

Stakeholders' Comments and Suggestions

General Provisions	Creation, Alteration, and Termination of Condominiums	Management of Condominiums	Protection of Condominium Purchasers	Administration and Registration of Condominiums	Miscellaneous Comments and Suggestions
<p>Hawaii County believes that HRS Chapter 514A has been misused by some developers to circumvent county zoning and subdivision codes. Suggest that HRS Chapter 514A: 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.</p> <p><i>[Note: Similar concerns were expressed by a representative of the Sierra Club – Hawaii Chapter, and a realtor/developer.]</i></p>	<p>First floor condominium owners object to paying maintenance fees for common elements that do not benefit their apartments (i.e., elevator, telephone in elevator, stairways and exit doors, and trash chute). Suggest that HRS §514A-13 (Common Elements) be amended to allow for designation of such common elements as “limited common elements” without approval of 75% of common interests. Further suggest that HRS §514A-3 (Definitions), “Limited common elements,” be amended to read: “Common elements designated in the Declaration as reserved or are primarily used and benefits certain apartment or apartments; provided it is designated as ‘limited common element’ in the Declaration.”</p> <p><i>[Note: Although these suggestions fall under HRS Chapter 514A’s “General Provisions,” the issue is more properly addressed under “Creation, Alteration, and Termination of Condominiums.”]</i></p>	<p>Hawaii Bankers Association (HBA) believes that we should maintain requirement under HRS §514A-97 (Association of Apartment Owner Funds; Handling and Disbursement) that funds be deposited in “a financial institution located in the State whose deposits are insured by an agency of the United States government.” However, HBA “question(s) the ability or authority of credit unions in receiving” deposits from AOAOs.</p> <p>HBA does not agree with lien priority provisions of Uniform Common Interest Ownership Act (UCIOA) or Uniform Condominium Act (UCA). HBA suggests that we keep HRS §514A-90 (Priority of Lien) until it sunsets on 12/31/03 (at which point the old law would come into effect again, giving first mortgages full priority over condominium association assessments).</p>	<p>Hawaii Bankers Association (HBA) suggests that HRS §514A-64.5 (Protection of Purchasers’ Funds) simply state that “purchasers funds shall be deposited in a financial institution doing business in the State and insured by the United States government.”</p>	<p>Hawaii Association of Realtors states that: “Reorganization and clarification of the condominium law should remain the major focus of the improvements implemented. Our current condominium law already contains many sections that are superior to the other Acts (i.e., UCIOA and UCA), such as the sections on Condominium Management, Managing Agent, Contents of Bylaws, Budgets and Reserves, Collection of Common Expense, and Condominium Documents. However, the need to organize Hawaii’s condominium law is quite apparent. Changes should include a table of contents, a topical index, and a key word index.”</p>	
	<p>Hawaii State Bar Association, Real Property and Financial Services Section (HSBA-RPFS) member suggests that HRS §514A-20 (Condominium Property Regimes) be amended to clarify that, in situations where a cooperative building wants to convert to a condominium, only the cooperative corporation is required to sign the declaration (or the cooperative and the fee owner in the case of a leasehold condo) in order establish the condominium property regime.</p>	<p>Hawaii Association of Realtors suggests that changes should be made to eliminate the confusion over the non-retroactive HRS §514A-82(a) (Contents of Bylaws) and the retroactive requirements of HRS §514A-82(b), which supercedes conflicting declarations and bylaws.</p>			
		<p>Condominium manager is concerned that there is no mechanism for holding unethical (and worse) property managers accountable. Suggests</p>			

Stakeholders' Comments and Suggestions

		requiring that all property managers hold real estate salesperson licenses.			
		Maui condominium, faced with land erosion and exposure to wave action that threatens beachfront buildings, must construct ocean based structures (e.g., t-head groins or man-made breakwater reefs) to alleviate problem. However, HRS §514A-92.1 (Designation of Additional Areas) requires approval of 90% of the apartment owners to designate additional areas to be common elements or subject to common expenses after the initial filing of the bylaws or declaration. Suggest that HRS §514A-92.1 be amended to add language requiring approval of only a simple majority of apartment owners for “the expenditure of funds to assure the physical integrity of shoreline areas by construction and maintenance of approved offshore structures and sand or rock fill.”			
		Condominium Council of Maui (CCM) states that a recurring problem is the matter of proxies held by rental agents giving them control of the board in many instances.			
		CCM member notes that absentee owners who use their apartments for vacation rental income are dependent on rental agents for income, thereby vesting enormous influence in the hands of the rental agents. Suggest that: 1) HRS §514A-82(a)(14) be amended to read: “No resident manager, <u>managing agent or rental agent</u> of a condominium shall serve on its board of directors”; 2) HRS §514A-82(b)(4) be amended to read: “No resident manager [or], <u>managing agent, rental agent, their spouses or staffs</u> shall solicit, for use by [the manager or managing agent] <u>any of the above</u> , any apartment owner of the association of owners that employs or			

Stakeholders' Comments and Suggestions

		<p>has a <u>contract agreement with</u> the resident manager [Ø], managing agent, <u>or rental agent</u>, nor shall the resident manager [Ø], managing agent, <u>rental agent, their spouses or staffs</u> cast any proxy vote at any association meeting except for the purposes of establishing a quorum. ...”; 3) HRS §514A-82(b)(7) be amended to read: “An owner shall not act as an officer of an association and an employee of the managing agent employed by the association <u>or rental agent contracted by the association or individual owners within the association</u>”; 4) ensure a more equitable distribution of proxies by prohibiting individuals from holding more than 5% of the voting percentage unless that individual holds 5% (or more) by virtue of ownership; and 5) HRS §514A-82(b)(19) be amended to require a minimum of quarterly board meetings (since boards of directors cannot adequately attend to the business of the association in just one board meeting per year).</p>			
		<p>Another CCM member suggests that: 1) rental agents be prohibited from soliciting proxies; 2) requirements for proxy forms should be improved; and 3) there should be some method short of legal action that would prevent the Board from knowingly violating either the Bylaws or the statutes.</p>			
		<p>Another CCM member suggests that: 1) Portions of HRS §514A-82(a) (specifically subsection 1 and subsections 12 through 18), which is not retroactive, include very good requirements that should be included in HRS §514A-82(b), which is retroactive; 2) meeting agendas should be posted prior to meetings as part of the required board meeting notices; 3) rental agents’ activities should be limited as they are for managing</p>			

Stakeholders' Comments and Suggestions

		agents and managers; 4) HRS §514A-96(b) (Board of Directors, Audits, Audited Financial Statement, Transmittal) be amended to require that annual audited financial statements be distributed (rather than simply made available) to each apartment owner at least 30 days prior to the annual meeting; 5) HRS §514A-83.6 (Associations of Apartment Owners; Budgets and Reserves) be amended to require that the budget be distributed 30 days prior to the fiscal year, as are notices for maintenance fee increases; and 6) appropriate sections of HRS Chapter 514A be amended to clarify that all association records must be maintained on the same island where the project is located and shall be available for reviewing and copying by association owners.			
		Another CCM member observes that “my conclusion after fifteen years of day-to-day condo interactions is that sooner or later it brings out the worst in everybody.” Suggests: 1) mandatory on-the-job training for board Presidents (optional for other directors); and 2) mandatory in-house conflict resolution (with guidelines).			
		A resident/director of a Maui mixed use condominium project is frustrated that the commercial center component, which is in a separate building next to the residential units with some common areas and some parking allocations, has a 30% vote in the activities of the residential condominium component. Suggest that HRS Chapter 514A be amended to allow for the separation of residential and commercial condominiums in mixed use situations such as theirs.			
		A part-time resident/director of an Oahu condominium expressed concerns regarding proxy abuses,			

Stakeholders' Comments and Suggestions

		<p>discrimination against offsite owners, special meeting abuses, and abuse of the recording of minutes. Suggests that: Regarding proxies, 1) proxy solicitation mailout to all owners should allow 14 days for submission of 100 word statements (“indicating the owners’ qualifications to serve on the board and reasons for wanting to receive proxies,” HRS §514A-82(b)(4)); 2) 100 word statement limit should not count owner’s name, address, unit #, signature, headings, etc.; 3) rental agents and real estate agents should be barred from voting proxies due to obvious conflicts of interest; 4) proxies should be received by managing agent or secretary by 4:30 p.m. 24 hours before any meetings to preclude efforts to alter proxies; and 5) proxies should be sealed in an envelope bearing the name of the sendee only and should not be opened before 24 hours of the meeting. Regarding special meetings, 1) require posting of notice of at least 72 hours (14 day notice to all owners would be more equitable, and 8 hours notice should be for genuine emergencies only); 2) officers should not be removed at special meetings called only by directors (but may be removed at special meetings duly called by owners only) and should not be removed except for just cause; and 3) electronic age allows all persons to participate in duly noticed meetings. Regarding minutes, draft minutes should be available within 15 days of any meeting (there is a potential for abuse when allowing up to 60 days for posting), and corrected minutes should be posted onsite and available following approval at the next board meeting no later than 7 days after the meeting.</p>			