
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The recodified condominium law, which took
2 effect on July 1, 2006, is the result of Act 164, Session Laws
3 of Hawaii 2004, Act 93, Session Laws of Hawaii 2005, and Act
4 273, Session Laws of Hawaii 2006. Since July 1, 2006,
5 experience has confirmed that the recodified condominium law
6 needs minor amendments to help clarify and implement its
7 provisions. Therefore, the purpose of this Act is to make those
8 minor amendments to the recodified condominium law.

9 SECTION 2. Section 514B-3, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By adding a new definition to be appropriately inserted
12 and to read:

13 "Approval" means approval by a vote or written consent."

14 2. By amending the definitions of "managing agent" and
15 "resident manager" to read:

16 "Managing agent" means any person retained, as an
17 independent contractor, for the purpose of assisting the board
18 in managing the operation of the property.



1 "Resident manager" means any person retained as an employee
2 by the association to manage, on-site, the operation of the
3 property[-], including a site manager and general manager."

4 SECTION 3. Section 514B-22, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§514B-22 Applicability to preexisting condominiums.**

7 Sections 514B-4, 514B-5, 514B-32, 514B-35, 514B-41(c), 514B-46,
8 514B-72, and part VI, and section 514B-3 to the extent
9 definitions are necessary in construing any of those provisions,
10 and all amendments thereto, apply to all condominiums created in
11 this [State] state before July 1, 2006; provided that those
12 sections:

- 13 (1) Shall apply only with respect to events and
14 circumstances occurring on or after July 1, 2006; and
15 (2) Shall not invalidate existing provisions of the
16 declaration, bylaws, condominium map, or other
17 constituent documents of those condominiums if to do
18 so would invalidate the reserved rights of a developer
19 or be an unreasonable impairment of contract.

20 For purposes of interpreting this chapter, the terms
21 "condominium property regime" and "horizontal property regime"
22 shall be deemed to correspond to the term "condominium"; the



1 term "apartment" shall be deemed to correspond to the term
2 "unit"; the term "apartment owner" shall be deemed to correspond
3 to the term "unit owner"; and the term "association of apartment
4 owners" shall be deemed to correspond to the term
5 "association".

6 SECTION 4. Section 514B-38, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§514B-38 Common elements.** Each unit owner may use the
9 common elements in accordance with the purposes permitted under
10 the declaration, subject to:

11 (1) The rights of other unit owners to use the common
12 elements;

13 (2) Any owner's exclusive right to use of the limited
14 common elements as provided in the declaration;

15 (3) The right of the owners to amend the declaration to
16 change the permitted uses of the common elements;
17 provided that ~~[subject to [section] 514B-140(c)]~~:

18 (A) Changing common element open spaces or landscaped
19 spaces to other uses shall not require an
20 amendment to the declaration; and

21 (B) Minor additions to or alterations of the common
22 elements for the benefit of individual units are



1 permitted if the additions or alterations can be
2 accomplished without substantial impact on the
3 interests of other owners in the common elements,
4 as reasonably determined by the board;

5 (4) Any rights reserved in the declaration to amend the
6 declaration to change the permitted uses of the common
7 elements;

8 (5) The right of the board, on behalf of the association,
9 to lease or otherwise use for the benefit of the
10 association those common elements that the board
11 determines are not actually used by any of the unit
12 owners for a purpose permitted in the declaration.

13 Unless the lease is approved by the owners of at least
14 sixty-seven per cent of the common interest, the lease
15 shall have a term of no more than five years and may
16 be terminated by the board or the lessee on no more
17 than sixty days prior written notice; provided that
18 the requirements of this paragraph shall not apply to
19 any leases, licenses, or other agreements entered into
20 for the purposes authorized by section 514B-140(d);
21 and



1 (6) The right of the board, on behalf of the association,
2 to lease or otherwise use for the benefit of the
3 association those common elements that the board
4 determines are actually used by one or more unit
5 owners for a purpose permitted in the declaration.
6 The lease or use shall be approved by the owners of at
7 least sixty-seven per cent of the common interest,
8 including all directly affected unit owners that the
9 board reasonably determines actually use the common
10 elements, and the owners' mortgagees; provided that
11 the requirements of this paragraph shall not apply to
12 any leases, licenses, or other agreements entered into
13 for the purposes authorized by section 514B-140(d)."

14 SECTION 5. Section 514B-41, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) The common profits of the property shall be
17 distributed among, and the common expenses shall be charged to,
18 the unit owners, including the developer, in proportion to the
19 common interest appurtenant to their respective units, except as
20 otherwise provided in the declaration or bylaws. In a mixed-use
21 project containing units for both residential and nonresidential
22 use, the charges and distributions may be apportioned in a fair



1 and equitable manner as set forth in the declaration. Except as
2 otherwise provided in subsection (c) or the declaration or
3 bylaws, all limited common element costs and expenses, including
4 but not limited to maintenance, repair, replacement, additions,
5 and improvements, shall be charged to the owner or owners of the
6 unit or units to which the limited common element is appurtenant
7 in an equitable manner as set forth in the declaration.

8 Notwithstanding the preceding limitations, all costs and
9 expenses of items designated as limited common elements pursuant
10 to section 514B-35, including the costs and expenses of
11 maintenance, repair, replacement, additions, and improvements,
12 shall be charged to the owner or owners of the unit or units to
13 which the limited common elements are appurtenant."

14 SECTION 6. Section 514B-83, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) A developer's public report shall contain:

17 (1) The name and address of the project, and the name,
18 address, telephone number, and electronic mail
19 address, if any, of the developer or the developer's
20 agent;

21 (2) A statement of the deadline, pursuant to section
22 514B-89, for completion of construction or, in the



1 case of a conversion, for the completion of any
2 repairs required to comply with section 514B-5, and
3 the remedies available to the purchaser, including but
4 not limited to cancellation of the sales contract, if
5 the completion of construction or repairs does not
6 occur on or before the completion deadline;

7 (3) A breakdown of the annual maintenance fees, including
8 minimum reserve contributions, and the monthly
9 estimated cost for each unit, certified to have been
10 based on generally accepted accounting principles, and
11 a statement regarding when a purchaser shall become
12 obligated to start paying the fees pursuant to section
13 514B-41(b);

14 (4) A description of all warranties for the individual
15 units and the common elements, including the date of
16 initiation and expiration of any such warranties, or a
17 statement that no warranties exist;

18 (5) A summary of the permitted uses of the units and, if
19 applicable, the number of units planned to be devoted
20 to a particular use;

21 (6) A description of any development rights reserved to
22 the developer or others;



1 (7) A declaration, subject to the penalties set forth in
2 section 514B-69(b), that the project is in compliance
3 with all county zoning and building ordinances and
4 codes, and all other county permitting requirements
5 applicable to the project, pursuant to sections 514B-5
6 and 514B-32(a)(13); and

7 (8) Any other facts, documents, or information that would
8 have a material impact on the use or value of a unit
9 or any appurtenant limited common elements or
10 amenities of the project available for an owner's use,
11 or that may be required by the commission."

12 SECTION 7. Section 514B-106, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) [~~Within thirty days after the adoption~~] Prior to the
15 effective date of any proposed budget for the condominium, the
16 board shall [~~make available~~] send a copy of the budget to all
17 the unit owners [~~and shall notify each unit owner that the unit~~
18 ~~owner may request a copy of the budget~~]."

19 SECTION 8. Section 514B-122, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Minutes of meetings of the association shall be
22 approved at the next succeeding regular meeting or by the board,



1 within sixty days after the meeting, if authorized by the owners
2 at an annual meeting. If approved by the board, owners shall be
3 given a copy of the approved minutes [~~or notified of the~~
4 ~~availability of the minutes~~] within thirty days after approval."

5 SECTION 9. Section 514B-143, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§514B-143 Insurance.** (a) Unless otherwise provided in
8 the declaration or bylaws, the association shall purchase and at
9 all times maintain the following:

10 (1) Property insurance:

11 (A) On the common elements;

12 (B) Providing coverage for special form causes of
13 loss; and

14 (C) In a total amount of not less than the full
15 insurable replacement cost of the insured
16 property, less deductibles, but including
17 coverage for the increased costs of construction
18 due to building code requirements, at the time
19 the insurance is purchased and at each renewal
20 date;

21 (2) Commercial general liability insurance against claims
22 and liabilities arising in connection with the



1 ownership, existence, use, or management of the
2 property in a minimum amount of \$1,000,000, or a
3 greater amount deemed sufficient in the judgment of
4 the board;

5 (3) A fidelity bond, as follows:

6 (A) An association with more than five dwelling units
7 shall obtain and maintain a fidelity bond
8 covering persons, including the managing agent
9 and its employees who control or disburse funds
10 of the association, in an amount equal to \$500
11 multiplied by the number of units; provided that
12 the amount of the fidelity bond required by this
13 paragraph shall not be less than \$20,000 nor
14 greater than \$200,000; and

15 (B) All management companies that are responsible for
16 the funds held or administered by the association
17 shall be covered by a fidelity bond as provided
18 in section 514B-132(a)(3). The association shall
19 have standing to make a loss claim against the
20 bond of the managing agent as a party covered
21 under the bond; ~~and~~

22 and



1 (4) The board shall obtain directors and officers
2 liability coverage at a level deemed reasonable by the
3 board, if not otherwise limited by the declaration or
4 bylaws.

5 (b) If a building contains attached units, the insurance
6 maintained under subsection (a)(1), to the extent reasonably
7 available, shall include the units, the limited common elements,
8 except as otherwise determined by the board, and the common
9 elements. The insurance need not cover improvements and
10 betterments to the units installed by unit owners, but if
11 improvements and betterments are covered, any increased cost may
12 be assessed by the association against the units affected.

13 For the purposes of this section, "improvements and
14 betterments" means all decorating, fixtures, and furnishings
15 installed or added to and located within the boundaries of the
16 unit, including electrical fixtures, appliances, air
17 conditioning and heating equipment, water heaters, or built-in
18 cabinets installed by unit owners.

19 (c) If a project contains detached units, then
20 notwithstanding the requirement in this section that the
21 association obtain the requisite coverage, if the board
22 determines that it is in the best interest of the association to



1 do so, the insurance to be maintained under subsection (a)(1)
2 may be obtained separately for each unit by the unit owners;
3 provided that the requirements of subsection (a)(1) shall be
4 met; and provided further that evidence of such insurance
5 coverage shall be delivered annually to the association. In
6 such event, the association shall be named as an additional
7 insured.

8 (d) The board, in the case of a claim for damage to a unit
9 or the common elements, may:

- 10 (1) Pay the deductible amount as a common expense;
11 (2) After notice and an opportunity for a hearing, assess
12 the deductible amount against the owners who caused
13 the damage or from whose units the damage or cause of
14 loss originated; or
15 (3) Require the unit owners of the units affected to pay
16 the deductible amount.

17 (e) The declaration, bylaws, or the board may require the
18 association to carry any other insurance, including workers'
19 compensation, employment practices, environmental hazards, and
20 equipment breakdown, that the board considers appropriate to
21 protect the association, the unit owners, or officers,
22 directors, or agents of the association. Flood insurance shall



1 also be maintained if the property is located in a special flood
2 hazard area as delineated on flood maps issued by the Federal
3 Emergency Management Agency. The flood insurance policy shall
4 comply with the requirements of the National Flood Insurance
5 Program and the Federal Insurance Administration.

6 (f) Any loss covered by the property policy under
7 subsection (a)(1) shall be adjusted by and with the association.
8 The insurance proceeds for that loss shall be payable to the
9 association, or to an insurance trustee designated by the
10 association for that purpose. The insurance trustee or the
11 association shall hold any insurance proceeds in trust for unit
12 owners and secured parties as their interests may appear.

13 (g) The board, with the vote or written consent of a
14 majority of the owners, may require unit owners to obtain
15 reasonable types and levels of insurance. The liability of a
16 unit owner shall include but not be limited to the deductible of
17 the owner whose unit was damaged, any damage not covered by
18 insurance required by this subsection, as well as the
19 decorating, painting, wall and floor coverings, trim,
20 appliances, equipment, and other furnishings.

21 If the unit owner does not purchase or produce evidence of
22 insurance requested by the board, the directors may, in good



1 faith, purchase the insurance coverage and charge the reasonable
2 premium cost back to the unit owner. In no event is the
3 association or board liable to any person either with regard to
4 the failure of a unit owner to purchase insurance or a decision
5 by the board not to purchase the insurance for the owner, or
6 with regard to the timing of its purchase of the insurance or
7 the amounts or types of coverages obtained.

8 (h) The provisions of this section may be varied or waived
9 in the case of a project in which all units are restricted to
10 nonresidential use.

11 (i) Any association insurance policy provided under this
12 section shall contain a provision requiring the insurance
13 carrier, at the inception of the policy and on each anniversary
14 date of the policy, to provide the board of directors with a
15 written summary, in layman's terms, of the policy. The summary
16 shall include:

- 17 (1) The type of policy;
18 (2) A description of the coverage and its limits;
19 (3) The amount of annual premium; and
20 (4) Renewal dates.

21 The board of directors shall provide this information to each
22 apartment owner."



1 SECTION 10. Section 514B-148, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The association shall assess the unit owners to
4 either fund a minimum of fifty per cent of the estimated
5 replacement reserves or fund one hundred per cent of the
6 estimated replacement reserves when using a cash flow plan[+
7 ~~provided that a new association need not collect estimated~~
8 ~~replacement reserves until the fiscal year which begins after~~
9 ~~the association's first annual meeting]~~. For each fiscal year,
10 the association shall collect the amount assessed to fund the
11 estimated replacement for that fiscal year reserves, as
12 determined by the association's plan."

13 SECTION 11. Section 514B-153, Hawaii Revised Statutes, is
14 amended by amending subsection (e) to read as follows:

15 "(e) The managing agent, resident manager, or board shall
16 keep an accurate and current list of members of the association
17 and their current addresses, and the names and addresses of the
18 vendees under an agreement of sale, if [~~any-~~] the information is
19 provided by the members and vendees. The list shall be
20 maintained at a place designated by the board, and a copy shall
21 be available, at cost, to any member of the association as
22 provided in the declaration or bylaws or rules and regulations



1 or, in any case, to any member who furnishes to the managing
2 agent or resident manager or the board a duly executed and
3 acknowledged affidavit stating that the list:

4 (1) Will be used by the owner personally and only for the
5 purpose of soliciting votes or proxies, or for
6 providing information to other owners with respect to
7 association matters; and

8 (2) Shall not be used by the owner or furnished to anyone
9 else for any other purpose.

10 A board may prohibit commercial solicitations."

11 SECTION 12. This Act does not affect rights and duties
12 that matured, penalties that were incurred, and proceedings that
13 were begun, before its effective date.

14 SECTION 13. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 14. This Act shall take effect upon its approval.



Report Title:

Condominium Law

Description:

Makes amendments to the recodified condominium law in chapter 514B, Hawaii Revised Statutes, to clarify and improve implementation of its provisions. (HB3305 HD1)

HB3305 HD1 HMS 2008-2049

