.

2. Recodification PRELIMINARY Draft #2

A Blue Ribbon advisory committee reviewed Recodification Draft #1.[18] Based on feedback the Commission received from the advisory committee, realtors, property managers, and others, HRS Chapter 514A (rather than the uniform laws) is used as the base for most of the recodification preliminary draft #2 (i.e., general provisions; creation, alteration, and termination of condominiums; protection of purchasers; administration and registration of condominiums; and condominium management education fund). The Uniform Condominium Act and Uniform Common Interest Ownership Act – along with appropriate provisions of HRS Chapter 514A, other jurisdictions' laws, and the Restatement of the Law, Third, Property (Servitudes) – remain as the base for condominium governance matters.[19]

The Commission intends to: 1) work with affected members of the community to refine Recodification Preliminary Draft #2, and 2) take the resulting draft to public hearing in each of Hawaii's counties. After the public hearings, the Commission will incorporate appropriate changes and submit a final draft of the proposed condominium law recodification to the 2004 Legislature.

F. Scope of Recodification

The Commission considered expanding the scope of the recodification to include other Hawaii common interest ownership communities under a UCIOA-like law. [This would have included HRS Chapters 421H (Limited Equity Housing Cooperatives), 421I (Cooperative Housing Corporations), and 421J (Planned Community Associations).] The Commission quickly decided, however, that recodification of HRS Chapter 514A (Condominium Property Regimes) alone makes the most practical sense at this time.

Condominium issues, in general, are substantially different from those of single-family detached units in planned communities. The unit owner mindsets, problems, and solutions are quite different for each type of common interest ownership community.

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes

A Florida court once observed that:

> [I]nherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners . . . each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property.[20]

Single-family detached unit homeowners in planned communities generally have different expectations than condominium owners regarding the degree of freedom they must give up when they buy their respective units. This is one of the factors that make it exceedingly difficult to reconcile the varying interests of unit owners in different forms of common interest ownership communities.[21]

Although condominiums can take many physical forms – from high-rise developments to townhouses to single-family detached units – the common perception that a condominium is a tall building consisting of many individual units within a common structure ("horizontal property regime") makes it easier for average people to understand the interdependence of unit owners in condominiums (as opposed to single-family detached homeowners in planned communities).

Therefore, the Commission will limit its efforts to recodifying Hawaii's condominium property regimes law.

G. Selected Public Policy Considerations

1. Need for laws (and the courts) to support the fair and efficient functioning of condominium communities

Given the importance of condominiums to the quality of life of Hawaii's people, laws must support the fair and efficient functioning of our condominium communities (and other common interest ownership communities).

However, there is a troubling line of recent Hawaii Supreme Court cases dealing with restrictive covenants/equitable servitudes.[22]

In Hiner, defendants-appellants ("Hoffmans") constructed a three story house on a lot which was (along with 118 other lots) subject to a restrictive covenant prohibiting any dwelling "which exceeds two stories in height." The Hoffmans had actual knowledge of the restrictive covenant. After warning the Hoffmans of their violation of the restrictive covenant, neighboring homeowners and the community association sued to have the Hoffmans remove the third story of their house.

At the trial court level, the Hoffmans argued that their house consisted of "two stories and a basement." The trial court rejected the Hoffmans' argument and ordered them to remove the third (top) story of their house.

On appeal, the Hoffmans changed their argument and claimed that the term "two stories in height" was ambiguous. In a 3-2 decision, the Hawaii Supreme Court ruled that the term "two stories in height" was ambiguous since it did not provide any dimensions for the term "story" and was therefore unenforceable in light of the restrictive covenant's undisputed purpose (to protect views by restricting the height of homes within the neighborhood). The majority on the Court stated that it was following a "long-standing policy favoring the unrestricted use of property" when construing "instruments containing restrictions and prohibitions as to the use of property." Finally, the majority noted that "such 'free and unrestricted use of property' is favored only to the extent of applicable State land use and County zoning regulations."

In so doing, the majority ignored the massive growth of servitude regimes over the past forty years and the corresponding importance of ensuring the fair and efficient functioning of such communities (whether they be condominiums or, as in this case, planned communities). As noted by the dissent in Hiner, "where one hundred or more homeowners in the Pacific Palisades community have limited their own property rights in reliance that their neighbors will duly reciprocate, . . . it [is] manifestly unjust to sanction the Hoffmans' willful non-compliance based on the 'policy

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes

favoring the unrestricted use of property.'" The dissent concluded with the observation that "the majority opinion over-emphasizes the rights of the Hoffmans without due regard to the rights of their neighbors."

Eight and a half months after deciding Hiner, the Hawaii Supreme Court in Fong invalidated as ambiguous a restrictive covenant limiting certain houses to "one-story in height." (The Court also found that there was no common scheme to support an equitable servitude and that the restrictive covenant was unenforceable since it was improperly created.)

The archaic body of servitudes law from which the Hawaii Supreme Court fashioned its decisions in Hiner and Fong evolved from rules developed to govern relatively small groupings of property owners (compared to today's condominium and planned development communities) in contexts largely unrelated to modern common interest ownership communities.[23]

Contrast the Hawaii Supreme Court's current approach regarding servitudes in common interest ownership communities with that of the *Restatement of the Law, Third, Property (Servitudes)*. As stated in the *Restatement's* introductory note to Chapter 6 – Common-Interest-Communities:

> The primary assumption underlying Chapter 6 is that common-interest communities provide a socially valuable means of providing housing opportunities in the United States. The law should facilitate the operation of common-interest communities at the same time as it protects their long-term attractiveness by protecting the legitimate expectations of their members.

To guide the courts in resolving disputes over servitudes in condominiums (and, at least by analogy, other common interest ownership communities), we should incorporate the *Restatement's* position on servitudes in our recodification of Hawaii's condominium law.

An earlier incarnation of the Hawaii Supreme Court said it well. In State Savings & Loan Association v. Kauaian Development Company, Inc., et al., the Court stated that:

> The [Horizontal Property Regimes Act] has profound social and economic overtones, not only in Hawaii but also in every densely populated area of the United States. Our construction of such legislation must be imaginative and progressive rather than restrictive.
>
> . . . .
>
> This court will not follow a common law rule relating to property where to do so would constitute a quixotic effort to conform social and economic realities to the rigid concepts of property law which developed when jousting was a favorite pastime.[24]

2. Need to support the fair and efficient functioning of senior living/assisted living condominium communities

One of the new century's major challenges for condominium associations nationwide is the aging of populations within condominium units and the problems that accompany diminishing health and capacity. Recent controversies in a condominium with assisted living facility services helped to direct the Commission's attention to this issue.[25]

More broadly, however, in addition to assisted living facilities in condominiums, a growing number of senior citizens are choosing to remain in their homes and familiar surroundings rather than moving to traditional retirement destinations. This trend is creating what has become known as "Naturally Occurring Retirement Communities" (NORCs). [26]

Regardless of whether a condominium is an assisted living facility or NORC, does "self-governance" truly

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	work for aged and infirm condominium owners? Does Hawaii's condominium law need to specifically address these issues, or would they be better handled in the governing documents of condominiums? These are just some of the questions being examined by the Commission at this time.	
	TABLE OF CONTENTS **Part I. GENERAL PROVISIONS** **Subpart 1. DEFINITIONS AND OTHER GENERAL PROVISIONS** § ___: 1-1. Short Title § ___: 1-2. Applicability § ___: 1-3. Definitions § ___: 1-4. Separate Titles and Taxation § ___: 1-5. Applicability of State Land Use Law and Local Ordinances, Regulations, and Building Codes § ___: 1-6. Supplemental General Principles of Law Applicable § ___: 1-7. Construction Against Implicit Repeal § ___: 1-8. Uniformity of Application and Construction § ___: 1-9. Severability § ___: 1-10. Unconscionable Agreement or Term of Contract § ___: 1-11. Obligation of Good Faith § ___: 1-12. Remedies to be Liberally Administered **Subpart 2. APPLICABILITY** § ___: 1-13. Applicability to New Condominiums § ___: 1-14. Same; Exception for Small Condominiums § ___: 1-15. Applicability to Pre-existing Condominiums § ___: 1-16. Same; Exception for Small Pre-existing Condominiums § ___: 1-17. Amendments to Governing Instruments § ___: 1-18. Applicability to Nonresidential Condominiums	
	PART I. GENERAL PROVISIONS	
	SUBPART 1. DEFINITIONS AND OTHER GENERAL PROVISIONS	
	§ ___: 1-1. Short Title. [Source: **UCA/UCIOA §1-101**; **HRS §514A-1**.] This chapter may be cited as the Condominium Property Act.	
	§ ___: 1-2. Applicability. [Source: **UCIOA §1-102**.] Applicability of this chapter is governed by subpart 2 of this part.	
	§ ___: 1-3. Definitions. [Source: **UCA/UCIOA §1-103**; **HRS §514A-3**.] In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:	
	BRRAC's [Real Estate Commission's] Comment 1. In Lewis Carroll's *Through the Looking Glass*, Alice meets up with Humpty Dumpty sitting on his wall. In the course of their conversation, the following exchange takes place: "There are three hundred and sixty-four days when you might get un-birthday presents," [said Humpty Dumpty] "and only *one* for birthday presents, you know. There's glory for you!" "I don't know what you mean by 'glory,'" Alice said.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	"Humpty Dumpty smiled contemptuously. "Of course you don't – till I tell you. I meant, 'there's a nice knock-down argument for you!'" "But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected. "When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean – neither more nor less." "The question is," said Alice, "whether you *can* make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master – that's all." Definitions – what we mean by the words we use – are critical in "Condoland." Through interpretation and amendment, definitions in HRS have gotten "curiouser and curiouser" over the years. With common understanding as our master, our recodified condominium law will primarily be using definitions contained in UCA with appropriate modifications and additions from UCIOA and HRS. 2. As noted in the official comments to §1-103 of UCA (1980) and UCIOA (1994): The first clause of this section permits the defined terms used in the Act to be defined differently in the declaration and bylaws. Regardless of how terms are used in those documents, however, terms have an unvarying meaning in the Act, and any restricted practice which depends on the definition of a term is not affected by a changed term in the documents. **Example**: A declarant might vary the definition of "unit owner" in the declaration to exclude himself in an attempt to avoid assessments for units which he owns. The attempt would be futile, since the Act defines a declarant who owns a unit as a unit owner and defines the liabilities of a unit owner.	
	"Association" or "unit owners' association" [Source: **UCA/UCIOA §1-103(3)**; **HRS §514A-3**.] means the unit owners' association organized under section ___: 5-1. "Commission" [Source: **HRS §514A-3**.] means the real estate commission of the state department of commerce and consumer affairs. "Common elements" [Source: **UCA/UCIOA §1-103(4)**.] means: (1) all portions of a condominium other than the units; and (2) any other interests in real estate for the benefit of unit owners which are subject to the declaration.	
	BRRAC's [Real Estate Commission's] Comment 1. Regarding HRS §514A-3's definition of "common element," Senior Condominium Specialist Cynthia Yee noted that the phrase "unless otherwise provided in the declaration" has been very useful. The UCA and UCIOA recognize this. UCA/UCIOA §1-103 (Definitions) begins by stating: "In the declaration and bylaws (Section 3-106), unless specifically provided otherwise or the context otherwise requires, and in this chapter . . ." (various definitions follow). Further, the Comments to UCA/UCIOA §1-104 (Variation by Agreement) note that: "The following sections permit variation: . . . Section 1-103. [Definitions.] All definitions used in the declaration and bylaws may be varied in the declaration, but not in interpretation of the Act." Therefore, we have kept the UCA/UCIOA definition of "common element" as is. 2. As noted in the UCIOA (1994) comment: [I]t is not difficult to envision cases where [acquiring real estate in addition to the land originally submitted to the declaration] would be desirable to the unit owners – for example, to acquire additional parking areas or	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	open space. There is no reason to either prohibit the association from securing this result, or to require the formalities of an amendment of the declaration to redefine the boundaries of the common interest community; this would typically require a two-thirds vote of the unit owners under Section 2-117(a). . . . . [T]he drafters contemplate that [a] condominium . . . association could also acquire title to real estate which is physically located outside the condominium . . . boundaries, in its own name, which would not automatically become a common element. There are condominiums in Hawaii that currently need to acquire additional "common element" property. For example, a Maui condominium is threatened by beach erosion and seeks to acquire an interest over additional property on which to build t-head groins or man-made breakwater reefs. However, HRS §514A-92.1 requires the approval of 90% of the apartment owners (nearly impossible to get) to designate "additional areas to be common elements or subject to common expenses after the initial filing of the bylaws or declaration." Additionally, in instances where a unit has not been reserved for a resident manager, it may be desirable for the condominium association to acquire a unit for use by the resident manager.	
	"Common expenses" [Source: **UCA/UCIOA §1-103(5)**; **HRS §514A-3**.] means expenditures made by, or financial liabilities of, the association for operation of the property, together with any allocations to reserves. "Common interest" [Source: **HRS §514A-3**.] means the percentage of undivided interest in the common elements appertaining to each apartment, as expressed in the declaration, and any specified percentage of the common interests means such percentage of the undivided interests in the aggregate. "Common profits" [Source: **HRS §514A-3**.] means the balance of all income, rents, profits, and revenues from the common elements remaining after the deduction of the common expenses. "Completion of construction" [Source: **HRS §514A-3**.] means the issuance by the appropriate county official of a certificate of completion. "Condominium" [Source: **UCA §1-103(7)**.] means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA §1-103(7) is the source of the definition of "condominium." 2. The official comment to UCA (1980) §1-103(7) makes clear that, unless the ownership interest in the common elements is vested in the owners of the units, the project is not a condominium.	
	"Declaration" [Source: **UCA §1-103(10)**; **HRS §514A-3**.] means any instruments, however denominated, that create a condominium, including any amendments to those instruments. "Developer" [Source: **HRS §514A-3**.] means a person who undertakes to develop a real estate condominium project. "Development rights" [Source: **UCA §1-103(11)**.] means any right or combination of rights reserved by a developer in the declaration to (1) add real estate to a condominium;	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	(2) create units, common elements, or limited common elements within a condominium; (3) subdivide units or convert units into common elements; or (4) withdraw real estate from a condominium.	
	BRRAC's [Real Estate Commission's] Comment 1. As noted in the official comment to UCA §1-103(11): "[D]evelopment rights" includes a panoply of sophisticated development techniques that have evolved over time throughout the United States and which have been expressly recognized (and regulated) in an increasing number of jurisdictions, beginning with Virginia in 1974. Some of these techniques relate to the phased (or incremental) development of condominiums which the declarant hopes, but cannot be sure, will be successful enough to grow to include more land than he is initially willing to commit to the condominium. For example, a declarant may be building (or converting) a 50-unit building on Parcel A with the intention, if all goes well, to "expand" the condominium by adding an additional building on Parcel B, containing additional units, as part of the same condominium. If he reserves the right to do so, *i.e.*, to "add real estate to a condominium," he has reserved a "development right."	
	"Limited common element" [Source: **UCA §1-103(16)**.] means a portion of the common elements allocated by the declaration or by operation of section ___: 2-___ for the exclusive use of one or more but fewer than all of the units. "Majority" or "majority of unit owners" [Source: **HRS §514A-3**.] means the owners of units to which are appurtenant more than fifty percent of the common interests, and any specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests. "Managing agent" [Source: **HRS §514A-3**.] means any person employed or retained for the purposes of managing the operation of the property. "Master deed" or "master lease" [Source: **HRS §514A-3**.] means any deed or lease showing the extent of the interest of the person submitting the property to the condominium property regime. "Operation of the property" [Source: **HRS §514A-3**.] means and includes the administration, fiscal management, and operation of the property and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements. "Person" [Source: **HRS §514A-3**.] means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof. "Project" [Source: **HRS §514A-3**.] means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the condominium property regime are offered or proposed to be offered for sale. "Property" [Source: **HRS §514A-3**.] means and includes the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, whether leasehold or in fee simple, to the extent of the interest held therein by the owner or lessee submitting such interest to the condominium property regime, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the regime established by this	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	chapter.	
	Condominium Recodification Attorney's Comment 1. Consider using the UCIOA (1994) §1-103(26) definition of "real estate" instead of HRS §514A-3's definition of "property." UCIOA §1-103(26) reads as follows: "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water. As noted in the official comments to UCA §1-103(21)/UCIOA §1-103(26): Although often thought of in two-dimensional terms, real estate is a three-dimensional concept and the third dimension is unusually important in the condominium context. Where real estate is described in only two dimensions (length and width), it is correctly assumed that the property extends indefinitely above the earth's surface and downwards toward a point in the center of the planet. In most condominiums, however, as in so-called "air rights" projects, ownership does not extend *ab solo usque ad coelum* (*"from the center of the earth to the heavens"*), because units are stacked on top of units or units and common elements are interstratified. In such cases the upper and lower boundaries must be identified with the same precision as the other boundaries.	
	"Time share unit" [Source: **HRS §514-E-1**.] means the actual and promised accommodations, and related facilities, which are the subject of a time share plan as defined in chapter 514E. "To record" [Source: **HRS §514A-3**.] means to record in accordance with chapter 502, or to register in accordance with chapter 501. "Unit" [Source: **UCA §1-103(25)**.] means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to section ___: 2-___. "Unit owner" [Source: **HRS §514A-3**.] means the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease registered under chapter 501 or recorded under chapter 502, a lessee of an apartment shall be deemed to be the owner thereof. All pronouns used in this chapter include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.	
	§ ___: 1-4. Separate Titles and Taxation. (a) [Source: **UCA/UCIOA §1-105(a)**; *compare*, **HRS §514A-4** and **514A-5**.] If there is any unit owner other than a developer, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate. (b) [Source: **UCA/UCIOA §1-105(b)**; **HRS §514A-6**.] If there is any unit owner other than a developer, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a developer has reserved no development rights. The laws relating to home exemptions from state property taxes are applicable to the individual unit, which shall have the benefit of home exemption in those cases where the owner of single-family dwelling would qualify. Property taxes assessed by the State shall be assessed on and collected on the individual units and not on the property as a whole. Without limitation of the foregoing, each unit and the common interest appertaining thereto shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.	BRRAC subcommittee's 10/12/02 Part II (Creation, Alteration, Termination of Condominiums) phrased as follows: **§_____ (formerly 514A-4, -5 & -6) Status, Ownership and Taxation of Units.** (a) Each unit, together with its appurtenant common interest, shall for all purposes constitute real property, separate and independent from all other units in its condominium. Each unit may be exclusively and individually, jointly or commonly owned, possessed, conveyed, sold, leased, mortgaged, or encumbered. Title to a unit and its common interest may be registered in the land court

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	(c) [Source: **UCA/UCIOA §1-105(c)**.] Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes. (d) [Source: **UCA/UCIOA §1-105(d)**.] If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.	pursuant to chapter 501. Documents conveying, mortgaging, or encumbering a unit and its common Interest may be recorded in the bureau of conveyances pursuant to chapter 502. (b) Property taxes assessed by the State or any county shall be assessed on and collected on individual units and their common interests and not on a condominium as a whole. Without limiting the foregoing, each unit and its common interest shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including but not limited to special assessments. The laws relating to home exemptions from state property taxes are applicable to individual units, which shall have the benefit of home exemption in those cases where the owner of a single-family dwelling would qualify.
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-105 and HRS §§514A-4, 514A-5, and 514A-6 are the sources of this section. 2. The official comments to §1-105 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.	
	§ ___: 1-5. Conformance with Land Use and Zoning Laws. [Source: **UCA/UCIOA §1-106**; **HRS §514A-1.6**; *modified*; *BRRAC subcommittee's 8/27/02 draft*.] (a) Any condominium property regime established under this chapter shall conform to the existing underlying state and county land use and zoning laws, regulations, ordinances, and rules for the property[, including any supplemental rules adopted by the county pursuant to section ___: 1-___ (HRS §514A-45, Supplemental regulations governing a condominium property regime),] [BRRAC subcommittee question: Should we keep HRS §514A-45 in the recodification?] to ensure the conformance by owners of lands subject to a condominium property regime with the purposes and provisions of such state and county land use and zoning laws, regulations, ordinances, and rules. Except as provided in subsection (b), provisions of this chapter do not invalidate or modify any provision of any building code, zoning, subdivision, or other State or county land use law, ordinance, rule or regulation governing the use of real estate. (b) No [State or] county land use law, ordinance, rule or regulation shall prevent any person from submitting any property of this State to a condominium property regime and from holding title to lands of this State under a condominium property regime. [BRRAC subcommittee question: Should we modify this prohibition to ensure that problems created for the counties by State-forced "Ohana zoning" may properly be addressed?] (c) In the case of a property which includes one or more existing structures being converted to condominium status, the condominium property regime shall comply with sections ___: 2-___ [HRS §514A-11(13)] or section ___: 3-___ [HRS §514A-40(b)].	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-106 and HRS §514A-1.6, substantially modified, are the sources of this section. 2. The official comments to §1-106 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. 3. There appears to be quite a bit of confusion over the fact that condominium property is a land *ownership*, as opposed to a land *use*, concept. In response to the Commission's request for comments from the community, various parties asked that Hawaii's condominium property regime law be used to ensure compliance with land *use* laws (e.g., HRS Chapter 205 and county zoning, subdivision, and building ordinances). The suggestions of two of these parties – the State Department of Business, Economic Development & Tourism (DBEDT) and the County of Hawaii – are described below. Hawaii's counties (particularly the Neighbor Island counties) have long complained that developers were using HRS Chapter 514A to circumvent underlying county land use laws. However, the counties have always had the power to regulate the *uses* of land pursuant to their police powers (i.e., their powers to protect the public health and safety – the legal basis for zoning laws) under HRS Chapter 46.[27] HRS §514A-1.6, passed by the Legislature in 2000, simply made this explicit in the condominium property regime law.[28] **a. DBEDT's Suggestions** DBEDT has suggested that: 1) the statutory language of HRS §514A-1.6 be retained; 2) HRS §514A-1.6 be amended to add language requiring conformance of condominium property regimes with HRS Chapter 205; 3) the statutory language of HRS §514A-45 be retained; 4) counties be afforded the opportunity to review condominium property regime site or parcel plans/maps prior to recordation so that any questions as to conformance with county codes can be examined prior to recordation and the establishment of ownership interests in the units created under a condominium property regime; and 5) the Commission carefully examine how to effectively manage condominium property regimes on agricultural lands, and how State or county laws or codes should be amended to best address the issue.[29] **b. County of Hawaii's Suggestions** The County of Hawaii initially suggested that Hawaii's condominium law be amended to: 1) require county certification of compliance with applicable codes for all condominium projects before final public reports may be issued (not just condominium conversions, as is currently the case under HRS §514A-40); 2) require minimum value for condominium apartments (to prevent "toolshed" apartments); 3) explicitly require that condominium property regimes follow county subdivision codes; and 4) ensure that county planning departments are allowed to comment on notice of intention for all condominium projects, at an early stage.[30]	

[27] *See*, HRS §§46-1.5(13) and 46-4.
[28] The Commission incorporated HRS §514A-1.6 in Recodification Draft #1, §1-106(c). While it is somewhat duplicative of Recodification Draft #1, §1-106(b), HRS §514A-1.6 contains specific references to requirements for condominium conversion projects which should probably be included in the recodification. The Commission also added language to Recodification Draft #1 requiring that condominium property regime projects conform to HRS Chapter 205 (State Land Use Law).
[29] September 20, 2001 letter from DBEDT – Office of Planning to Gordon M. Arakaki.
[30] May 29, 2001 letter from County of Hawaii Planning Department to Mitchell A. Imanaka and Gordon M. Arakaki.

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	Ultimately, in September 2002, the County of Hawaii passed an ordinance purporting to "regulate CPRs that are the equivalent of subdivisions of land."[31] Whether the ordinance can survive legal and practical challenges remains to be seen.[32] **c. Analysis**	

[31] Ordinance 02 111 (effective 9/25/02).

[32] In a series of meetings, e-mail, and letters, the Commission attempted to educate the County of Hawaii about condominium property regimes. However, many of our cautions went unheeded.

[33] Although ultimately not incorporated by the Commission, the overall approach taken by UCA/UCIOA (upon which Recodification Draft #1 is based) appeared to solve the problem. The Acts appear to contemplate that all condominium projects go through appropriate land use processes before recordation and sale unless, based on specific criteria, the Commission determines that a declaration may be recorded and units registered. UCA/UCIOA §2-101(b) prohibits the recordation (hence, creation) of a condominium declaration unless:

1) "[A]ll 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 (registered) engineer, surveyor, or architect;" or

2) "[T]he agency has approved the declaration or amendment in the manner prescribed in Section 5-103(b)."

UCA/UCIOA §5-103 allows a developer to record a condominium declaration for the purpose of creating a condominium in which the units are not substantially completed *if* the agency (i.e., the Real Estate Commission) determines, "on the basis of the material submitted by the declarant and any other information available to the agency, that there is a *reasonable basis to expect that the units to be conveyed will be completed by the declarant following conveyance*." [Emphasis added; *see*, UCA/UCIOA §5-103(c)] To help the Commission determine whether there is a "reasonable basis to expect that the units to be conveyed will be completed . . . following conveyance," UCA/UCIOA §5-103(b) requires the developer to submit the following:

(1) a verified statement showing all costs involved in completing the buildings containing those units;

(2) a verified estimate of the time of completion of construction of the buildings containing those units;

(3) satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;

(4) a copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;

(5) a 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;

(6) plans for the units conforming to the requirements of Section 2-109(c);

(7) if purchasers' funds are to be utilized for the construction of the condominium, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state which provides that:

(i) disbursements of purchasers' funds may be made from time to time to pay for construction of the condominium, architectural, engineering finance, and legal fees, and other costs for the completion of the condominium in proportion to the value of the work completed by the contractor as certified by an independent (registered) architect or engineer, or bills submitted and approved by the lender of construction funds or the escrow agent;

(ii) disbursement of the balance of purchasers' funds remaining after completion of the condominium shall be made only when the escrow agent or lender receives satisfactory evidence that the period for filing mechanic's and materialman's liens has expired, or that the right to claim those liens has expired, or that the right to claim those liens has been waived, or that adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and

(iii) any other restriction relative to the retention and disbursement of purchasers' funds required by the agency; and

(8) any other materials or information the agency may require by its rules.

[Note: These requirements are similar to those of HRS §514A-40 (Final Reports).]

[34] DBEDT – Office of Planning and the county planning directors object to the principal that physically identical developments should be treated equally (incorporated in §1-106(a) of Recodification Draft #1). *See*, September 19, 2002 letter from DBEDT – Office of Planning to Mitchell Imanaka and Gordon Arakaki. *See also*, County of Hawaii's Ordinance 02 111 (effective 9/25/02).

[35] An exception to the general rule that physically identical developments should be treated equally is the City and County of Honolulu's prohibition on condominiumizing Ohana units created pursuant to HRS §46-4. *See*, Revised Ordinances of Honolulu §21-8.20. An Ohana unit is a second home permitted on a lot where the underlying zoning normally allows only one house. Infrastructure adequacy and other conditions determine whether an Ohana unit may be built, and an applicant for an Ohana building permit must file a restrictive covenant agreeing *not* to register the property as a condominium and to abide by a family occupancy requirement. Ohana units are the result of the State Legislature's attempt to address a shortage of affordable housing by essentially forcing the counties to accept housing densities double that allowed by county zoning. Under this circumstance, it is appropriate for the counties to have the power to prohibit the condominiumization of Ohana units. The counties' authority to do so should be made clear in HRS §46-4, however, *not* the condominium property regime law.

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	DBEDT-OP, the County of Hawaii, and others have raised legitimate concerns over the current interplay between HRS Chapter 514A and state and county land use laws. The question remains how to properly address the problem. In crafting a provision to prevent abuse of the condominium property regimes law as it relates to underlying land use laws, the Commission (and ultimately the Legislature) should take the following factors into consideration: • Purpose of Condominium Property Regime Law. As previously noted, a condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a community *governance* law. It is not a land *use* law (i.e., it does not govern what structures may be built on real property; separate state and county land use laws control – or should control – land use matters). (*See*, "Basic Concepts" discussion above.) As a consumer protection law, the primary purpose of Hawaii's current condominium property regimes law is to make sure that buyers know what they are buying. Theoretically, if a sophisticated buyer wants to take a chance on being able to get government approval to build a structure that is not allowed under State or county land use laws at the time of purchase, that should be the buyer's choice. The key is to give the buyer a chance to make an informed decision. • Purpose of the Real Estate Commission. The Real Estate Commission is a consumer protection body established under HRS Chapter 467 (Real Estate Brokers and Salespersons) to regulate real estate licensees. The purpose of HRS Chapter 467 (and the Commission) is to protect the general public in its real estate transactions. Pursuant to HRS §467-3, the Real Estate Commission consists of nine members, at least four of whom must be licensed real estate brokers. • Need for Appropriate and Consistent Lines of Authority. All parties need to make sure that the appropriate governmental entities enforce the appropriate laws. County land use agencies – i.e., planning and permitting departments – have the responsibility for ensuring that all proposed development projects comply with county land use laws. County councils have the authority to pass laws giving county land use agencies the tools to ensure that any proposed condominium development complies with county land use laws. • Timing. Under Hawaii's current law, condominiums are created upon proper filing with Bureau of Conveyances or Land Court. The Real Estate Commission's involvement begins when condominium units are offered for sale. As the Commission continues its efforts to recodify Hawaii's condominium law, it has tried to keep the condominium law (and the Real Estate Commission) true to its purpose while making it clear that HRS Chapter 205 and county land use laws control land use matters.[33] It does not appear to be necessary or appropriate in the recodified Hawaii condominium law to have blanket requirements that: 1) make the recordation of all condominium property regime declarations (and other applicable documents) contingent upon county certification of compliance with county land use laws, or 2) make the sale of any condominium units (currently allowed upon the Commission's issuance of an effective date for a project's preliminary, contingent final, or final public report) contingent upon county certification of compliance with county land use laws. Finally, consistent with the principle that physically identical developments should be treated equally, the counties can simply draft land use ordinances governing the development of condominiums.[34] The ordinances should hold condominium developments to the same standards as physically identical developments under different forms of ownership.[35] In other words, the ordinances should require that condominium developments follow the same physical requirements (density, bulk, height, setbacks, water, sewerage, etc.) as physically identical developments under existing land use requirements (e.g., zoning, subdivision, building code, and cluster development laws). If a particular development proposal is inconsistent with state and county land use laws under forms of real estate ownership other than condominium ownership, the condominium property regimes law does not and will not somehow allow the project to be built.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	Land *use* laws should control land *use* matters. The condominium property regimes law should continue to encompass and control land *ownership*, *consumer protection*, and condominium *community governance* matters. And just as it would be inappropriate for the Real Estate Commission to control land *use* matters, it would be inappropriate for land use agencies to control condominium property regime matters. **Condominium Recodification Attorney's Comment** 1. *See also*, HRS §514A-45 (Supplemental regulations governing a condominium property regime), which reads: "Whenever they deem it proper, the commission, the county councils of the various counties or the city council of the city and county of Honolulu may adopt supplemental rules and regulations governing a condominium property regime established under this chapter in order to implement this program; provided that any of the supplemental rules and regulations adopted shall not conflict with this chapter or with any of the rules and regulations adopted by the commission to implement this chapter." 2. HRS §514A-45 tends to heighten confusion over land *use* and land *ownership* issues, so I do not recommend incorporating it in our recodification. If the Commission decides to incorporate HRS §514A-45, it should be placed after §___: 1-5.	
	§ ___: 1-6. Supplemental General Principles of Law Applicable. [Source: **UCA/UCIOA §1-108**.] The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-108 is the source of this section. 2. The official comments to §1-108 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. **Condominium Recodification Attorney's Comment** Members of the Real Property & Financial Services Section of the Hawaii State Bar Association (HSBA) and condominium management law attorneys have expressed concerns regarding the Hawaii Nonprofit Corporations Act passed by the 2001 Legislature (HB 599, HD1, SD1, CD1; enacted as Act 105, SLH 2001, effective date 7/1/2002). While the extent of the Act's application to nonprofit corporation condominium associations is unclear, many provisions would be disastrous if applied to common interest ownership communities. For example, § -88 of the new law allows members of nonprofit corporations to resign at any time. This is clearly impossible for common interest ownership communities, where membership in the community association (with all of its rights and obligations) is mandatory and runs with the land. As defined in §1.8 of the *Restatement of the Law, Third, Property (Servitudes)*: A "common-interest community" is a real-estate development or neighborhood in which individually owned lots or units are burdened by a servitude that imposes an obligation that cannot be avoided by nonuse or withdrawl (1) to pay for the use of, or contribute to the maintenance of, property held or enjoyed in common by the individual owners, or (2) to pay dues or assessments to an association that provides services or facilities to the common	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	property or to the individually owned property, or that enforces other servitudes burdening the property in the development or neighborhood. Other sections of the new nonprofit corporation law require notice that may be different from existing provisions in declarations and bylaws. Many other provisions would be inappropriate for nonprofit corporation condominium (and community) associations, but § -321 (a transition provision) can be read to mandate application of the new law to all nonprofit corporations in existence on the effective date of the Act. Recodification Draft #1, §1-108 makes it clear that supplemental general principles of law (such as the nonprofit corporation law) apply only to the extent they are consistent with the condominium law.	
	§ ___: 1-7. Construction Against Implicit Repeal. [Source: **UCA/UCIOA §1-109**.] This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-109 is the source of this section. 2. The official comments to §1-109 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.	
	§ ___: 1-8. Uniformity of Application and Construction. [Source: **UCA/UCIOA §1-110**.] This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among States enacting it.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-110 is the source of this section. 2. The official comments to §1-110 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.	
	§ ___: 1-9. Severability. [Source: **UCA/UCIOA §1-111**.] If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-111 is the source of this section.	
	§ ___: 1-10. Unconscionable Agreement or Term of Contract. [Source: **UCA/UCIOA §1-112**.] (a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result. (b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to: (1) the commercial setting of the negotiations; (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	agreement or similar factors; (3) the effect and purpose of the contract or clause; and (4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions. A disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-112 is the source of this section. 2. The official comments to §1-112 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.	
	§ ___: 1-11. Obligation of Good Faith. [Source: **UCA/UCIOA §1-113**.] Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-113 is the source of this section. 2. The official comments to §1-113 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.	
	§ ___: 1-12. Remedies To Be Liberally Administered. [Source: **UCA/UCIOA §1-114**.] (a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law. (b) Any right or obligation declared by this chapter is enforceable by judicial proceeding.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §1-114 is the source of this section.	
	SUBPART 2. APPLICABILITY [*Compare*: **HRS §514A-1.5**.]	
	§ ___: 1-13. Applicability to New Condominiums. [Source: **UCIOA §1-201**.] Except as provided in section ___: 1-14, this chapter applies to all condominiums created within this State after the effective date of this chapter. The provisions of chapter 514A do not apply to condominiums created after the effective date of this chapter. Amendments to this chapter apply to all condominiums created after the effective date of this chapter or subjected to this chapter, regardless of when the amendment is adopted in this State.	
	BRRAC's [Real Estate Commission's] Comment 1. UCIOA §1-201 is the source of this section. 2. The official comments to §1-201 of UCIOA (1994) should be used for guidance in interpreting this section.	
	§ ___: 1-14. Exception for Small Condominiums. [Source: **UCIOA §1-203**.] If a condominium contains no more than [~~12~~] 5 units and is not subject to any development rights, it is subject only to sections ___: 1-4 (Separate Titles and Taxation) and ___: 1-5 (Conformance with Land Use and Zoning Laws) unless the	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	declaration provides that the entire chapter is applicable.	
	BRRAC's [Real Estate Commission's] Comment 1. UCIOA §1-203 is the source of this section. 2. The official comments to §1-203 of UCIOA (1994) should be used for guidance in interpreting this section. **Condominium Recodification Attorney's Comment** UCIOA and UCA exempt small (no more than 12 units) cooperatives and planned communities (but not condominiums) from their provisions. HRS Chapter 514A applies to all new condominiums. [*See*, HRS §514A-1.5 (Applicability of chapter).] However, the fidelity bond requirements of HRS §514A-95.1 (Association of apartment owners registration; fidelity bond) apply only to those condominiums having six or more units. For discussion: In keeping with our desire to lessen the regulatory burden on Hawaii's people, it would seem to be appropriate to exempt smaller condominium projects from most of the requirements of our recodified condominium law (unless they choose to "opt-in" to its provisions). Consistent with HRS §514A-95.1, I have chosen "5" as the maximum number of units in a "small condominium" eligible for exception. [*See* Recodification Draft #1, §1-203 (Exception for Small Condominiums).]	
	§ ___: 1-15. Applicability to Pre-Existing Condominiums. [Source: **UCIOA §1-204**.] Except as provided in section ___: 1-16 (Same; Exception for Small Pre-Existing Condominiums), sections ___: 1-4 (Separate Titles and Taxation), ___: 1-5 (Conformance with Land Use and Zoning Laws), ___: 2-___ (Construction and Validity of Declaration and Bylaws), ___: 2-___ (Description of Units), ___: 2-___ (Merger or Consolidation of Common Interest Communities), ___: 5-___(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), ___: 5-___ (Tort and Contract Liability), ___: 5-___ (Lien for Assessments), and ___: 5-___ (Association Records), and section ___: 1-3 (Definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this State before the effective date of this chapter; but those sections apply only with respect to events and circumstances occurring after the effective date of this chapter and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of those condominiums. For the purposes of this chapter, the terms "condominium property regime" and "horizontal property regime" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "apartment owner" shall be deemed to correspond to the term "unit owner"; and the term "association of apartment owners" shall be deemed to correspond to the term "unit owners' association".	
	BRRAC's [Real Estate Commission's] Comment 1. UCIOA §1-204 is the source of this section. 2. The official comments to §1-204 of UCIOA (1994) should be used for guidance in interpreting this section. **Condominium Recodification Attorney's Comment** The second paragraph of §1-204 is added to aid interpretation of documents for pre-existing condominiums. It is similar to §55-79.40 (Application and construction of chapter) of the Virginia Condominium Act. For discussion: There may be more corresponding terms that should be defined for the transition from HRS Chapter 514A and its predecessor statutes to the recodification.	
	§ ___: 1-16. Same; Exception for Small Pre-Existing Condominiums. [Source: **UCIOA §1-205**.] If a	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	condominium created within this State before the effective date of this chapter contains no more than [~~12~~] 5 units and is not subject to any development rights, it is subject only to sections 1-4 (Separate Titles and Taxation) and 1-5 (Conformance with Land Use and Zoning Laws) unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section ___: 1-17, in which case all the sections enumerated in section ___: 1-15 apply to that condominium.	
	BRRAC's [Real Estate Commission's] Comment 1. UCIOA §1-205 is the source of this section. 2. The official comments to §1-205 of UCIOA (1994) should be used for guidance in interpreting this section.	
	§ ___: 1-17. Amendments to Governing Instruments. [Source: **UCIOA §1-206**.] (a) The declaration, bylaws, or plats and plans of any condominium created before the effective date of this chapter may be amended to achieve any result permitted by this chapter, regardless of what applicable law provided before this chapter was adopted. (b) An amendment to the declaration, bylaws, or plats and plans authorized by this section must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this chapter. If an amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.	
	BRRAC's [Real Estate Commission's] Comment 1. UCIOA §1-206 is the source of this section. 2. The official comments to §1-206 of UCIOA (1994) should be used for guidance in interpreting this section.	
	§ ___: 1-18. Applicability to Nonresidential and Mixed-Use Condominiums. [Source: **UCIOA §1-207**.] (a) "Nonresidential condominium" means a condominium in which all units are restricted exclusively to nonresidential purposes. Except as provided in subsection (e), this section applies only to nonresidential condominiums. (b) A nonresidential condominium is not subject to this chapter unless the declaration otherwise provides. (c) The declaration of a nonresidential condominium may provide that the entire chapter applies to the condominium or that only sections ___: 1-4 (Separate Titles and Taxation) and ___: 1-5 (Applicability of Local Ordinances, Regulations and Building Codes) apply. (d) If the entire chapter applies to a nonresidential condominium, the declaration may also require, subject to section 1-10 (Unconscionable Agreement or Term of Contract), that: (1) notwithstanding section ___: 5-___ (Termination of Contracts and Leases of Declarant), any management contract, employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a developer or an affiliate of a developer continues in force after the developer turns over control of the association; and (2) purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the developer regarding particular matters enumerated in those instruments. (e) A condominium that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this chapter unless the units that may be used for	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	residential purposes would comprise a condominium in the absence of the nonresidential units or the declaration provides that this chapter applies as provided in subsection (c) or (d).	
	BRRAC's [Real Estate Commission's] Comment 1. UCIOA §1-207 is the source of this section. 2. The official comments to §1-207 of UCIOA (1994) should be used for guidance in interpreting this section.	
	Condominium Recodification Attorney's Comment 1. Recommend deletion of HRS §514A-2 (Chapter not exclusive), which reads as follows: This chapter is in addition and supplemental to all other provisions of the Revised Statutes; provided that this chapter shall not change the substantive law relating to land court property, and provided further that if this chapter conflicts with chapters 501 and 502, chapters 501 and 502 shall prevail. *See also* discussion under §1-108 of Recodification Draft #1, regarding the potentially disastrous effects of the 2001 Nonprofit Corporations Act (HB 599, HD1, SD1, CD1; enacted as Act 105, SLH 2001) if it were to be applied to nonprofit corporation condominium associations (or any other common interest ownership community associations). HRS §514A-2 would make Hawaii's condominium law "supplemental" to the new nonprofit corporations law. 2. HRS §514A-7 (Condominium specialist; appointment; duties) has been moved from Part I (General Provisions) to Part III (Administration and Registration of Condominiums), §___: 3-___.	

Part II. Creation, Alteration, and Termination of Condominiums (Recodification PRELIMINARY Draft #2) (HRS Chapter 514A, Part II) (UCA/UCIOA/Recod Draft #1, Article 2)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	BRRAC's [Real Estate Commission's] Prefatory Comment to Part II [To be written: Description of guiding principles and changes to existing processes and practices under recodification. This prefatory comment should also be incorporated as a "purpose" subsection in draft legislation that will eventually be part of the session laws text (but not part of HRS).]	
	TABLE OF CONTENTS **Part II. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS** § ___: 2-1. Creation § ___: 2-2. Contents of Declaration § ___: 2-3. Condominium Map § ___: 2-4. Architect or Engineer's Certificate § ___: 2-5. Leasehold Units § ___: 2-6. Lease Rent Renegotiation § ___: 2-7. Common Interest § ___: 2-8. Common Elements § ___: 2-9. Limited Common Elements § ___: 2-10. Transfer of Limited Common Elements § ___: 2-11. Common Profits and Expenses § ___: 2-12. Metering of Utilities § ___: 2-13. Liens Against Units § ___: 2-14. Contents of Deeds or Leases of Units § ___: 2-15. Blanket Mortgages and Other Blanket Liens Affecting a Unit at Time of First Conveyance or Lease § ___: 2-16. Merger of Increments § ___: 2-17. Removal from Provisions of This Chapter	
	PART II. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS [*BRRAC subcommittee's 10/12/02 draft, edited.*]	
	§ ___: 2-1. Creation. [Source: **HRS §§514A-11**, **514A-20**.] (a) To create a condominium, all of the owners of the fee simple interest in land must execute a declaration submitting the land to the condominium and record the declaration in the bureau of conveyances or, if title to the land is registered pursuant to chapter 501, in the land court. (b) The condominium shall be subject to any right, title or interest existing when the declaration is recorded if the person who owns such right, title or interest does not execute or join in the declaration or otherwise subordinate. A person with any other right, title or interest in the land may subordinate that person's interest to the condominium by executing the declaration or executing and recording a document joining in or subordinating to the declaration.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §§514A-11 and 514A-20 are the sources of this section.	
	§ ___: 2-2. Contents of Declaration. [Source: **HRS §514A-11**.] (a) A declaration must describe the following:	

Part II. Creation, Alteration, and Termination of Condominiums (Recodification PRELIMINARY Draft #2) (HRS Chapter 514A, Part II) (UCA/UCIOA/Recod Draft #1, Article 2)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	(1) The land submitted to the condominium. (2) The number of the condominium map filed concurrently with the declaration. (3) The number of units in the condominium. (4) The unit number and common interest of each unit. (5) The number of buildings in the condominium, and the number of stories and units in each building. (6) The permitted and prohibited uses of each unit. (7) To the extent not shown on the condominium map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, spatial coordinates. (8) The condominium's common elements. (9) The condominium's limited common elements, if any, and the unit or units to which each limited common element's use is reserved. (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium if it is damaged or destroyed. (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservation made pursuant to paragraph (12) below, the approval of the owners sixty-seven percent of the common interest shall be required for all amendments to the declaration. (12) Any rights that the developer or others reserve regarding the condominium, including without limitation any reservations to merge or annex additional land or units to the condominium, to withdraw land from the condominium, and any reservations to modify the declaration or condominium map. An amendment to the declaration that is made to exercise those reserved rights requires only the consent or approval specified in the reservation. (b) The declaration may contain any additional provisions that are consistent with this chapter.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-11 is the source of this section.	
	§ ___: 2-3. Condominium Map. [Source: **HRS §514A-12**.] (a) A condominium map shall be recorded with the declaration. The condominium map must show the following: (1) A site plan for the condominium, showing the location and layout of all buildings included in the condominium. (2) Elevations and floor plans of all buildings in the condominium. (3) The layout, location, boundaries, unit numbers, and dimensions of the units. (4) A parking plan for the condominium, showing the location, layout and stall numbers of all parking stalls included in the condominium.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	(5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information, if any, of the limited common elements. (b) The condominium map may show any additional information that is consistent with this chapter. [**Subcommittee question: Any map requirements imposed by the Commission that should be codified?**]	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-12 is the source of this section.	
	§ ___: 2-4. Architect or Engineer's Certificate. [Source: **HRS §514A-12**.] The condominium map must bear the certificate of a licensed architect or professional engineer certifying that the condominium map is an accurate copy of portions of the plans of the condominium's building or buildings filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium is located. If the buildings or buildings have been built at the time the condominium map is recorded, the certificate must also state that, to the best of the architect's or engineer's knowledge, the condominium map depicts the layout, location, dimensions and numbers of the units substantially as built. If the building or buildings have not been built at the time the condominium map is 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 is earlier, the developer shall execute and record an amendment to the declaration accompanied by a certification of a licensed architect or professional engineer certifying that the condominium map previously recorded, as amended by the revised pages filed with such amendment, if any, fully and accurately depicts the layout, location, dimensions and numbers of the units substantially as built.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-12 is the source of this section. 2. 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.	
	§ ___: 2-5. Leasehold Units. [Source: **HRS §514A-13(g)**.] An undivided interest in the land that is subject to a condominium equal to a unit's common interest may be leased to the unit owner and the unit and its common interest in the common elements exclusive of the land may be conveyed to the unit owner. The conveyance of the unit with an accompanying lease of an interest in the land shall not constitute a division or partition of the common elements, or a separation of the common interest from its unit. Where a deed of a unit is accompanied by a lease of an interest in the land, the deed shall not be construed as conveying title to the land included in the common elements.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-13(g) is the source of this section.	
	§ ___: 2-6. Lease Rent Renegotiation. [Source: **HRS §514A-90.6**.] (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	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	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 ___: 5-___ (Lien for Assessments) in the same manner as an unpaid common expense.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-90.6 is the source of this section. HRS §514A-90.6 is under Part V (Condominium Management) of Chapter 514A.	
	§ ___: 2-7. Common Interest. [Source: **HRS §514A-13(a)**, **(b)**, and **(c)**.] Each unit shall have the common interest percentage it is assigned in the declaration. Except as provided in sections _____ of this chapter [insert cross references to merger provision and declaration reservations paragraph], a unit's common interest percentage shall be permanent and remain undivided, and may not be altered or partitioned without the consent of the owner of the unit and the owner's mortgagee, expressed in a duly executed and recorded declaration amendment, except as provided in the declaration. The common interest shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned or described in the conveyance or other instrument.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-13(a), (b), and (c) are the sources of this section.	
	§ ___: 2-8. Common Elements. [Source: **HRS §514A-13(d)**.] Each unit owner may use the common elements in accordance with the purposes permitted under the declaration, subject to: (1) The rights of other unit owners to use the common elements. (2) Any owner's exclusive right to use of the limited common elements as provided in the declaration (3) The power of the owners to amend the declaration to change the permitted uses of the common elements or to designate any portion of the common elements as a limited common element. [**This paragraph, which negates *Penney*, may need further discussion in light of comments received from the BRRAC subcommittee and others.**] (4) Any rights reserved in the declaration to amend the declaration to change the permitted uses of the common elements. (5) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are not actually used by any of the unit owners for a purpose permitted in the declaration. Unless the lease if approved by the owners of sixty-seven percent of the common interest, any such lease shall have a term of no more than five years and may be terminated by the board or the lessee on sixty days written notice. (6) The right of the board of directors to lease or otherwise use for the benefit of the association those common elements that the board determines are actually used by one or more Unit owners for a purpose permitted in the declaration. Any such lease or use must be approved by the owners of sixty-seven percent of the common interest, including the unit owners that the board determined actually use the common element	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	and such owner's mortgages.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-13(d) is the source of this section. **Condominium Recodification Attorney's Comment (from Draft #1)** 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. [Note: 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 are trying to adopt this approach in the recodification.]	
	§ ___: 2-9. Limited Common Elements. If the declaration designates any portion of the common elements as limited common elements, those limited common elements shall be subject to the exclusive use of the owner of the unit or units to which they are assigned, subject to the provisions of the declaration and bylaws.	
	BRRAC's [Real Estate Commission's] Comment 1. This is a new section. [BRRAC subcommittee's 10/12/02 draft uses the term "Private Elements". The term was edited back to "Limited Common Elements" throughout this preliminary draft #2.]	
	§ ___: 2-10. Transfer of Limited Common Elements. [Source: **HRS §514A-14**.] Except as provided in the declaration, any unit owner may transfer or exchange a limited common element that is assigned to the owner's unit to another unit. Such a transfer may be made by execution and recordation of an amendment of the condominium's declaration. Such an amendment need only be executed by the owner of the unit whose limited common element is being transferred and the owner of the unit receiving the limited common element, provided that unit mortgages and leases may also require the consent of mortgages or lessors, respectively, of the units involved. A copy of any such amendment shall be promptly delivered to the association.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-14 is the source of this section. [Explain expansion.]	
	§ ___: 2-11. Common Profits and Expenses. [Source: **HRS §514A-15**.] (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners, including the developer, in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws. In a mixed-use project containing units for both residential and non-residential use, such charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration. Except as otherwise provided in the declaration or bylaws, all limited common element costs and expenses, including but not limited to, maintenance, repair, replacement, additions and improvements, shall be charged to the owner of the unit to which the limited common element is appurtenant in an equitable manner as set forth in the declaration. (b) A unit owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to the owner's unit at the time the certificate of occupancy relating to the owner's unit is issued by the appropriate county agency; provided that a developer may assume all the actual common	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	expenses in a project, by stating in the public report required by section ___: 3-___ that the unit owner shall not be obligated for the payment of owner's respective share of the common expenses until such time the developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the shares of common expenses that are allocated to their respective units. The developer must mail such written notice to the owners, the association, and the managing agent, if any, at least thirty days before the specified date. [**Subcommittee question: Should "residential use" and "nonresidential use" be defined terms?**]	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-15 is the source of this section.	
	§ ___: 2-12. Metering of Utilities. [Source: **HRS §514A-15.5**.] (a) Units in a project that includes units designated for both residential and non-residential use shall have separate meters, or calculations shall be made, or both, to determine the use by the non-residential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage and the cost of such utilities shall be paid by the owners of such non-residential units; provided that the apportionment of such charges among owners of non-residential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. The requirements of this paragraph shall not apply to projects on which construction commenced before January 1, 1978. (b) Subject to any approval requirements and spending limits contained in a project's declaration or bylaws, a project's board may authorize the installation of meters to determine the use by the individual units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water and drainage. The cost of metered utilities shall be paid by the owners of such units based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, 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.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-15.5 is the source of this section.	
	§ ___: 2-13. Liens Against Units. [Source: **HRS §514A-16**.] (a) For purposes of this section, "visible commencement of operations" shall have the meaning it has under chapter 507, part II, and a "lien" as used herein means a lien created pursuant to chapter 507, part II. (b) Upon the creation of a condominium, liens shall attach to the units and not to the common elements. If visible commencement of operations occurs prior to the creation of the condominium, then liens arising from such work shall attach to all units in the condominium. If visible commencement of operations occurs after creation of the condominium, then liens arising from such work shall attach only to the unit or units on which the work was performed in the same manner as other real property. (c) If the developer contracts for work on the common elements, either on its behalf or on behalf of the association prior to the first meeting of the association, then liens arising from such work shall attach to all units owned by the developer at the time of visible commencement of operations. (d) If the association contracts for work on the common elements after the first meeting of the association, there shall be no lien but the persons contracting with the association to perform the work or supply the materials incorporated in the work shall have a contractual right to payment by the association.	

Part II. Creation, Alteration, and Termination of Condominiums (Recodification PRELIMINARY Draft #2) (HRS Chapter 514A, Part II) (UCA/UCIOA/Recod Draft #1, Article 2)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-16 is the source of this section.	
	§ ___: 2-14. Contents of Deeds or Leases of Units. [Source: **HRS §514A-17**.] Deeds or leases of units adequately describe the property conveyed or leased if they contain the following information: (1) The title and date of the declaration and the declaration's bureau of conveyances and/or land court document number or liber and page numbers; (2) The unit number of the unit conveyed or leased; (3) The common interest of the unit conveyed or leased; (4) For a unit title to which is registered in the land court, the land court certificate of title number for the unit, and the master certificate of title number for the condominium [**Question: Did Land Court buy into this concept?**]; and (5) For a unit title to which is not registered in the land court, the bureau of conveyances document number or liber and page numbers for the instrument by which the grantor acquired title. Deeds or leases of units may contain such additional information and details deemed desirable and consistent with the declaration and this chapter, including without limitation a statement of any encumbrances on title to the unit which are not listed in the declaration. The failure of a deed or lease to include all of the information specified above does not render it invalid.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-17 is the source of this section.	
	§ ___: 2-15. Blanket Mortgages and Other Blanket Liens Affecting a Unit at Time of First Conveyance or Lease. [Source: **HRS §514A-18**.] At the time of the first conveyance or lease of each unit, every mortgage and other lien, except any improvement district or utility assessment, affecting both the unit and any other unit shall be paid and satisfied of record, or the unit being conveyed or leased and its common interest shall be released therefrom by partial release duly recorded.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-18 is the source of this section.	
	§ ___: 2-16. Merger of Increments. [Source: **HRS §514A-19**.] (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 elements of the projects by all the owners of the units in the merged projects. A merger may be implemented with the vote or consent that the declaration requires for a merger or upon vote of 80% of the common interest. (b) A merger becomes effective when a certificate of merger is recorded. The certificate of merger may provide for a single unit owners' association 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 units in the merged projects. The certificate of merger may also provide for a merger of the common elements of the projects so that each unit owner in the merged projects has an undivided ownership interest in the common elements of the merged projects. In the event of such a merger of common elements, the common interests of each unit in the merged projects shall be adjusted in accordance with the merger provisions in the projects' declarations so that the total common interests of all units in the resulting merged project totals 100%. If the certificate of	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	merger does not provide for a merger of the common elements, the common elements and common interests of the merged projects shall remain separate, but they shall be subject to any easements or other rights set forth in the certificate of merger. [**This is intended to address the so-called "administrative merger" (i.e., a merger for administrative purposes but where title does not merge); suggestions for this language are most welcome.**] (c) 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 units in the condominium projects being merged and shall issue new certificates of title for the units in the merged project, covering all of the land of the merged projects. The new certificates of title for the units in the merged condominium shall describe, among other things, each unit's new common interest. The certificate of merger shall at least set forth all of the units of the merged condominium projects, their new common interests, and their current certificate of title numbers in the common elements of the merged condominium projects.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-19 is the source of this section.	
	§ ___: 2-17. Removal from Provisions of This Chapter. [Source: **HRS §514A-21**.] (a) If: (1) Unit owners owning units 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 units of the unit 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 unit 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 unit 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 as one fund and, except as otherwise provided in the declaration, shall be divided among all the unit owners in proportion to their respective common interests, provided that no payment shall be made to a unit owner until there has first been paid off out of the owner's share of such net proceeds all liens on the owner's unit. Upon such sale, the property ceases to be the subject of a condominium or subject to this chapter. (b) All of the unit 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 units 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 or subject to this chapter, and is deemed to be owned in common by the unit owners in proportion to their respective common interests. (c) Notwithstanding subsections (a) and (b), 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	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	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 unit 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 developer 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 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 unit owner is entitled. The lessor shall provide the unit owners' association, 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. (d) [Source: **HRS §514A-22**.] The removal provided for in this section shall in no way bar the subsequent resubmission of the property to this chapter.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §§514A-21 and 514A-22 are the sources of this section. **Condominium Recodification Attorney's Comment** 1. HRS §514A-22 (Removal no bar to subsequent resubmission) seems to be unnecessary.	
	Condominium Recodification Attorney's Comment 1. Recommend not including HRS §514A-13.5 (Renumeration to allow ingress and egress prohibited) in recodification. If it is included, it should be placed in Part V – Management of Condominium. (Include in new "Limitations" section?) 2. Recommend not including HRS §514A-13.5 (Mailboxes for each dwelling required) 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. 3. Recommend not including HRS §514A-14.5 (Ownership of parking stalls) in recodification. Parking	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	requirements should be governed by state and county land use laws. 4. HRS §514A-15.1 (Common expenses; prior late charges) has been incorporated in Part V – Management of Condominium, §___:5-___.	

Part III. Administration and Registration of Condominiums (Recodification PRELIMINARY Draft #2) (HRS Chapter 514A, Part III) (UCA/UCIOA/Recod Draft #1, Article 5)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	BRRAC's [Real Estate Commission's] Prefatory Comment to Part III [To be refined: Description of guiding principles and changes to existing processes and practices under recodification. This prefatory comment should also be incorporated as a "purpose" subsection in draft legislation that will eventually be part of the session laws text (but not part of HRS). Use Bernice's 3/26/02 memo, as edited by Rick, and Ray's 3/27/02 "Random Thoughts" as basis.] **Guiding Principles:** 1. For the sake of clarity, all provisions under the jurisdiction of the Commission should be found in Parts III (Administration and Registration of Condominiums) and IV (Protection of Condominium Purchasers) rather than scattered throughout the Act. 2. The Commission's role is fundamentally to provide consumer protection through adequate disclosure to prospective condominium purchasers and education of condominium community stakeholders (i.e., those who build, sell, buy, manage, live-in, etc. condominium projects). 3. Risk to purchasers' funds must be correlated with the rights and obligations of developers. Provisions in this part, in conjunction with Part IV (Protection of Condominium Purchasers), are meant to assure that a developer is not able to obtain use of a purchaser's money until the purchaser is able to get a completed unit. 4. The recodified condominium law should not result in an increase in the cost of government. **Pertinent parts of UCA (1980) Prefatory Comment to Article 5** . . . . At the same time, in some states the public's response to administrative regulation has become increasingly negative. The adoption of so-called "sunshine" and "sunset" laws, consolidation or merger of many agencies, and abolition of some outmoded boards and commissions, reflect a growing public perception that administrative enforcement may at times be neither efficient nor effective. The debate on the general desirability of state agency regulation is reflected in the question of regulation of condominium development. While many states with widespread condominium activity, such as California, Florida, Virginia, and New York, have created agencies to regulate condominiums or have placed the regulation of condominiums in an existing governmental body, other states with substantial condominium activity, such as Illinois and Maryland, have chosen not to regulate condominiums, relying instead on the private market and lenders for consumer protection.	
	TABLE OF CONTENTS **Part III. ADMINISTRATION AND REGISTRATION OF CONDOMINIUMS** § ___: 3-1. Administrative Agency § ___: 3-2. Registration Required § ___: 3-3. Inspection by Agency § ___: 3-4. Public Report § ___: 3-5. Same; Request for Effective Date or Hearing by Developer § ___: 3-6. Same; Amendments for Material Changes § ___: 3-7. Annual Report § ___: 3-7.1 Expiration of Public Reports § ___: 3-8. No Misleading Information	

Part III. Administration and Registration of Condominiums (Recodification PRELIMINARY Draft #2) (HRS Chapter 514A, Part III) (UCA/UCIOA/Recod Draft #1, Article 5)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	§ ___: 3-9. General Powers and Duties of Agency § ___: 3-10. Deposit of Fees § ___: 3-11. Condominium Specialists; Appointment; Duties § ___: 3-12. Private Consultants § ___: 3-13. Agency Regulation of Public Report § ___: 3-14. Investigative Powers of Agency § ___: 3-15. Cease and Desist Orders § ___: 3-16. Revocation of Registration § ___: 3-17. Power to Enjoin § ___: 3-18. Penalties § ___: 3-19. Limitation of Action § ___: 3-20. Condominium Education Fund § ___: 3-21. Same; Payments to Fund by Unit Owners' Associations and Developers § ___: 3-22. Same; Management of Fund [Note: The table of contents will be appropriately renumbered when we finish reorganizing, tearing apart, and tinkering with the draft.]	
	PART III. ADMINISTRATION AND REGISTRATION OF CONDOMINIUMS	
	§ ___: 3-1. Administrative Agency. [Source: **HRS §514A-3; UCA/UCIOA §5-101;** *BRRAC to decide whether to incorporate*.] As used in this chapter, "commission" means the real estate commission of the state department of commerce and consumer affairs, which is an agency within the meaning of chapter 91.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-3 and UCA/UCIOA §5-101 are the sources of this section.	
	§ ___: 3-2. Registration Required. [Source: **HRS §514A-31; UCA/UCIOA §5-102;** *BRRAC to decide whether to incorporate*.] A developer may not offer or dispose of a unit intended for residential use unless the condominium and the unit are registered with the commission, but a condominium consisting of no more than [~~12~~] five units and which is not subject to development rights is exempt from the requirements of this section and section [~~5-103(a)~~] ___:3-___.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-31 and UCA/UCIOA §5-102 are the sources of this section. 2. The official comments to §5-102 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. 3. Currently, the requirement for a public report is triggered by an "offer for sale". Because the Commission's definition of an "offer for sale" has been so strict, a public report is required for activities involving no risk to the consumer. [Example:] When a developer is "testing the market" without taking any purchasers funds (e.g., taking names and addresses of interested persons, or even accepting nonbinding, no deposit reservations), the consumer is not at risk. Therefore, "testing the market" should not trigger the requirement of a public report and should be excluded from the definition of	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	"offer for sale". [Note: The nonbinding reservation should be a brief document with no obligations for the prospective purchaser, so that it would have to be superseded by a formal contract after the issuance of a public report and not merely affirmed. In other words, the reservation should be a half page document that is clearly not a contract. The type of "Reservation" currently used after a preliminary public report that has all the appearance and terms of a contract and need only be affirmed after the final public report is not the type of reservation we would allow during the "testing the market" stage.] [Note further: There are issues regarding when brokers must become involved in this process and whether they will feel able to sign up even nonbinding reservations with no disclosures.] 4. The questionnaire required by HRS §514A-32 appears to be an unnecessary remnant of Hawaii's 1961 Horizontal Property Regimes Act (RLH §170A-17). It has not been included in the recodification. **Condominium Recodification Attorney's Comment** HRS Chapter 514A applies to all new condominiums. [*See*, HRS §514A-1.5 (Applicability of chapter).] However, the fidelity bond requirements of HRS §514A-95.1 (Association of apartment owners registration; fidelity bond) and Condominium Management Education Fund requirements of HRS §514A-132 (Payments to the fund) apply only to those condominiums having six or more units. For discussion: In keeping with our desire to lessen the regulatory burden on Hawaii's people, it would seem to be appropriate to exempt smaller condominium projects from most of the requirements of our recodified condominium law (unless they choose to "opt-in" to its provisions). Consistent with HRS §§514A-95.1 and 514A-132, I have chosen "five" as the maximum number of units in a "small condominium" eligible for exception. [*See* Recodification Draft #1, §1-203 (Exception for Small Condominiums).]	
	§ ___:3-3. Inspection by Agency. [Source: **HRS §§514A-33, -34, -35**; *modified*.] (a) After appropriate notification has been made or additional information has been received pursuant to [~~sections 514A-31, 514A-32, 514A-39.5, 514A-40, or 514A-41~~] this part, an inspection of the condominium project may be made by the commission. (b) When an inspection is to be made of projects, the developer shall be required to pay an amount estimated by the commission to be necessary to cover the actual expenses of the inspection, not to exceed $500 a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses.	
	BRRAC's [Real Estate Commission's] Comment 1. Since the Commission inspection pursuant to subsection (a) is discretionary, there is no need for a provision such as HRS §514A-35 (Waiver of Inspection).	
	§ ___:3-4. Public Report. [Source: **HRS §514A-61;** *modified; see also, HRS §§514A-36, 514A-40; BRRAC subcommittee's 10/29/02 draft*.] (a) Prior to the issuance of an effective date for a public report, the commission must have received the following: (1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to Chapter 91. (2) The public report prepared by the developer disclosing the following information, in such form and content as prescribed by the commission: (i) The name and address of the project, and the name, address, telephone number and electronic mail address (if any) of the developer or the developer's agent;	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	(ii) A breakdown of the annual maintenance fees and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles; (iii) A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties or a statement that no warranties exist; (iv) A statement of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use; (v) If the project includes one or more existing structures being converted to condominium status, then as to those units that have been in existence for not less than five years: (A) A statement by the developer, based upon a report prepared by a Hawaii [~~registered~~] licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units; (B) A statement by the developer of the expected useful life of each item reported on in paragraph (A) or a statement that no representations are made in that regard; and (C) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing these violations. (vi) If the project includes one or more existing structures being converted to condominium status, then as to those structures that have been in existence for not less than five years, a verified statement signed by an appropriate county official that: (A) the structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable (x) any variances which have been granted to achieve compliance; and (y) whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; or (B) based on the available information, the county official cannot make a determination with respect to the matters described in paragraph (A). **[Note: A separate section in 514A will list various sections (including (v) and (vi) above that are not applicable to commercial units.]** (vii) A description of any rights reserved to the developer or others, including any rights to merge or phase the project; and (viii) Any other facts that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use. (3) A copy of the deed, master lease, option agreement, agreement of sale, or sales contract evidencing either that the developer holds the fee and/or leasehold interest in the property or has a right to acquire the same. (4) Copies of the executed declaration, by laws and condominium map (or if such documents have not been executed, drafts of such documents) that meet the requirements of sections _____. **[The sections specifying what must be in the declaration, by laws and map. The requirement for a parking plan should be satisfied by the map.]** (5) A specimen copy of the proposed contract of sale for units that specifies the date by which the requirements set forth in section ___: 3-___ **[Requirements for Binding Contracts]** must be met, if such	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	requirements have not already been met. (6) An executed copy of an escrow agreement with a third party depository for retention and disposition of purchaser's funds that meets the requirements of Section _____. **[Which will include restrictions on using proceeds.]** (b) The public report may not be used for the purpose of selling any units in the project unless and until the commission issues an effective date for the public report. The commission's issuance of an effective date for a public report shall not be construed to constitute the commission's approval or disapproval of the project, or the commission's representation that all material facts concerning the project have been fully or adequately disclosed, or the commission's judgment of the value or merits of the project.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS § 514A-61, substantially modified, with elements of HRS §§514A-36 and 514A-40 are the sources of this section. 2. Under the recodified condominium law, developers can "test the market" without a public report as there is no risk of consumer harm when no money changes hands and no binding contracts are made. *See*, §___: 4-___. Therefore, HRS §514A-37 (Preliminary public reports) is no longer necessary. 3. Consistent with the UCA, UCIOA, and the laws of many other jurisdictions, a single public report ("public offering statement" in the UCA/UCIOA) is required in Hawaii's recodified condominium law. Therefore, HRS §514A-39.5 (Contingent final public report) is no longer necessary. 4. Since condominium conversions involve existing structures and a county might not otherwise have the opportunity to address land *use* matters in these situations, it is appropriate to require county certification of compliance with its land *use* laws when converting existing structures to the condominium form of *ownership*. 5. HRS §§514A-40(b) and 514A-61(b) use the undefined term "declarant." "Developer" will be used in the recodification instead of "declarant." 6. HRS §§514A-40(b)(2) and 514A-61(b)(1) incorrectly use the term "registered" architect or engineer. The correct term is "licensed." *See*, HRS Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects). 7. HRS §514A-40(c), requiring developers to pay $5 per project unit into the Condominium Education Fund, is incorporated in §___: 3-___. **Condominium Recodification Attorney's Comment** 1. The BRRAC should consider incorporating more of the requirements of HRS §514A-40. 2. Rather than requiring that the public report "be in such form and content as prescribed by the commission" (HRS §514A-36), the BRRAC/REC should consider statutorily setting forth required contents of public reports. UCA/UCIOA/Recod Draft #1 takes this approach in Article 4 (Protection of Condominium Purchasers). *See also*, Hawaii Administrative Rules, Title 16, Chapter 107, Proposed Rules Relating to Condominium Property Regimes; HRS §484-6 (Uniform Land Sales Practices Act, "Public Offering Statement"; and HRS §514E-9 (Time Sharing Plans, "Disclosure Statement"). 3. Clearer separation of requirements for condominium conversions may be desirable.	
	§ ___:3-5. Same; Request for Effective Date or Hearing by Developer. [Source: HRS §514A-38; *modified*.] If an effective date for a public report is not issued within a reasonable time after compliance with registration requirements, or if the developer is materially grieved by the form or content of the public report,	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	the developer may, in writing, request and shall be given a hearing by the commission within a reasonable time after receipt of request.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-38 is the source of this section. The first sentence in HRS §514A-38 is incorporated in section ___: 3-___ (Private Consultants).	
	§ ___: 3-6. Same; Amendments. [Source: **HRS §514A-41;** *modified; BRRAC subcommittee's 10/29/02 draft*.] (a) After the effective date for a public report has been issued by the commission, if any circumstance occurs which would render the public report misleading to purchasers in any material respect, or if the developer desires to update or change the information set forth in the public report, the developer shall immediately submit to the commission an amendment to the public report, together with such supporting information as may be required by the commission, to update the information contained in the public report, accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. (b) The submission of an amended public report shall not require the developer to suspend sales subject to the power of the commission to order such sales to cease as set forth in section ___: 3-15. (c) The developer shall provide all prospective purchasers with a true copy of (i) the amendment to the public, if the prospective purchaser has received copies of the public report and all prior amendments, or (ii) an amendment to the public report amending and restating the public report and all prior amendments in the entirety. (d) The filing of an amendment to the public report shall not, in and of itself, be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by section ___: 4-___, the terms and conditions of the purchaser's contract for sale, and applicable common law.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-41, modified, is the source of this section. 2. A "circumstance . . . which would render the public report misleading to purchasers in any material respect" triggering the need for a supplemental public report is a change in circumstances that directly, substantially, and adversely affects the use or value of a purchaser's unit or appurtenant limited common elements or project elements available for the purchaser's use. This is the standard set forth in HRS §514A-63. HRS Chapter 514A currently has inconsistent provisions regarding when changes in a project give a buyer the right of rescission. The [BRRAC/REC] believes that HRS §514A-63 contains the correct standard for determining rescission rights. A particular change in a project may meet this standard for some buyers and not others. For example, internal changes in some types of apartment might not adversely affect buyers of different apartment types. However, HRS §514A-41 requires a supplementary public report for any change which makes the public report misleading as to purchasers in any material respect. Once a supplementary public report is issued, the Commission appears to require that it be provided to all unit buyers with a form of receipt that includes a notice of right of rescission. We believe as follows: a. HRS §514A-63 should be the standard for rescission. If a change meets the HRS §514A-63 standard, it is sufficiently material to require a supplementary public report. b. A supplementary public report should not automatically give every buyer a right of rescission, only those buyers who meet the rescission standard.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	c. The receipt for a public report or supplementary public report should be separate from the notice of right of rescission. All buyers would receipt for the report (or be deemed to receipt). Only buyers meeting the rescission standard would receive the notice of right of rescission. d. Question: Should the commission or the developer should make the initial decision that the rescission standard is met. If a developer decides the standard has not been met, it will not send a notice of right of rescission, but if the developer is wrong the buyer may rescind anyway and be upheld by an arbitrator or court. So the developer will have a motive for erring on the side of caution and giving the notice in doubtful cases, to avoid a prolonged period during which the right of rescission could be exercised. e. Provided the buyers were notified of the change, the statutory right of rescission would terminate at closing. Thereafter the buyer would have any contractual or common law rights of rescission. f. If a change makes the public report misleading, but does not meet the rescission standard for any buyer, it could be disclosed in an amended disclosure abstract, or in an annual update of the public report or in a supplementary public report. 3. Subsection (a) is a substantial departure from current practice in that it allows sales in a project to continue subject to the Commission's issuance of an effective date for a supplemental public report. [Explain rationale. Explain how consumers are still protected and still have appropriate remedies, if necessary. Note that prospective purchasers will have a copy of the supplemental public report pending the Commission's issuance of an effective date, and that the sale would be void (voidable?) if the Commission does not issue an effective date.]	
	§ ___: 3-7. Annual Report. [Source: **UCA/UCIOA §5-109;** *modified; BRRAC subcommittee's 10/29/02 draft*.] (a) A developer shall file annually, within thirty days after the anniversary date of the effective date for a public report, a report to update the material contained in the public report. This provision does not relieve the developer of the obligation to file amendments to the public report pursuant to section ___: 3-6. (b) The developer shall be relieved from filing annual reports pursuant to this section and amendments pursuant to section ___: 3-6 upon the occurrence of the following: (1) The developer (A) owns or controls units representing less than twenty-five percent of the voting power in the association and has no power to override or veto the acts of the association, to increase the number of units in the project, to cause a merger or consolidation of the project with other projects, or to amend the project documents, (B) has no ownership interest in the project, or (C) has not sold any units in the project and elects not to sell units in the project; (2) The developer has filed a final annual report describing the conditions set forth subsection (1) above; and (3) The commission has issued written acknowledgment of receipt of developer's final annual report.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §5-109, modified, is the source of this section. 2. The official comments to §5-109 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. 3. Under the recodified condominium law, public reports do not expire. Hence, there are no provisions comparable to HRS §514A-43 (Automatic expiration of public reports; exceptions). Annual reports as well as prompt amendments/supplemental public reports (if a change directly, substantially, and adversely affects the use or value of a purchaser's unit or appurtenant limited common elements or project elements available for the purchaser's use) are	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	required instead. Project changes that are not so material as to trigger rescission rights (i.e., do not meet the standard set forth in HRS §514A-63) are among the things that might be included in annual reports. 4. This section requires annual reports from a developer to the Commission in order to keep the information filed with the Commission current. This requirement parallels the developer's obligation to provide a current public report to unit owners. *See*, § [~~4-103(c)~~] ___: 4-___. 5. Under subsection (c), if the period of developer control has passed, the developer is relieved of the obligation to continue to file an annual report. However, the obligation to continue to provide public reports is imposed on a developer under § [~~4-103(c)~~] ___: 4-___ so long as he is offering any unit for sale. The Commission would thus continue to have jurisdiction over the developer's activities, but would have no other authority to regulate the project.	
	§ ___: 3-7.1. Expiration of Public Reports. [Source: ***New***; *BRRAC subcommittee's 10/29/02 draft*.] (a) Except as otherwise provided in this chapter, upon issuance of an effective date for a public report or any amendment, the public report and amendment or amendments shall not expire until such time as the commission has acknowledged receipt of the developer's final annual report.	
	BRRAC's [Real Estate Commission's] Comment 1. This is a new section.	
	§ ___: 3-8. [~~True copies of public report;~~] No Misleading Information. [Source: **HRS §514A-42;** *modified*.] [~~The public reports given by the developer to prospective purchasers shall be an exact reproduction of the public report for which the commission has issued an effective date.~~] All documents (including the public report) prepared by or for the developer and submitted to the commission in connection with the developer's registration of the project, and all information contained in such documents, shall be true, complete and accurate in all respects, and shall not contain any misleading information, or omit any information which would render the information or documents submitted to the commission misleading in any material respect.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-42 is the source of this section. 2. Note: The essence of the first sentence of HRS §514A-42 seems to be duplicative of the requirement in HRS §514A-62 (Copy of Public Report to be Given to Prospective Purchaser) that: "The developer … shall not enter into a contract or agreement for the sale or resale of … an apartment that is binding upon any prospective purchaser until … The commission has issued an effective date for … a … public report on the project … and the developer has delivered … to the prospective purchaser … a true copy of … the … public report …" If, however, the BRRAC believes we should incorporate the exact language of HRS §514A-42, it should be in Part IV (Protection of Condominium Purchasers).	
	§ ___: 3-9. General Powers and Duties of Agency. [Source: **HRS §514A-99; UCA/UCIOA §5-107;** *modified; BRRAC to decide whether to incorporate*.] (a) The commission may adopt, amend, and repeal rules, assess fees, and issue orders consistent with and in furtherance of the objectives of this chapter[~~, but the commission may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter~~]. The commission may prescribe forms and procedures for submitting information to the commission. (b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of part III (Administration and Registration of Condominiums) or part IV (Protection of Condominium Purchasers) of this chapter or any of the commission's related rules or orders, the commission without prior	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	administrative proceedings may maintain an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The commission is not required to post a bond or prove that no adequate remedy at law exists. (c) The commission may intervene in any action involving the powers or responsibilities of a developer in connection with any condominium for which an application for registration is on file. (d) The commission may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter. (e) The commission may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the commission's duties. (f) In issuing any cease and desist order or order rejecting or revoking registration of a condominium, the commission shall state the basis for the adverse determination and the underlying facts. (g) The commission, in its sound discretion, may require bonding, escrow of portions of sales proceeds, or other safeguards it may prescribe by its rules to guarantee completion of all improvements which a developer is obligated to complete pursuant to section [~~4-119 (Declarant's Obligation to Complete and Restore)~~] ___: 4-___.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-99 and UCA/UCIOA §5-107 are the sources of this section. 2. The official comments to §5-107 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. 3. Prohibition of Commission intervention in the internal activities of unit owners associations (in UCA/UCIOA §5-107(a)) was deleted to avoid any implication that the Commission will involve itself in curing violations of the condominium management provisions of this chapter. The Commission's role in condominium governance matters should be limited to education and the provision of information. 4. The BRRAC/REC needs to decide whether to include a "Developer's Obligation to Complete and Restore" provision in Part IV (Protection of Condominium Purchasers).	
	§ ___: 3-10. Deposit of Fees. [Source: **HRS §514A-44;** *essentially identical*.] Unless otherwise provided in this chapter, all fees collected under this chapter shall be deposited by the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-44 is the source of this section.	
	§ ___: 3-11. Condominium Specialist; Appointment; Duties. [Source: **HRS §514A-7;** *identical*.] There are established two permanent condominium specialist positions within the department of commerce and consumer affairs to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominiums. There is also established a permanent secretarial position to provide assistance in carrying out these duties. The condominium specialists and secretary shall be appointed by the director of commerce and consumer affairs without regard to chapters 76 and 77. The condominium specialists and secretary shall be members of the employees retirement system of the State and shall be eligible to receive the benefits of any state or federal employee benefit program generally	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	applicable to officers and employees of the State.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-7 is the source of this section. 1. [Question: Is it a "secretarial" or "administrative assistant" position that should be established under this section?]	
	§ ___: 3-12. Private Consultants. [Source: **HRS §514A-38;** *in pertinent part, identical*.] The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of such review by private consultants shall be borne by the developer.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-38 is the source of this section.	
	§ ___: 3-13. Agency Regulation of Public Report. [Source: **UCA/UCIOA §5-110;** *essentially identical; BRRAC to decide whether to incorporate*.] (a) The commission at any time may require a developer to alter or supplement the form or substance of a public report to help assure adequate and accurate disclosure to prospective purchasers. (b) The public report may not be used for any promotional purpose before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the commission has approved or recommended the condominium, the disclosure statement, or any of the documents contained in the application for registration. (c) In the case of a condominium situated wholly outside of this State, an application for registration or proposed public report filed with the commission which has been approved by an agency in the State where the condominium is located and substantially complies with the requirements of this chapter may not be rejected by the commission on the grounds of non-compliance with any different or additional requirements imposed by this chapter or by the commission's rules. However, the commission may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §5-110 is the source of this section. 2. The official comments to §5-110 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. [Note: A combined, corrected, comment is contained in Recodification Draft #1, under §5-110.] 3. HRS §514A-36 (Public reports and registration fees, incorporated above as §_____) states that: "The commission's issuance of an effective date for a public report shall not be construed to constitute the commission's approval or disapproval of the project, or the commission's representation that all material facts concerning the project have been fully or adequately disclosed, or the commission's judgment of the value or merits of the project." This section makes it clear that, to help assure that adequate and accurate disclosures are made to consumers, the Commission may require a developer to alter or supplement a public report.	
	§ ___: 3-14. [~~Investigatory~~] Investigative Powers. [Source: **HRS §514A-46;** *modified*.] If the commission has reason to believe that any person is violating or has violated [~~section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1,~~	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	~~514A-97, 514A-98, 514A-132, or 514A-134~~] part III (Administration and Registration of Condominiums) or part IV (Protection of Condominium Purchasers) of this chapter, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of [~~the association of apartment owners, the board of directors, the managing agent, the real estate broker, the real estate salesperson, the purchaser, or the developer~~] all relevant parties. For the purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and shall make the records accessible to the commission upon reasonable notice and demand.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-46 is the source of this section. 2. Compare UCA/UCIOA/Recod Draft #1 §5-108 (Investigative Powers of Agency), which reads as follows: (a) The commission may initiate public or private investigations within or outside this State to determine whether any representation in any document or information filed with the commission is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice. (b) In the course of any investigation or hearing, the commission may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the commission may apply to the appropriate court for a contempt order or injunctive or other appropriate relief to secure compliance.	
	§ ___: 3-15. Cease and Desist Orders. [Source: **HRS §514A-47;** *modified*.] In addition to its authority under section [~~514A-48~~] _____, whenever the commission has reason to believe that any person is violating or has violated [~~section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134~~] part III (Administration and Registration of Condominiums) or part IV (Protection of Condominium Purchasers) of this chapter, or the rules of the commission adopted pursuant thereto, it [~~shall~~] may issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or the rules of the commission charged in the complaint. If upon the hearing the commission is of the opinion that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-47 is the source of this section.	
	§ ___: 3-16. Revocation of Registration. [Source: **UCA/UCIOA §5-106;** *essentially identical; BRRAC to decide whether to incorporate*.] (a) The commission, after notice and hearing, may issue an order revoking the registration of a condominium upon determination that a developer or any officer or principal of a developer has:	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	(1) failed to comply with a cease and desist order issued by the commission affecting that condominium; (2) concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of units in that condominium; (3) failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that condominium; (4) misrepresented or failed to disclose a material fact in the application for registration; or (5) failed to meet any of the conditions described in [~~sections 5-103 and 5-104~~] this part necessary to qualify for registration. (b) A developer may not convey, cause to be conveyed, or contract for the conveyance of any interest in a unit while an order revoking the registration of the condominium is in effect, without the consent of the agency. (c) In appropriate cases the commission, in its discretion, may issue a cease and desist order in lieu of an order of revocation.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §5-106 is the source of this section. 2. The official comments to §5-106 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. 3. Although there is no comparable provision in HRS Chapter 514A, HRS Chapters 484 (Uniform Land Sales Practices Act) and 514E (Time Sharing Plans) allow for revocation of registration. *See*, HRS §§484-13 and 514E-12. Administrative revocation of registration is an appropriate intermediate means of enforcing provisions relating to the sale of condominium units. 4. Re: §5-106 (4), *see also*, HRS §514A-98 relating to "False Statement."	
	§ ___: 3-17. Power to Enjoin. [Source: **HRS §514A-48;** *modified*.] Whenever the commission believes from satisfactory evidence that any person has violated [~~section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134~~] part III (Administration and Registration of Condominiums) or part IV (Protection of Condominium Purchasers) of this chapter, or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-48 is the source of this section.	
	§ ___: 3-18. Penalties. [Source: **HRS §514A-49;** *modified*.] (a) Any person who violates or fails to comply with [~~section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134~~] part III (Administration and Registration of Condominiums) or part IV (Protection of Condominium Purchasers) of this chapter, is guilty of a misdemeanor and shall be punished by a fine not exceeding $10,000 or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under [~~section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106,~~	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	~~514A-132, or 514A-134~~] part III (Administration and Registration of Condominiums) or part IV (Protection of Condominium Purchasers) of this chapter shall be punished by a fine not exceeding $10,000. (b) In addition to any other actions authorized by law, [~~Any~~] any person who violates [~~any provision~~] part III (Administration and Registration of Condominiums) or part IV (Protection of Condominium Purchasers) of this chapter or the rules of the commission adopted pursuant thereto shall also be subject to a civil penalty not exceeding $10,000 for any violation. Each violation shall constitute a separate offense.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-49 is the source of this section.	
	§ ___: 3-19. Limitation of Actions. [Source: **HRS §514A-50;** *identical*.] No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-50 is the source of this section.	
	§ ___: 3-20. Condominium Education Fund. [Source: **HRS §514A-131;** *essentially identical*.] (a) The commission shall establish a condominium education fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting: (1) Education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under this chapter; (2) The improvement and more efficient administration of condominium associations; and (3) Expeditious and inexpensive procedures for resolving condominium association disputes. (b) The commission may use any and all moneys in the condominium education fund for purposes consistent with subsection (a).	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-131 is the source of this section. 2. The name of the fund was changed from "Condominium Management Education Fund" to "Condominium Education Fund" to more accurately reflect its funding sources and permissible uses. 3. The provisions for the "Condominium Management Education Fund" are currently found in a separate part (HRS Chapter 514A, Part VIII).	
	§ ___: 3-21. Same; Payments to Fund by Unit Owners' Associations and Developers. [Source: **HRS §§514A-40(c), 514A-132;** *modified*.] (a) Each project or unit owners' association with more than five units shall pay to the department of commerce and consumer affairs the condominium education fund fee on or before June 30 of every odd-numbered year or within thirty days of the unit owners' association first meeting or within one year after the recordation of the purchase of the first unit, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. (b) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable. Failure to pay the required fee by the due date shall result in a penalty assessment of ten per cent of the amount due and the unit owners' association shall not have standing to bring any action to	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of a unit owners' association to pay a fee required under this section shall not impair the validity of any claim of the unit owners' association for common expenses or other assessments, or prevent the unit owners' association from defending any action in any court of this State. (c) [Source: **HRS §514A-40(c);** *modified*.] Each developer shall pay into the condominium education fund a nonrefundable fee of $5 for each unit in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. The project shall not be registered and no effective date for a public report shall be issued until such payment is made. (d) The department of commerce and consumer affairs shall allocate the fees collected to the condominium education fund established pursuant to section ~~[514A-131]~~ ___: 3-20.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-132 is the main source of this section. Subsection (c) above is a slightly modified version of HRS §514A-40 (Final Reports), subsection (c). 2. HRS Chapter 514A sometimes uses the term "condominium project." Since the term "project" is defined in HRS §514A-3 as "a real estate condominium project; a plan or project whereby a condominium of two or more apartments located within the condominium property regime are offered or proposed to be offered for sale," it is redundant to use the term "condominium project;" "project" will suffice.	
	§ ___: 3-22. Same; Management of Fund. [Source: **HRS §514A-133;** *essentially identical*.] (a) The sums received by the commission for deposit in the condominium education fund shall be held by the commission in trust for carrying out the purpose of the fund. (b) The commission and the director of commerce and consumer affairs may use moneys in the condominium education fund to employ necessary personnel not subject to chapters 76 and 77 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part. (c) The moneys in the condominium education fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees retirement system of the State. The interest from these investments shall be deposited to the credit of the condominium education fund. (d) The commission shall annually submit to the legislature, prior to the convening of each regular session: (1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund, and (2) A copy of the budget for the current fiscal year, including summary information on programs which were funded or are to be funded.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-133 is the source of this section. 2. HRS §514A-134 (False statement) has not been included in the recodification. It is redundant and its criminal penalty is impractical.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	3. HRS §514A-135 (Rules) has not been included in the recodification. It is redundant.	
	HRS §514A-45 Supplemental regulations governing a condominium property regime. Whenever they deem it proper, [~~the commission,~~] the county councils of the various counties [~~or the city council of the city and county of Honolulu~~] may adopt supplemental rules and regulations governing [~~a~~] condominium property regimes established under this chapter in order to implement this program; provided that any of the supplemental rules and regulations adopted shall not conflict with this chapter or with any of the rules and regulations adopted by the commission to implement this chapter.	
	Condominium Recodification Attorney's Comment 1. If BRRAC/REC desires to include this provision (as recommended by the subcommittee), incorporate after HRS §514A-1.6 (Conformance with County Land Use Ordinances).	

Part IV. Protection of Condominium Purchasers (Recodification PRELIMINARY Draft #2)
(HRS Chapter 514A, Part IV) (UCA/UCIOA/Recod Draft #1, Article 4)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	BRRAC's [Real Estate Commission's] Prefatory Comment to Part IV [To be refined: Description of guiding principles and changes to existing processes and practices under recodification. This prefatory comment should also be incorporated as a "purpose" subsection in draft legislation that will eventually be part of the session laws text (but not part of HRS).] **Guiding Principles:** 1. Adequate disclosure to prospective condominium purchasers is the foundation of Part IV. As noted in the Uniform Condominium Act (1980) and Uniform Common Interest Ownership Act (1994), "[t]he best 'consumer protection' that the law can provide to any purchaser is to insure that he has an opportunity to acquire an understanding of the nature of the products which he is purchasing." (*See*, Comment to UCA/UCIOA §4-103.) 2. "Adequate disclosure" to prospective condominium purchasers involves more than disclosures involving the sale of real property in non-common interest ownership community projects. Such a result is difficult to achieve, however, in the case of the condominium purchaser because of the complex nature of the bundle of rights and obligations which each unit owner obtains. For this reason, the Act, adopting the approach of many so-called "second generation" condominium statutes, sets forth a lengthy list of information which must be provided to each purchaser before he contracts for a unit. This list includes a number of important matters not typically required in public offering statements under existing law. 3. Risk to purchasers' funds must be correlated with the rights and obligations of developers. Provisions in this part, in conjunction with Part III (Administration and Registration), are meant to assure that a developer is not able to obtain use of a purchaser's money until the purchaser is able to get a completed unit. 4. The recodified condominium law should not result in an increase in the cost of government.	
	TABLE OF CONTENTS **Part IV. PROTECTION OF CONDOMINIUM PURCHASERS** [Note: The table of contents will be appropriately renumbered when we finish reorganizing, tearing apart, and tinkering with the draft.]	
	PART IV. PROTECTION OF CONDOMINIUM PURCHASERS	
	§ ___: 4-1. Applicability; Waiver. [Source: **UCA/UCIOA §4-101**; *BRRAC to decide whether to incorporate*.]	

Part IV. Protection of Condominium Purchasers (Recodification PRELIMINARY Draft #2) (HRS Chapter 514A, Part IV) (UCA/UCIOA/Recod Draft #1, Article 4)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	(a) This part applies to all units subject to this chapter, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to non-residential use. (b) [~~Neither a~~] No public report [~~nor a resale certificate need be prepared or delivered~~] is required in the case of: (1) a gratuitous disposition of a unit; (2) a disposition pursuant to court order; (3) a disposition by a government or governmental agency; (4) a disposition by foreclosure or deed in lieu of foreclosure; [~~(5) a disposition to a dealer;~~] (5) a disposition that may be canceled at any time and for any reason by the purchaser without penalty; or (6) a disposition of a unit restricted to nonresidential purposes.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §4-101 is the source of §___: 4-1. [BRRAC still needs to decide whether to incorporate this section.] [Note: The BRRAC subcommittee decided NOT to incorporate UCA/UCIOA's "resale certificate" provisions as two standard Hawaii Association of Realtor disclosure forms generally used in connection with the resale of condominium units already adequately serve that purpose. One is the RR105C that unit owners' associations complete. The other is the seller disclosure form.] There is no comparable provision in HRS Chpt. 514A. 2. The official comments to §4-101 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. 3. Subsection (b)(4) addresses the problem [raised by various stakeholders and the BRRAC subcommittee] of lenders being considered "successor developers" in foreclosure/deed in lieu of foreclosure situations.	
	§ ___: 4-2. Sale of Units. [Source: **New;** *see also, **HRS §§514A-31 and 514A-62**; BRRAC subcommittee's 11/18/02 draft*.] No sale of units in a condominium project shall be made prior to the registration of the project by the developer with the commission, the issuance of an effective date for the project's public report by the commission, and the delivery of the public report to prospective purchasers. **[Note: The scope of chapter provision will be included in Part I of Chapter 514A.]**	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §§514A-31 and 514A-62 (rewritten by the BRRAC) are the sources of §___: 4-2.	
	§ ___: 4-3. Public Report. [Source: **HRS §514A-61;** *modified; see also, HRS §§514A-36, 514A-40; BRRAC subcommittee's 10/29/02 draft, modified to fit Part IV*.] [~~(a) Prior to the issuance of an effective date for a public report, the commission must have received the following:~~ ~~(1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to Chapter 91.~~] [~~(2) The public report prepared by the developer disclosing the following information, in such form and content as prescribed by the commission:~~] (a) A public report must contain or fully and accurately disclose: (1) [~~(i)~~] The name and address of the project, and the name, address, telephone number and electronic	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	mail address (if any) of the developer or the developer's agent; (2) [~~(ii)~~] A breakdown of the annual maintenance fees and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles; (3) [~~(iii)~~] A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties or a statement that no warranties exist; (4) [~~(iv)~~] A statement of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use; (5) [~~(v)~~] If the project includes one or more existing structures being converted to condominium status, then as to those units that have been in existence for not less than five years: (i) [~~(A)~~] A statement by the developer, based upon a report prepared by a Hawaii [~~registered~~] licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units; (ii) [~~(B)~~] A statement by the developer of the expected useful life of each item reported on in paragraph (A) or a statement that no representations are made in that regard; and (iii) [~~(C)~~] A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing these violations. (6) [~~(vi)~~] If the project includes one or more existing structures being converted to condominium status, then as to those structures that have been in existence for not less than five years, a verified statement signed by an appropriate county official that: (i) [~~(A)~~] the structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable (x) any variances which have been granted to achieve compliance; and (y) whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; or (ii) [~~(B)~~] based on the available information, the county official cannot make a determination with respect to the matters described in paragraph (A). **[Note: A separate section in 514A will list various sections (including (v) and (vi) above that are not applicable to commercial units.]** (7) [~~(vii)~~] A description of any rights reserved to the developer or others, including any rights to merge or phase the project; and (8) [~~(viii)~~] Any other facts that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use. [~~(3) A copy of the deed, master lease, option agreement, agreement of sale, or sales contract evidencing either that the developer holds the fee and/or leasehold interest in the property or has a right to acquire the same.~~] [~~(4) Copies of the executed declaration, by laws and condominium map (or if such documents have not been executed, drafts of such documents) that meet the requirements of sections _____. **[The sections specifying what must be in the declaration, by laws and map. The requirement for a parking plan should be satisfied by the map.]**~~] [~~(5) A specimen copy of the proposed contract of sale for units that specifies the date by which the~~	

Part IV. Protection of Condominium Purchasers (Recodification PRELIMINARY Draft #2) (HRS Chapter 514A, Part IV) (UCA/UCIOA/Recod Draft #1, Article 4)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	~~requirements set forth in section ___: 3 ___ **[Requirements for Binding Contracts]** must be met, if such requirements have not already been met.~~] [~~(6) An executed copy of an escrow agreement with a third-party depository for retention and disposition of purchaser's funds that meets the requirements of Section _____. **[Which will include restrictions on using proceeds.]**~~] [~~(b) The public report may not be used for the purpose of selling any units in the project unless and until the commission issues an effective date for the public report. The commission's issuance of an effective date for a public report shall not be construed to constitute the commission's approval or disapproval of the project, or the commission's representation that all material facts concerning the project have been fully or adequately disclosed, or the commission's judgment of the value or merits of the project.~~] (b) A developer shall promptly amend the public report to report any material change in the information required by this section.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS § 514A-61 (substantially modified) with elements of HRS §§514A-36 and 514A-40 are the sources of this section. 2. Under the recodified condominium law, developers can "test the market" without a public report as there is no risk of consumer harm when no money changes hands and no binding contracts are made. *See*, §___: 4-___. 3. Consistent with the UCA, UCIOA, and the laws of many other jurisdictions, a single public report ("public offering statement" in the UCA/UCIOA) is required in Hawaii's recodified condominium law. 4. Since condominium conversions involve existing structures and a county might not otherwise have the opportunity to address land *use* matters in these situations, it is appropriate to require county certification of compliance with its land *use* laws when converting existing structures to the condominium form of *ownership*. 5. HRS §§514A-40(b) and 514A-61(b) use the undefined term "declarant." "Developer" will be used in the recodification instead of "declarant." 6. HRS §§514A-40(b)(2) and 514A-61(b)(1) incorrectly use the term "registered" architect or engineer. The correct term is "licensed." *See*, HRS Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects). **Condominium Recodification Attorney's Comment** 1. The BRRAC should consider incorporating more of the requirements of HRS §514A-40 and UCA/UCIOA §4-103. 2. Rather than requiring that the public report "be in such form and content as prescribed by the commission" (HRS §514A-36), the BRRAC/REC should consider statutorily setting forth required contents of public reports. UCA/UCIOA/Recod Draft #1 takes this approach in Article 4 (Protection of Condominium Purchasers). *See also*, Hawaii Administrative Rules, Title 16, Chapter 107, Proposed Rules Relating to Condominium Property Regimes; HRS §484-6 (Uniform Land Sales Practices Act, "Public Offering Statement"; and HRS §514E-9 (Time Sharing Plans, "Disclosure Statement"). 3. Clearer separation of requirements for condominium conversions may be desirable.	
	§ ___: 4-4. Pre-registration Solicitation. [Source: **New;** *see, BRRAC subcommittee's 11/18/02 draft*.] Prior to the registration of the project by the developer with the commission, the issuance of an effective date for the project's public report by the commission, and the delivery of the public report to prospective	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	purchasers, and subject to the limitations set forth in subsections (a) and (b) of this section, the developer may solicit prospective purchasers and enter into non-binding reservation agreements with such prospective purchasers with respect to units in the project. As used in this section, "solicit" means to advertise, to induce or to attempt in whatever manner to encourage a person to acquire any legal or equitable interest in a unit. (a) The developer shall not collect any monies from prospective purchasers or anyone on behalf of prospective purchasers, whether or not such monies are to be placed in an escrow account, or whether or not such monies would be refundable at the request of the prospective purchaser. (b) The developer shall not require nor request that a prospective purchaser execute any document other than a non-binding reservation agreement. The reservation agreement may, but need not, specify the unit number of a unit in the project to be reserved and may, but need not, include a price for the unit. The reservation agreement shall not incorporate the terms and provisions of the sales contract for the unit and shall not, by its terms, become a sales contract. Notwithstanding anything contained in the reservation agreement to the contrary, the reservation agreement may be cancelled at any time by either the developer or the prospective purchaser by written notice to the other. The commission may from time to time prepare a form of reservation agreement for use pursuant to this subsection (b), and use of the commission-prepared form shall be deemed to satisfy the requirements of the reservation agreement as provided in this subsection (b).	
	BRRAC's [Real Estate Commission's] Comment 1. There is no comparable provision in HRS Chapter 514A. [Explain genesis of this section.]	
	§ ___: 4-5. Requirements for Binding Sales Contracts; Purchaser's Right to Cancel. [Source: **New;** *see also*, ***HRS §514A-62*; *BRRAC subcommittee's 11/19/02 draft***.] (a) No sales contract for the purchase of a unit from a developer shall be binding on developer or prospective purchaser until: (1) The developer has delivered to the prospective purchaser: (i) a true copy of the public report including all amendments with an effective date issued by the commission; (ii) a copy of the recorded declaration and bylaws creating the project showing the document number or land court document number or both as applicable; and (iii) a notice of the prospective purchaser's thirty day cancellation right on a form prescribed by the Commission, which the prospective purchaser can use to exercise the right to cancel or waive the right to cancel; and (2) The prospective purchaser has waived the right to cancel. [**Or passage of 30 days?**] (b) The prospective purchaser may exercise the right to cancel by checking the cancellation box on the cancellation notice, signing the notice, and delivering it to the developer by midnight on the thirtieth day after delivery by the developer of the items listed in ___: 4-4(a). (c) The prospective purchaser may waive the right to cancel by: (1) Checking the waiver box on the cancellation notice and delivering it to the developer; (2) Doing nothing and letting the thirty day cancellation period expire; or (3) Closing the purchase of the unit before the cancellation period expires. (d) The receipts, return receipts, or cancellation notices obtained under this section shall be kept on file in	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	possession of the developer and shall be subject to inspection at a reasonable time by the commission or its deputies for a period of three years from the date the receipt or return receipt was obtained.	
	BRRAC's [Real Estate Commission's] Comment 1. This is a new section based on HRS §514A-62. [Explanation needed for this Comment.] 2. Consistent with the UCA, UCIOA, and the laws of many other jurisdictions, a single public report ("public offering statement" in the UCA/UCIOA) is required in Hawaii's recodified condominium law. Therefore, provisions related to HRS §§514A-39.5 (Contingent final public report), 514A-62(f) (Copy of public report to be given to prospective purchaser), and 514A-64.5 (Protection of purchasers' funds) are no longer necessary and have not been incorporated in the recodification. 3. The purchaser's right to cancel is a one time right that is strictly tied to the statutory "cooling off" period. 4. Rather than set the purchaser's right to cancel document in statute, the recodification allows the Real Estate Commission to prescribe the form and content of the document (which must still, of course, be consistent with statutory requirements). This will, among other things, allow the Commission to react more quickly in clarifying any ambiguities in the form. 5. Use of the following "Receipt and Notice" form has been approved by the Commission: [Insert form.] **Condominium Recodification Attorney's Comment** Many small developers have objected to HRS §514A-62's 30-day right to cancel period as a "free 30-day option to purchase" ripe for abuse by speculators. In response to this concern (and consistent with the UCA, UCIOA, and the laws of many other jurisdictions) the right to cancel ("cooling off") period was been reduced from 30 to 15 days in earlier working drafts. As a practical matter under HRS Chapter 514A, large developers have encouraged prospective purchasers to close early or to waive their right to cancel. Reducing the prospective purchaser's one-time "cooling off" right to cancel period to 15 days appeared to provide for adequate consumer protection without unduly burdening small developers. The BRRAC subcommittee, however, recommends keeping the right to cancel period at 30 days. I suggest we revisit the issue or draft a Comment explaining why we recommend a 30-day cancellation period.	
	§ ___: 4-6. Delivery. [Source: **New;** *see, BRRAC subcommittee's 11/19/02 draft*.] (a) Delivery to a prospective purchaser shall be made by: (1) Personal delivery; (2) Delivery by registered or certified mail with adequate postage, to the prospective purchaser's address; delivery will be considered made three days after deposit in the mail or any earlier date the return receipt is signed; (3) Via fax if the prospective purchaser has provided a fax number to the developer; delivery will be considered made upon sender's receipt of automatic confirmation of transmission; or (4) In any other way prescribed by the commission. (b) Delivery to developer shall be made by: (1) Personal delivery; (2) Delivery by registered or certified mail with adequate postage, to the developer's address; delivery will	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	be considered made upon deposit in the mail; (3) Via fax if the developer has provided a fax number to the prospective purchaser; delivery will be considered made upon sender's receipt of automatic confirmation of transmission; or (4) In any other way prescribed by the commission.	
	BRRAC's [Real Estate Commission's] Comment 1. This is a new section. [Explanation needed for this Comment.]	
	§ ___: 4-7. Sales Contracts Before Date of Completion. [Source: **New;** *see, BRRAC subcommittee's 11/19/02 draft*.] If a sales contract for a unit is signed before the date of completion, the sales contract shall contain an agreement of the developer that the date of completion shall occur on or before a completion deadline. The completion deadline may be a specific date, or the expiration of a period of time after the sales contract becomes binding and may include a right of the developer to extend the completion deadline for *force majeure* as defined in the sales contract. The sales contract shall provide that the prospective purchaser may cancel the sales contract, at any time prior to the date of completion, if the date of completion does not occur on or before the completion deadline. The sales contract may provide additional remedies to the prospective purchaser if the date of completion does not occur on or before the completion deadline.	
	BRRAC's [Real Estate Commission's] Comment 1. This is a new section. [Explanation needed for this Comment.]	
	§ ___: 4-8. Cancellation After Sales Contract Becomes Binding. [Source: **HRS §514A-63;** *see, BRRAC subcommittee's 11/21/02 draft*.] (a) Prior to closing, a prospective purchaser shall, in addition to any cancellation right under section ___: 4-___ have a thirty day right to cancel a binding sales contract if the seller determines that such prospective purchaser's deposits will be disbursed prior to closing for purposes of paying for project costs, or if there is a material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's unit or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use. This cancellation right shall not apply, however, in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the declaration. (b) Upon delivery to a prospective purchaser of an option to cancel sales contract instrument on a form prescribed by the commission, such purchaser may waive the purchaser's cancellation right provided in subsection (a) by (i) checking the waiver box on the option to cancel sales contract instrument, signing it and delivering it to the seller; (ii) doing nothing and letting the thirty day cancellation period expire; or (iii) closing the purchase of the unit before the thirty day cancellation period expires. (c) Upon delivery to a prospective purchaser of an option to cancel sales contract instrument on a form prescribed by the commission, such purchaser may exercise such purchaser's cancellation right provided in subsection (a) above by checking the cancellation box on the option to cancel sales contract instrument, signing it, and delivering it to the seller. In order to be valid, the option to cancel sales contract instrument must be signed by all purchasers of the affected unit, and be postmarked no later than midnight of the day that is thirty calendar days after the date that purchaser(s) received the option to cancel sales contract instrument from the seller. In the event of a valid exercise of a purchaser's right of cancellation pursuant to this section, the purchaser(s) shall be entitled to a prompt and full refund of any moneys paid. (d) The option to cancel sales contract instruments obtained by the seller under this section shall be kept on	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	file in possession of the seller and shall be subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date of the receipt or return receipt was obtained. (e) This section shall not preclude a purchaser from exercising any cancellation rights pursuant to a contract for the sale of a unit or any applicable common law remedies.	
	BRRAC's [Real Estate Commission's] Comment 1. [The BRRAC subcommittee suggested that the Real Estate Commission develop an approved disclosure form for this section.] **Condominium Recodification Attorney's Comment** 1. Were we going to call this section a "right to rescind" (as opposed to "right to cancel") section to help draw the distinction between the "cooling off" period and the rescission right based on material change in circumstances?	
	§ ___: 4-9. Refunds Upon Cancellation or Termination. [Source: **HRS §514A-62(c);** *see, BRRAC subcommittee's 11/19/02 draft*.] Upon any cancellation under section ___: 4-5, ___: 4-7, or ___: 4-___ **[termination for adverse change section]** the purchaser, shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of $250.	
	BRRAC's [Real Estate Commission's] Comment 1. This is a new section based on HRS §514A-62(c). [Explanation needed for this Comment.] 2. BRRAC subcommittee's 11/19/02 draft also notes: **[Include in Definitions:** the Date of Completion for a Unit is the earliest of (1) the issuance of a certificate of occupancy for the Unit (2) the date of completion for the project (or the phase of the project that includes the Unit) as defined in section 507-43 HRS (3) the recordation of the "as built" amendment to the Declaration that includes the Unit (4) the issuance of the architect's certificate of substantial completion for the project (or the phase of the project that includes the Unit) or (5) the date the Unit is completed so as to permit normal occupancy.**] [Term sales contract is used but may need to be reconciled with usage in other parts of the statute]**	
	§ ___: 4-10. Escrow of Deposits. [Source: **New;** *see also, **HRS §514A-40(a)(6), 514A-65;** BRRAC subcommittee's 10/23/02 draft, which is to be edited per subcommittee's 11/6/02 discussion*.] All monies paid by purchasers shall be deposited in trust under a written escrow agreement with an escrow depository licensed pursuant to chapter 449. An escrow depository shall not disburse purchaser deposits to or on behalf of the developer prior to closing except: (1) As provided in section ___: 4-11; or (2) As provided in the purchaser's sales contract in the event the sales contract is cancelled. An escrow depository shall not disburse a purchaser's deposits at closing unless the escrow depository has received satisfactory assurances that all blanket mortgages and liens have been released from the purchaser's unit in accordance with section ___: ___ [**reference old 514A-18** (also covered by UCA/UCIOA §4-111)]. Satisfactory assurances include a commitment by a title insurer licensed under chapter 431 to issue the purchaser a title insurance policy insuring the purchaser against such liens.	
	BRRAC's [Real Estate Commission's] Comment 1. This is a new section based on HRS §§514A-40(a)(6) and 514A-65. [Explanation needed for this Comment.]	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	2. In the 10/23/02 draft, BRRAC subcommittee suggests that we make "closing" a defined term. 3. The Hawaii Bankers Association commented that "[HRS §514A-64.5] can simply state that purchasers' funds shall be deposited in a financial institution doing business in the State and insured by the United States government." (*See*, May 18, 2001 letter from Hawaii Bankers Association to Gordon M. Arakaki.) **Condominium Recodification Attorney's Comment** 1. Consistent with the UCA, UCIOA, and the laws of many other jurisdictions, a single public report ("public offering statement" in the UCA/UCIOA) is required in Hawaii's recodified condominium law. Therefore, HRS §514A-64.5 (Protection of purchasers' funds) is no longer necessary as it was specifically related to the contingent final public report. [BRRAC subcommittee recommended copying **HRS §514A-64.5** straight into the recodification, but it relates only to contingent final public reports, which we are doing away with. Unless there are particular provisions in this section that the subcommittee would like to keep in the recodification (as Rick did in §___: 4-11), it should be deleted.] 2. BRRAC subcommittee recommended copying **HRS §514A-65** (Escrow requirement) straight into the recodification, but its essence appears to be incorporated in Rick's draft. HRS §514A-65 reads as follows: "All moneys paid by purchasers prior to the purchaser's receipt of the contingent final public report or the final public report on the project shall be deposited in trust under escrow arrangement with instructions that no disbursements shall be made from such trust funds on behalf of the seller until the contract has become binding, and the requirements of sections 514A-40, 514A-63, and 514A-64.5 have been met." 3. For comparison, **UCA/UCIOA §4-110** (Escrow of Deposits), reads as follows: "Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to section [~~4-102(c)~~] ___: 4-2 must be placed in escrow by the escrow agent and held in a federally-insured, interest-bearing account designated solely for that purpose, at a financial institution authorized to do business in the State until (i) delivered to the developer at closing; (ii) delivered to the developer because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser."	
	§ ___: 4-11. Use of Purchaser Deposits to Pay Project Costs. [Source: **New;** *see also, **HRS §514A-40(a)(6), 514A-64.5, 514A-67, 7/1/99 draft REC rules;** BRRAC subcommittee's 10/23/02 draft, which is to be edited per subcommittee's 11/6/02 discussion*.] (a) Subject to the conditions set forth in subsection (b), purchaser deposits that are held in escrow pursuant to a binding sales contract may be disbursed before closing to pay for costs of acquiring the project land and buildings, project construction costs, and architectural, engineering, finance, and legal fees and other incidental expenses of the project. (b) Disbursement of purchaser deposits prior to closing shall be permitted only if: (1) The commission has issued an effective date for the project's public report; (2) The developer has recorded the project's declaration and bylaws; (3) The developer has submitted to the commission, and the commission has approved: (i) A project budget showing all costs that must be paid in order to complete the project, including land acquisition or lease payments, real property taxes, construction costs, architect, engineering and legal fees, and financing costs; (ii) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs that must be paid in order to complete the project, which may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds; (iii) If purchaser funds are to be used to pay the cost of acquiring the project land or buildings,	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	evidence satisfactory to the commission that the developer will, concurrently with the disbursement of purchaser funds, acquire title to the project land or buildings and convey the unit to the purchaser; and (iv) If purchaser funds are to be disbursed prior to completion of construction of the project: (A) A copy of the executed construction contract; (B) A copy of the building permit for the project; and (C) [Source: *BRRAC subcommittee's 11/19/02 edit of 10/23/02 draft*.] Satisfactory evidence of security for the completion of construction. Such evidence may include the following, in forms approved by the commission: a completion bond in an amount equal to one hundred percent of the cost of construction issued by a surety licensed in the State to issue such bonds; an irrevocable letter of credit issued by a federally insured financial institution in an amount equal to one hundred percent of the cost of construction; or such other substantially similar instrument or security approved by the commission. (c) A purchaser's deposits may be disbursed prior to closing only to pay costs set forth in the project budget submitted pursuant to subsection (b)(iii)(a) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, purchaser deposits may be disbursed prior to closing to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer. (d) If purchaser deposits are to be disbursed prior to closing, the following notice shall be prominently displayed in the public report for the project: "**Important Notice Regarding Your Deposits:** Deposits that you make under your sales contract may be disbursed prior to closing of your purchase to pay for project costs, including costs of acquiring the land, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."	
	BRRAC's [Real Estate Commission's] Comment 1. This is a new section based on HRS §§514A-40(a)(6), 514A-64.5, 514A-67, and 7/1/99 draft REC rules. [Explanation needed for this Comment.] 2. BRRAC subcommittee's 10/23/02 note: "[Paragraph (b)(3)(iii)] of this draft effectively means that deposits can only be used for acquisition costs in a conversion, whereas on new construction the developer would have to buy the land using equity or lender funds (i.e., roughly the current situation). Conceptually, however, I'm not sure they should be treated differently and, therefore, I think we should consider whether deposits should also be usable for land acquisition on a new construction project. Let's discuss." 3. BRRAC subcommittee's 11/19/02 comments to subsection (b)(iv)(C): ● The reference to material house was deleted since they are not licensed to issue bonds solely by virtue of being a material house. If the company is a licensed surety, it will be covered in the new language. ● The requirement has been changed from "performance bond" which is typically issued in conjunction with a payment bond and insures the performance of the contractor, to a completion bond, which insures the performance of the developer and is the format required to obtain a final subdivision approval prior to completion of construction. ● Since financial institutions on the mainland can issue letters of credit that are enforceable anywhere, and	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	since anyone can issue letters of credit, the language has been changed to simply require that it be issued by a federally insured financial institution. ● Rather than going into detail as to the requirements of the bond forms and letter of credit forms, the revisions simply provides for the forms to be as approved by the Commission.	
	§ ___: 4-12. Misleading Statements and Omissions; Remedies. [Source: **HRS §514A-68, 514A-69;** *combined, but essentially same*.] (a) No officer, agent, or employee of any company, and no other person may knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease, and no person may issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning any project which contains any written statement that is false or which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein made in the light of the circumstances under which they are made not misleading. (b) Every sale made in violation of this section [~~514A-68~~] is voidable at the election of the purchaser; and the person making such sale and every director, officer, or agent of or for such seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, is jointly and severally liable to the purchaser in an action in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorney's fees; provided that no action shall be brought for the recovery of the purchase price after two years from the date of the sale and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by the purchaser, together with interest at six per cent on such amount for the period from the date of payment by the purchaser down to the date of repayment.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §§514A-68 and 514A-69 are the sources of this section. 2. Under Hawaii caselaw, proof of scienter is not required and proof of reliance is not an element of the cause of action under HRS §§514A-68 and 69. *See*, DiSandro v. Makahuena Corp., 588 F.Supp. 889 (D.Hawaii 1984). **Condominium Recodification Attorney's Comment** 1. Should we keep essence of HRS §§514A-68 and 69 (Misleading statements and omissions; Remedies; sales voidable when and by whom)? Or leave to common law remedies? (Explain common law remedies in Comment regardless.)	
	BRRAC's [Real Estate Commission's] Comment 1. The BRRAC subcommittee suggested that **HRS §514A-70** (Warranty against structural and appliance defects; notice of expiration required) be deleted or substantially modified. As written, it is overly paternalistic, adds unnecessary costs ("notice by certified mail to all members" of the AOAO, etc.), provides unclear parameters ("normal one-year period"), and results in little additional consumer protection, if any. Appropriate disclosure of warranties is the key.	
	Some statutory provisions and comments below have no comparable provisions in HRS Chapter 514A. Please review them to see if they should be added to Recodification Draft #2.	
	UCA/UCIOA/Recod Draft #1 § 4-118. Labeling of Promotional Material. No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT."	
	UCA (1980) Comment 1. Section 2-109(c) requires that the plats and plans for every condominium indicate whether or not any improvement that might be built in the condominium must be built. However, Section 4-103 does not require that copies of the plats and plans be provided to purchasers as part of the public offering statement. Consequently, this section requiring the labeling of improvements depicted on promotional material is necessary to assure that purchasers are not deceived with respect to which improvements the declarant is obligated to make in a particular condominium project. 2. Since no contemplated improvements on real estate subject to development rights need be shown on plats and plans, additional labeling is required by this section to insure that, if the declarant shows any contemplated improvements in his promotional material which are not shown on the plats and plans, those improvements must also be appropriately labeled. **UCIOA (1994) Comment** This section requiring the labeling of improvements depicted on promotional material is necessary to assure that purchasers are not deceived with respect to improvements the declarant indicates he intends to make in a common interest community.	
	UCA/UCIOA/Recod Draft #1 § 4-119. Declarant's Obligation to Complete and Restore. (a) Except for improvements labeled "NEED NOT BE BUILT," the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to Section 2-109, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant. (b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by Section 2-110, 2-111, 2-112, 2-113, 2-115, or 2-116.	
	UCIOA (1994) Comment [UCA (1980) Comment similar, but not as clear] 1. The duty imposed by subsection (a) is a fundamental obligation of the declarant and is one with which a successor declarant is obligated to comply under Section 3-104. 2. Section 4-119(b) requires the declarant to repair and restore the common interest community following the exercise of any rights reserved or created to exercise a development right (Section 2-110), to alter units (Section 2-112), relocate the boundaries between adjoining units (Section 2-112), subdivide units (Section 2-113), use units or common elements for sales purposes (Section 2-115), or exercise of easement rights (Section 2-116). Plainly, this obligation on the declarant exists only if the declarant, in his capacity as a unit owner, exercises these rights. If any right to, for example, alter units, is exercised by another unit owner, that unit owner and not the declarant, would be responsible for the consequences of those acts.	
	UCA/UCIOA/Recod Draft #1 § 4-120. Substantial Completion of Units. Except as allowed under section 5-103(b), in the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent licensed architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by law.	

Part IV. Protection of Condominium Purchasers (Recodification PRELIMINARY Draft #2) (HRS Chapter 514A, Part IV) (UCA/UCIOA/Recod Draft #1, Article 4)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on HRS Chapter 514A]	Notes
	UCA (1980) Comment [UCIOA (1994) Comment same] The purpose of this section, complemented by Section 4-110, is to assure that the declarant is not able to obtain use of the purchaser's money until the purchaser is able to get a completed unit. **UCIOA (1994) Comment** The purpose of this section, complemented by Section 4-110, is to assure that the declarant is not able to obtain use of the purchaser's money until the purchaser is able to get a completed unit. **Condominium Recodification Attorney's Comment** UCIOA (1994) deleted reference to §5-103(b), but it makes sense to keep the reference in Recodification §4-120.	

Part V. Management of Condominium (Recodification PRELIMINARY Draft #2)
(HRS Chapter 514A, Part V) (UCA/UCIOA/Recod Draft #1, Article 3)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	[To be refined: Description of guiding principles and changes to existing processes and practices under recodification. Some of the "guiding principles" listed below are taken from BRRAC subcommittee's 5/23/02 memo. The bulk of the revised statutory language below is taken from the subcommittee's 7/10/02 draft and subcommittee meetings throughout October 2002. This prefatory comment should also be incorporated as a "purpose" subsection in draft legislation that will eventually be part of the session laws text (but not part of HRS).] **BRRAC's [Real Estate Commission's] Prefatory Comment to Part V** "Every [unit owners' association] has three functions – to serve as a business, a governance structure, and a community." *~ Community Associations Factbook (1999)* As explained in the *Community Associations Factbook (1999)*, the business, governance, and community functions of community associations (including associations of apartment owners/unit owners' associations) have evolved over time. Early in the history of community associations, "business" meant "austerity", "governance" meant "compliance", and "community" meant "conformity". As the movement matured, "business" has come to mean "prudence", "governance" has come to mean "justice", and "community" has come to mean "harmony". "Community/harmony" is obviously not something we can mandate by State law. Just as obviously, State law can help (or hinder) associations in their "business" and "governance" functions. We have kept these functions and principles in mind as we have worked on the provisions for management of condominiums. **Guiding Principles:** 1. The philosophy guiding Part V (Management of Condominium) continues to be **minimal government involvement** and **self-governance** by the condominium community. Essentially, this means that we must ensure that the condominium community (both owners and management) has the tools with which to govern itself. We should enhance self- governance (e.g., conduct of meetings, financial decisions). This does not mean that every problem and contingency should be addressed in State law (as happened too often in the past, resulting in our current need to recodify our condominium law). Addressing problems in State law is appropriate in some areas. Other problems may more appropriately be handled in condominium governing documents or through other private mechanisms. And some matters simply must be resolved in court. 2. The recodified condominium law should recognize the difficulty of a "one size fits all" approach to management provisions. 3. The recodified condominium law should enhance clarity of Condominium Property Act. We should consolidate or group together provisions on a single issue (e.g., proxies, assessments). We should eliminate the artificial approach regarding the contents of bylaws developed in HRS §514A-82(a) and (b). And we should minimize the statutory requirements for condominium governing documents while incorporating certain provisions currently in HRS §514A-82(a) and (b) in more appropriate statutory sections. 4. The recodified condominium law should not result in an increase in the cost of government.	
	TABLE OF CONTENTS **ARTICLE 3. MANAGEMENT OF CONDOMINIUM** 	

Part V. Management of Condominium (Recodification PRELIMINARY Draft #2)
(HRS Chapter 514A, Part V) (UCA/UCIOA/Recod Draft #1, Article 3)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	§ ___: 5-4. Same; Limitations on Powers § ___: 5-5 Alternative Dispute Resolution; Mediation § ___: 5-6. Same; Arbitration § ___: 5-7. Board of Directors; Powers and Duties § ___: 5-8. Same; Limitations § ___: 5-9. Same; Conflicts of Interest § ___: 5-10. Same; Meetings § ___: 5-11. Same; Quorums § ___: 5-12. Same; Meeting Minutes § ___: 5-13. Same; Mixed Use Property; Representation on Board of Directors § ___: 5-14. Managing Agents § ___: 5-15. Prohibitions; Employees, Resident Manager § ___: 5-16. Management and Contracts; Developer, Managing Agent, and Unit Owners' Association § ___: 5-17. Termination of Contracts and Leases of Developer § ___: 5-18. Transfer of Special Developer Rights § ___: 5-19. Bylaws § ___: 5-20. Restatement of Declaration and Bylaws § ___: 5-20.1. Judicial Power to Excuse Compliance with Requirements of Governing Documents § ___: 5-21. Upkeep of Condominium § ___: 5-21.1. Same; Disposition of Unclaimed Possessions § ___: 5-21.2. Same; Certain Work Prohibited § ___: 5-21.3. Nonmaterial Structural Additions; Solar Energy Devices § ___: 5-22. Telecommunications Equipment § ___: 5-23. Unit Owners' Association Meetings § ___: 5-24. Same; Quorums § ___: 5-25. Same; Meeting Minutes § ___: 5-26. Same; Voting; Proxies § ___: 5-27. Same; Good Faith Unintentional Failure to Comply § ___: 5-28. Same; Purchaser's Right to Vote § ___: 5-29. Tort and Contract Liability; Tolling of Limitation Period § ___: 5-30. Conveyance or Encumbrance of Common Elements § ___: 5-31. Insurance § ___: 5-32. Association Fiscal Matters; Assessments for Common Expenses § ___: 5-33. Same; Collection of Unpaid Assessments from Tenants § ___: 5-34. Same; Lien for Assessments § ___: 5-35. Same; Other Liens Affecting the Condominium § ___: 5-36. Same; Budgets and Reserves § ___: 5-37. Same; Handling and Disbursement of Funds § ___: 5-38. Same; Audits, Audited Financial Statement, Transmittal § ___: 5-39. Association Records; Generally § ___: 5-40. Same; Records to be Maintained § ___: 5-41. Same; Availability § ___: 5-42. Same; Disposal, Generally § ___: 5-43. Same; Prohibitions	

Part V. Management of Condominium (Recodification PRELIMINARY Draft #2)
(HRS Chapter 514A, Part V) (UCA/UCIOA/Recod Draft #1, Article 3)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	§ ___: 5-44. Association as Trustee § ___: 5-45. Condominium Community Mutual Obligations § ___: 5-46. Pets § ___: 5-47. Attorneys' Fees, Delinquent Assessments, and Expenses of Enforcement [The table of contents will be appropriately renumbered when we finish reorganizing, tearing apart, and tinkering with the draft.]	
	PART V. MANAGEMENT OF CONDOMINIUM	
	§ ___: 5-1. Unit Owners' Association; Organization and Membership [Source: **HRS §514A-82(a)(11)**; **UCA/UCIOA §3-101**.] (a) The first meeting of the unit owners' association shall be held not later than one hundred eighty days after recordation of the first unit conveyance, provided that forty percent or more of the project has been sold and recorded. If forty percent of the project is not sold and recorded at the end of one year after recordation of the first unit conveyance, an annual meeting shall be called if ten percent of the unit owners so request. (b) The membership of the association shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all former unit owners entitled to distributions of proceeds under section [~~2-118~~] ___: 2-___, or their heirs, successors, or assigns.	
	BRRAC's [Real Estate Commission's] Comment 1. From a legal standpoint, a condominium association (and its powers and duties) exists at recordation of the legal documents creating the condominium. While the developer inevitably acts as the association for some period of time, nevertheless, the association exists as an entity independent of the developer and the developer has a fiduciary obligation to act on behalf of the association from the time the declaration is recorded. *See*, State Savings & Loan Association v. Kauaian Development Company, Inc., et al., 50 Haw. 540, 445 P.2d 109 (1968); Hawaii Real Estate Law Manual, "Community Associations," by J. Neeley, _____, (year?). 2. As noted in the official commentary to UCA/UCIOA §3-101: "The first purchaser of a unit is entitled to have in place the legal structure of the unit owners' association. The existence of the structure clarifies the relationship between the developer and other unit owners and makes it easy for the developer to involve unit owners in the governance of the condominium even during a period of declarant control …" 3. HRS §514A-82(a)(11) is the source of §___: §5-1(a). [For background regarding the use of first recordation of a unit conveyance versus certificate of occupancy, *see*, A Study of Problems in the Condominium Owner-Developer Relationship, by Office of Consumer Protection, Office of the Legislative Reference Bureau, and Real Estate Commission, State of Hawaii (December 1976) at page 16.] UCA/UCIOA §3-101 is the source of §___: 5-1(b). 3. HRS Chapter 514A has used the term "Association of Apartment Owners" (AOAO) to describe "all of the apartment owners acting as a group in accordance with the bylaws and declaration." *See*, HRS §514A-3. However, Hawaii's recodified condominium law uses the term "unit" instead of "apartment" since, as understood by the general public, "unit" more accurately reflects the fact the ownership interests in condominiums can consist of commercial spaces, parking spaces, boat slips, and other non-residential spaces.	
	§ ___: 5-2. Same; Registration. [Source: **HRS §514A-95.1**.] (a) Each [~~condominium~~] project or [~~association of apartment owners~~] unit owners' association having [~~six or more apartments~~] more than five units shall:	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(1) Register with the commission through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. [~~Beginning June 30, 1997, the~~] The registration shall be for a biennial period with termination on June 30 of [~~an~~] each odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any [~~condominium~~] project or [~~association of apartment owners~~] unit owners' association that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. Any new [~~condominium~~] project or [~~association of apartment owners~~] unit owners' association shall register within thirty days of the [~~association of apartment owners'~~] unit owners' association's first meeting. If the [~~association of apartment owners~~] unit owners' association has not held its first meeting and it is at least one year after the recordation of the purchase of the first [~~apartment~~] unit in the [~~condominium~~] project, the developer or developer's affiliate or the managing agent shall register on behalf of the [~~unorganized~~] [~~association of apartment owners~~] unit owners' association and shall comply with this section, except the fidelity bond requirement for [~~association of apartment owners~~] unit owners' associations required by section ___: 5-___. The public information required to be submitted on any completed application form shall include but not be limited to evidence of and information on fidelity bond coverage, names and positions of the officers of the association, the name of [~~association of apartment owners~~] unit owners' association's managing agent, if any, the street and the postal address of the [~~condominium~~] project, and the name and current mailing address of a designated officer of the [~~association of apartment owners~~] unit owners' association where the officer can be contacted directly; (2) Pay a nonrefundable application fee and, upon approval, an initial registration fee and subsequently pay a reregistration fee, and the condominium [~~management~~] education fund fee, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; (3) Register or reregister and pay the required fees by the due date. Failure to register or reregister or pay the required fees by the due date shall result in the assessment of a penalty equal to the amount of the registration or reregistration fee; and (4) Report [~~immediately~~] promptly in writing to the commission any changes to the information contained on the registration or reregistration application[~~, the evidence of the fidelity bond,~~] or any other documents [~~set forth~~] required by the commission. Failure to do so may result in termination of registration and subject the [~~condominium~~] project or the [~~association of apartment owners~~] unit owners' association to initial registration requirements. (b) The commission may reject or terminate any registration submitted by a [~~condominium~~] project or [~~an association of apartment owners~~] a unit owners' association that fails to comply with this section. Any [~~association of apartment owners~~] unit owners' association that fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers. The failure of [~~an association of apartment owners~~] a unit owners' association to register, or rejection or termination of its registration, shall not impair the validity of any contract or act of the [~~association of apartment owners~~] unit owners' association nor prevent the [~~association of apartment owners~~] unit owners' association from defending any action or proceeding in any court in this State.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-95.1 is the source of §___: 5-2. In pertinent part, it has been modified slightly. HRS §514A-95.1 contains both registration requirements and fidelity bond requirements for unit owners' associations. We have	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	incorporated the fidelity bond provisions of HRS §514A-95.1(1) in a separate insurance (risk management?) section. *See*, Recodification Draft #2, §___: 5-___. 2. Keeping the unit owners' association registration requirement is important to continued support of alternative dispute resolution and condominium education efforts. 3. Requiring unit owners' associations to register with the Commission is not meant to imply that the Commission has jurisdiction over condominium governance matters. (The Commission's powers and duties are described in Recodification Draft #2, Part III, §___: 3-___.) As provided in subsection (b) above, failure of a unit owners' association to register results in a self-enforcing sanction – the association's lack of standing to maintain actions in State court until properly registered with the Commission. 4. Note for BRRAC: Going forward from this section, the following terms will be used and will not be Ramseyered: "Unit" (in place of "apartment"); "Unit owners' association" (in place of "association of apartment owners"); "Project" (in place of "condominium project" since "project" is defined in HRS §514A-3); "Condominium education fund" (in place of "condominium management education fund" to more accurately reflect its funding sources and permissible uses).	
	§ ___: 5-3. Same; Powers. [Source: **UCA/UCIOA §3-102**.] (a) Except as provided in subsection (b), and subject to the provisions of the declaration, bylaws, and section [~~3-102.1~~] ___: 5-4, the association, even if unincorporated, may: (1) adopt and amend bylaws and rules and regulations; (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section ___: 5-___ [~~HRS §514A-83.6 (Associations of apartment owners; budgets and reserves)~~]; (3) hire and discharge managing agents and other employees, agents, and independent contractors; (4) institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium; (5) make contracts and incur liabilities; (6) regulate the use, maintenance, repair, replacement, and modification of common elements; (7) cause additional improvements to be made as a part of the common elements; (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to [~~Section 3-112 and section 3-102.1 (514A-82.3)~~] sections ___: 5-___ and ___: 5-___; [*The following language is from* ***§514A-92.1*** *(Designation of additional areas), with BRRAC subcommittee amendments*] provided that designation of additional areas to be common elements or subject to common expenses after the initial filing of the bylaws or declaration shall require the approval of [~~ninety~~] sixty-five percent of the unit owners; provided further that if the developer discloses to the initial buyer in writing that additional areas will be designated as common elements pursuant to an incremental or phased project, this requirement shall not apply as to those additional areas; and provided further that this subsection shall not apply to the purchase of a unit for a resident manager; (9) grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements; (10) impose and receive any payments, fees, or charges for the use, rental, or operation of the common	**UCA/UCIOA/Recod Draft #1 § 3-102. Powers of Unit Owners' Association.** (a) … (4) institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or 2 or more unit owners on matters affecting the condominium; [*Compare*: **HRS §514A-93 Actions.** Without limiting the rights of any apartment owner, actions may be brought by the manager or board of directors, in either case in the discretion of the board of directors on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one apartment. Service of process on two or more apartment owners in any action relating to the common elements or more than one apartment may be made on the person designated in the declaration to receive service of process.] [*See also*, **HRS §514A-94** "Attorneys' fees, delinquent assessments, and expenses of enforcement" below.] …

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	elements, other than limited common elements described in section [~~2-102(2) and (4)~~] ___: 2-___, and for services provided to unit owners; (11) impose charges and penalties for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board; (12) impose reasonable charges for the preparation and recordation of amendments to the declaration, [~~resale certificates required by section 4-109~~] documents requested for resale of units, or statements of unpaid assessments; (13) provide for the indemnification of its officers, [~~and executive~~] board of directors, and committee members and maintain directors' and officers' liability insurance; (14) assign its right to future income, including the right to receive common expense assessments, but only to the extent [~~the declaration~~] section [~~HRS §514A-82.3 (Borrowing of money)~~] ___: 5-___ expressly so provides; (15) exercise any other powers conferred by the declaration or bylaws; (16) exercise all other powers that may be exercised in this State by legal entities of the same type as the association; (17) exercise any other powers necessary and proper for the governance and operation of the association; and (18) by regulation, subject to sections ___: 5-5 and ___: 5-6, require that disputes between the [~~executive~~] board of directors and unit owners or between two or more unit owners regarding the condominium must be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding. [~~(d)~~] (b) If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may: (1) exercise directly against the tenant the powers described in subsection (a)(11); (2) after giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation, provided that a unit owner shall be responsible for the conduct of his tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the declaration, bylaws, or rules and regulations of the association against the tenant; and (3) enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the unit owner, or both. [~~(e)~~] (c) The rights granted under subsection (d)(3) may only be exercised if the tenant or unit owner fails to cure the violation within 10 days after the association notifies the tenant and unit owner of that violation. [~~(f)~~] (d) Unless a lease otherwise provides, this section does not: (1) affect rights that the unit owner has to enforce the lease or that the association has under other law; or (2) permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations.	(13) provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance; [*See also*, **HRS §514A-86(b)**, which reads: "The association of apartment owners may purchase and maintain directors' and officers' liability insurance with minimum coverage in such amount as shall be determined by the board of directors. Premiums shall be common expenses."] …

Part V. Management of Condominium (Recodification PRELIMINARY Draft #2)
(HRS Chapter 514A, Part V) (UCA/UCIOA/Recod Draft #1, Article 3)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-102 is the source of §___: 5-3. Some provisions have been modified using language of similar provisions in HRS Chapter 514A. Others have been modified to address problems that have arisen over time. [For example, subsection (9) corrects problems created by the Penney decision. (Explain.)] UCA/UCIOA §3-102 (b) and (c) have been moved to §___: 5-4 (Limitations on Powers). 2. The official comments to §3-102 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. 3. HRS §514A-82.1 (Employees of condominiums; background check) has been superceded by HRS §846-41 and is therefore omitted from the recodified condominium law.	
	§ ___: 5-4. Same; Limitations on Powers. (a) Association dealing with developer. [Source: **UCA/UCIOA §3-102(b)**.] The declaration or bylaws may not impose limitations on the power of the association to deal with the [~~declarant~~] developer which are more restrictive than the limitations imposed on the power of the association to deal with other persons. (b) Behavior in units. [Source: **UCIOA §3-102(c)**.] Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to: (1) prevent any use of a unit which violates the declaration or bylaws; (2) regulate any behavior in or occupancy of a unit which violates the declaration or ~~[adversely affects]~~ bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or (3) restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in [~~common interest~~] condominium communities or regularly purchase those mortgages. Otherwise, the association may not regulate any use of or behavior in units by means of the rules and regulations. (c) Late charges, legal fees, and fines. [Source: **HRS §514A-15.1**.] No unit owners' association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, and fines (other than amounts remitted by a unit in payment of late fees, legal fees and fines) unless it delivers or mails a written notice to such unit owner, at least seven days prior to the first such deduction, which states that: (1) Failure to pay late fees, legal fees, and fines 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, legal fees, and fines from such payment. (d) Prior written notice of assessment of the cost of providing information. [Source: **Act 140 (SLH, 2002)**.] No unit owner who requests legal or other information from the unit owners' association, the board of directors, the managing agent, or their employees or agents, shall be charged for the cost of providing the information unless the association notifies the unit owner that it intends to charge the unit owner for the cost. The association shall notify the unit owner in writing at least ten days prior to incurring the cost of providing the information, except that no prior notice shall be required to assess the cost of providing information on	[*Compare*: **HRS §514A-82(a)(10)**, which reads: (The bylaws shall provide for at least the following) "The restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners."] [*See also*, **HRS §514A-88**, which reads: "Each apartment owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner."] …

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	delinquent assessments or in connection with proceedings to enforce the law or the association's governing documents. After being notified of the cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the cost of providing the information.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-102(b) is the source of §___: 5-4(a). UCIOA §3-102(c) is the source of §___: 5-4(b). Act 140 (SLH, 2002) is the source of §___: 5-4(d). 2. In §___: 5-4 (b), the term "adversely affects" (from UCIOA §3-102(c)) was changed to "unreasonably interferes with" (from HRS §514A-82(10)). 3. Professor Susan F. French, Reporter for the *Restatement, Third, of Property (Servitudes)*, has proposed that common interest community developers include a "Homeowner's Bill of Rights" in the governing documents for their projects. (*See*, "The Constitution of a Private Residential Government Should Include a Bill of Rights," 27 *Wake Forest L. Rev.* 331 (1992).) As a starting point for discussion, we should consider Professor French's Proposed Provisions for a Homeowner's Bill of Rights. (We should also keep in mind that there are practical problems inherent in some of Professor French's provisions depending on circumstances.) More broadly, we need to consider what limitations are appropriate for general application in State law, and what limitations are more appropriately addressed in individual condominium governing documents.	
	§ ___: 5-5. Alternative Dispute Resolution; Mediation. (a) [Source: **HRS §514A-121.5**; *underscored language is from* **Act 142 (SLH, 2002)**.] If a unit owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the unit owners' association declaration, bylaws, or house rules, or involving this part, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation; unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If an owner or the board refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorney's fees. (b) [Source: **HRS §421J-13(b)**.] Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving: (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person; (2) Actions to collect assessments; (3) Personal injury claims; or (4) Actions against an association, a board of directors, or one or more directors, officers, agents, employees, or other persons for amounts in excess of $2,500 if insurance coverage under a policy of insurance procured by the association or its board of directors would be unavailable for defense or judgment because mediation was pursued. (c) [Source: **HRS §421J-13(c)**.] If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the association and the member.	[*Compare*: **HRS §514A-121.5 (Mediation).** If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, or involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2, 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, or 514A-84.5, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation; unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If an owner or the board refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorney's fees in accordance with section 514A-94.]
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-121.5 is the source of §___: 5-5(a). HRS §421J-13 (Planned Community Associations, Mediation of	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	disputes) is the source of §___: 5-5(b) and (c). In pertinent part, it is identical. 2. NOTE: Pursuant to HRS §514A-131(a)(3) (Condominium Education Fund), the Real Estate Commission has established a special condominium mediation program with the Neighborhood Justice Center of Honolulu for the mediation of condominium disputes. The cost of the program is ten dollars per party and the Neighborhood Justice Center of Honolulu can be contacted at 521-6768 in Honolulu.	
	§ ___: 5-6. Same; Arbitration. (a) [Source: **HRS §514A-121**.] At the request of any party, any dispute concerning or involving one or more unit owners and a unit owners' association, its board of directors, managing agent, or one or more other unit owners relating to the interpretation, application or enforcement of this chapter [~~514A~~] or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and the provisions of chapter 658A; provided that the [~~Condominium Property Regime Rules on Arbitration of Disputes of the American Arbitration Association~~] rules of the arbitration service conducting the arbitration shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658A, chapter 658A shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect. (b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving: (1) The real estate commission; (2) The mortgagee of a mortgage of record; (3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a unit owner, a director, or managing agent, such person shall, in those capacities, be subject to the provisions of subsection (a); (4) Actions seeking equitable relief involving threatened property damage or the health or safety of unit owners or any other person; (5) Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section [~~514A-90(d)~~] ___: 5-___ shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment; (6) Personal injury claims; (7) Actions for amounts in excess of $2,500 against a unit owners' association, a board of directors, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the unit owners' association or its board of directors would be unavailable because action by arbitration was pursued; or (8) Any other cases which are determined, as provided in [~~section 514A-122~~] subsection (c), to be	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	unsuitable for disposition by arbitration. (c) Determination of unsuitability. [Source: **HRS §514A-122**.] At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to the circuit court in the judicial circuit in which the condominium is located for a determination that the subject matter of the dispute is unsuitable for disposition by arbitration. In determining whether the subject matter of a dispute is unsuitable for disposition by arbitration, a court may consider: (1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute; (2) Problems referred to the court where court regulated discovery is necessary; (3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter [~~514A~~]; (4) The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration under this section [~~514A-121~~]; (5) Any matters of dispute where disposition by arbitration, in the absence of complete judicial review, would not afford substantial justice to one or more of the parties. Any such application to the circuit court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed $200. (d) Determination of insurance coverage. [Source: **HRS §514A-123**.] In the event of a dispute as to whether a claim shall be excluded from mandatory arbitration under [~~section 514A-121(b)(7)~~] subsection (b)(7) any party to an arbitration may file a complaint for declaratory relief against the involved insurer or insurers for a determination of whether insurance coverage is unavailable due to the pursuit of action by arbitration. The complaint shall be filed with the circuit court in the judicial circuit in which the condominium is located. The insurer or insurers shall file an answer to the complaint within twenty days of the date of service of the complaint and the issue shall be disposed of by the circuit court at a hearing to be held at the earliest available date; provided that the hearing shall not be held within twenty days from the date of service of the complaint upon the insurer or insurers. (e) Costs, expenses, and legal fees. [Source: **HRS §514A-124**.] Notwithstanding any provision in this chapter to the contrary, the declaration or the bylaws, the award of any costs, expenses, and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses and legal fees shall be binding upon all parties. (f) Award; confirming award. [Source: **HRS §514A-125**.] The award of the arbitrator shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and shall be served by the arbitrator on each of the parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court of the judicial circuit in which the condominium is located for an order confirming the award. The court shall grant the order confirming the award pursuant to section 658A-22, unless the award is vacated, modified, or corrected, as provided in sections 658A-20, 658A-23, and 658A-24, or a trial de novo is demanded under [~~section 514A-127~~] subsection (h), or the award is successfully appealed under [~~section 514A-127~~] subsection (h). The record shall be filed with the motion to confirm award, and notice of the motion shall be served upon	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	each other party or their respective attorneys in the manner required for service of notice of a motion. (g) Findings of fact and conclusions of law. [Source: **HRS §514A-126**.] Findings of fact and conclusions of law, as requested by any party prior to the arbitration hearing, shall be promptly provided to the requesting party upon payment of the reasonable cost thereof. (h) Trial de novo and appeal. [Source: **HRS §514A-127**. *BRRAC subcommittee believes that this subsection must be further strengthened (perhaps with provision similar to those of the Medical Claims Conciliation Panel). Intent: Discourage going to court.*] [~~(a)~~] (1) The submission of any dispute to an arbitration under this section [~~514A-121~~] shall in no way limit or abridge the right of any party to a trial de novo. [~~(b)~~] (2) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ten days after service of the arbitration award upon all parties and the trial de novo shall be filed in circuit court within one month of the written demand. Failure to meet these deadlines shall preclude a party from demanding a trial de novo. [~~(c)~~] (3) The award of arbitration shall not be made known to the trier of fact at a trial de novo. [~~(d)~~] (4) In any trial de novo demanded under subsection [~~(b)~~] (h)(2), if the party demanding a trial de novo does not prevail at trial, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial. When there is more than one party on one or both sides of an action, or more than one issue in dispute, the court shall allocate its award of costs, expenses and attorneys' fees among the prevailing parties and tax such fees against those nonprevailing parties who demanded a trial de novo in accordance with the principles of equity. [~~(e)~~] (5) Any party to an arbitration under this section [~~514A-121~~] may apply to vacate, modify, or correct the arbitration award for the grounds set out in chapter 658A. All reasonable costs, expenses, and attorneys' fees on appeal shall be charged to the nonprevailing party.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §§514A-121 (Arbitration of disputes), 514A-122 (Determination of unsuitability), 514A-123 (Determination of insurance coverage), 514A-124 (Costs, expenses and legal fees), 514A-125 (Award; confirming award), 514A-126 (Findings of fact and conclusions of law), and 514A-127 (Trial de novo and appeal) are the sources of §___: 5-6. 2. Stakeholders have commented that HRS Chapter 514A's mandatory arbitration provisions are impractical and expensive in most cases – particularly with the trial de novo provision of HRS §514A-127. The BRRAC subcommittee considered deleting the arbitration section, but decided to keep it with a few amendments to the trial de novo provisions. 3. Some members of the BRRAC subcommittee as well as members of the condominium community have suggested that a "Condominium Court" be established to help resolve condominium disputes (either as small claims court is organized, as a part of district court; or as a hearings officer, like existing DCCA hearings officers). At this point, we are not considering or researching proposals that increase the cost and size of government. [Note: For an excellent discussion of various condominium dispute resolution possibilities, *see*, Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991). It is clear that some sort of "dispute triage" is desirable. As noted above, however, figuring out how to pay for the "dispute triage" is critical. The BRRAC should make a recommendation whether we should pursue this further. In any case, we need to draft an explanation for the commentary regarding why or why not.] 4. Finding an alternative dispute resolution mechanism that works for common interest communities is one of the	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	initial priorities of the California Law Revision Commission's research into improving their common interest community law (the Davis-Stirling Act). The Commission [Legislature] can choose to build on their work.	
	§ ___: 5-7. Board of Directors; Powers and Duties. [Source: **UCA/UCIOA § 3-103**.] (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board of directors may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board of directors appointed by the developer shall exercise the degree of care and loyalty required of a trustee. Officers and members of the board of directors not appointed by the developer shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter [~~415B~~] 414D. (b) The board of directors may not act on behalf of the association to amend the declaration or bylaws (~~Section 2-117~~ sections ___: 2-___ and ___:5-___), to terminate the condominium (section ~~2-118~~ ___: 2-___), or to elect members of the board of directors or determine the qualifications, powers and duties, or terms of office of board of directors members (section ~~3-103(f)~~ ___: 5-___(f)), but the board of directors may fill vacancies in its membership for the unexpired portion of any term. (c) Within [30] days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners. [Subcommittee question: OMIT OR MOVE TO MONEY SECTION §3-115? GMA's notes say to delete this provision entirely. (Subcommittee already decided to delete the unit owner ratification language.)] (d) [??? Discuss further.] Subject to subsection (e), the declaration may provide for a period of developer control of the association, during which a developer, or persons designated by him, may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, [~~and except as provided in Section 2-123(g) (Master Planned Communities),~~] a period of developer control terminates no later than the earlier of: (1) [60] days after conveyance of [75] percent of the units that may be created to unit owners other than a developer; (2) [2] years after all developers have ceased to offer units for sale in the ordinary course of business; (3) [2] years after any right to add new units was last exercised; or (4) the day the developer, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association. A developer may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period, but in that event the developer may require, for the duration of the period of developer control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the developer, be approved by the developer before they become effective. (e) [??? Discuss further.] Not later than [60] days after conveyance of [25] percent of the units that may be created to unit owners other than a developer, at least one member and not less than [25] percent of the members of the board of directors must be elected by unit owners other than the developer. Not later than [60] days after conveyance of [50] percent of the units that may be created to unit owners other than a developer, not less than [33-1/3] percent of the members of the board of directors must be elected by unit owners other than the developer. (f) [??? Discuss further.] Except as otherwise provided in section [~~2-120(e) (Master Associations)~~] ___: 2-___, not later than the termination of any period of developer control, the unit owners shall elect an board of	[*Added*: **HRS §514A-82(b)(1) (Bylaws).** [~~At any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created.~~] The removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including any provision relating to cumulative voting. If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	directors of at least three members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. The board of directors members and officers shall take office upon election. (g) [??? Discuss further. First sentence "destroys cumulative voting." (BRRAC subcommittee: Post 30 days before mailing? Minimum 45 days under current law.)] Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the developer. [*The following language is from **HRS §514A-82(b)(1)***] The removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including any provision relating to cumulative voting. If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five percent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided in this section, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.	agent signed by not less than twenty-five percent of the apartment owners as shown in the association's record of ownership; provided that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided in this section, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.]
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-103 is the source of this section. Subsection §3-103(g) was amended by adding language from HRS §514A-82(b)(1) (Bylaws). 2. The official comments to §3-103 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. 3. Currently, HRS §514A-82.4 (Duty of directors) states that "[e]ach director shall owe the association of apartment owners a fiduciary duty in the performance of the director's responsibilities." §___: 5-7(a) reflects our decision to adopt the language of UCIOA (1994) §3-103(a). The official comment to UCIOA (1994) §3-103 explains the duty owed by directors as follows: The 1994 amendment to subsection (a) is intended to conform the Act to expectations of owners, members of executive boards, and courts. The duty owed by an elected member of an executive board ought to parallel the standard imposed on directors of non-profit corporations. The original text set out a lesser standard. By making reference to the non-profit corporate model, members will also obtain the benefits of the business judgment rule, now commonly applied by courts in the non-profit context; see, for example, *Levandusky v. One Fifth Avenue Apartment Corp.*, 75 N.Y.2d 530 (1990). The change from "fiduciary" to "trustee" as the standard of care for declarant-appointed directors makes the standard of care more precise. The law contemplates many forms of fiduciary relationships; among them, the trustee's duty is the highest.	
	§ ___: 5-8. Same; Limitations. (a) Staggered terms for directors. [Source: **HRS §414-196**. Note: Consider adding "Unless otherwise provided …" language.] The bylaws shall provide for staggering of directors terms by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual meeting after their election, the terms of the second group expire at the second annual meeting after their election, and the terms of the third group, if any, expire at the third annual meeting after their election. At	[Note: The BRRAC subcommittee recommends DELETING the requirement in **HRS §514A-82(a)(1)(B)** that: "condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than sixty-five percent of all apartment owners vote by mail

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	each annual meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire. (b) [Source: **HRS §514A-82(a)(1)(E)**.] The compensation, if any, of the directors, shall be specified in the bylaws. (c) [Source: **HRS §514A-82(a)(12)**.] All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, the trustee or benficiary of a truste which owns a unit, or an officer of any corporate owner, including a limited liability corporation, or representative of any other legal entity, of a unit. The partners in a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be the owners of a unit for this purpose. There shall not be more than one representative on the board of directors from any one unit. (d) [Source: **HRS §514A-82(a)(14)**. Question: Add resident managers' "spouses and employees" to the prohibition?] No resident manager of a condominium shall serve on its board of directors. (e) [Source: **HRS §514A-82(b)(7)**.] An owner shall not act as an officer of an association and an employee of the managing agent employed by the association. (f) [Source: **HRS §514A-82(b)(10)**.] Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses; provided that directors may be reimbursed for actual expenditures on behalf of the association. (g) [Source: **HRS §514A-82(b)(11)**.] Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments. (h) [Source: **HRS §514A-82(b)(12)**.] The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of subsection (g). (i) Borrowing of money. [Source: **§514A-82.3**. Note: With amendments originally proposed by BRRAC subcommittee, as modified. A property manager suggested that we amend to allow boards to refinance existing approved loans to take advantage of better interest rates and terms without owners' approval as long as there is no increase in the principal balance. We also need explanations for the commentary.] Subject to any approval requirements and spending limits contained in the declaration or bylaws of the unit owners' association, the board of directors may authorize the borrowing of money to be used by the association for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto. In connection with such borrowing, the board may assign and pledge reserve accounts of the association, and may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of such assessments or other sums by statutory lien and foreclosure proceedings. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project; provided that owners representing fifty percent of the common interest [~~and~~	ballot, or at a special or annual meeting, to reduce the minimum number of directors."]

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	~~apartments~~] vote or give written consent to such borrowing, having been first notified of the purpose and use of the funds. For purposes of this section, no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.	
	BRRAC's [Real Estate Commission's] Comment 1. Consistent with our goal of eliminating the artificial approach regarding bylaws in HRS §514A-82(a) and (b), and to help reduce the statutory requirements for condominium governing documents, we have consolidated appropriate provisions under separate sections (i.e., separate from the bylaws section). [Explain further, particularly the decision to delete the deletion of the "50% of apartments" approval requirement.] The following provisions from HRS Chapter 514A have been consolidated in this section: HRS §§514A-82(a)(1)(E), -82(a)(12), -82(a)(14), -82(b)(7), -82(b)(10), -82(b)(11), -82(b)(12), and -82.3. In addition, HRS §414-196 has been incorporated in subsection (a). 2. The BRRAC subcommittee recommends DELETING the requirement in HRS §514A-82(a)(1)(B) that: "condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than sixty-five per cent of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce the minimum number of directors. [Explain further.] 3. Stakeholders have suggested that we also prohibit managing agents, rental agents, and any employees of associations from serving on the boards of those associations.	
	§ ___: 5-9. Same; Conflicts of Interest. (a) [Source: **HRS §514A-82(a)(13)**.] A director shall not [~~cast any proxy vote at any board meeting, nor shall a director~~] vote at any board meeting on any issue in which the director has a conflict of interest. (b) [Source: **HRS §514A-82(b)(5)**.] A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. A conflict of interest shall be deemed to arise if the vote of a director confers a benefit on the director which is over and above the benefit which the director's vote confers on all other members of the association.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §§514A-82(a)(13) and –82(b)(5) are the sources of this section. 2. Pursuant to §___: 5-7(a), "officers and members of the board of directors appointed by the developer shall exercise the degree of care and loyalty required of a trustee" and "[o]fficers and members of the board of directors not appointed by the developer shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D" (i.e., Hawaii's nonprofit corporations law). *See*, BRRAC's [Real Estate Commission's] Comment to §___: 5-7.	
	§ ___: 5-10. Same; Meetings. (a) [Source: **HRS §514A-83.1(a)**.] All meetings of the board of directors, other than executive sessions, shall be open to all members of the association, and association members who are not on the board of directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the board of directors votes otherwise. (b) [Source: **HRS §514A-83.1(b); HRS §421J-(5)(d)**.] The board of directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters concerning personnel, [~~matters or~~] litigation in which the association is or may become involved, or as may be necessary to protect the attorney client privilege of the association. The nature of any and all business to be considered in executive session shall first be announced in open session.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(c) [Source: **HRS §514A-82(a)(16)**.] All [~~association and~~] board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order. (d) [Source: **HRS §514A-82(b)(9)**.] The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors. (e) [Source: **HRS §514A-82(a)(13)**.] A director shall not cast any proxy vote at any board meeting[~~, nor shall a director vote at any board meeting on any issue in which the director has a conflict of interest~~]. [*Compare*: **HRS §421J-(5)(e)**, "No board member shall vote by proxy at board meetings."]	
	BRRAC's [Real Estate Commission's] Comment 1. [List sources.] 2. [Question: Account for other advisers in executive session, e.g., appraisers in lease-to-fee-negotiations?] 3. Stakeholders have suggested that we make it clear that directors have the right to attend any committee meetings, whether they sit on the committee or not, unless they have a conflict of interest on the subject matter. [BRRAC subcommittee believes probably NOT.] 4. Stakeholders have questioned the qualifier "practicable" in HRS §514A-82(b)(9). 5. Consider combining this section under "Meetings" below, with subsections for unit owners' association meetings and board of directors meetings.	
	§ ___: 5-11. Same; Quorums. [Source: **§UCA/UCIOA §3-109(b)**.] Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-109(b) is the source of this section. 2. Specifically authorizing videoconferencing and other means of remote meetings may be desirable. 3. Consider recombining this section under "Quorums" below, with subsections for unit owners' association meetings and board of directors meetings.	
	§ ___: 5-12. Same; Meeting Minutes. [Source: **HRS §514A-83.4**.] (a) Minutes of meetings of the board of directors [~~and association of apartment owners~~] shall include the recorded vote of each board member on all motions except motions voted on in executive session. (b) Minutes of meetings of the board of directors [~~and association of apartment owners~~] shall be approved [~~at the next succeeding meeting; provided that for board of directors meetings,~~] no later than the second succeeding meeting. (c) Minutes of all meetings shall be available within seven calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-83.4 is the source of this section.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	2. Consider combining this section under "Meeting Minutes" below, with subsections for unit owners' association meetings and board of directors meetings.	
	§ ___: 5-13. Same; Mixed Use Property; Representation on Board of Directors. [Source: **HRS §514A-82.15**.] (a) The bylaws of a unit owners' association may be amended to provide that the composition of the board of directors reflect the proportionate number of units for a particular use, as set forth in the declaration. For example, a unit owners' association may provide that for a nine-member board where two-thirds of the units are for residential use and one-third is for commercial use, sixty-six and two-thirds percent of the nine-member board, or six members, shall be owners of residential use units and thirty-three and one-third percent, or three members, shall be owners of commercial use units. (b) [BRRAC subcommittee believes this subsection is superfluous as written. Redraft.] Any proposed bylaws amendment to modify the composition of the board in accordance with subsection (a) may be initiated by: (1) A majority vote of the board of directors; or (2) A submission of the proposed bylaw amendment to the board of directors from a volunteer unit owner's committee accompanied by a petition from twenty-five percent of the unit owners of record. (c) Within thirty days of a decision by the board or receipt of a petition to initiate a bylaws amendment, the board of directors shall mail a ballot with the proposed bylaws amendment to all of the unit owners of record. For purposes of this section only [~~and notwithstanding section 514A-82(b)(2)~~], the bylaws may be initially amended by a vote or written consent of the majority (at least fifty-one percent) of the unit owners; and thereafter by sixty-five percent of all unit owners; provided that each of the requirements set forth in this section shall be embodied in the bylaws. (d) The bylaws, as amended pursuant to this section, shall be recorded in the bureau of conveyances or filed in land court, as the case may be. (e) Election of the new board of directors in accordance with an amendment adopted pursuant to this section shall be held within sixty days from the date the amended bylaws are recorded pursuant to subsection (d). (f) As permitted in the bylaws or declaration, the vote of a commercial unit owner shall be cast and counted only for the commercial seats available on the board of directors and the vote of a residential unit owner shall be cast and counted only for the residential seats available on the board of directors. (g) No petition for a bylaw amendment pursuant to subsection (b)(2) to modify the composition of the board shall be distributed to the unit owners within one year of the distribution of a prior petition to modify the composition of the board pursuant to that subsection. (h) This section shall not preclude the removal and replacement of any one or more members of the board pursuant to section [~~514A-82(b)(1)~~] ___: 5-7(g). Any removal and replacement shall not affect the proportionate composition of the board as prescribed in the bylaws as amended pursuant to this section. [~~(i) This section shall be deemed incorporated into the bylaws of all properties subject to this chapter existing as of July 1, 1998, and thereafter.~~]	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-82.15 is the source of this section.	
	§ ___: 5-14. Managing Agents. [Source: **§514A-95.**] (a) Every managing agent shall: (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	be a corporation authorized to do business under article 8 of chapter 412; (2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include the name, business address, phone number, and names of unit owners' associations managed; (3) Obtain and keep current a fidelity bond in an amount equal to $500 multiplied by the aggregate number of units of the unit owners' association managed by the managing agent; provided that the amount of the fidelity bond shall not be less than $20,000 nor greater than $100,000. Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond or a certification statement from an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirement of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any unit owners' association funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The fidelity bond shall protect the managing agent against the loss of any unit owners' association's moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or a bond alternative, or permit deductibles; (4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to a unit owners' association, and apply the fidelity bond proceeds, if any, to reduce the unit owners' association's loss. If more than one unit owners' association suffers a loss, the managing agent shall divide the proceeds among the unit owners' associations in proportion to each unit owners' association's loss. A unit owners' association may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If a unit owners' association cannot recover its loss from the fidelity bond proceeds of the managing agent, the unit owners' association may recover by court order from the real estate recovery fund established under section 467-16, provided that: (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees; (B) The managing agent is a licensed real estate broker; and (C) The unit owners' association fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission; (5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and (6) Report immediately in writing to the commission any changes to the information contained on the registration application or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements. (b) The commission may deny any registration or reregistration application or terminate a registration without hearing if the fidelity bond and its evidence fail to meet the requirements of this chapter and the rules adopted pursuant thereto. (c) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent. (d) [Source: **Act 129 (SLH, 2002)**.] The registration and fidelity bond requirements of this section shall not apply to active real estate brokers in compliance with and licensed under chapter 467.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-95 is the source of this section. 2. The BRRAC subcommittee does not believe that the change made by Act 129 (SLH, 2002) was wise. At least part of the theory behind exempting licensed, active, real estate brokers from the registration and fidelity bond requirements of this section is that victims of such real estate brokers would have recourse against the Real Estate Recovery Fund. *See*, HRS §467-___. Such a remedy, however, is woefully inadequate. [Explain.]	
	§ ___: 5-15. Prohibitions; Employees, Resident Manager. (a) [Source: **HRS §514A-82(b)(8)**.] An association's employees shall not engage in selling or renting units in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five percent of the membership. (b) [Source: **HRS §514A-82(b)(7)**.] [Note: Also in §___: 5-8(e) of this draft.] An owner shall not act as an officer of an association and an employee of the managing agent employed by the association. (c) [Source: **HRS §514A-82(b)(4)**, *partial*.] No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any unit owner of the unit owners' association that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. (d) [Source: **HRS §514A-82(a)(14)**.] No resident manager of a condominium shall serve on its board of directors.	
	BRRAC's [Real Estate Commission's] Comment 1. [List source(s).] 2. [Question: Should "resident manager" be defined in Part I (General Provisions)?] 3. Stakeholders have suggested that we also prohibit managing agents, rental agents, their spouses, and their employees from soliciting proxies or casting proxy votes except for the purposes of establishing a quorum.	
	§ ___: 5-16. Management and Contracts; Developer, Managing Agent, and Unit Owners' Association. [Source: **§ 514A-84**.] ~~[(a) If the developer or any affiliate of the developer acts as the first managing agent for the association of apartment owners following its organization, the contract shall not have a term exceeding one year and shall~~	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	~~contain a provision that the contract may be terminated by either party thereto on not more than sixty days' written notice. The identity of the managing agent as the developer or the developer's affiliate shall be disclosed to the association of apartment owners no later than the first meeting of the association of apartment owners, which is when the association of apartment owners is organized. An affiliate of, or person affiliated with, a developer is a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.~~] [HRS §514A-84(a) deleted. Replaced by provisions of UCA/UCIOA §3-105, incorporated below in §___: 5-___.] [~~(b)~~] (a) Any developer or affiliate of the developer or a managing agent, who manages the operation of the property from the date of recordation of the first unit conveyance until the organization of the unit owners' association, shall comply with the requirements of sections [~~514A-95.1, 514A-97, and 514A-132~~] §___: 5-___, ___: 5-___, and ___: 3-___, with the exception of the fidelity bond requirement for the unit owners' association. [~~(c)~~] (b) The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract. Prior to the organization of the unit owners' association, any unit owner may request to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-84 is the source of this section.	
	§ ___: 5-17. Termination of Contracts and Leases of Developer. [Source: **UCA/UCIOA §3-105;** *underscored language is from* **HRS §514A-84(a)**.] Except as provided in section [~~1-207~~] ___: 1-___, if entered into before the board of directors elected by the unit owners pursuant to section [~~3-103(f)~~] ___: 5-___ takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a developer or an affiliate of a developer, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to section [~~3-103(f)~~] ___: 5-___ takes office upon not less than [90] days' notice to the other party. This section does not apply to: (i) any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section, or (ii) a proprietary lease. An affiliate of, or person affiliated with, a developer is a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-105 is the source of this section. The definition of "affiliate of a developer" is taken from HRS §514A-84(a). BRRAC should consider moving this definition to "Definitions" section in Part I (General Provisions). 2. The official comments to §3-105 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. [Note: A combined comment is contained in Recodification Draft #1, under §3-105.]	
	§ ___: 5-18. Transfer of Special Developer Rights. [Source: **UCA/UCIOA §3-104**.] (a) A special developer right (section [~~1-103(29)~~] ___: 1-___) created or reserved under this chapter may be transferred	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	only by [~~an~~] a recorded instrument evidencing the transfer [~~recorded in every [county] in which any portion of the common interest community is located~~]. The instrument is not effective unless executed by the transferee. (b) Upon transfer of any special developer right, the liability of a transferor developer is as follows: (1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor. (2) If a successor to any special developer right is an affiliate of a developer (section [~~1-103(1)~~] ___: 1-___), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium. (3) If a transferor retains any special developer rights, but transfers other special developer rights to a successor who is not an affiliate of the developer, the transferor is liable for any obligations or liabilities imposed on a developer by this chapter or by the declaration relating to the retained special developer rights and arising after the transfer. (4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special developer right by a successor developer who is not an affiliate of the transferor. (c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a developer or real estate in a condominium subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon his request, succeeds to all special developer rights related to that property held by that developer, or only to any rights reserved in the declaration pursuant to section [~~2-115~~] ___: 2-___ and held by that developer to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special developer rights requested. (d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of all interests in a condominium owned by a developer: (1) the developer ceases to have any special developer rights, and (2) the period of developer control (section [~~3-103(d)~~] ___: 5-7(d)) terminates unless the judgment or instrument conveying title provides for transfer of all special developer rights held by that developer to a successor developer. (e) The liabilities and obligations of a person who succeeds to special developer rights are as follows: (1) A successor to any special developer right who is an affiliate of a developer is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration. (2) A successor to any special developer right, other than a successor described in paragraph (3) or (4) or a successor who is an affiliate of a developer, is subject to the obligations and liabilities imposed by this chapter or the declaration: (i) on a developer which relate to the successor's exercise or nonexercise of special developer rights; or	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(ii) on his transferor, other than: (A) misrepresentations by any previous developer; (B) warranty obligations on improvements made by any previous developer, or made before the condominium was created; (C) breach of any fiduciary obligation by any previous developer or his appointees to the board of directors; or (D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer. (3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs (section [~~2-115~~] ___: 2-___), may not exercise any other special developer right, and is not subject to any liability or obligation as a developer, except the obligation to provide a public [~~offering statement~~] report and any liability arising as a result thereof, and obligations under [~~Article 5~~] part III. (4) A successor to all special developer rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special developer rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the board of directors in accordance with section [~~3-103(d)~~] ___: 5-7(d) for the duration of any period of developer control, and any attempted exercise of those rights is void. So long as a successor developer may not exercise special developer rights under this subsection, the successor developer is not subject to any liability or obligation as a developer other than liability for his acts and omissions under section [~~3-103(d)~~] ___: 5-7(d). (f) Nothing in this section subjects any successor to a special developer right to any claims against or other obligations of a transferor developer, other than claims and obligations arising under this chapter or the declaration.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-104 is the source of this section. 2. The *extensive* official comments to §3-104 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. [Note: A combined comment is contained in Recodification Draft #1, under §3-104.] [Note: If we choose to incorporate UCA/UCIOA §3-104 in the recodification, as recommended by the BRRAC subcommittee, we should also incorporate the UCA/UCIOA §1-103 definitions of "special [~~declarant~~] developer rights" and "development rights" along with the official comments to those definitions.] F.Y.I.: • UCA §1-103(23) defines "special declarant rights" as follows: "Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the declaration (Section 2-109); (ii) to exercise any development right (Section 2-110); (iii) to maintain sales offices, management offices, signs advertising the condominium, and models (Section 2-115); (iv) to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (Section 2-116); (v) to make the condominium part of a larger condominium or a planned community (Section 2-121); (vi) to make the condominium	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	subject to a master association (Section 2-120); (vii) or to appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (Section 3-103(c)). ● The official comment to the UCA definition of "special declarant rights" states that: Definition (23), "special declarant rights," seeks to isolate those rights reserved for the benefit of a declarant which are unique to the declarant and not shared in common with other unit owners. The list, while short, encompasses virtually every significant right which a declarant might seek in the course of creating or expanding a condominium. Any person who possesses a special declarant right would be a "declarant", including any who succeed under Section 3-104 to any of those rights. Thus, the concept of special declarant rights triggers the imposition of obligations on those who possess the rights. Under Section 3-104, those obligations vary significantly, depending upon the particular special declarant rights possessed by a particular declarant. These circumstances are described more fully in the comments to Section 3-104.	
	§ ___: 5-19. Bylaws. (a) [Source: **UCA/UCIOA §3-106; HRS §514A-81**.] The operation of the property shall be governed by bylaws, a true copy of which shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded. The bylaws of the association must provide: (1) the number of members of the board of directors and the titles of the officers of the association; (2) election by the board of directors of a president, treasurer, secretary, and any other officers of the association the bylaws specify; (3) the qualifications, powers and duties, terms of office, and manner of electing and removing board of directors members and offices and filling vacancies; (4) which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent; (5) which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; (6) subject to subsection (c), a method for amending the bylaws; and (7) [Source: **HRS §514A-82(a)(2)**; *partial*.] the percentage, consistent with this chapter, that is necessary to adopt decisions binding on all unit owners; provided that votes allocated to any area that constitutes a common element under section [~~514A-13(h)~~] ___: 2-___ shall not be cast at any association meeting, regardless of whether it is so designated in the declaration. (b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate. (c) [Source: **HRS §514A-82(b)(2)** as amended by **Act 141 (SLH, 2002)**.] (2) The bylaws may be amended at any time by the vote or written consent of sixty-five percent of all unit owners; provided that [~~each~~]: (1) Each one of the particulars set forth in this [~~section~~] subsection shall be embodied in the bylaws always; and [~~provided further that any~~] (2) Any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer unit owners' committee. If submitted by that committee, the proposal shall be accompanied by a petition signed by not less than twenty-five percent of the unit owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed	[Specific language from HRS §514A-82 omitted from recodification draft #2. EXPLAIN where covered or why omitted.] (a) (2) Method of calling meetings of the apartment owners…; (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges; (7) Manner of collecting common expenses, expenses, costs, and fees recoverable by the association under section 514A-94, and any penalties and late charges; (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements; (9) Method of adopting and amending administrative rules governing the details of the operation and use of the common elements; (10) The restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners; (18) Penalties chargeable against persons for violation of the covenants, conditions, or restrictions set forth in the declaration, or of the bylaws and administrative rules adopted pursuant thereto, method of determination of violations, and manner of enforcing

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five percent of all unit owners; provided that the vote or written consent must be obtained within [~~one hundred twenty~~] three hundred sixty-five days after mailing[~~. In the event that~~] for a proposed bylaw submitted by either the board of directors or a volunteer unit owners' committee. If the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer unit owners' committee shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board. This subsection shall not preclude any unit owner or voluntary unit owners' committee from proposing any bylaw amendment at any annual association meeting.	penalties, if any. (b) In addition to the requirements of subsection (a), the bylaws shall be consistent with the following provisions: … (13) A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by chapter 667[~~, as that chapter may be amended from time to time~~]. The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date.
	BRRAC's [Real Estate Commission's] Comment 1. Consistent with our goals to eliminate the artificial approach regarding the contents of bylaws developed in HRS §514A-82(a) and (b) and to minimize the statutory requirements for condominium governing documents, certain provisions currently in HRS §514A-82(a) and (b) have been incorporated in more appropriate statutory sections. [List source(s).] 2. The official comments to §3-106 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. [Note: In contrast to UCA/UCIOA, the recodification has retained the HRS §514A-81 requirement that bylaws be "recorded in the same manner as the declaration."]	
	§ ___: 5-20. Restatement of Declaration and Bylaws. [Source: **HRS §514A-82.2**.] (a) Notwithstanding any other provision of this chapter or of any other statute or instrument, a unit owners' association 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) A unit owners' association 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 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	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	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.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-82.2 is the source of this section.	
	§ ___: 5-20.1. Judicial Power to Excuse Compliance with Requirements of Governing Documents. [Source: ***Restatement of the Law, Third, Property (Servitudes)* §6.12**; *to be drafted along the lines suggested in the official commentary to the Restatement. See, BRRAC's Comment to this section*.]	
	BRRAC's [Real Estate Commission's] Comment 1. The *Restatement of the Law, Third, Property (Servitudes)* §6.12 is the source of this section. 2. Several practitioners, management companies, and unit owners have commented on the virtual impossibility of changing obsolete provisions (among others) contained in condominium declarations. For example, in one old condominium, the elevator was so small that no one could fit any furniture bigger than a love seat into the elevator. The majority of unit owners wanted to modify the elevator so they could move bigger pieces of furniture up to their apartments. However, the declaration contained an owner-approval requirement for spending more than $2,000. Since first and second floor owners and others (for various reasons, including apathy) didn't care to approve spending for enlarging the elevator, it was not possible to get the necessary 75% unit owners' consent. [HRS §514A-11(11) allows declarations to be amended if at least 75% of the unit owners consent.] Ultimately, while such "spending limit" provisions might have had appeal to a buyer (initially) or to a developer who believes that it is the right "democratic" thing to do, it makes little sense in the long run for the people who have to live in the condominium since it becomes virtually impossible to change the declaration (even with its outdated dollar figure limits). The *Restatement of the Law, Third, Property (Servitudes)*, recognizes this problem and addresses it in §6.12 – Judicial Power to Excuse Compliance with Requirements of the Governing Documents, which reads as follows: A court may excuse compliance with any of the following provisions in a governing document if it finds that the provision unreasonably interferes with the community's ability to manage the common property, administer the servitude regime, or carry out any other function set forth in the declaration, and that compliance is not necessary to protect the legitimate interests of the members or lenders holding security interests: (1) a provision limiting the amount of any assessment that can be levied against individually owned property; (2) a provision requiring that an amendment to the declaration be approved by lenders; (3) a provision requiring the approval of more than a majority of the voting power to adopt an amendment described in § 6.10(1)(a); (4) a provision requiring approval of more than two-thirds of the voting power to adopt an amendment described by § 6.10(1)(b) that is not subject to the requirements of § 6.10(2) or (3); (5) a requirement that an amendment to the declaration be signed by members; (6) a quorum requirement for meetings of members. *[Note: §6.10 deals with the power to amend the declaration.]*	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	In its comments to §6.12, the Restatement explains its rationale as follows: The public and the property owners have substantial interests in the long-term viability of the common-interest community. The declaration, the foundational document setting the parameters of the community's authority, is usually drafted by the developer for whom the project's immediate financial success is generally more important than creation of a community that will function successfully in the long term. Through ignorance, inadvertence, reliance on poorly drafted forms, or lack of foresight, many declarations include provisions that impair the ability of the community or its association to function over the long term. The resulting problems have sometimes been corrected or ameliorated by legislation. However, remedial legislation is not yet available in many states and may not apply to some common-interest communities. A court has a general dispensing power, under principles of equity jurisdiction, to excuse compliance with requirements that significantly impede the functioning of common-interest communities and their associations. The interests of property owners and lenders who relied on the provisions of the declaration are protected by the requirement that the court find that compliance with the provision in question is unnecessary to protect their legitimate interests. 3. [Note: California and Florida also have provisions allowing for the courts to excuse compliance with condominium governing documents under very specific circumstances. Compile some other examples.]	
	§ ___: 5-21. Upkeep of Condominium. [Source: **UCA/UCIOA §3-107**; *underscored phrase is from **HRS §514A-82(b)(6)***.] (a) Except to the extent provided by the declaration, subsection (b), or section [~~3-113(h)~~] ___:5-___, the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, during reasonable hours, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof. (b) In addition to the liability that a developer as a unit owner has under this chapter, the developer alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the developer. [Subcommittee question: ADD 514A-15 HERE? Cross-reference from Part II?]	[*Compare*: HRS §514A-82(b)(6), "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."]
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-107 is the source of this section. 2. The official comments to §3-107 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.	
	§ ___: 5-21.1. Same; Disposition of Unclaimed Possessions. [Source: **§514A-93.5**.] (a) When personalty in or on the common elements of a project has been abandoned, the board of directors may sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty days after the board complies with the following: (1) The board notifies the owner in writing of:	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(A) The identity and location of the personalty, and (B) The board of directors' intent to so sell, store, donate, or dispose of the personalty. Notification shall be by certified mail, return receipt requested to the owner's address as shown by the records of the association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or (2) If the identity or address of the owner is unknown, the board of directors shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located. (b) The proceeds of any sale or disposition of personalty under subsection (a) shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty days. Any proceeds not claimed within this period shall become the property of the unit owners' association.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-93.5 is the source of this section.	
	§ ___: 5-21.2. Same; Certain Work Prohibited. [Source: **§514A-89**; *partial; rewrite again for clarity*.] No unit owner shall do any work which could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any unit owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of [~~seventy-five~~] sixty-five percent of the unit owners, together with the consent of all unit owners whose units or limited common elements appurtenant thereto are directly affected, being first obtained.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-89 (portions relating to jeopardizing soundness or safety of property, etc.) is the source of this section..	
	§ ___: 5-21.3. Nonmaterial Structural Additions; Solar Energy Devices. [Source: **§514A-89**; *partial; rewrite again for clarity*.] Nonmaterial structural additions to the common elements, including, without limitation, the installation of solar energy devices, or additions to or alterations of a unit made within such unit or within a limited common element appurtenant to and for the exclusive use of the unit shall require approval only by the board of directors of the unit owners' association and such percentage, number, or group of unit owners as may be required by the declaration or bylaws. "Nonmaterial structural additions to the common elements", as used in this section, means a structural addition to the common elements which does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner. "Solar energy device", for purposes of this section, means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it must be installed in place and ready to be made operational in order to qualify as a "solar energy device".	
	BRRAC's [Real Estate Commission's] Comment	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	1. HRS §514A-89 (portions relating to "nonmaterial structural additions;" e.g., "solar energy devices") is the source of this section.	
	§ ___: 5-22. Telecommunications Equipment. [Source: **Act 137 (SLH, 2002)**.] (a) Notwithstanding any other provisions to the contrary in this chapter, in the declaration of any project, or in the by-laws of any association: (1) The board of directors of an association shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and (2) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section [~~514A-12~~] ___: 2-___; provided that no such installation shall directly affect any nonconsenting unit owner. (b) Notwithstanding any other provision to the contrary in this chapter, in the declaration of any project or in the by-laws of any association: (1) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and (2) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section [~~514A-12~~] ___: 2-___. (c) As used in this section: "Directly affect" means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect a unit owner in a manner not common to the unit owners as a whole. "Television signal distribution" and "telecommunications equipment" shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology."	
	BRRAC's [Real Estate Commission's] Comment 1. Act 137 (SLH, 2002) is the source of this section.	
	§ ___: 5-23. Unit Owners' Association Meetings. [Source: **UCA/UCIOA §3-108**.] (a) A meeting of the association must be held at least once each year. (b) Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having 25 percent, or any lower percentage specified in the bylaws, of the votes in the association.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(c) Not less than fourteen [~~nor more than [60]~~] days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, [~~any budget changes,~~] and any proposal to remove an officer or member of the board of directors. [*The following language is from **HRS §514A-82(b)(3)***] Notices of association meetings[~~, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting and~~] shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any. (d) [Source: **HRS §514A-82(a)(16)**.] All association [~~and board of directors~~] meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order. (e) [Source: **HRS §514A-82(a)(17)**.] All association meetings shall be held at the address of the condominium project or elsewhere within the State as determined by the board of directors; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State.	
	BRRAC's [Real Estate Commission's] Comment 1. [List source(s).] 2. UCA (1980) and UCIOA (1994) do not have any official comments to §3-108 (Meetings). 3. Need to authorize Internet notice at option of unit owner. 4. Consider combining this section with Board of Directors "Meetings" provisions above, with subsections for unit owners' association meetings and board of directors meetings.	
	§ ___: 5-24. Same; Quorums. [Source: **§UCA/UCIOA §3-109(a)**.] Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast [twenty] percent of the votes that may be cast for election of the board of directors are present in person or by proxy at the beginning of the meeting.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-109(a) is the source of this section. 2. The official comment to UCA/UCIOA §3-109 notes that: Mandatory quorum requirements lower than 50 percent for meetings of the association are often justified because of the common difficulty of inducing unit owners to attend meetings. The problem is particularly acute in the case of resort condominiums where many owners may reside elsewhere, often at considerable distances, for most of the year. 3. Specifically authorizing videoconferencing and other means of remote meetings may be desirable. 4. Consider recombining this section with Board of Directors "Quorums" provisions above, with subsections for unit owners' association meetings and board of directors meetings.	
	§ ___: 5-25. Same; Meeting Minutes. [Source: **HRS §514A-83.4**.] [~~(a) Minutes of meetings of the board of directors and association of apartment owners shall include the recorded vote of each board member on all motions except motions voted on in executive session.~~] [~~(b)~~] (a) Minutes of meetings of the [~~board of directors and~~] association [~~of apartment owners~~] shall be	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	approved at the next succeeding meeting[~~; provided that for board of directors meetings, no later than the second succeeding meeting~~] or by the board if authorized by the owners at an annual meeting. [~~(c)~~] (b) Minutes of all meetings shall be available within seven calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting[~~; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session~~].	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-83.4 is the source of this section. 2. Consider combining this section with Board of Directors "Meeting Minutes" provisions above, with subsections for unit owners' association meetings and board of directors meetings.	
	§ ___: 5-26. Voting; Proxies. [Source: **UCA/UCIOA §3-110**.] (a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. (b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association. [*Question: Actual notice may be given to managing agent?*] A proxy is void if it is not dated or purports to be revocable without notice. [~~A proxy terminates one year after its date, unless it specifies a shorter term.~~] [~~(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (i) the provisions of subsections (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in Section 3-108, of all meetings at which lessees are entitled to vote.~~] [~~(d)~~] (c) No votes allocated to a unit owned by the association may be cast for the election or re-election of directors (d) [Source: **HRS §514A-83.2(a)**.] A proxy, to be valid, must: (1) Be delivered to the secretary of the unit owners' association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; (2) Contain at least the name of the unit owners' association, the date of the meeting of the unit owners' association, the printed names and signatures of the persons giving the proxy, the units for which the proxy is given, and the date that the proxy is given; and (3) If the proxy is an official association proxy, contain boxes wherein the owner has indicated that the proxy is given: [~~(A) For quorum purposes only;~~]	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	[~~(B)~~] [A] To the individual whose name is printed on a line next to this box; [~~(C)~~] [B] To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or [~~(D)~~] [C] To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage. The proxy shall also contain a box in which the owner may indicate that the proxy may not be used for the election of directors. (e) [Source: **HRS §514A-83.2(b)**.] A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit. (f) [Source: **HRS §514A-83.2(d)**.] A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy. (g) [Source: **HRS §514A-83.2(e)**.] Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit. (h) [Source: **HRS §514A-82(b)(4)**; *except for first sentence, which is incorporated in §___: 5-15.*] Any board of directors that intends to use association funds to distribute proxies, including the standard proxy form [~~referred to in paragraph (3)~~], shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days [~~prior to~~] before its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either: (1) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or (2) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements. The statement shall not exceed one hundred words [*Consider one 8 ½" x 11" page limitation instead.*], indicating the owner's qualifications to serve on the board [~~and~~] or reasons for wanting to receive proxies. [*The following language contains the essence of **HRS §514A-83.2(c)**.*] A board of directors or member of the board may use association funds to solicit proxies as part of the distribution of proxies; provided that an individual member of the board may only solicit proxies as a unit owner under the procedure outlined above; and provided further that members of the board may submit a single statement which may not exceed one hundred words multiplied by the number of directors participating in the single statement. [*Consider one 8 ½" x 11" page multiplied by # of participating directors limitation instead.*] (i) [Source: **HRS §514A-83.3**; *partial*.] No board of directors shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by unit owners; provided that a board of directors may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. A board of directors may prohibit commercial solicitations.	
	BRRAC's [Real Estate Commission's] Comment 1. [List source(s).]	**Condominium Recodification Attorney's Comment** ● The ***Restatement, Third, of Property (Servitudes)***, has

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	2. The statutory requirement allowing proxies to be given "for quorum purposes only" (HRS §514A-83.2(a)(3)(A)) has been deleted. [Explain.] 3. The official comments to UCIOA (1994) and UCA (1980) §3-110(c) [DELETED by BRRAC subcommittee – explanation?] note that: Subsection (c) addresses an increasingly important matter in the governance of condominiums: the role of tenants occupying units owned by investors or other persons. Most present statutes require voting by owners in the association. However, it may be desirable to give lessees, rather than lessors, of units the right to vote on issues involving day-to-day operation both because the lessees may have a greater interest than the lessors and because it is desirable to have lessees feel they are an integral part of the condominium community. BRRAC subcommittee/additional considerations and questions: ● Electing association directors is usually the most important decision of the unit owners. Real and perceived unfairness in voting for directors comes up often in complaints to the Commission. (*See*, HRS Chapter 514A Recodification "Stakeholders Comments and Recommendations" on the Commission's website, http://www.state.hi.us/hirec/.) We need to determine which matters are appropriate to address in State law. [Note: We have incorporated many existing limitations/prohibitions on board members, managing agents, resident managers, and association employees in the recodification. (List.) We need to consider expanding such limitations/prohibitions to managing agents' employees and spouses, rental agents, etc., as has been suggested by some stakeholders.] ● In addition to being fundamentally fair, voting processes should be practical. To that end, it may be desirable to explicitly allow voting by electronic means (with proper security – already available through many providers on the mainland), cumulative voting, and voting by acclamation (i.e., without a formal ballot vote, e.g., when the number of candidates and vacancies are the same). ● Stakeholders have suggested that we also prohibit managing agents, rental agents, their spouses, and their employees from soliciting proxies or casting proxy votes except for the purposes of establishing a quorum. ● A property manager suggested that we eliminate the 100 word limit to proxy solicitation statements and instead provide that the association will mail a single-sided 8 ½" x 11" proxy solicitation at the association's expense. This is consistent with the intent of limiting the cost of producing large amounts of information for an owner at the association's expense.	three sections related to voting. They read as follows: **§ 6.16 Representative Government** Except as otherwise provided by statute or the governing documents, an association in a common-interest community is governed by a board elected by its members. The board is entitled to exercise all powers of the community except those reserved to the members. **§ 6.17 Voting Rights** Except as otherwise provided by statute or the declaration, votes are allocated to members on the basis of the number of lots or units owned that are currently subject to an obligation to pay assessments or dues. One vote is allocated to each such lot or unit. Unless a contrary interpretation is required by statute or by the governing documents, a requirement for approval by a certain percentage of "owners" means approval by that percentage of votes. **§ 6.18 Meetings and Elections** Except to the extent the association is properly controlled by the developer under § 6.19, and subject to reasonable procedures set forth in the governing documents or adopted by the association, members of a common-interest community have the right to vote in elections for the board of directors and on other matters properly presented to the members, to attend and participate in meetings of the members, and to stand for election to the board of directors. Except when the board properly meets in executive session, members of the association are entitled to attend meetings of the board of directors and to a reasonable opportunity to present their views to the board.
	§ ___: 5-27. Same; Good Faith Unintentional Failure to Comply. [Source: ***New***.] A managing agent's or board's good faith failure to meet any deadlines or requirements relating to proxies, solicitation of proxies, or meetings shall not invalidate the action taken or the validity of the meeting, provided that [the board determines that ?] the board or managing agent takes reasonable action to correct the failure or the failure does not materially affect the solicitation of proxies or the outcome of the meeting.	
	BRRAC's [Real Estate Commission's] Comment 1. [Explain.]	
	§ ___: 5-28. Same; Purchaser's Right to Vote. [Source: **HRS §514A-83**.] The purchaser of a unit pursuant to an agreement of sale recorded in the bureau of conveyances or land court shall have all the rights of a unit owner, including the right to vote; provided that the seller may retain the right to vote on matters	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	substantially affecting the seller's security interest in the unit, including but not limited to, the right to vote on: (1) Any partition of all or part of the project; (2) The nature and amount of any insurance covering the project and the disposition of any proceeds thereof; (3) The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith; (4) The payment of any amount in excess of insurance or condemnation proceeds; (5) The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project; (6) The special assessment of any expenses; (7) The acquisition of any unit in the project; (8) Any amendment to the declaration of condominium property regime or bylaws; (9) Any removal of the project from the provisions of this chapter; and (10) Any other matter which would substantially affect the security interest of the seller.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-83 is the source of this section.	
	§ ___: 5-29. Tort and Contract Liability; Tolling of Limitation Period. [Source: **UCA/UCIOA §3-111**.] (a) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. (b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for (i) all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association. (c) [~~Except as provided in Section 4-116(d) with respect to warranty claims, any~~] Any statute of limitation affecting the association's right of action against a declarant under this chapter is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section [~~3-117~~] ___: 5-___ (Other Liens Affecting the Condominium).	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-111 is the source of this section. [Note: With respect to subsection (c), BRRAC rejected the warranty provisions in Article 4 of UCIOA.]	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	2. The official comments to §3-111 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. [Note: A combined comment is contained in Recodification Draft #1, under §3-111.]	
	§ ___: 5-30. Conveyance or Encumbrance of Common Elements. [Source: **UCA/UCIOA §3-112**.] [BRRAC subcommittee question: Add HRS §514A-13(d) requirements relating to easements, encroachments, etc.? Subcommittee has suggested amendments to 514A-13(d). STUDY. Ability to mortgage common elements causes concerns. BUT, consider that the 80% approval requirement is the same for forcing termination/partition of the condominium] (a) Portions of the common elements may be conveyed or subjected to a security interest by the association 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 a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to non-residential uses. Proceeds of the sale are an asset of the association, but the proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the limited common elements were allocated. (b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The 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. (c) The association, on behalf of the unit owners, may contract to convey an interest in a condominium pursuant to subsection (a), but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. (d) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements is void. (e) A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support. (f) Unless the declaration otherwise provides, if the holders of first security interests on 80 percent of the units that are subject to security interests on the day the unit owners' agreement under subsection (b) is recorded consent in writing: (1) a conveyance of common elements pursuant to this section terminates both the undivided interests in those common elements allocated to the units and the security interests in those undivided interests held by all persons holding security interests in the units; and (2) an encumbrance of common elements pursuant to this section has priority over all preexisting encumbrances on the undivided interests in those common elements held by all persons holding security interests in the units. (g) The consents by holders of first security interests on units described in subsection (f), or a certificate of the secretary affirming that those consents have been received by the association, may be recorded at any time before the date on which the agreement under subsection (b) becomes void. Consents or certificates so recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	first security interest holders, regardless of later sales or encumbrances on those units. Even if the required percentage of first security interest holders so consent, a conveyance or encumbrance of common elements does not affect interests having priority over the declaration, or created by the association after the declaration was recorded.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-112 is the source of this section. 2. The extensive official comments to §3-112 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. [Note: A combined comment is contained in Recodification Draft #1, under §3-112.] As explained in the comments: The ability to sell a portion of the common elements without termination of the condominium gives the condominium regime desirable flexibility. For example, the unit owners, some years after the initial creation of the condominium, may decide to convey away a portion of the open space which has been reserved as a part of the common elements because they no longer find the area useful or because they wish to use sale proceeds to make other improvements. Similarly, the ability to encumber common elements gives the association power to raise money for improvements through the device of mortgaging the improvements themselves. Of course, recreational improvements will frequently not be sufficient security for a loan for their construction. Nevertheless, the ability to take a security interest in such improvements may lead lenders to be more favorably disposed toward making a loan in larger amounts and at lower interest rates.	
	§ ___: 5-31. Insurance. [Source: **§765 Illinois Compiled Statutes (ILCS) 605/12** (As amended by P.A. 92-518, effective June 1, 2002*); BRRAC needs to review further to see what, if any of UCA/UCIOA §3-113, HRS §514A-86, or Cliff Treese's ideas to incorporate.*] (a) *Required coverage.* No policy of insurance shall be issued or delivered to a condominium association, and no policy of insurance issued to a condominium association shall be renewed, unless the insurance coverage under the policy includes the following: (1) *Property insurance.* Property insurance (i) on the common elements and the units, including the limited common elements and except as otherwise determined by the board of directors, the bare walls, floors, and ceilings of the unit, (ii) providing coverage for special form causes of loss, and (iii) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. (2) *General liability insurance.* Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of $ 1,000,000, or a greater amount deemed sufficient in the judgment of the board, insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer must be included as an additional insured in its capacity as a unit owner, manager, board member, or officer. The unit owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance must cover claims of one or more insured parties against other insured parties. (3) Fidelity bond; directors and officers coverage. (A) An association with 6 or more dwelling units must obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, for the maximum amount of coverage available to protect funds in the custody or control of the association, plus	[*Compare*: **HRS §514A-86 Insurance** (as amended by **Act 17, SLH, 2002**). (a) The association of apartment owners shall purchase and at all times maintain insurance which covers the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with the as-built condominium plans and specifications, against loss or damage by fire sufficient to provide for the repair or replacement thereof in the event of such loss or damages. Flood insurance shall also be [~~provided under the federal Flood Disaster Protection Act if the property is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development.~~] maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration. Exterior glass may be insured at the option of the association of apartment owners. The insurance coverage shall be written on the property in the name of the association of apartment owners. Premiums shall be common expenses. Provision for the

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	the association reserve fund. (B) All management companies that are responsible for the funds held or administered by the association must be covered by a fidelity bond for the maximum amount of coverage available to protect those funds. The association has standing to make a loss claim against the bond of the managing agent as a party covered under the bond. (C) For purposes of paragraphs (A) and (B), the fidelity bond must be in the full amount of association funds and reserves in the custody of the association or the management company. (D) The board of directors must obtain directors and officers liability coverage at a level deemed reasonable by the board, if not otherwise established by the declaration or bylaws. Directors and officers liability coverage must extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the [~~General Not For Profit Corporation Act of 1986~~] chapter 414D or the declaration and bylaws of the association. (b) *Contiguous units; improvements and betterments(?).* The insurance maintained under subdivision (a)(1) must include the units, the limited common elements except as otherwise determined by the board of directors, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected. For the purposes of this section, common elements include fixtures located within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual units initially installed by the developer. Common elements exclude floor, wall, and ceiling coverings. "Improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners. [Should we simply stick with the general definition of "common elements" as provided in Part I?] (c) *Deductibles.* The board of directors may, in the case of a claim for damage to a unit or the common elements, (i) pay the deductible amount as a common expense, (ii) after notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated, or (iii) require the unit owners of the units affected to pay the deductible amount. (d) *Other coverages.* The declaration may require the association to carry any other insurance, including workers compensation, employment practices, environmental hazards, and equipment breakdown, the board of directors considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association. (e) *Insured parties; waiver of subrogation.* Insurance policies carried pursuant to subsections (a) and (b) must include each of the following provisions: (1) Each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association. (2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board of directors.	insurance shall be without prejudice to the right of each apartment owner to insure the owner's own apartment for the owner's benefit. (b) The association of apartment owners may purchase and maintain directors' and officers' liability insurance with minimum coverage in such amount as shall be determined by the board of directors. Premiums shall be common expenses. (c) Any insurance policy providing the coverage required by subsections (a) and (b) shall contain a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the board of directors with a written summary, in layperson's terms, of the policy. The summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium, and renewal dates. The board of directors shall provide this information to each apartment owner.] [*Compare further*: **HRS §514A-95.1 Association of apartment owners registration; fidelity bond.** (a) Each condominium project or association of apartment owners having six or more apartments shall: (1) Secure a fidelity bond in an amount equal to $500 multiplied by the number of apartments, to cover all officers, directors, employees, and managing agents of the association of apartment owners who handle, control, or have custody of the funds of the association of apartment owners; provided that the amount of the fidelity bond required by this subsection shall not be less than $20,000 nor greater than $100,000. The fidelity bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons, including any managing agent, handling the funds of the association of apartment owners. An association of apartment owners shall act promptly and diligently to recover from the fidelity bond required by this section. An association of apartment owners that is unable to obtain a fidelity bond may seek approval for an exemption or a bond alternative from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or a bond alternative, or permit deductibles. Failure to obtain or maintain a fidelity bond in

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(3) The unit owner waives his or her right to subrogation under the association policy against the association and the board of directors. (f) *Primary insurance.* If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy is primary insurance. (g) *Adjustment of losses; distribution of proceeds.* Any loss covered by the property policy under subdivision (a)(1) must be adjusted by and with the association. The insurance proceeds for that loss must be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association must hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged common elements, the bare walls, ceilings, and floors of the units, and then to any improvements and betterments the association may insure. Unit owners are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the association has been terminated as trustee. (h) *Mandatory unit owner coverage.* The board of directors may, under the declaration and bylaws or by rule, require condominium unit owners to obtain insurance covering their personal liability and compensatory (but not consequential) damages to another unit caused by the negligence of the owner or his or her guests, residents, or invitees, or regardless of any negligence originating from the unit. The personal liability of a unit owner or association member must include the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings. If the unit owner does not purchase or produce evidence of insurance requested by the board, the directors may purchase the insurance coverage and charge the premium cost back to the unit owner. In no event is the board liable to any person either with regard to its decision not to purchase the insurance, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained. (i) *Certificates of insurance.* Contractors and vendors (except public utilities) doing business with a condominium association under contracts exceeding $ 10,000 per year must provide certificates of insurance naming the association, its board of directors, and its managing agent as additional insured parties. (j) *Non-residential condominiums.* The provisions of this section may be varied or waived in the case of a condominium community in which all units are restricted to nonresidential use. (k) *Settlement of claims.* Any insurer defending a liability claim against a condominium association must notify the association of the terms of the settlement no less than 10 days before settling the claim. The association may not veto the settlement unless otherwise provided by contract or statute.	compliance with this chapter and the rules adopted pursuant thereto, including failure to provide current evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. Current evidence of a fidelity bond includes a certification statement from an insurance company registered with the department of commerce and consumer affairs certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission; …]
	BRRAC's [Real Estate Commission's] Comment 1. §765 Illinois Compiled Statutes (ILCS) 605/12 (As amended by P.A. 92-518, effective June 1, 2002*)* is the source of this section. *BRRAC needs to review further to see what, if any of UCA/UCIOA §3-113, HRS §514A-86, or Cliff Treese's ideas to incorporate.* 2. UCA/UCIOA §3-113 is another potential source for this section. If used, the extensive official comments to §3-113 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. [Note: A combined comment is contained in Recodification Draft #1, under §3-113.] Among the many interesting features of UCA/UCIOA §3-113, the Acts do not mandate association insurance on units in town house or other arrangements in which there are no stacked units. However, if the developer wishes, the declaration	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	may require association insurance as to units having shared walls or as to all units in the development. Many developments will have some units with horizontal boundaries and other units with no horizontal boundaries. In that case, association insurance as to the units having horizontal boundaries is required, but it is not necessary as to other units. UCA/UCIOA §3-113 and their official comments also attempt to clarify the complex issue of what is a common element and what is a unit with respect to insurance coverage.	
	BRRAC's [Real Estate Commission's] Comment 1. The BRRAC subcommittee decided to omit UCA/UCIOA § 3-114 (Surplus Funds), which reads as follows: "Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments." [Note: As explained in the official comments to UCIOA (1994) and UCA (1980), "Surplus funds of the association are generally used first for the pre-payment of reserves, and remaining funds are thereafter credited to the account of unit owners or paid to them. In some cases, however, unit owners might prefer that surplus funds be used for other purposes (*e.g.*, the purchase of recreational equipment). Accordingly, this section permits the declaration to specify any other use of surplus funds."] [BRRAC subcommittee will draft explanation for omitting this section.]	
	§ ___: 5-32. Association Fiscal Matters; Assessments for Common Expenses. [Source: **UCA/UCIOA §3-115**; *underscored language in subsection (a) is essentially from* ***HRS §514A-83.6(a)***; *management group to discuss with development group; John/Joyce prefer some provisions of HRS §514A-15 (e.g., developer notice to unit owners). Need to clarify that "interest," "late fees," and "late payment penalties" are "assessments for common expenses" (?).*] (a) Until the association makes a common expense assessment, the developer shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted and distributed to unit owners at least annually by the [~~association~~] board of directors. (b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section [~~2-107(a) and (b)~~] ___: 2-___. Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding [18] percent per year. [~~(c) To the extent required by the declaration:~~ ~~(1) any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;~~ ~~(2) any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefitted; and~~ ~~(3) the costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.~~] [~~(d)~~] (c) Assessments to pay a judgment against the association (section [~~3-117(a)~~] ___: 5-___) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities. [~~(e)~~] (d) If any common expense is caused by the misconduct of any unit owner, the association may assess	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	that expense exclusively against his unit. [~~(f)~~] (e) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due must be recalculated in accordance with the reallocated common expense liabilities. (f) [Source: **HRS §514A-91**.] In a voluntary conveyance the grantee of a unit is jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee is entitled to a statement from the manager [Managing agent? Resident manager?] or board of directors setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty day period immediately preceding the date of such statement, the grantee is not liable for, nor is the unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. (g) [Source: **HRS §514A-92**.] No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit. Subject to such terms and conditions as may be specified in the bylaws, any unit owner may, by conveying his unit and his common interest to the board of directors on behalf of all other unit owners, exempt himself from common expenses thereafter accruing. (h) [Source: **HRS §514A-92.2**.] The manager [Managing agent? Resident manager?] or board of directors shall notify the unit owners in writing of maintenance fee increases at least thirty days prior to such an increase.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-115 is the source of subsections (a) through (e). The official comments to §3-115 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting these subsections. 2. HRS §§514A-91, 514A-92, and 514A-92.2 are the sources of subsections (f) through (h).	
	§ ___: 5-33. Same; Collection of Unpaid Assessments from Tenants. [Source: **HRS §514A-90.5**.] (a) If the owner of a unit rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the common expenses, the board of directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law. (b) [~~Prior to~~] Before taking any action under this section, the board of directors shall give to the delinquent unit owner written notice of its intent to collect the rent owed. The notice shall: (1) Be sent both by first-class and certified mail; (2) Set forth the exact amount the association claims is due and owing by the unit owner; and (3) Indicate the intent of the board of directors to collect such amount from the rent, along with any other amounts that become due and remain unpaid. (c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section. (d) The payment of any portion of the unit's share of common expenses by the tenant pursuant to a written	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant. (e) The board may not demand payment from the tenant pursuant to this section if: (1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure; (2) A mortgagee is in possession pending a mortgage foreclosure; or (3) The tenant is served with a court order directing payment to a third party. (f) In the event of any conflict between this section and any provision of chapter 521, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under chapter 521, the tenant may deduct the offset from the amount due to the association, up to the limits stated in chapter 521. Nothing herein precludes the unit owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed. (g) Before the board of directors may take the actions permitted under subsection (a), the board must adopt a written policy providing for the actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-90.5 is the source of this section.	
	§ ___: 5-34. Same; Lien for Assessments. [Source: **HRS §514A-90**;*Repeal and reenactment on December 31, 2003. L 2000, c 39, §4.*] (a) All sums assessed by the unit owners' association but unpaid for the share of the common expenses chargeable to any unit constitute a lien on the unit prior to all other liens, except: (1) Liens for taxes and assessments lawfully imposed by governmental authority against the unit; and (2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the unit owners' association, and costs and expenses including attorneys' fees provided in such mortgages. The lien of the unit owners' association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board of directors, acting on behalf of the unit owners' association, in like manner as a mortgage of real property. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The managing agent or board of directors, acting on behalf of the unit owners' association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed. (b) Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the unit owners' association chargeable to the unit which became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning: (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court; (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser; [~~or~~] (3) Thirty days after the auction in a non-judicial power of sale foreclosure; or [~~(3)~~] (4) Upon the recording of the deed, whichever occurs first. (c) No unit owner shall withhold any assessment claimed by the association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating: (1) The amount of common expenses included in the assessment, including the due date of each amount claimed; (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment; (3) The amount of attorneys' fees and costs, if any, included in the assessment; (4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason; (5) That a unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the unit owner immediately pays the assessment in full and keeps assessments current; and (6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed. Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law. (d) A unit owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under [~~part VII~~] section ___ : 5- ___; provided that a unit owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association assessments within thirty days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association which are not owed. (e) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the unit owners' association may authorize its managing agent or board of directors to, after sixty days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the unit owners' association. Any terminated services and privileges shall be restored upon payment of all delinquent	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	assessments but need not be restored until payment in full is received. (f) Before the board of directors or managing agent may take the actions permitted under subsection (e), the board must adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners. (g) Subject to this subsection, and subsections (h) and (i), the board of an unit owners' association may specially assess the amount of the unpaid regular monthly common assessments for common area expenses against a person who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that: (1) A purchaser who holds a mortgage on a delinquent unit that was recorded prior to the filing of a notice of lien by the unit owners' association and who acquires the delinquent unit through a judicial or nonjudicial foreclosure proceeding, including purchasing the delinquent unit at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and (2) A person who subsequently purchases the delinquent unit from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; provided that the unit owners' association has filed a notice of lien against the delinquent unit for the unpaid assessments for common area expenses which form the basis of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. [*Note: BRRAC subcommittee considering deleting the "notice of lien" requirement.*] (h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure, and for which the unit owners' association had filed a notice of lien against the delinquent unit pursuant to subsection (g)(2). In no event shall the amount of the special assessment exceed the sum of $1,800. [*Note: BRRAC subcommittee would like the $1,800 sum to be tied to the Consumer Price Index or something similar.*] (i) For purposes of subsections (g) and (h), the following definitions shall apply: (1) "Completion" means: (A) In a nonjudicial power of sale foreclosure, when the affidavit required under section 667-5 is filed; and (B) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b). (2) "Regular monthly common assessments" shall not include: (A) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514A-83.6; (B) Late charges, fines, or penalties; (C) Interest assessed by the unit owners' association; (D) Any lien arising out of the assessment; or (E) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs; except that the cost of a release of any lien filed pursuant to this section shall be paid by	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	the party requesting the release.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-90 is the source of this section. 2. BRRAC subcommittee found many of the provisions of UCA/UCIOA § 3-116 (Lien for Assessments) to be worthwhile, and recommends further review to see what might be incorporated in the recodification (e.g., providing that, unless the declaration provides otherwise, fees, charges, late charges, fines, and interest charged are enforceable as assessments under this section). The official comments to §3-116 of UCIOA (1994) and UCA (1980) also provide excellent context for the assessment lien priority issue. **Condominium Recodification Attorney's Comment (*from Recodification Draft #1)*** 1. The Hawaii Bankers Association opposes the provisions of UCA/UCIOA §3-116. They maintain that the present HRS §514A-90 "should remain in the recodification until its repeal on December 31, 2003." (*See*, May 18, 2001 letter from Hawaii Bankers Association to Gordon M. Arakaki.) 2. At least 14 states (Alaska, Colorado, Connecticut, Florida, Massachusetts, Minnesota, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, Washington, Washington, D.C., and West Virginia) give unit owners' associations limited lien priority for their assessments. (Cliff Treese refers to such liens as "community association protection" liens.) I am unaware of any problems related to the limited lien priority in those states have adopted it. 3. It has been said that lenders: a) make no concerted effort to cure assessment defaults at the same time they cure mortgage defaults; b) wait as long as possible to take tile so they won't have to pay assessments; and c) have the benefit of having the community association maintain their asset until a new buyer is found (if the home was in a non-common interest ownership development, the lender would have to maintain and pay for the asset). 4. We need to explore the limited lien priority along with other possible ways to address this imbalance. 5. For an excellent discussion of the issues involved with the UCA/UCIOA limited lien priority, *see*, Winokur, James L., "Meaner Lienor Community Associations: The 'Super Priority' Lien and Related Reforms Under the Uniform Common Interest Ownership Act," 27 *Wake Forest L. Rev.*353 (1992).	
	§ ___: 5-35. Same; Other Liens Affecting the Condominium. [Source: **UCA/UCIOA §3-117**.] (a) [*(BRRAC subcommittee likes this section (someone mentioned Ruoff, a California case), but: "Ask title/escrow companies about this."*] Except as provided in subsection (b), a judgment for money against the association, if recorded [~~if docketed~~] [~~if (insert other procedures required under state law to perfect a lien on real property as a result of a judgment)~~], is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association. [~~(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to Section 3-112, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.~~] [~~(c)~~] (b) Whether perfected before or after the creation of the condominium, if a lien, other than a deed of trust or mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium), becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien. [~~(d)~~] (c) [*(BRRAC subcommittee likes this section, but: "Ask title/escrow companies about this."*] A judgment against the association must be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-117 is the source of this section. 2. The detailed official comments to §3-117 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.	
	§ ___: 5-36. Same; Budgets and Reserves. [Source: **HRS §514A-83.6**.] (a) The budget required under section ___: 5-32(a) must include at least the following: (1) The estimated revenues and operating expenses of the association; (2) Information as to whether the budget has been prepared on a cash or accrual basis; [*Note: Several property managers strongly recommend that only accrual basis accounting be allowed.*] (3) The total replacement reserves of the association as of the date of the budget; (4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association; (5) A general explanation of how the estimated replacement reserves are computed; (6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a percent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4). [~~(b) The association shall assess the apartment owners to either fund a minimum of fifty percent of the estimated replacement reserves or fund one hundred percent of the estimated replacement reserves when using a cash flow plan; provided that a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the association's plan, except:~~ ~~(1) The commission shall adopt rules to permit an existing association to fund its estimated replacement reserves in increments after January 1, 1993 and prior to January 1, 2000; and~~ ~~(2) The commission shall adopt rules to permit an association to fund in increments, over three years, estimated replacement reserves that have been substantially depleted by an emergency.~~] [~~(c)~~] (b) The association shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the property. The estimated replacement reserves shall include: (1) Adjustments for revenues which will be received and expenditures which will be made before the	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	beginning of the fiscal year to which the budget relates; and (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed $10,000. Parts of the property for which capital expenditures or major maintenance will not exceed $10,000 may be aggregated in a single designated reserve. [~~(d)~~] (c) No association or unit owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated replacement reserves for an association shall be liable if the estimate subsequently proves incorrect. [~~(e)~~] (d) The commission may request a copy of the annual operating budget of the unit owners' association as part of the association's registration with the commission under section [~~514A-95.1~~] ___: 5-___. [~~(f)~~] (e) Except in emergency situations or with the approval of a majority of the unit owners, a board may not exceed its total adopted annual operating budget by more than twenty percent during the fiscal year to which the budget relates[~~, except in emergency situations~~]. [~~Prior to the imposition or collection of~~] Before imposing or collecting an assessment under this paragraph which has not been approved by a majority of the unit owners, the board [~~shall~~] must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment. [~~(g)~~] (f) The requirements of this section shall override any requirements in an association's declaration, bylaws, or any other association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, and expenditures from reserves with the exception of: [~~(1) Any provisions relating to the repair and maintenance of property;~~] [*Note: BRRAC subcommittee members believe this provision is meaningless. Attempted rewrites were unsuccessful.*] [~~(2)~~] (1) Any requirements in an association's declaration, bylaws, or any other association documents which require the association to collect more than fifty percent of reserve requirements; or [~~(3)~~] (2) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements. [~~(h)~~] (g) Subject to the procedures of section [~~514A-94~~] ___: 5-___ and any rules adopted by the commission, any unit owner whose association board fails to comply with this section may enforce compliance by the board. In any proceeding to enforce compliance, a board which has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with this section. [~~(i) The commission may adopt rules to implement this section.~~] [~~(j)~~] (h) As used in this section: "Capital expenditure" means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year. "Cash flow plan" means a minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency. "Emergency situation" means any extraordinary expenses:	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(1) Required by an order of a court; (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered; (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget. (5) Necessary for the association to obtain adequate insurance for the property which the association must insure. "Major maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year. "Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property, including, but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-83.6 is the source of this section. Additional thoughts for BRRAC: ● There may be potential to use community facilities district bond financing in some situations. (*See*, HRS §46-80.1.) We will research this further. ● The philosophical basis for bond financing of public facilities is that those who use such facilities should pay for them. When government builds a public facility, money is borrowed through the sale of bonds secured by the full faith and credit of the governmental body. The bond is repaid with tax dollars over a period of time that roughly corresponds to the life of the public facility. The bottom line is that taxpayers are paying for the public facility during the time they are using the facility.	
	§ ___: 5-37. Same; Handling and Disbursement of Funds. [Source: **HRS §514A-97**.] (a) The funds in the general operating account of the unit owners' association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall a managing agent commingle any association funds with the managing agent's own funds. (b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual unit owners of a project and the payment of such ground lease rents to the ground lessor; provided that: (1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual unit leases of the project; (2) If a management contract exists, it requires the managing agent to collect ground lease rents from the individual unit owners and pay the ground lease rents to the ground lessor; (3) The system of lease rent collection is approved by a majority vote of all unit owners at a meeting of the association; and	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(4) No managing agent or association shall pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual unit owners. (c) All funds collected by an association, or by a managing agent for any association, shall be: (1) Deposited in a financial institution, including a federal or community credit union, [~~located in the State and~~] whose deposits: (A) Are insured by an agency of the United States government, and (B) Maintain a Community Reinvestment Act (U.S. Code, Title 12, Chapter 30) evaluation of "Outstanding" or "Satisfactory", and (C) Maintain a Moody's Investors Service: (i) Long-Term Bank Deposit Rating of "Baa" or better, or (ii) Short-Term Bank Deposit Ratings of "Prime-3" or better, or (iii) Bank Financial Strength Rating of "C" or better; (2) Held by a corporation authorized to do business under article 8 of chapter 412 meeting the provisions of this section;; (3) Held by the United States Treasury; or (4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation. All funds collected by an association, or by a managing agent for any association, shall be invested only in: (1) Demand deposits, investment certificates, and certificates of deposit; (2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or (3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting. Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board of directors. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board of directors. [~~The commission may draft rules governing the handling and disbursement of condominium association funds.~~]	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(d) A managing agent or board of directors shall not transfer association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account. [*Need to clarify (i.e., make it clear that intent is to have written instructions, so facsimiles and e-mail are o.k.; intent is to prohibit unverifiable verbal instructions, such as those over the "telephone).*] (e) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws. (f) Any person who embezzles or knowingly misapplies association funds received by a managing agent or unit owners' association shall be guilty of a class C felony.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-97 is the source of this section. 3. The treasurer of a condominium association suggested the amendments to subsection (c). (*See*, February 4, 2002 e-mail from George Taylor to Gordon M. Arakaki.) **Condominium Recodification Attorney's Comment** 1. The Hawaii Bankers Association recommends that "funds be deposited in a financial institution located in the State whose deposits are insured by an agency of the United States government." They question "the ability or authority of credit unions in receiving such deposits from the AOAO." (*See*, May 18, 2001 letter from Hawaii Bankers Association to Gordon M. Arakaki.) 2. It has been suggested that State law explicitly allow a prudent percentage of the unit owners' association funds to be invested in higher yielding instruments.	
	§ ___: 5-38. Same; Audits, Audited Financial Statement, Transmittal. [Source: **HRS §514A-96**; *Asking professional to review*.] (a) The unit owners' association shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty [~~owners~~] units, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all unit owners taken at an association meeting. (b) The board of directors of the association shall make available a copy of the annual audit to each unit owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall provide upon all official proxy forms a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report. The board shall not be required to submit a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by that date, the board shall make available: (1) An unaudited year end financial statement for the fiscal year to each unit owner at least thirty days prior to the annual meeting; and (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs later. If the association's fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.	

Part V. Management of Condominium (Recodification PRELIMINARY Draft #2)
(HRS Chapter 514A, Part V) (UCA/UCIOA/Recod Draft #1, Article 3)

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-96 is the source of this section.	
	§ ___: 5-39. Association Records; Generally. [Source: **UCA/UCIOA §3-118**.] The association shall keep financial and other records sufficiently detailed to enable the association to comply with [~~Section 4-109~~] requests for information and disclosures related to resale of units. All financial and other records must be made reasonably available for examination by any unit owner and his authorized agents.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-118 is the source of this section. [Note: UCA (1980) and UCIOA (1994) do not have any official comments for §3-118.] 2. Two standard Hawaii Association of Realtor disclosure forms are generally used in connection with the resale of condominium units. One is the RR105C that unit owners' associations complete. The other is the seller disclosure form. Associations should keep records that allow them to adequately comply with these requests for information and disclosure.	
	§ ___: 5-40. Same; Records to be Maintained. (a) [Source: **HRS §514A-84.5**; *partial*.] An accurate copy of the declaration of condominium property regime, the bylaws of the unit owners' association, the house rules, if any, the master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office. (b) [Source: **HRS §514A-85(a)**.] The managing agent or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The managing agent or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. (c) [Source: **HRS §514A-85(b)**.] All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors. (d) [Source: **HRS §514A-84(c)**; *partial; language also incorporated in §___: 5-16 above*.] The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract. (e) [Source: **HRS §514A-83.3**; *partial*.] The resident manager or managing agent or board of directors shall keep an accurate and current list of members of the unit owners' association and their current addresses and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the resident manager or managing agent or board of directors a duly executed and acknowledged affidavit stating that the list (1) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters, and (2) shall not be used by such owner or furnished to anyone else for any other purpose.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	BRRAC's [Real Estate Commission's] Comment 1. [List sources.] **Condominium Recodification Attorney's Comment** 1. Access to association documents and records is a key to self-governance by the condominium community. 2. We need to authorize/encourage the provision of association documents and records on-line. This should end most access disputes. 3. A condominium unit owner suggests that the recodification should require that: a) boards distribute (as opposed to simply make available) year-end financial statements 30 days before annual meetings; b) budgets be distributed 30 days before the fiscal year (noting that maintenance fee increase notices must be sent 30 days before being imposed); and c) association records be maintained on the same island where the project is located (for review and copying by unit owners). [Note that the last suggestion would be unnecessary if records are available on-line and unit owners have access to computers. Note further that all public libraries have computers with Internet access.]	
	§ ___: 5-41. Same; Availability. (a) [Source: **HRS §514A-83.5 (a)**.] The association's most current financial statement and minutes of the board of directors' meetings, once approved, shall be available to any owner at no cost or on twenty-four hour loan, at a convenient location designated by the board of directors. (b) [Source: **HRS §514A-83.5(b)**.] Minutes of meetings of the board of directors and the association for the current and prior year shall be available for examination by unit owners at convenient hours at a place designated by the board. [~~Minutes of meetings shall include the recorded vote of each board member on all motions except motions voted on in executive session.~~] Copies of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (c) [Source: **HRS §514A-83.5(c)**.] Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the unit owners' association for the current and prior year and delinquencies of ninety days or more shall be available for examination by unit owners at convenient hours at a place designated by the board; provided that: (1) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association or its members or both; and (2) Owners pay for administrative costs in excess of eight hours per year. Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (d) [Source: **HRS §514A-83.5(d)**.] Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty days following any association meeting; provided that: (1) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	(2) Owners pay for administrative costs in excess of eight hours per year. Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (e) [Source: **HRS §514A-84.5**.] The managing agent shall provide copies of those documents to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. In the event that the project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the unit owners' association, to whom this function is delegated. (f) [Source: **HRS §514A-84(c)**; *partial; language also incorporated in §___: 5-16 above*.] Prior to the organization of the unit owners' association, any unit owner may request to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property. (g) [Source: **HRS §514A-83.5(e)**.] Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.	
	BRRAC's [Real Estate Commission's] Comment 1. [List sources.]	
	§ ___: 5-42. Same; Disposal, Generally. [Source: **HRS §514A-85(c)**.] A managing agent employed or retained by one or more condominium associations may dispose of the records of any condominium association which are more than five years old without liability if the managing agent first provides the board of directors of the condominium association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board of directors within sixty days, which notice shall include an itemized list of the records which the managing agent intends to dispose of.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-85(c) is the source of this section.	
	§ ___: 5-43. Same; Prohibitions. [Source: **HRS §514A-85(d)**; *do we really need this section? shall we attach a "death penalty?"*] No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or association.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-85(d) is the source of this section.	
	§ ___: 5-44. Association as Trustee. [Source: **UCA/UCIOA §3-119**; *BRRAC subcommittee suggests giving the association the option of being its own trustee.*] With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquiry whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	trustee.	
	BRRAC's [Real Estate Commission's] Comment 1. UCA/UCIOA §3-119 is the source of this section. The official comment to UCA (1980) §3-119 should be used for guidance in interpreting this section. [Note: UCIOA (1994) does not have any official comments to §3-119 (Association as Trustee).] **UCA (1980) Comment** Based on Section 7 of the Uniform Trustees' Powers Act, this section is intended to protect an innocent third party in its dealings with the association only when the association is acting as a trustee for the unit owners, either under Section 3-113 for insurance proceeds, or Section 2-118 following termination.	
	§ ___: 5-45. Condominium Community Mutual Obligations. [Source: **HRS §514A-87**.] (a) All unit owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the unit owners' association adopted pursuant to this chapter. (b) All agreements, decisions, and determinations lawfully made by the unit owners' association in accordance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all unit owners. (c) [Source: **HRS §514A-88**.] Each unit owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the unit owners' association or, in a proper case, by an aggrieved unit owner.	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §§514A-87 and 514A-88 are the sources of this section. [Double-check against "Bylaws" and various "Powers" sections.]	
	§ ___: 5-46. Pets. (a) [Source: **HRS §514A-82.6(a)**.] Any unit owner who keeps a pet in the owner's unit pursuant to a provision in the bylaws which allows owners to keep pets or in the absence of any provision in the bylaws to the contrary may, upon the death of the animal, replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's unit or another unit subject to the same bylaws. (b) [Source: **HRS §514A-82.6(b)**.] Any unit owner who is keeping a pet pursuant to subsection (a) as of the effective date of an amendment to the bylaws which prohibits owners from keeping pets in their units shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a). (c) [Source: **HRS §514A-82.5(a)(4)(5)**.] The bylaws may include reasonable restrictions or prohibitions against excessive noise or other problems caused by pets on the property and the running of pets at large in the common areas of the property. No animals described as pests under section 150A-2, or animals prohibited from importation under section 141-2, 150A-5, or 150A-6 shall be permitted. (d) [Source: **HRS §514A-82.5(a)(1)(2)(3)**.] Whenever the bylaws do not forbid unit owners from keeping animals as pets in their units, the bylaws shall not forbid the tenants of the unit owners from keeping pets in	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	the units rented or leased from the owners; provided that: (1) The unit owner agrees in writing to allow the unit owner's tenant to keep a pet in the unit; (2) The tenants may keep only those types of pets which may be kept by unit owners; and (3) The bylaws may allow each owner or tenant to keep only one pet in the unit. (e) [Source: **HRS §514A-82.5(b)**.] Any amendments to the bylaws pertaining to pet restrictions or prohibitions which exempt circumstances existing prior to the adoption of the amendments shall apply equally to unit owners and tenants. [*BRRAC subcommittee suggests adding a provision that would allow boards to act immediately when dealing with viscous animals (danger to person or property).*]	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §§514A-82.5 and 514A-82.6 are the sources of this section.	
	§ ___: 5-47. Attorneys' Fees, Delinquent Assessments, and Expenses of Enforcement. [Source: **HRS §514A-94**.] (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for: (1) Collecting any delinquent assessments against any owner's unit; (2) Foreclosing any lien thereon; or (3) Enforcing any provision of the declaration, bylaws, house rules, and [~~the Condominium Property Act~~] this chapter; or the rules of the real estate commission; against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to such person or persons by the association. (b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless: (1) The owner first shall have demanded and allowed reasonable time for the board of directors to pursue such enforcement; or (2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless. If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless [~~the action was filed in small claims court or~~] prior to filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under this part [~~VII of this chapter~~], and made a good faith effort to resolve the dispute under any of those procedures. [*Note: Really CANNOT prove that someone is NOT mediating in good faith.*] [~~(c) Anyone contracted by the association of apartment owners to collect delinquent assessments against any~~	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	~~owner's apartment shall not share in any portion of any penalties or late charges collected.~~]	
	BRRAC's [Real Estate Commission's] Comment 1. HRS §514A-94 is the sources of this section. 2. [Explain deletion of HRS §514A-94(c).]	
	Condominium Recodification Attorney's Comment 1. HRS §514A-90.6 is incorporated in Recodification Draft #1 §2-106.1. The BRRAC governance subcommittee did not include this section in Part V (Management of Condominium). Should it be in Part V or Part II (Creation, Alteration, and Termination of Condominiums)? **HRS §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 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 1. If **HRS §514A-98 (False statement)** is included at all, it should be moved under Part III – Administration and Registration of Condominiums. 2. **HRS §514A-99 (Rules)** is deleted since it is covered under Part III – Administration and Registration of Condominiums. [*See*, §___: 3-___ ("General Powers and Duties of Agency").]	
	BRRAC's [Real Estate Commission's] Comment 1. **HRS Chapter 514A Part VI (Sales to Owner-Occupants)** has not been included in the recodification. Part VI was enacted in 1980 to require developers to offer to owner-occupants, at least 50% of a representative sampling of units in a project before offering them to the public. The intent of the law was to prevent speculation by investors at the expense of owner-occupants. Yet this law only applies to condominiums. Hawaii law does not require owner-occupants to be given any preference in the sale of single-family homes, subdivisions, planned-unit developments or cooperatives. Also, of the states where condominiums are common, Hawaii appears to be the only state which mandates this preference. The requirement does not appear in the condominium/common interest ownership acts of Florida, California, New York or Virginia, nor in the UCA or the UCIOA.	

	Hawaii Condominium Law Recodification PRELIMINARY Draft #2 [Based on UCA/UCIOA/Recodification Draft #1]	Notes
	Since its enactment, the intended benefits of Part VI have been outweighed by resulting problems, and a repeal of Part VI would not adversely affect the consumer protections contained in Chapter 514A. The requirements of Part VI are complicated, cumbersome and expensive. Developers must publish special owner-occupant advertisements and hold a public lottery or use a chronological system to determine which owner-occupants can purchase which units. Also, since the law does not specify how to contend with certain issues, such as back-up offers, developers end up using their own methods, which may or may not be correct. In addition, the costs for complying with these requirements are passed on to buyers through increased sales prices. Part VI is ineffective because compliance is virtually impossible to monitor and enforce. There is substantial anecdotal evidence of cheating by investors who pose as owner-occupants. Because the Real Estate Commission does not have sufficient personnel to monitor compliance with the owner-occupant requirements, there is nothing to prevent this cheating from continuing. And although there are civil and criminal penalties for violating these laws, there is no record of any civil or criminal enforcement action having been brought against any developer or buyer. If Part VI cannot be enforced, its purpose is defeated. 2. BRRAC/REC should consider adding the following language: **___: ___-___. First Right to Purchase**. In the case of a project that includes one or more existing structures being converted to condominium status, the developer shall first offer to sell each unit to the individual(s) occupying the unit on the effective date of the public report, before offering such unit for sale to any other person. This first offer shall commence on the effective date of the public report and shall end _____ (____) days thereafter. During such period, the developer shall give such occupant(s) a sales contract for such unit, at the price and on the terms that the developer will be offering the unit for sale to the public. If such occupant fails to execute the sales contract within such period, then the developer shall be free to sell the unit to any other person. [NOTE: **HRS §521-38(2)** would have to be revised to refer to this new section instead of HRS §514A-105.] 3. **HRS Chapter 514A Part VII (Arbitration; Mediation)** is being incorporated in Recodification Part V (Management of Condominium) under §___: 5-___ (Alternative Dispute Resolution). Much work remains to be done on crafting an alternative dispute resolution mechanism for condominiums that really works. 4. **HRS Chapter 514A Part VIII (Condominium Management Education Fund)** has been incorporated in Recodification Part III (Administration and Registration of Condominiums) under §___: 5-___, et seq. (Condominium Education Fund).	