Part I. General Provisions

SB 2210, SD 2, HD 1, CD 1

PART I.

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

The 1961 "Horizontal Property Regime" law consisted of thirty-three sections covering a little more than three pages in the Revised Laws of Hawaii. Since that time, the law has been amended constantly. Presently, Hawaii's "Condominium Property Regime" law, chapter 514A, Hawaii Revised Statutes, consists of over one hundred sections taking up over fifty pages. As noted by the legislature in Act 213, Session Laws of Hawaii 2000, "[t]he 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."

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

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

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

Real Estate Commission's Prefatory Comment

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 2004 legislative session, Hawaii's "Condominium Property Regime" law consists of 122 sections taking up over 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]

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[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.

[3] *Id.*

[4] *Id.*

[5] The recodification workplan is available on the Commission's website – http://www.hawaii.gov/hirec/ – along with 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.

Part I. General Provisions

Why Should We Care?

● **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.

● **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.

● **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.

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

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[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). In 1968, however, the Hawaii Supreme Court commented that although the original condominium property regimes law was viewed as an enabling act, condominiums might have been cognizable under common law. *See,* State Savings & Loan Association v. Kauaian Development Company, Inc., et al., 50 Haw. 540, 547 (1968).

[12] Standing Committee Report 622, House Bill No. 1142 (1961).

[13] *Id*.

[14] 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).

[15] Recodification Draft #1, Preliminary Draft #2, and Public Hearing Discussion Draft (all with statutory text plus commentary) are available on the Commission's website at http://www.hawaii.gov/hirec/.

[16] Every provision of HRS Chapter 514A was analyzed for possible inclusion within the structure of the UCA.

[17] In 2003, pursuant to Act 131 (SLH, 2003), the Blue Ribbon Recodification Advisory Committee was expanded to include representatives of the Hawaii Council of Associations of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners Association, Community Associations Institute - Hawaii Chapter, Hawaii Association of Realtors®, and the Condominium Council of Maui.

[18] In conjunction with the Commission's 2003 public hearings on the recodification, some people requested that cooperatives be added to the community governance sections of the condominium law. (*See, e.g.*, testimony of Bobbie Jennings, received by the Commission on September 15, 2003.) The Commission ultimately decided to limit its efforts to recodifying Hawaii's condominium property regimes law and followed the philosophy that problems should be fixed in the statutory provisions that contain or created the problems in the first place.

[19] Hidden Harbour Estates, Inc. v. Norman, 309 So.2d 180, 181-182 (Fla. Dist. Ct. App. 1975).

[20] *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: http://www.clrc.ca.gov/_H850.html.

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]

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 regimes 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]

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.[12]

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.[13]

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."[14]

Evolving Approach to the Recodification of Hawaii's Condominium Law

- **Recodification Draft #1.** In January 2002, the Commission completed its initial draft of the recodification (statutory text and explanatory commentary).[15] 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,[16] 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 discussions on improving Hawaii's condominium law. Some portions were 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.

- **Recodification Draft #2.** A Blue Ribbon advisory committee reviewed Recodification Draft #1. Based on feedback the Commission received from the advisory committee, realtors, property managers, individual unit owners, and others, HRS Chapter 514A (rather than the uniform laws) was used as the basis for most of Recodification 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) – was used as the basis for condominium governance matters. Recodification Draft #2 was attached to the Commission's progress report to the 2003 Legislature.

- **Final Draft.** Following the 2003 legislative session, the Commission: (i) continued to work with affected members of the community and the Blue Ribbon Recodification Advisory Committee[17] to refine Recodification Draft #2; (ii) took the resulting draft ("Public Hearing Discussion Draft") to public hearing in each of Hawaii's counties; and (iii) worked with the Blue Ribbon Recodification Advisory Committee and others to incorporate appropriate changes and submit a final draft of the proposed condominium law recodification to the 2004 Legislature.

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),[18] 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.[19]

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.[20]

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 limited its efforts to recodifying Hawaii's condominium property regimes law.

Guiding Principles, Generally

1. The Condominium Property Act should be construed in accordance with the purposes stated in Act 213 (SLH 2000) and this Prefatory Comment (i.e., to "update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law"), and the Real Estate Commission's comments to the text of each section. The Act should also be construed to promote the in-state and interstate flow of funds to condominiums to facilitate the reasonable development and sales of units in such projects, and to protect consumers, purchasers, and borrowers against condominium practices that may cause unreasonable risk of loss to them. It should also help facilitate the development of this type of real estate in Hawaii, as Hawaii's land area is limited. Accordingly, the text of each section should be read in light of the purpose and policy of the rule or principle in question, and also of the Act as a whole.

2. The recodified condominium law should enhance the clarity of the Condominium Property Act.

Provisions on a single issue (e.g., proxies, assessments) should be consolidated or grouped together. The artificial approach regarding the contents of bylaws developed in HRS §514A-82(a) and (b) should be eliminated. And the statutory requirements for condominium governing documents should be minimized while incorporating certain provisions currently in HRS §514A-82(a) and (b) in more appropriate statutory sections.

3. The recodified condominium law should recognize the difficulty of a "one size fits all" approach to consumer protection and management provisions.

4. The Commission should require only information it will use or may find useful from a regulatory and consumer protection standpoint.

5. Problems should be fixed where they are created.

Some stakeholders asked that the condominium property regimes law be used to fix problems created by other provisions in HRS. Such problems should be fixed in the statutory provisions that created the problems in the first place.

6. To the extent practicable, approval percentage requirements should be standardized. When necessary, conform to Fannie Mae, Freddie Mac, or HUD requirements.

7. The recodified condominium law should not result in an increase in the cost of government.

This goal is meant to limit the addition of new programs administered by government under the condominium law. If the Legislature wishes to add such programs (e.g., condominium courts), means of funding the new programs must also be established. It is possible that revised consumer protection requirements will affect government costs. We will not actually know if the goal of maintaining the cost of government in this area has actually been achieved until after practical experience working with the recodified condominium law. If proper administration of the new law actually requires more resources, the responsible government agency should ask for more resources or ask that particular requirements be revised.

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

"CHAPTER

CONDOMINIUMS

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Part I. GENERAL PROVISIONS

PART I. GENERAL PROVISIONS

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

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

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

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.

"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."

Part I. General Provisions

Definitions – what we mean by the words we use – are critical in "Condoland." Through interpretation and amendment, some definitions in HRS have gotten "curiouser and curiouser" over the years. With common understanding as our master, the recodified condominium law uses definitions contained in HRS Chapter 514A with, however, appropriate modifications and additions from the proposed Hawaii Administrative Rules (Title 16, Chapter 107), UCA/UCIOA, and other sources.

2. UCA/UCIOA §1-103 and HRS §514A-3 are the sources of the first sentence in this section. 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.

3. HRS §514A-3, HAR §16-107-2, Proposed Rules, Draft #6 (5/17/02), and UCA/UCIOA §1-103, sometimes modified, are the sources of most of the definitions in this section.

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

Real Estate Commission's Comment

1. HRS §514A-84(a) is the source of the definition of "affiliate of a developer".

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

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

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

"Common elements" 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 that are subject to the declaration.

Real Estate Commission's Comment

1. UCA/UCIOA §1-103(4) is the source of the definition of "common elements". The recodification defines "units" and "limited common elements" with specificity and defines "common elements" as everything else. As noted in UCIOA Comment #1 to §2-102: "It is important for title purposes, for purposes of defining maintenance responsibilities, and other reasons to have a clear guide as to precisely which parts of a condominium constitute the units and which parts constitute the common elements.

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

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

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

"Completion of construction" means 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;

(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.

"Condominium" 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.

Real Estate Commission's Comment

1. UCA §1-103(7) is the source of the definition of "condominium".

2. As noted in the official comment to UCA (1980) §1-103(7), unless the ownership interest in the common elements is vested in the owners of the units, the project is not a condominium.

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

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

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

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

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

(1) Add real estate to a condominium;

(2) Create units, common elements, or limited common elements within a condominium;

(3) Subdivide units, combine units, or convert units into common elements;

(4) Withdraw real estate from a condominium;

(5) Merge projects or increments of a project; or

(6) Otherwise alter the condominium.

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

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

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

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

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

(1) A purchaser's unit or appurtenant limited common elements; or

(2) Those amenities of the project available for the purchaser's use.

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

Real Estate Commission's Comment

1. HRS §514A-63, modified slightly, is the source of the definition of "material change". The definition of "material change" is tied to the standard for rescission rights.

2. HRS §508D-1, modified slightly to address condominium property, is the source of the definition of "material fact".

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

"Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any

combination thereof.

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

(1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element;

(2) The size, use, location, or construction materials of the common elements of the project; or

(3) The common interest appurtenant to the unit.

A pertinent change does not necessarily constitute a material change.

Real Estate Commission's Comment

1. The definition of "material respect" in HAR §16-107-2, Proposed Rules, Draft #6 (5/17/02), modified, is the source of the definition of "pertinent change". "Pertinent change" refers to a change that would require disclosure in an amended public report. It does not automatically give a prospective purchaser the right to rescind a contract to purchase a condominium. In order to give rise to rescission rights, a material change in a project must "directly, substantially, and adversely" affect the use or value of (i) the purchaser's unit or appurtenant limited common elements, or (ii) those amenities of the project available for such purchaser's use.

"Project" 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 created.

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

Real Estate Commission's Comment

1. The last sentence of the UCIOA (1994) §1-103(26) definition of "real estate" has been added to 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.

2. The definition of "property" specifically allows for the creation of "air space" condominiums and overrules In re: The Krieg Condominium, REC-DR-93-1 (2/10/95), in which the Commission prohibited such condominiums. Among other things, this helps to provide clearer and more accurate disclosures by doing away with the need to create "tool shed" condominiums on agricultural lands – a fiction driven by the need, under Krieg, for a physical structure to submit to the condominium property regime. (*See also,* the additional disclosures for projects on agricultural lands required by § -84.)

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

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

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

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

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

Real Estate Commission's Comment

1. The recodified condominium law uses the term "unit" instead of "apartment" since, as understood by the general public, "unit" more accurately reflects the fact that ownership interests in condominiums can consist of commercial spaces, parking spaces, boat slips, and other non-residential spaces.

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

(b) If there is any unit owner other than a developer, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements. 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. Property taxes assessed by the State or any county shall be assessed and collected on the individual units and not on the property as a whole. Without limitation of the foregoing, each unit and its appurtenant 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.

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

Real Estate Commission's Comment

1. UCA/UCIOA §1-105 and HRS §§514A-4, 514A-5, and 514A-6, combined and modified, are the sources of this section.

§ -5 Conformance with county land use laws. Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county, pursuant to section -6, to ensure the conformance of condominium property regimes to the purposes and provisions of county zoning and development ordinances and chapter 205. 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 section -32(a)(13) or -84(a).

Real Estate Commission's Comment

1. This section is identical to HRS §514A-1.6.

2. The Commission made many attempts to help solve the counties' problems regarding the need for condominium projects to conform with underlying land use laws.[21] Among other things, the Commission attempted to help prevent the inappropriate condominiumization of farm structures on agricultural lands[22] by proposing to specifically delegate power to the counties (in HRS §§205-

[21] Hawaii and Kauai counties have had problems regarding the conformance of condominium projects with underlying land use laws. Maui County raised some questions in a December 8, 2003 telephone call and e-mail with Mark E. Recktenwald, Director of the State Department of Commerce & Consumer Affairs. The City & County of Honolulu does not appear to have problems requiring the conformance of condominium projects with its Land Use Ordinance.

[22] The condominium form of ownership of agricultural lands has become a symbol of illegal and irresponsible development, particularly on the islands of Hawaii and Kauai. *See, e.g.,* testimony of Mark Van Pernis, Esq., dated September 29, 2003, in which Mr. Van Pernis recommends banning the submission of land designated "agriculture" or "conservation" to a condominium property regime. (Such suggestions ignore the fact that similar results could be achieved under forms of land ownership other than condominium.) Many of the problems faced by Hawaii County were, however, actually caused by the failure of the county under previous administrations to enforce the county's land use and real property tax laws.

Furthermore, true agricultural condominiums are valuable. As noted by the Department of Business, Economic Development & Tourism – Office of Planning ("DBEDT-OP") in its September 20, 2001 memorandum to Gordon M. Arakaki, while DBEDT-OP is very concerned about condominium property regimes used to create projects for primarily residential purposes on agricultural lands:

> [DBEDT-OP] would not support a blanket ban on CPRs on agricultural lands. The State created its agricultural park in Hamakua as a CPR. This permits farmers access to agricultural land and financing without having to subdivide or break up large agricultural parcels.

4.5(a)(4) and 205-5(b)) to adopt "reasonable standards, including but not limited to, the form of ownership under which property may be held." This was provided, however, as an exception to the general rule that county laws not discriminate against the condominium form of ownership (adopted from UCA/UCIOA §1-106). In response, the Hawaii County Planning Director stated that he and other planning directors would oppose, on "homerule" grounds, any language that appeared to preempt the county in any way.[23]

In a letter received by the Commission on October 16, 2003 (dated October 2, 2003), the Department of Business, Economic Development & Tourism – Office of Planning ("DBEDT-OP") and the four counties requested that the Commission eliminate its Public Hearing Discussion Draft version of §___: 1-5 (SB 2210, SD 2, HD 1, CD 1 § -5) and retain the language of HRS §§514A-1.6 and 514A-45.[24] DBEDT-OP and the four counties also stated that they would be "discussing possible recommendations for specific language for amendments" that would be forwarded to the Commission "if and when they are developed."[25] Therefore, in the final draft of the recodification, the Commission incorporated the current language of HRS §§514A-1.6 and 514A-45, and also retained a provision (added in earlier recodification drafts) requiring special disclosures for condominium projects proposed to be built on agricultural land.[26]

Background

There appears to have been much confusion over the fact that condominium property is a land *ownership*, as opposed to a land *use*, concept. In response to the Commission's requests for comments from the community, various parties have asked that Hawaii's

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Finally, as long as a county's real property tax laws are not completely coordinated with its land use laws, the condominium form of land ownership can be quite useful in protecting and preserving agricultural lands by allowing the appropriate transition from one type of crop to another as well as from large scale agricultural operations to smaller boutique farms. (*See,* 1993 speech on real property taxation of agricultural lands by Gordon M. Arakaki, Deputy Director, Land Use Research Foundation of Hawaii, to the Hawaii State Association of Counties.)

See also, e.g., testimony of Sheilah N. Miyake, Deputy Director, Department of Planning, County of Kauai, dated September 16, 2003, and testimony of Judy Dalton, Conservation Committee Member, Sierra Club Kauai Group, Hawaii Chapter.

[23] October 31, 2003 telephone conversation between Christopher J. Yuen and Gordon M. Arakaki.

[24] October 2, 2003 letter from DBEDT-OP to Mitchell A. Imanaka and Gordon M. Arakaki.

[25] *Id.* After a June 24, 2002 meeting, and by letter dated September 19, 2002, DBEDT-OP and the four counties had committed to drafting language for the recodification regarding conformance with county land use laws that would be acceptable to all four counties. No such language was ever given to the Commission by DBEDT-OP or any of the counties.

[26] In a telephone conversation with Commissioner Mitchell A. Imanaka in November 2003, Hawaii County Planning Director Christopher J. Yuen said that he would support the recodification if the provisions of HRS §§514A-1.6 and 514A-45 were kept "status quo." It should also be noted that some Blue Ribbon Recodification Advisory Committee members were concerned about what the counties might do with additional delegated powers.

[27] 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. (May 29, 2001 letter from County of Hawaii Planning Department to Mitchell A. Imanaka and Gordon M. Arakaki.)

In September 2002, the County of Hawaii passed an ordinance purporting to "regulate CPRs that are the equivalent of subdivisions of land." (Ordinance 02-111, effective 9/25/02.) Whether the ordinance can survive legal (e.g., denial of equal protection under the law) and practical challenges remains to be seen.

The counties, along with the Department of Business, Economic Development & Tourism – Office of Planning ("DBEDT-OP"), argue that "land ownership and land use are intertwined, especially when a [condominium property regime] is used to create what is, in material respect, a subdivision." (October 2, 2003 letter from DBEDT-OP to Mitchell A. Imanaka and Gordon M. Arakaki.) The counties have always had, however, the power to adopt land development codes and other measures to address physical development and infrastructure requirements without discriminating against the condominium form of land ownership (as opposed to other forms of ownership, such as cooperatives).

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

[29] The Commission has incorporated HRS §514A-1.6 in §___: 1-5 of the final draft of the recodification (SB 2210, SD 2, HD 1, CD 1 § -5).

[30] DBEDT – Office of Planning and the county planning directors object to the principal that physically identical developments should be treated equally. *See*, September 19, 2002, and October 2, 2003 letters from DBEDT – Office of Planning to Mitchell Imanaka and Gordon Arakaki. *See also*, County of Hawaii's Ordinance 02-111 (effective 9/25/02).

[31] 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 is made clear in HRS §46-4(c) (i.e., the specific delegation of power to adopt "reasonable standards" to achieve the purpose of the subsection), however, *not* the condominium property regimes law.

condominium property regimes law be used to ensure compliance with land *use* laws (e.g., HRS Chapter 205 and county zoning, subdivision, and building ordinances).[27]

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.[28] HRS §514A-1.6, passed by the Legislature in 2000, simply made this explicit in the condominium property regimes law.[29]

Analysis

The counties 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 attempting to craft a provision to prevent abuse of the condominium property regimes law as it relates to underlying land use laws, the Commission considered the following factors:

- Purpose of Condominium Property Regimes 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. As a consumer protection law, the primary purpose of Hawaii's condominium property regimes law is to make sure that buyers can 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 (i.e., proper *disclosure* of material facts).

- 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 condominium property regimes 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. In other words, the *ownership* interest in condominium property may be created without any approval or involvement of the Real Estate Commission.

Throughout the recodification process, the Commission tried to keep the condominium law (and the Real Estate Commission itself) true to its purposes while making it clear that HRS Chapter 205 and county land use laws control land use matters. Indeed, one of the Commission's guiding principles in the recodification is that problems should be fixed in the statutory provisions that created the problems in the first place. It does not appear to be necessary or appropriate to have blanket requirements in the recodified Hawaii condominium law that make the recordation of all condominium property regime declarations or sale of all condominium units 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.[30] The ordinances should hold condominium developments to the same standards as physically identical developments under different forms of ownership.[31] 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.

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.

§ -6 Supplemental county rules governing a condominium property regime. Whenever any county deems it proper, the county may adopt supplemental rules governing condominium property regimes established under this chapter in order to implement this program; provided that any of the supplemental rules adopted shall not conflict with this chapter or with any of the rules adopted by the commission to implement this chapter.

Real Estate Commission's Comment

1. This section, edited for clarity, is essentially identical to HRS §514A-45. The Commission believed that HRS §514A-45 heightened confusion over land *use* and land *ownership* issues, so it was not incorporated it in earlier drafts of the

recodification. The provision has been reinserted at the request of the counties and DBEDT-OP. (*See,* Comment #2 to § -5.)

§ -7 Construction against implicit repeal. 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.

Real Estate Commission's Comment

1. UCA/UCIOA §1-109 is the source of this section.

§ -8 Severability. 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.

Real Estate Commission's Comment

1. UCA/UCIOA §1-111 is the source of this section.

§ -9 Obligation of good faith. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

Real Estate Commission's Comment

1. UCA/UCIOA §1-113 is the source of this section.

§ -10 Remedies to be liberally administered. (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. Consequential, special, or punitive damages may not be awarded, however, except as specifically provided in this chapter or by other rule of law.

(b) Any deed, declaration, bylaw, or condominium map shall be liberally construed to facilitate the operation of the condominium property regime.

(c) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

Real Estate Commission's Comment

1. UCA/UCIOA §1-114 and California Civil Code §1370 are the sources of this section.

2. Subsection (b) is intended to *negate* any implication that the Hawaii Supreme Court holdings regarding restrictive covenants/equitable servitudes in Hiner v. Hoffman, 90 Haw. 188, 977 P.2d 878 (1999), and Fong v. Hashimoto, 92 Haw. 568, 994 P.2d 500 (2000), apply to 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).

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 appeared to ignore 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.[32]

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.

The *Restatement's* position on servitudes should be used by courts as a guide in resolving disputes over servitudes in condominiums and other common interest ownership communities.

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.[33]

Real Estate Commission's Comment

1. HRS §514A-2 (Chapter not exclusive), which reads as follows, has been deleted:

> "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."

HRS §514A-2 makes Hawaii's condominium law "supplemental" to other laws, with potentially disastrous results. A good example is the 2001 Nonprofit Corporations Act (Act 105, SLH 2001), as passed that year, if it were to be applied to nonprofit corporation condominium associations (or any other common interest ownership community associations).

§ -88 of the law as originally enacted would have allowed 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 property or to the individually owned property, or that enforces other servitudes burdening the property in the development or

[32] 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."

[33] State Savings & Loan Association v. Kauaian Development Company, Inc., et al., *supra* note 11, at 552 and 555.

neighborhood.

Other sections of the new nonprofit corporation law required notice that may have been different from existing provisions in declarations and bylaws. Many other provisions would have been inappropriate for nonprofit corporation condominium (and community) associations, but § -321 (a transition provision) could have been read to mandate application of the new law to all nonprofit corporations in existence on the effective date of the Act.

2. HRS §514A-7 (Condominium specialist; appointment; duties) has been moved from Part I (General Provisions) to Part III (Administration and Registration of Condominiums), § -63.