

	<b>Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)</b>	<b>Notes</b>
	<p align="center"><b>BRRAC's [Real Estate Commission's] Prefatory Comment to Part III</b></p> <p>[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).]</p> <p>Many states with widespread condominium activity – such as Hawaii, California, Florida, Virginia, and New York – regulate condominiums to protect consumers. 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. The Commission continues to believe that adequate protection of Hawaii's condominium purchasers requires public oversight of private compliance with law. The ability of government to adopt new regulations to meet new and changing circumstances is also valuable and should continue.</p> <p><b>Guiding Principles:</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>2. The Commission's role is fundamentally: a) to provide consumer protection through adequate disclosure to prospective condominium purchasers, and b) education of condominium community stakeholders (i.e., those who build, sell, buy, manage, live-in, etc. condominium projects).</li> <li>3. Risk to purchasers' funds must be correlated with the rights and obligations of developers.</li> </ol> <p>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.</p> <ol style="list-style-type: none"> <li>4. The recodified condominium law should not result in an increase in the cost of government.</li> </ol>	
	<p align="center"><b>TABLE OF CONTENTS</b></p> <p align="center"><b>Part III. ADMINISTRATION AND REGISTRATION OF CONDOMINIUMS</b></p> <p>§ ____: 3-1. Administrative Agency</p> <p>§ ____: 3-2. Registration Required; Exceptions</p> <p>§ ____: 3-2.1. Application for Registration</p> <p>§ ____: 3-3. Inspection by Agency</p> <p>§ ____: 3-4. Public Report</p> <p>§ ____: 3-5. Same; Request for Effective Date or Hearing by Developer</p> <p>§ ____: 3-6. Same; Amendments for Material Changes</p> <p>§ ____: 3-7. Annual Report</p> <p>§ ____: 3-7.1 Expiration of Public Reports</p> <p>§ ____: 3-8. No Misleading Information</p> <p>§ ____: 3-9. General Powers and Duties of Agency</p> <p>§ ____: 3-10. Deposit of Fees</p> <p>§ ____: 3-11. Condominium Specialists; Appointment; Duties</p> <p>§ ____: 3-12. Private Consultants</p> <p>§ ____: 3-13. Agency Oversight of Public Report</p> <p>§ ____: 3-14. Investigative Powers of Agency</p> <p>§ ____: 3-15. Cease and Desist Orders</p> <p>§ ____: 3-16. Revocation of Registration</p> <p>§ ____: 3-17. Power to Enjoin</p> <p>§ ____: 3-18. Penalties</p> <p>§ ____: 3-19. Limitation of Action</p> <p>§ ____: 3-20. Condominium Education <u>Trust</u> Fund</p> <p>§ ____: 3-21. Same; Payments to <u>Trust</u> Fund by Unit Owners' Associations and Developers</p>	

Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)	Notes
<p>§ ____: 3-22. Same; Management of <u>Trust</u> Fund</p> <p>[Note: The table of contents will be appropriately renumbered when we finish reorganizing, tearing apart, and tinkering with the draft.]</p>	
<p><b>PART III. ADMINISTRATION AND REGISTRATION OF CONDOMINIUMS</b></p>	
<p>§ ____: 3-1. <b>Administrative Agency.</b> [Source: <b>HRS §514A-3; UCA/UCIOA §5-101.</b>] 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.</p>	
<p><b>BRRAC’s [Real Estate Commission’s] Comment</b></p> <p>1. HRS §514A-3 and UCA/UCIOA §5-101 are the sources of this section.</p>	
<p>§ ____: 3-2. <b>Registration Required; Exceptions.</b> [Source: <b>HRS §514A-31; UCA/UCIOA §5-102; HAR §16-107-2.1, Proposed Rules, Draft #6 (5/17/02).</b>] (a) 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.</p> <p>(b) Exceptions:</p> <p>(1) <i>Small condominiums.</i> A condominium consisting of no more than [42] <b>five units</b> and which is not subject to [development rights] expansion is exempt from the requirements of this section and sections ____: 3-4, ____: 3-6, and ____: 3-7. [Some regulators object to this exception for small condominiums, since the Real Estate Branch receives many complaints about such projects. The regulators might agree to exceptions for small condominiums that have already been built since such units can be inspected by potential purchasers.]</p> <p>(2) <i>Bulk sales.</i> The registration requirement of this section shall not apply to the sale of units in bulk. “The sale of units in bulk” [includes] is a circumstance where a developer undertakes to develop and then sells a portion of or the developer’s entire inventory of units to a purchaser who is not a prospective initial purchaser. The registration requirements of this section and the developer’s amended public report requirements of section ____: 3-6 shall apply to any sale of units to the public following a sale of units in bulk.</p>	
<p><b>BRRAC’s [Real Estate Commission’s] Comment</b></p> <p>1. HRS §514A-31, UCA/UCIOA §5-102, and HAR §16-107-2.1, Proposed Rules, Draft #6 (5/17/02) are the sources of this section.</p> <p>2. The official comments to §5-102 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section. As noted in these comments:</p> <p>Registration of a condominium is only required in the case of a condominium or unit intended for residential use. Commercial and industrial condominiums, accordingly, are exempt from registration under this Act. Also exempt from the requirement of registration is a small condominium containing 12 or fewer units, so long as the condominium is not subject to development rights. However, the small condominium and the industrial or commercial condominium are still subject to scrutiny by the agency under its general powers, despite the fact that registration is not required.</p> <p>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.</p> <p>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 “offer for sale”.</p> <p>[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</p>	

Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)	Notes
<p>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.]</p> <p>[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.]</p> <p style="text-align: center;"><b>Condominium Recodification Attorney’s Comment</b></p> <p>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. <b>For discussion:</b> 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.</p>	
<p><b>§ ____: 3-2.1. Application for Registration.</b> [Source: <b>HRS §514A-32; UCA/UCIOA §5-103(a); modified.</b>] (a) An application for registration must:</p> <p>(1) be accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; and</p> <p>(2) contain such documents and information concerning the condominium as may be specified by the commission.</p> <p>(b) A developer promptly shall file amendments to report any actual or expected material change in any document or information contained in the application.</p>	
<p style="text-align: center;"><b>BRRAC’s [Real Estate Commission’s] Comment</b></p> <p>1. HRS §514A-32 and UCA/UCIOA §5-103(a) are the sources of this section.</p> <p>2. The questionnaire required by HRS §514A-32(2) 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.</p>	
<p><b>§ ____: 3-3. Inspection by Agency.</b> [Source: <b>HRS §§514A-33, -34, -35; modified.</b>] (a) After appropriate notification has been made or additional information has been received pursuant to <b>sections 514A-31, 514A-32, 514A-39.5, 514A-40, or 514A-44</b> <u>this part</u>, an inspection of the condominium project may be made by the commission.</p> <p>(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 <b>first-class</b> transportation expenses.</p>	
<p style="text-align: center;"><b>BRRAC’s [Real Estate Commission’s] Comment</b></p> <p>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).</p>	
<p><b>§ ____: 3-4. Public Report.</b> [Source: <b>HRS §514A-61; modified; see also, HRS §§514A-36, 514A-40.</b>] (a) Prior to the issuance of an effective date for a public report, the commission must have received the following:</p> <p>(1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to Chapter 91.</p> <p>(2) The public report prepared by the developer disclosing the information specified in section 4-3 and, if applicable, section 4-3.1.</p> <p>(3) A copy of the deed, master lease, 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.</p>	

	<b>Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)</b>	<b>Notes</b>
	<p>(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 ____: 2-2, ____: 5-9, and ____: 2-3. <b>The requirement for a parking plan (if parking is required) should be satisfied by the map.</b></p> <p>(5) A specimen copy of the proposed contract of sale for units.</p> <p>(6) An executed copy of an escrow agreement with a third party depository for retention and disposition of <del>[purchaser's]</del> <u>purchasers'</u> funds that meets the requirements of section ____: 4-10 (Escrow of Deposits).</p> <p>(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.</p>	
	<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>HRS § 514A-61, substantially modified, with elements of HRS §§514A-36 and 514A-40 are the sources of this section.</li> <li>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. <i>See</i>, §____: 4-4. Therefore, HRS §514A-37 (Preliminary public reports) is no longer necessary.</li> <li>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.</li> <li>HRS §§514A-40(b) and 514A-61(b) use the undefined term "declarant." "Developer" is used in the recodification instead of "declarant."</li> <li>HRS §§514A-40(b)(2) and 514A-61(b)(1) incorrectly use the term "registered" architect or engineer. The correct term is "licensed." <i>See</i>, HRS Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects).</li> <li>HRS §514A-40(c), requiring developers to pay \$5 per project unit into the Condominium Education Trust Fund, is incorporated in §____: 3-21.</li> </ol> <p style="text-align: center;"><b>Condominium Recodification Attorney's (and Senior Condominium Specialist's) Comment</b></p> <ol style="list-style-type: none"> <li>The BRRAC/Commission should consider incorporating more of the requirements of HRS §514A-40 and related proposed administrative rules.</li> <li>Rather than requiring that the public report "be in such form and content as prescribed by the commission" (HRS §514A-36), the BRRAC/Commission 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). <i>See also</i>, 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").</li> </ol>	
	<p><b>§ ____: 3-5. Same; Request for Effective Date or Hearing by Developer.</b> [Source: HRS §514A-38; <i>modified</i>.] 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, the developer may, in writing, request and shall be given a hearing by the commission within a reasonable time after receipt of <u>such a</u> request.</p>	
	<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>HRS §514A-38 is the source of this section. The first sentence in HRS §514A-38 is incorporated in §____: 3-12 (Private Consultants).</li> </ol>	

Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)	Notes
<p><b>§ ____: 3-6. Same; Amendments.</b> [Source: <b>HRS §514A-41; modified.</b>] (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. Within a reasonable period of time, the commission shall issue an effective date for the amended public report or take other appropriate action under this part. <del>[If the commission does not issue an effective date for the amended public report, any sales made pursuant to subsections (b) and (c) shall be voidable at the option of the purchaser.]</del></p> <p>(b) The submission of an amended public report shall not require the developer to suspend sales, however, subject to the power of the commission to order such sales to cease as set forth in section ____: 3-15.</p> <p>(c) The developer shall provide all prospective purchasers with a true copy of (i) the amendment to the public report, if the prospective purchaser has received copies of the public report and all prior amendments, or (ii) a restated public report including all amendments.</p> <p>(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 sections ____: 4-5 and ____: 4-6, the terms and conditions of the purchaser's contract for sale, and applicable common law.</p>	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-41, modified, is the source of this section.</p> <p>2. A "circumstance . . . which would render the public report misleading to purchasers in any material respect" triggering the need for an amended public report under this section 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.</p> <p>HRS Chapter 514A currently has inconsistent provisions regarding when changes in a project give a buyer the right of rescission. The BRRAC [Commission] 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 units might not adversely affect buyers of different unit 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 have required that it be provided to <i>all</i> unit buyers with a form of receipt that includes a notice of right of rescission. The BRRAC [Commission] now believes as follows:</p> <p>a. The provisions of HRS §514A-63 should be the standard for rescission. If a change meets the HRS §514A-63 standard, it is sufficiently material to require an amended public report.</p> <p>b. An amended public report should not automatically give every buyer a right of rescission, only those buyers who meet the rescission standard.</p> <p>c. The receipt for a public report or amended 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.</p> <p>d. The developer makes 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</p>	

Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)	Notes
<p>exercised.</p> <p>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.</p> <p>f. If a change makes the public report misleading, but does not meet the rescission standard for any buyer, it could be disclosed in the annual update of the public report or in an amended public report (even if the amended public report is not required by law).</p> <p>3. Subsection (b) 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. Consumers are still protected and still have appropriate remedies, if necessary. Prospective purchasers will have a copy of the amended public report pending the Commission's issuance of an effective date, and the sale would be voidable if the Commission does not issue an effective date for the amended public report.</p>	
<p><b>§ ___: 3-7. Annual Report.</b> [Source: <b>UCA/UCIOA §5-109; modified.</b>] (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.</p> <p>(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:</p> <p>(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; <u>and</u></p> <p>(2) The developer has filed a final annual report describing the conditions set forth subsection (1) above; <u>and</u>].</p> <p><del>[(3) The commission has issued written acknowledgment of receipt of developer's final annual report.]</del></p>	
<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. UCA/UCIOA §5-109, modified, is the source of this section.</p> <p>2. The official comments to §5-109 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.</p> <p>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 amended 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 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.</p> <p>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. <i>See</i>, §___: 4-3(b).</p> <p>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 §___: 4-2 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.</p>	
<p><b>§ ___: 3-7.1. Expiration of Public Reports.</b> [Source: <b>New.</b>] 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 <del>[the commission has acknowledged receipt of the developer's</del></p>	



Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)	Notes
final annual report] the developer has sold all units in the project.	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. This is a new section.</p>	
<p><b>§ ____: 3-8. [True copies of public report;] No Misleading Information.</b> [Source: <b>HRS §514A-42; modified.</b>] [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.</p>	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-42 is the source of this section.</p> <p>2. The essence of the first sentence of HRS §514A-42 is 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 Legislature believes we should incorporate the exact language of HRS §514A-42, it should be in Part IV (Protection of Condominium Purchasers).</p>	
<p><b>§ ____: 3-9. General Powers and Duties of Agency.</b> [Source: <b>HRS §514A-99; UCA/UCIOA §5-107; modified.</b>] (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, <del>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.</del> The commission may prescribe forms and procedures for submitting information to the commission.</p> <p>(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 <u>related</u> rules or orders, the commission, without prior 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. <i>[Some BRRAC members would like the Commission to continue to have jurisdiction over selected condominium management issues – currently HRS §§514A-83.5 (Documents of AOAOs) (Recod §____: 5-42), 514A-84 (Management and contracts; developer, managing agent, and AOAOs) (Recod §§ ____: 5-24, 5-42), 514A-85 (Records; examination; disposal) (Recod §§____: 5-41, 5-42), 514A-95 (Managing agents) (Recod §____: 5-22), 514A-95.1 (AOAOs registration; fidelity bond) (Recod §§____: 5-3, 5-42), 514A-97 (AOAOs funds; handling and disbursement) (Recod §____: 37), and 514A-98 (False statement) (not in Recod).]</i></p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	

	<b>Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)</b>	<b>Notes</b>
	(g) The commission, in its sound discretion, may require bonding ( <u>at appropriate levels over time</u> ), 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.	
	<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. HRS §514A-99 and UCA/UCIOA §5-107 are the sources of this section.</li> <li>2. The official comments to §5-107 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.</li> <li>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.</li> <li>4. Reduction of bond. The parenthetical "(at appropriate levels over time)" was added to subsection (g) to allow the Commission to adjust/reduce bonding requirements over time.</li> </ol>	
	<p><b>§ ____: 3-10. Deposit of Fees.</b> [Source: <b>HRS §514A-44</b>; <i>essentially identical</i>.] 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).</p>	
	<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. HRS §514A-44 is the source of this section.</li> </ol>	
	<p><b>§ ____: 3-11. Condominium Specialist; Appointment; Duties.</b> [Source: <b>HRS §514A-7</b>; <i>identical</i>.] 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 applicable to officers and employees of the State.</p>	
	<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. HRS §514A-7 is the source of this section.</li> </ol>	
	<p><b>§ ____: 3-12. Private Consultants.</b> [Source: <b>HRS §514A-38</b>; <i>in pertinent part, identical</i>.] 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.</p>	
	<p style="text-align: center;"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. HRS §514A-38 is the source of this section.</li> </ol>	
	<p><b>§ ____: 3-13. Agency [Regulation] Oversight of Public Report.</b> [Source: <b>UCA/UCIOA §5-110</b>; <i>modified</i>.]</p> <p>(a) The commission at any time may require a developer to alter or supplement the form or substance of a public report to assure adequate and accurate disclosure to prospective purchasers.</p> <p>(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 <del>[disclosure statement]</del> <u>public report</u>, or any of the documents contained in the application for registration.</p> <p><del>[(c) In the case of a condominium situated wholly outside of this State, an application for registration or</del></p>	



	<b>Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)</b>	<b>Notes</b>
	<p>proposed public report filed with the commission that 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. The commission may require, however additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.]</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. UCA/UCIOA §5-110 is the source of this section.</li> <li>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.]</li> <li>3. HRS §514A-36 (Public reports and registration fees, incorporated above as §___: 3-4(b)) 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 assure that adequate and accurate disclosures are made to consumers, the Commission <u>may</u> require a developer to alter or supplement a public report.</li> <li>4. UCA/UCIOA §5-110(c) was deleted. As noted by Senior Condominium Specialist Cynthia Yee, an Attorney General's Office opinion states that HRS Chapter 514A only applies to real estate in Hawaii because only real estate in Hawaii can be recorded here.</li> </ol>	
	<p><b>§ ___: 3-14. [Investigatory] Investigative Powers.</b> [Source: <b>HRS §514A-46; modified.</b>] 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, 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. [Some BRRAC members would like the Commission to continue to have jurisdiction over selected condominium management issues – currently HRS §§514A-83.5 (Documents of AOAOs) (Recod § ___ : 5-42), 514A-84 (Management and contracts; developer, managing agent, and AOAOs) (Recod §§___: 5-24, 5-42), 514A-85 (Records; examination; disposal) (Recod §§___: 5-41, 5-42), 514A-95 (Managing agents) (Recod § ___ : 5-22), 514A-95.1 (AOAOs registration; fidelity bond) (Recod §§___: 5-3, 5-42), 514A-97 (AOAOs funds; handling and disbursement) (Recod § ___ : 37), and 514A-98 (False statement) (not in Recod).]</p>	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. HRS §514A-46 is the source of this section.</li> <li>2. Compare UCA/UCIOA/Recod Draft #1 §5-108 (Investigative Powers of Agency), which reads as follows: <ol style="list-style-type: none"> <li>(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.</li> <li>(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.</li> </ol> </li> </ol>	

Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)	Notes
<p><b>§ ___: 3-15. Cease and Desist Orders.</b> [Source: <b>HRS §514A-47</b>; <i>modified</i>.] In addition to its authority under section ___: 3-17, 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] <u>may</u> 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.</p>	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-47 is the source of this section.</p>	
<p><b>§ ___: 3-16. Revocation of Registration.</b> [Source: <b>UCA/UCIOA §5-106</b>; <i>essentially identical</i>.] (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:</p> <ul style="list-style-type: none"> <li>(1) failed to comply with a cease and desist order issued by the commission affecting that condominium;</li> <li>(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;</li> <li>(3) failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that condominium;</li> <li>(4) misrepresented or failed to disclose a material fact in the application for registration; or</li> <li>(5) failed to meet any of the conditions described in this part necessary to qualify for registration.</li> </ul> <p>(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 commission.</p> <p>(c) In appropriate cases the commission, in its discretion, may issue a cease and desist order in lieu of an order of revocation.</p>	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. UCA/UCIOA §5-106 is the source of this section.</p> <p>2. The official comments to §5-106 of UCIOA (1994) and UCA (1980) should be used for guidance in interpreting this section.</p> <p>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. <i>See</i>, 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.</p> <p>4. Regarding subsection (a)(4), <i>see also</i>, HRS §514A-98 relating to "False Statement."</p>	
<p><b>§ ___: 3-17. Power to Enjoin.</b> [Source: <b>HRS §514A-48</b>; <i>modified</i>.] 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-</p>	

Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)	Notes
<p><del>97, 514A-98, 514A-132, or 514A-134</del> 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.</p>	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-48 is the source of this section.</p>	
<p><b>§ ___: 3-18. Penalties.</b> [Source: <b>HRS §514A-49</b>; <i>modified.</i>] (a) Any person who violates or fails to comply with <del>[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]</del> 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 <del>[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]</del> 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.</p> <p>(b) In addition to any other actions authorized by law, <del>[Any]</del> any person who violates <del>[any provision]</del> 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.</p>	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-49 is the source of this section.</p>	
<p><b>§ ___: 3-19. Limitation of Actions.</b> [Source: <b>HRS §514A-50</b>; <i>identical.</i>] 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.</p>	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-50 is the source of this section.</p>	
<p><b>§ ___: 3-20. Condominium Education Trust Fund.</b> [Source: <b>HRS §514A-131</b>; <i>essentially identical.</i>] (a) The commission shall establish a condominium education <u>trust</u> fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:</p> <ol style="list-style-type: none"> <li>(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;</li> <li>(2) The improvement and more efficient administration of condominium associations; and</li> <li>(3) Expedient and inexpensive procedures for resolving condominium association disputes.</li> </ol> <p>(b) The commission may use any and all moneys in the condominium education <u>trust</u> fund for purposes consistent with subsection (a).</p>	
<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <ol style="list-style-type: none"> <li>1. HRS §514A-131 is the source of this section.</li> <li>2. The name of the fund was changed from "Condominium Management Education Fund" to "Condominium Education Trust Fund" to more accurately reflect its funding sources and permissible uses.</li> </ol>	

	<b>Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)</b>	<b>Notes</b>
	<p>3. The provisions for the “Condominium Management Education Fund” are currently found in a separate part (HRS Chapter 514A, Part VIII).</p>	
	<p><b>§ ____: 3-21. Same; Payments to Trust Fund by Unit Owners’ Associations and Developers.</b> [Source: <b>HRS §§514A-40(c), 514A-132; modified.</b>] (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 <u>trust</u> 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.</p> <p>(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 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.</p> <p>(c) [Source: <b>HRS §514A-40(c); modified.</b>] Each developer shall pay into the condominium education <u>trust</u> 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.</p> <p>(d) The department of commerce and consumer affairs shall allocate the fees collected to the condominium education <u>trust</u> fund established pursuant to section ____: 3-20.</p>	
	<p style="text-align: center;"><b>BRRAC’s [Real Estate Commission’s] Comment</b></p> <p>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).</p> <p>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.</p>	
	<p><b>§ ____: 3-22. Same; Management of Trust Fund.</b> [Source: <b>HRS §514A-133; essentially identical.</b>] (a) The sums received by the commission for deposit in the condominium education <u>trust</u> fund shall be held by the commission in trust for carrying out the purpose of the fund.</p> <p>(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium education <u>trust</u> 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.</p> <p>(c) The moneys in the condominium education <u>trust</u> 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 <u>trust</u> fund.</p> <p>(d) The commission shall annually submit to the legislature, prior to the convening of each regular session:</p> <p>(1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund, and</p>	

	Part III. Administration and Registration of Condominiums (Recodification Public Hearing Discussion Draft)	Notes
	(2) A copy of the budget for the current fiscal year, including summary information on programs which were funded or are to be funded.	
	<p align="center"><b>BRRAC's [Real Estate Commission's] Comment</b></p> <p>1. HRS §514A-133 is the source of this section.</p> <p>2. HRS §514A-134 (False statement) has not been included in the recodification. It is redundant and its criminal penalty is impractical.</p> <p>3. HRS §514A-135 (Rules) has not been included in the recodification. It is redundant.</p>	
	<p><b>HRS §514A-45 Supplemental regulations governing a condominium property regime.</b> Whenever they deem it proper, <del>[the commission,]</del> the county councils of the various counties <del>[or the city council of the city and county of Honolulu]</del> may adopt supplemental rules and regulations governing <del>[a]</del> 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.</p>	
	<p align="center"><b>BRRAC's Comment</b></p> <p>1. HRS §514A-45 tends to heighten confusion over land <i>use</i> and land <i>ownership</i> issues, so the BRRAC does not recommend incorporating it in the recodification. If the Commission decides to incorporate HRS §514A-45, it should be placed after §___: 1-5.</p>	