



**HAWAII REVISED STATUTES**

**CHAPTER 514A**

**CONDOMINIUM PROPERTY REGIMES**

This law should be read in conjunction with Hawaii Revised Statutes Chapter 436B, Uniform Professional and Vocational Licensing Act, which is distributed separately.

This material can be made available for individuals with special needs. Please call the Professional and Vocational Licensing Division, DCCA at 586-2690, to submit your request.

UNOFFICIAL

ACT 223, SLH 2019 -

SECTION 2. Notwithstanding section 2 of Act 181, Session Laws of Hawaii 2017, and subject to section 3 of this Act, the following sections of chapter 514A, Hawaii Revised Statutes, shall remain operative in the form in which they read on December 31, 2018, until June 30, 2020, for the sole purpose of providing developers with sufficient time to update their developer's public reports and associated documents in order to qualify for the safe harbor provisions of section 45 of Act 181, Session Laws of Hawaii 2017, as amended by this Act. . .

**CHAPTER 514A**  
**CONDOMINIUM PROPERTY REGIMES**

Part I. General Provisions and Definitions

SECTION

- 514A-1 Title
- 514A-1.5 Applicability of chapter
- 514A-1.6 Conformance with county land use ordinances
- 514A-2 Chapter not exclusive
- 514A-3 Definitions
- 514A-4 Status of apartments
- 514A-5 Ownership of apartments
- 514A-6 Separate taxation
- 514A-7 Repealed

Part II. Creation, Alteration, and Termination of  
Condominiums

- 514A-11 Recordation and contents of declaration
- 514A-12 Copy of the floor plans to be filed
- 514A-13 Common elements
- 514A-13.4 Repealed
- 514A-13.5 Repealed
- 514A-13.6 Mailboxes for each dwelling required
- 514A-14 Parking stalls
- 514A-14.5 Ownership of parking stalls
- 514A-15 Common profits and expenses
- 514A-15.1 Common expenses; prior late charges
- 514A-15.5 Metering of utilities
- 514A-16 Liens against apartments; removal from lien; effect of part payment

- 514A-17 Contents of deeds or leases of apartments
- 514A-18 Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance or lease
- 514A-19 Merger of increments
- 514A-20 Condominium property regimes
- 514A-21 Removal from provisions of this chapter
- 514A-22 Repealed

Part III. Registration and Administration

- 514A-31 Repealed
- 514A-32 Questionnaire and filing fee
- 514A-33 Inspection
- 514A-34 Inspection expenses
- 514A-35 Waiver of inspection
- 514A-36 Public reports and registration fees
- 514A-37 Repealed
- 514A-38 Request for effective date or hearing by developer
- 514A-39 Repealed
- 514A-39.5 Repealed
- 514A-40 Final reports
- 514A-41 Supplementary public report
- 514A-42 True copies of public report; no misleading information
- 514A-43 Automatic expiration of public reports; exceptions
- 514A-44 Deposit of fees
- 514A-45 Supplemental regulations governing a condominium property regime
- 514A-46 Investigatory powers
- 514A-47 Cease and desist orders
- 514A-48 Power to enjoin
- 514A-49 Penalties
- 514A-50 Limitation of action

Part IV. Protection of Purchasers

- 514A-61 Disclosure requirements
- 514A-62 Copy of public report to be given to prospective purchaser
- 514A-63 Rescission rights
- 514A-64 Repealed
- 514A-64.5 Protection of purchasers' funds
- 514A-65 Escrow requirement
- 514A-66 Repealed
- 514A-67 Financing construction

- 514A-68 Misleading statements and omissions
- 514A-69 Remedies; sales voidable when and by whom
- 514A-70 Warranty against structural and appliance defects;  
notice of expiration required

Part V. Repealed

Part VI. Repealed

Part VII. Repealed

Part VIII. Repealed

## **PART I. GENERAL PROVISIONS AND DEFINITIONS**

**§514A-1 Title.** This chapter shall be known as the Condominium Property Act.

- §514A-1.5 Applicability of chapter.** (a) This chapter:
- (1) Shall not apply to condominiums created on or after July 1, 2006, or that are registered with the commission pursuant to part IV of chapter 514B; and
  - (2) On and after July 1, 2006, shall apply only to:
    - (A) Condominiums created prior to July 1, 2006, except as provided in subsection (b) and sections 514B-22 and 514B-23; and
    - (B) A developer's sale of condominiums in a project for which a notice of intention was filed with the commission prior to July 1, 2006, pursuant to section 514A-31, except where the developer elects to register an existing project with the commission under part IV of chapter 514B,

pursuant to section 9(b) of Act 93, Session Laws of Hawaii 2005.

(b) This chapter shall not apply to any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961, unless all of the owners and holders of liens affecting any of the apartments in the project have expressly declared that this chapter shall apply to the property, and shall govern the rights, interests, and remedies of all persons owning interests in or liens upon the property; provided that any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961, having seven or more apartments shall register with the commission and comply with the requirements pursuant to sections 514A-95.1 and 514A-132, except for the fidelity bond requirement. The express declaration shall be made through the execution and recordation of a declaration in form and content required to establish a condominium property regime pursuant to this chapter.

**§514A-1.6 Conformance with county land use ordinances.**

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 514A-45, 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 514A-11(13) or section 514A-40(b).

**§514A-2 Chapter not exclusive.** 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.

**§514A-3 Definitions.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

"Apartment" means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace, and patio.

"Apartment owner" means the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease registered under chapter 501 or recorded under chapter 502, a lessee of an apartment shall be deemed to be the owner thereof.

"Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and declaration.

"Commission" means the real estate commission of the state department of commerce and consumer affairs.

"Common elements", unless otherwise provided in the declaration, means and includes:

- (1) The land included in the condominium property regime, whether leased or in fee simple;
- (2) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building or buildings;
- (3) The basements, flat roofs, yards, gardens, recreational facilities, parking areas, and storage spaces;
- (4) The premises for the lodging or use of janitors and other persons employed for the operation of the property;
- (5) Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerators;
- (6) The elevators, escalators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
- (7) Such facilities as may be designated as common elements in the declaration; and
- (8) All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

"Common expense" means and includes:

- (1) Expenses of operation of the property; and
- (2) All sums designated common expenses by or pursuant to this chapter, the declaration or the bylaws.

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

"Common profits" means the balance of all income, rents, profits, and revenues from the common elements remaining after the deduction of the common expenses.

"Completion of construction" means the issuance by the appropriate county official of a certificate of completion.

"Condominium" means the ownership of single units, with common elements, located on property within the condominium property regime.

"Declaration" means the instrument by which the property is submitted to this chapter, as hereinafter provided, and such declaration as from time to time amended.

"Developer" means a person who undertakes to develop a real estate condominium project.

"Limited common elements" means and includes those common elements designated in the declaration as reserved for the use of a certain apartment or certain apartments to the exclusion of the other apartments; provided that no amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the apartment or apartments for the use of which such limited common elements are reserved.

"Majority" or "majority of apartment owners" means the owners of apartments to which are appurtenant more than fifty per cent of the common interests, and any specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

"Managing agent" means any person employed or retained for the purposes 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.

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

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

"Project" means:

- (1) A real estate condominium project; and
- (2) A plan or project whereby a condominium of two or more apartments located within the condominium property regime are offered or proposed to be offered for sale.

"Property" means and includes the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, whether leasehold or in fee simple, to the extent of the interest held therein by the owner or lessee submitting such interest to the condominium property regime, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the regime established by this chapter.

"To record" means to record in accordance with chapter 502, or to register in accordance with chapter 501.

All pronouns used herein include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.

**§514A-4 Status of apartments.** Each apartment, together with the common interest appertaining thereto, shall for all purposes constitute real property and may be individually conveyed, leased, or encumbered and be the subject of ownership, possession, or sale and for all other purposes be treated as if it were sole and entirely independent of the other apartment or apartments in the property of which it forms a part, and the corresponding individual titles and interests shall be recordable.

**§514A-5 Ownership of apartments.** The apartment owner is entitled to the exclusive ownership and possession of the apartment. Any apartment may be jointly or commonly owned by more than one person.

**§514A-6 Separate taxation.** The laws relating to home exemptions from state property taxes are applicable to the individual apartments, which shall have the benefit of home exemption in those cases where the owner of single-family



dwelling would qualify. Property taxes assessed by the State shall be assessed on and collected on the individual apartments and not on the property as a whole. Without limitation of the foregoing, each apartment and the common interest appertaining thereto shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.

**§514A-7 REPEALED [January 1,2019]**

**PART II. CREATION, ALTERATION, AND  
TERMINATION OF CONDOMINIUMS**

**§514A-11 Recordation and contents of declaration.** The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration to which section 514A-20 refers shall express the following particulars:

- (1) Description of the land, whether leased or in fee simple, on which the building or buildings and improvements are or are to be located;
- (2) Description of the building or buildings, stating the number of stories and basements, the number of apartments, and the principal materials of which it or they is or are constructed or to be constructed;
- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, immediate common element to which it has access, designated parking stall if considered a limited common element, and any other data necessary for its proper identification;
- (4) Description of the common elements;
- (5) Description of the limited common elements, if any, stating to which apartments their use is reserved;

- (6) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting;
- (7) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use;
- (8) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of the person which shall be within the county in which the property is located;
- (9) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, or restore the property in the event of damage or destruction of all or part of the property;
- (10) Any further details in connection with the property that the person executing the declaration may deem desirable to set forth consistent with this chapter;
- (11) The method by which the declaration may be amended, consistent with this chapter; provided that an amendment to the declarations of all condominium projects existing as of May 22, 1991, and all condominium projects created thereafter shall require a vote or written consent of seventy five per cent of all apartment owners, except as otherwise provided in this chapter; provided further that the declarations of condominium projects having five or fewer apartments may provide for the amendment thereof by a vote or written consent of more than seventy five per cent of all apartment owners;
- (12) Description as to any additions, deletions, modifications, and reservations as to the property, including without limitation provisions concerning the merger or addition of later phases of the project. To the extent provided in the declaration, an amendment to the declaration that is made to implement those additions, deletions, modifications, reservations, or merger provisions shall require the vote or written consent of only the declarant or such percentage of apartment owners as is provided in the declaration; and
- (13) A declaration subject to the penalties set forth in section 514A-49(b) that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514A-1.6, and

specifying in the case of a property which includes one or more existing structures being converted to condominium status:

- (A) Any variances which have been granted to achieve such compliance; and
- (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal non-conforming uses or structures;

except that a property that is registered pursuant to section 514A-31 shall instead provide this declaration pursuant to [section] 514A-40.

**§514A-12 Copy of the floor plans to be filed.**

Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and, if construction of the building or buildings is completed, as approved by the county or city and county officer. If the plans do not include a statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, there shall be recorded within thirty days from the date of completion of the building or buildings as "date of completion" is defined in section 507 43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, which amendment shall require only the vote or written consent of the declarant or such other person or persons as are provided in the

declaration. The plans shall be kept by the recording officer as provided by rules adopted by the department of land and natural resources, pursuant to chapter 91, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "apartment ownership," with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.

**§514A-13 Common elements.** (a) Each apartment shall have appurtenant thereto a common interest as expressed in the declaration.

(b) The common interest appurtenant to each apartment as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded, except as provided in sections 514A-11(12) and 514A-13.4. An amendment which subdivides or consolidates apartments and reapportions the common interest appurtenant to the subdivided or consolidated apartment shall, to the extent provided in the declaration, require the vote or written consent of only the apartment owners of the subdivided or consolidated apartments, their mortgagees, and such other percentage of apartment owners as the declaration may provide. The common interest shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(c) The common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as otherwise expressed in this chapter. Any provision to the contrary is void.

(d) Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject to:

- (1) The right of the board of directors, upon the approval of the owners of seventy-five per cent of the common interests, except as provided in section 514A-13.4, to change the use of the common elements;
- (2) The right of the board of directors, on behalf of the association of apartment owners, to lease or otherwise use for the benefit of the association of apartment

owners those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the board of directors; provided that, except for any leases, licenses, or other agreements entered into for the purposes authorized by section 514A-13.4, unless the approval of the owners of seventy five per cent of the common interest is obtained, any such lease shall not have a term exceeding five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice;

- (3) The right of the board of directors to lease or otherwise use for the benefit of the association of apartment owners those common elements not falling within paragraph (2), upon obtaining:
  - (A) Except as provided in section 514A-13.4, the approval of the owners of seventy-five per cent of the common elements, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of limited common elements; and
  - (B) The approval of all mortgagees of record on apartments with respect to which owner approval is required by subparagraph (A), if such lease or use would be in derogation of the interest of such mortgagees; and
- (4) The exclusive use of the limited common elements as provided in the declaration.

(e) (The operation of the property shall be carried out as provided herein and in the declaration and the bylaws.

(f) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

(g) An undivided interest in the land included in the common elements equal to the apartment's common interest may be leased to the apartment owner and the apartment and other common elements may be deeded to the apartment owner with a right of removal; and, this shall not constitute a division or partition of the common elements, or a separation of the common interest from the apartment to which it appertains; nor shall any such deed be construed as conveying title to the land included in the common elements.

(h) Lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar areas not located inside apartments intended for residential use or the conduct of a business shall constitute common elements unless designated as limited common elements by the declaration.

**§514A-13.4 REPEALED [January 1,2019]**

**§514A-13.5 REPEALED [January 1,2019]**

**§514A-13.6 Mailboxes for each dwelling required.** Any:

- (1) Condominium:
  - (A) Built;
  - (B) Rehabilitated, reconstructed, or otherwise improved to the extent that the value of the work required equals at least one per cent of the appraised value of the building; or
- (2) Existing building converted to condominium status; after May 18, 1984, shall provide at least one mail box for each dwelling unit.

**§514A-14 Parking stalls.** Notwithstanding any provision of the declaration, apartment owners shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the declaration and respective apartment leases or deeds involved. The amendment need only be signed and approved by the lessor (in the case of a leasehold project) and the owners (and their respective mortgagees if any) of the apartments whose parking stalls are being changed. The amendment shall be effective only upon recording or filing of the same of record with the bureau of conveyances.

**§514A-14.5 Ownership of parking stalls.** (a) Owners of apartments intended for use for dwelling purposes shall have the right to own or have designated parking stalls to be appurtenant

to their respective apartments. Where a developer or association of apartment owners owns parking stalls and rents parking stalls to the owners of the apartments, a majority of these apartment owners may request the appointment of an appraiser to establish a price for each parking stall which may then be negotiated for purchase by the respective owners.

(b) The sales contract for any apartment intended for use for dwelling purposes and newly constructed after April 29, 1986, shall include ownership of a parking stall or designate a stall to be appurtenant to the apartment as a limited common element.

(c) This section shall not apply:

- (1) To apartments developed under chapter 201H, 346, or 356D;
- (2) To apartments in a mixed-use project developed under chapter 206E that has a shared parking program approved by the Hawaii community development authority; provided that such a program shall require the availability of the use of not less than one parking space per apartment; and
- (3) To apartments designated in the declaration of condominium property regime for hotel, time share, transient vacation rental, or commercial use.

**§514A-15 Common profits and expenses.** (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners, including the developer, in proportion to the common interest appurtenant to their respective apartments; provided that in a mixed use project containing apartments for both residential and commercial use, such charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration; provided further that all limited common elements costs and expenses, including but not limited to, maintenance, repair, replacement, additions and improvements shall be charged to the owner of the apartment to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.

(b) An apartment owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to his apartment at the time the certificate of occupancy relating to his apartment is issued by the appropriate county agency; provided that a developer may assume all the actual common expenses in a residential project containing no mixed commercial and residential use, by stating

in the abstract as required by section 514A-61 that the apartment owner shall not be obligated for the payment of his respective share of the common expenses until such time the developer files an amended abstract with the commission which shall provide, that after a date certain, the respective apartment owner shall thereafter be obligated to pay for his respective share of common expenses that is allocated to his apartment. The amended abstract shall be filed at least thirty days in advance with the commission with a copy of the abstract being delivered either by mail or personal delivery after the filing to each of the apartment owners whose maintenance expenses were assumed by the developer.

**§514A-15.1 Common expenses; prior late charges.** No association of apartment owners shall deduct and apply portions of common expense payments received from an apartment owner to unpaid late fees (other than amounts remitted by an apartment owner in payment of late fees) unless it delivers or mails a written notice to such apartment owner, at least seven days prior to the first such deduction, which states that:

- (1) Failure to pay late fees will result in the deduction of late fees from future common expense payments, so long as a delinquency continues to exist.
- (2) Late fees shall be imposed against any future common expense payment which is less than the full amount owed due to the deduction of unpaid late fees from such payments.

**§514A-15.5 Metering of utilities.** (a) Notwithstanding the provisions of section 514A-15, commercial apartments in mixed-use projects containing apartments for both residential and commercial use shall have a separate meter, or calculations shall be made, or both, to determine the use by the commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage and the cost of the utilities shall be paid by the owners of the commercial units; provided that the apportionment of the charges among owners of commercial apartments shall be done in a fair and equitable manner as set forth in the declaration or bylaws.

Notwithstanding any provision to the contrary in this chapter or in a project's declaration or bylaws of an association of apartment owners, the board of directors may authorize the installation of separate meters to determine the



use by each of the residential and commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage; provided that the cost of installing the meters shall be paid by the association.

(b) Notwithstanding any approval requirements and spending limits contained in the declaration or bylaws of an association of apartment owners, the board of directors of any association of apartment owners may authorize the installation of meters to determine the use by each residential or commercial apartment of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage; provided that the cost of installing the meters shall be paid by the association. The cost of metered utilities shall be paid by the owners of each apartment based on actual consumption and may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to these owners for the cost of metered utilities.

**§514A-16 Liens against apartments; removal from lien; effect of part payment.** (a) Subsequent to substantial completion of the project and the recordation of the first conveyance or lease of an apartment in the project to a bona fide purchaser, and thereafter while the property remains the subject of a condominium property regime, no lien shall arise or be created against the common elements. Following such completion and first recordation, liens may arise or be created only against the several apartments and their respective common interests.

During such period while:

- (1) The developer retains ownership of any apartment other than:
  - (A) The mere reservation of legal title under an agreement of sale to a bona fide purchaser; and
  - (B) The apartment in respect of which a binding contract of sale has been entered into with a bona fide purchaser but which has not, at the time of filing of the application of a mechanic's lien, closed escrow; or
- (2) Any other person retains ownership of any apartment prior to the first conveyance or lease of such apartment to a bona fide purchaser, mechanics' and materialmen's liens may arise or be created for labor or material furnished in project construction performed before the completion of construction, and such liens shall affect every apartment and its

respective common interests so retained until released or until the period for making application for such liens has expired without any such application having been filed.

(b) Labor performed on or materials furnished to an apartment shall not be the basis of a lien pursuant to part II of chapter 507 against the apartment of any apartment owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. No labor performed on or materials furnished to the common elements shall be the basis of a lien thereon.

**§514A-17 Contents of deeds or leases of apartments.** Deeds or leases of apartments shall include the following particulars:

- (1) Description of the land as provided in section 514A-11, or incorporation by reference of the description in the declaration, or the post office address of the property, including in either case an appropriate reference to the recording of the declaration.
- (2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification.
- (3) Statement of the use for which the apartment is intended and restrictions on its use.
- (4) The common interest appertaining to the apartment.
- (5) All encumbrances on the apartment and any further details which the grantor and grantee, or lessor and lessee, deem desirable to set forth consistent with the declaration and this chapter.

**§514A-18 Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance or lease.** At the time of the first conveyance or lease of each apartment, every mortgage and other lien, except any improvement district or utility assessment, affecting both the apartment and any other apartment shall be paid and satisfied of record, or the apartment being conveyed or leased and its common interest shall be released therefrom by partial release duly recorded.

**§514A-19 Merger of increments.** (a) Two or more condominium projects, whether or not adjacent to one another, but which are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the apartments in the merged projects. The merger documents may provide for a single association of apartment owners and board of directors for the merged projects and for a sharing of the common expenses of the projects among all the owners of the apartments in the merged projects.

(b) Upon the recording in the office of the assistant registrar of the land court of the State of Hawaii of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the assistant registrar shall cancel all existing certificates of title for the apartments in the condominium projects being merged and shall issue new certificates of title for the apartments in the merged project, covering all of the land of the merged condominium projects. The new certificates of title for the apartment in the merged condominium project shall describe, among other things, the new undivided interest in the land appertaining to each apartment in the merged condominium projects. The certificate of merger shall at least set forth all of the apartments of the merged condominium projects, their new undivided interest, and their current certificate of title numbers in the common elements of the merged condominium projects.

**§514A-20 Condominium property regimes.** Whenever the sole owner or all of the owners including all of the lessees of a property expressly declare, through the execution and recordation of a master deed, together with a declaration, which declaration shall set forth the particulars enumerated by section 514A-11, the sole owner's or their desire to submit the property to the regime established by this chapter, there shall thereby be established a condominium property regime with respect to the property, and this chapter shall be applicable to the property. If the master deed is already recorded, the recordation of the declaration is sufficient to achieve the same result.

**§514A-21 Removal from provisions of this chapter.** (a)  
If:

- (1) Apartment owners owning not less than eighty per cent in number of apartments in the aggregate, and owning apartments to which are appurtenant not less than eighty per cent of the common interests, execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of the apartments of the apartment owners executing such instrument consent thereto by instruments duly recorded, or
- (2) The common elements suffer substantial damage or destruction and such damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof or the apartment owners have earlier determined as provided in the declaration that such damage or destruction shall not be rebuilt, repaired, or restored,

then, and in either event, the property shall be subject to an action for partition by any apartment owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in proportion to their respective common interests, provided that no payment shall be made to an apartment owner until there has first been paid off out of the owner's share of such net proceeds all liens on the owner's apartment. Upon such sale, the property ceases to be the subject of a condominium property regime or subject to this chapter.

(b) All of the apartment owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto, by instruments duly recorded. Upon such removal from this chapter, the property, or the part of the property designated in the instrument, ceases to be the subject of a condominium property regime or subject to this chapter, and is deemed to be owned in common by the apartment owners in proportion to their respective common interests.

(c) Notwithstanding subsections (a) and (b); if the apartment leases for a leasehold project (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

- (1) The estate and interest of the apartment owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the project;

- (2) The apartment owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the apartment owner's leasehold interest;
- (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;
- (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the apartment owners of the buildings and improvements in accordance with their interests; and
- (5) The apartment lease rents are reduced in proportion to the land so acquired or possessed;

then, the lessor and the declarant shall file an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the apartment owners or their respective mortgagees shall not be required, if the land so acquired or possessed constitutes no more than five per cent of the total land of the project. Upon the filing of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or this chapter. The lessor shall notify each apartment owner in writing of the filing of the amendment and the rent abatement to which the apartment owner is entitled. The lessor shall provide the association of apartment owners, through its board of directors, with a copy of the amendment.

For purposes of this subsection, the acquisition or right to possession may be effected:

- (1) By a taking or condemnation of property by the State or a county pursuant to chapter 101;
- (2) By the conveyance of property to the State or county under threat of condemnation; or
- (3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.

**§514A-22 REPEALED [January 1,2019]**

### **PART III. REGISTRATION AND ADMINISTRATION**

**§514A-31 REPEALED**

**§514A-32 Questionnaire and filing fee.** The notice of intention shall be accompanied by:

- (1) A nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (2) A copy of a questionnaire properly filled in; and
- (3) Such documents and information concerning the project as may be specified by the commission.

The questionnaire shall be in such form and content as prescribed by the commission.

**§514A-33 Inspection.** After appropriate notification has been made or additional information has been received pursuant to sections 514A-31, 514A-32, 514A-39.5, 514A-40, or 514A-41, an inspection of the condominium project may be made by the commission.

**§514A-34 Inspection expenses.** When an inspection is to be made of projects, the developer shall be required to pay an amount estimated by the commission to be necessary to cover the actual expenses of the inspection, not to exceed \$500 a day for each day consumed in the examination of the project plus reasonable first class transportation expenses.

**§514A-35 Waiver of inspection.** The commission may waive an inspection when in its opinion, a preliminary, contingent final, final, or supplementary public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries.

**§514A-36 Public reports and registration fees.** (a) Concurrently with its filing with the commission of the notification of intention pursuant to sections 514A-31 and 514A-32, the developer shall prepare and submit to the commission a

public report disclosing all material facts pertaining to the project. The public report shall be in such form and content as prescribed by the commission. Such public report may not be used for the purpose of selling any apartments in the project unless and until the commission issues an effective date for the public report. The commission's issuance of an effective date for a public report shall not be construed to constitute the commission's approval or disapproval of the project, or the commission's representation that all material facts concerning the project have been fully or adequately disclosed, or the commission's judgment of the value or merits of the project. No effective date for a final public report shall be issued until execution and recordation of the deed or master lease, the declaration, the bylaws, and floor plans, as provided by sections 514A-12, 514A-20, and 514A-81.

(b) The commission may determine when a public report will supersede the public reports previously issued for the project.

(c) The developer shall be assessed nonrefundable fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, for each effective date requested for a public report, including extensions, if any.

**§514A-37 REPEALED [January 1,2019]**

**§514A-38 Request for effective date or hearing by developer.** The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of such review by private consultants shall be borne by the developer. If an effective date for a public report is not issued within a reasonable time after compliance with registration requirements, or if the developer is materially grieved by the form or content of the public report, the developer may, in writing, request and shall be given a hearing by the commission within a reasonable time after receipt of request.

**§514A-39 REPEALED**

**§514A-39.5 REPEALED [January 1,2019]**

**§514A-40 Final reports.** (a) No effective date shall be issued by the commission for a final public report prior to completion of construction of the project, unless there is filed with the commission:

- (1) A statement showing all costs involved in completing the project, including land payments or lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the project;
- (2) An estimate of the time of completion of construction of the total project;
- (3) Satisfactory evidence of sufficient funds to cover the total project cost from purchasers' funds, equity funds, interim or permanent loan commitments, or other sources;
- (4) A copy of the executed construction contract;
- (5) Satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the commission;
- (6) If purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the trust fund required under section 514A-67 for financing construction, which expressly shall provide for:
  - (A) No disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for disbursements that have been approved or certified for payment by the project lender or an otherwise qualified financially disinterested person; and
  - (B) No disbursements from the balance of the trust fund after payment of construction costs pursuant to paragraph (A) until construction of the project has been completed and the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute;
- (7) A parking plan to include designated residence parking stalls and guest parking, if any, exclusive of



assignment to individual apartments, if parking stalls are to be considered limited common elements;

- (8) A copy of the disclosure statement required by section 514A-62(f)(3) if an effective date for a contingent final public report has been issued by the commission and the report has not expired; and
- (9) A declaration subject to the penalties set forth in section 514A-49(b) that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to section 514A-1.6.

(b) No effective date shall be issued by the commission for a final public report for a project that includes one or more existing structures being converted to condominium status unless there is filed with the commission all items required under subsection (a) and:

- (1) A statement signed by an appropriate county official that the project is in compliance with all zoning and building ordinances and codes applicable to the project, and specifying, if applicable:
  - (A) Any variances which have been granted to achieve such compliance; and
  - (B) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes;
- (2) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the project; and
- (3) A statement by the declarant of the expected useful life of each item reported on in paragraph (2) or a statement that no representations are made in that regard; provided that this paragraph and paragraph (2) apply only to apartments that may be occupied for residential use and have been in existence for five years or more.

(c) No effective date shall be issued by the commission for a final public report until the developer, pursuant to section 514B-72, has paid into the condominium education trust fund established under section 514B-71 a nonrefundable fee of \$5 for each apartment in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules

adopted by the director of commerce and consumer affairs pursuant to chapter 91.

**§514A-41 Supplementary public report.** (a) If after the effective date has been issued by the commission for a public report, any circumstance occurs which would render the public report misleading as to purchasers in any material respect, the developer shall stop all offers of sale and sales and immediately submit to the commission a supplementary public report, together with such supporting information as may be required by the commission, to update the information contained in the public report, accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Offers of sale and sales shall not resume until an effective date has been issued by the commission for the supplementary public report. The developer shall provide all prospective purchasers with a true copy of the supplementary public report and all prior public reports not superseded by the supplementary public report.

(b) The commission may determine when a supplementary public report will supersede the public reports previously issued for the project.

(c) Notwithstanding the provisions of this section, the rescission rights, if any, of a purchaser shall be governed exclusively by sections 514A-62 and 514A-63. This does not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies.

(d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

**§514A-42 True copies of public report; no misleading information.** The public reports given by the developer to

prospective purchasers shall be an exact reproduction of the public report for which the commission has issued an effective date. All documents (including the public report) prepared by or for the developer and submitted to the commission in connection with the developer's registration of the project, and all information contained in such documents, shall be true, complete and accurate in all respects, and shall not contain any misleading information, or omit any information which would render the information or documents submitted to the commission misleading in any material respect.

**§514A-43 Automatic expiration of public reports; exceptions.** (a) Except as provided in section 514A-39.5, a public report shall expire thirteen months after the effective date of the report. The commission, upon submission of a written request for an extension by the developer at least thirty calendar days prior to the expiration date, together with such supporting information as may be required by the commission, a review of the registration, and after payment of a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, may issue an order extending the effective date of the preliminary, final, or supplemental public report.

(b) The commission may issue an order that the final public report for a two-apartment condominium project shall have no expiration date, provided that the developer submits to the commission:

- (1) A written request for such an order not later than thirty calendar days prior to the next expiration date of the final public report;
- (2) Satisfactory evidence that one or both apartments are either retained by the developer, or conveyed to an irrevocable trust to benefit a spouse or family member of the developer. A family member is anyone related by blood, descent, or adoption; and
- (3) Payment of a nonrefundable fee as provided by rules adopted by the department of commerce and consumer affairs pursuant to chapter 91.

The final report shall be subject to the supplemental public report requirements as provided in section 514A-41(a).

The developer receiving an order under this subsection shall provide written notification to the commission within thirty calendar days of any subsequent sale and conveyance of either apartment to any person.

**§514A-44 Deposit of fees.** All fees collected under this chapter shall, unless otherwise provided in this chapter, be deposited by the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).

**§514A-45 Supplemental regulations governing a condominium property regime.** Whenever they deem it proper, the commission, the county councils of the various counties or the city council of the city and county of Honolulu may adopt supplemental rules and regulations governing a condominium property regime established under this chapter in order to implement this program; provided that any of the supplemental rules and regulations adopted shall not conflict with this chapter or with any of the rules and regulations adopted by the commission to implement this chapter.

**§514A-46 Investigatory powers.** If the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-134, or 514B-72, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association of apartment owners, the board of directors, the managing agent, the real estate broker, the real estate salesperson, the purchaser, or the developer. For the purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and shall make the records accessible to the commission upon reasonable notice and demand.

**§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,

514A-95.1, 514A-97, 514A-98, 514A-134, or 514B-72, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or the rules of the commission charged in the complaint. If upon the hearing the commission is of the opinion that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.

**§514A-48 Power to enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-134, or 514B-72, or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

**§514A-49 Penalties.** (a) Any person who violates or fails to comply with section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-105, 514A-134, or 514B-72 is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under section 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-

105, or 514B-72 shall be punished by a fine not exceeding \$10,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.

**§514A-50 Limitation of action.** No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.

#### **PART IV. PROTECTION OF PURCHASERS**

**§514A-61 Disclosure requirements.** (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or the developer's agent and of the project manager or the project manager's agent;
- (2) A breakdown of the annual maintenance fees and the monthly estimated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;
- (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties; and if no warranties exist, the developer shall state that no warranties exist;
- (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed-use project containing apartments for both residential and hotel use;
- (5) A statement of the extent of commercial or other nonresidential development in the project.

(b) In the case of a project which includes one or more existing structures being converted to condominium status:

- (1) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
- (2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard;
- (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations;
- (4) A statement whether the project is on a lot, or has structures or uses, which do not conform to present zoning requirements;

provided that paragraphs (1), (2), and (3) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years.

(c) This section shall be administered by the commission. The commission may waive the requirements of subsections (a) and (b) if the information required to be contained in the disclosure abstract is included in the commission's public report on the project.

(d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

**§514A-62 Copy of public report to be given to prospective purchaser.** (a) The developer (or any other person offering any apartment in a condominium project prior to completion of its construction) shall not enter into a contract or agreement for the sale or resale of an apartment that is binding upon any prospective purchaser until:

- (1) The commission has issued an effective date for either a contingent final public report or a final public report on the project, and the developer has delivered, or caused to be delivered, to the prospective purchaser, either personally or by registered or certified mail with return receipt requested, a true copy of either the contingent final public report or the final public report together with a true copy of all prior public reports on the project, if any, that have not been previously delivered to such prospective purchaser; except that such prior public reports need not be delivered to the prospective purchaser if the contingent final public report or the final public report supersedes such prior public reports. If, prior to the entering into of such contract or agreement for sale or resale, the commission, subsequent to its issuance of an effective date for the contingent final public report or the final public report, has issued an effective date for a supplementary public report on the project, then a true copy of such supplementary public report shall also be delivered to such prospective purchaser in the same manner as the contingent final public report or the final public report, except that if the supplementary public report supersedes all prior public reports on the project, then only the supplementary public report need be delivered to the prospective purchaser;
- (2) The prospective purchaser has been given an opportunity to read the report or reports; and
- (3) The prospective purchaser (A) executes the form of the receipt and notice set forth in subsection (d); and (B) waives the prospective purchaser's right to cancel; provided that if the prospective purchaser does not execute and return the receipt and notice within thirty days from the date of delivery of such reports, or if the apartment is conveyed to the prospective purchaser prior to the expiration of such thirty day period, the prospective purchaser shall be deemed to have receipted for the reports and to have waived the prospective purchaser's right to cancel.

(b) The receipts and notices taken hereunder shall be kept on file in possession of the developer (or such other person as may offer any apartment in a condominium project prior to completion of its construction), and shall be subject to inspection at a reasonable time by the commission or its



deputies, for a period of three years from the date the receipt and notice was taken.

(c) Unless such right has previously been waived pursuant to subsection (a), a prospective purchaser shall have the right to cancel any agreement for the purchase or reservation of an apartment at any time prior to the earlier of:

- (1) The conveyance of the apartment to the prospective purchaser; or
- (2) Midnight of the thirtieth day following the date of delivery of the first of either the contingent final public report or the final public report to such purchaser,

and, upon any such cancellation, shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

(d) Whenever a contingent final public report, final public report, or supplementary public report is delivered to a prospective purchaser pursuant to subsection (a), two copies of the receipt and notice set out below shall also be delivered to such purchaser, one of which may be used by the purchaser to cancel the transaction. Such receipt and notice shall be printed in capital and lower case letters of not less than twelve point type on one side of a separate statement. The receipt and notice shall be in the following form:

"RECEIPT FOR PUBLIC REPORT(S) AND NOTICE OF RIGHT TO CANCEL

I acknowledge receipt of the Developer's (Preliminary, Contingent Final, Final, and Supplementary) Public Report(s) and Disclosure Abstract, contained in the public report, in connection with my purchase of apartment(s) (insert apartment numbers) in the (insert name of condominium project) condominium project.

I understand that I have a legal right under Hawaii law to cancel my purchase, if I desire to do so, without any penalty or obligation within thirty days from the date the above Public Report or Reports were delivered to me. If I cancel, I understand that I will be entitled to receive the refund of any down payment or deposit, less any escrow cancellation fees and other costs, up to \$250.

If I decide to cancel, I understand that I can do so by notifying (insert name of seller) at (insert address of seller) by mail or telegram sent before: (1) the conveyance of my apartment(s) to me; or (2) midnight of the thirtieth day after delivery of the Public Report(s) to me, whichever is earlier.

If I send or deliver my written notice some other way, it must be delivered to the above address no later than that time. I understand that I can use any written statement that is signed and dated by me and states my intention to cancel, or I may use this notice by checking the appropriate box and by signing and dating below.

I understand that if I do not act within the above thirty-day period or if the apartment is conveyed to me within the above thirty day period, I will be considered to have executed this receipt and to have waived my right to cancel my purchase. I also understand that I can waive my right to cancel by checking the appropriate box, by signing and dating below, and by returning this notice to (insert name of seller).

I HAVE RECEIVED A COPY OF:

(1) THE DEVELOPER'S (PRELIMINARY, CONTINGENT FINAL, FINAL, AND SUPPLEMENTARY) PUBLIC REPORT(S) ON (insert name of condominium project); AND

(2) THE DISCLOSURE ABSTRACT CONTAINED IN THE PUBLIC REPORT.

---

Purchaser's signature

---

Date

---

I HAVE HAD AN OPPORTUNITY TO READ THE PUBLIC REPORT(S) AND

[ ] I WAIVE MY RIGHT TO CANCEL.

[ ] I HEREBY EXERCISE MY RIGHT TO CANCEL.

---

Purchaser's signature

---

Date"

(e) No obligation to purchase an apartment under any agreement for the purchase or reservation of an apartment entered into prior to the purchaser's receipt of either a contingent final public report or a final public report is enforceable against the purchaser under such agreement.

(f) Where a developer has delivered to a purchaser a contingent final public report and the purchaser has previously waived the purchaser's right to cancel the purchaser's agreement for the purchase or reservation of an apartment pursuant to this section:

(1) The issuance of an effective date for a final public report prior to the expiration of the contingent final public report shall not affect the enforceability of the purchaser's obligations under the purchaser's agreement for the purchase of an apartment;

- (2) The developer shall not be required to deliver to the purchaser the final public report for the project and receipt and notice set forth in subsection (d); and
- (3) The developer shall promptly deliver to the purchaser a disclosure statement informing them that the commission has issued an effective date for the final public report and containing all information contained in the final public report that is not contained in the contingent final public report.

(g) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.

**§514A-63 Rescission rights.** (a) Except for any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the declaration, a purchaser shall have the right to rescind a sale made under a binding contract if there is a material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use.

(b) A purchaser's right of rescission under subsection (a) shall be waived upon (1) delivery to such purchaser, either personally or by registered or certified mail, return receipt requested, of a disclosure document which describes the material change and contains a provision for such purchaser's written approval or acceptance of such change, and (2) such purchaser's written approval or acceptance of the material change, or the lapse of ninety days since such purchaser has accepted the apartment, or the occupancy of the apartment by such purchaser; provided that if such purchaser does not rescind the contract or execute and return the written approval or acceptance of such change as provided in the disclosure document within thirty days from the date of delivery of such disclosure document, such

purchaser shall be deemed to have approved and accepted such change; provided further that the deemed approval and acceptance shall be effective only if at the time of delivery of the disclosure document, such purchaser is notified in writing of the fact that such purchaser will be deemed to have approved and accepted the change upon such purchaser's failure to act within the thirty-day period; provided further that if, prior to delivery of such disclosure document, ninety days have lapsed since such purchaser has accepted the apartment, or such purchaser has occupied the apartment, then such purchaser's right of rescission under subsection (a) shall not be waived unless such purchaser shall execute the written approval or acceptance of such change as provided in the disclosure document within thirty days from the date of delivery of such disclosure document or such purchaser is deemed to have approved and accepted such change as set forth above. A copy of the form of disclosure document shall be delivered to the commission prior to delivery to purchasers.

(c) In the event of rescission pursuant to the provisions of this section, a purchaser shall be entitled to a prompt and full refund of any moneys paid.

(d) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies.

#### **§514A-64 REPEALED**

**§514A-64.5 Protection of purchasers' funds.** (a) If the commission issues an effective date for a contingent final public report for a project, the escrow agent shall deposit all purchasers' funds in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. The escrow agent shall not disburse the purchasers' funds from the account until the commission issues an effective date for a final public report for the project.

(b) If the commission does not issue an effective date for a final public report for a project by the date on which the project's contingent final public report expires, then the developer shall promptly notify all purchasers thereof by certified mail and the developer or the purchaser, after the expiration of the contingent final public report, may rescind the purchaser's sales contract by giving written notice thereof

to the other. In the event of rescission pursuant to this subsection a purchaser shall be entitled to a prompt and full refund of the purchaser's entire deposit together with all interest earned thereon, reimbursement of any required escrow fees, and, if the developer required the purchaser to secure a financing commitment, the purchaser shall also be entitled to reimbursement by the developer of any fees the purchaser incurred in securing that financing commitment.

(c) If the commission issues an effective date for a contingent final public report for a project, the following notice shall be included in the contingent final public report and the receipt and notice required under section 514A-62(d):

"The effective date for the Developer's Contingent Final Public Report was issued before the Developer submitted to the Real Estate Commission: the executed and recorded deed or master lease for the project site; the executed construction contract for the project; the building permit; satisfactory evidence of sufficient funds to cover the total project cost; or satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the Commission. Until the Developer submits each of the foregoing items to the Commission, all Purchaser deposits will be held by the escrow agent in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. If the Developer does not submit each of the foregoing items to the Commission and the Commission does not issue an effective date for the Final Public Report before the expiration of the Contingent Final Public Report, then:

- (1) The Developer will notify the Purchaser thereof by certified mail; and
- (2) Either the Developer or the Purchaser shall thereafter have the right under Hawaii law to rescind the Purchaser's sales contract. In the event of a rescission, the Developer shall return all of the Purchaser's deposits together with all interest earned thereon, reimbursement of any required escrow fees, and, if the Developer required the Purchaser to secure a financing commitment, reimburse any fees the Purchaser incurred to secure that financing commitment."

**§514A-65 Escrow requirement.** All moneys paid by purchasers prior to the purchaser's receipt of the contingent final public report or the final public report on the project shall be deposited in trust under escrow arrangement with instructions that no disbursements shall be made from such trust funds on behalf of the seller until the contract has become binding, and the requirements of sections 514A-40, 514A-63, and 514A-64.5 have been met.

**§514A-66 REPEALED**

**§514A-67 Financing construction.** Should the apartments be conveyed or leased prior to the completion of construction of the building or buildings for the purpose of financing such construction, all moneys from the sale of such apartments, including any payments made on loan commitments from lending institutions, shall be deposited by the developer in a trust fund with a bank, savings and loan association, or trust company authorized to do business in the State under an escrow arrangement. Disbursements from such fund may be made, from time to time, to pay for construction costs of the building or buildings in proportion to the valuation of the work completed by the contractor as certified by a registered architect or professional engineer, and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the trust fund shall be disbursed only upon completion of the building or buildings, free and clear of all mechanic's and materialman's liens. The real estate commission may impose other restrictions relative to the retention and disbursement of the trust fund.

**§514A-68 Misleading statements and omissions.** No officer, agent, or employee of any company, and no other person may knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease, and no person may issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter

concerning any project which contains any written statement that is false or which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein made in the light of the circumstances under which they are made not misleading.

**§514A-69 Remedies; sales voidable when and by whom.** Every sale made in violation of section 514A-68 is voidable at the election of the purchaser; and the person making such sale and every director, officer, or agent of or for such seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, is jointly and severally liable to the purchaser in an action in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorney's fees; provided that no action shall be brought for the recovery of the purchase price after two years from the date of the sale and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by the purchaser, together with interest at six per cent on such amount for the period from the date of payment by the purchaser down to the date of repayment.

**§514A-70 Warranty against structural and appliance defects; notice of expiration required.** The developer of a condominium property regime subject to this chapter shall give notice by certified mail at the appropriate time to all members of the association of apartment owners and all members of the board of directors that the normal one-year warranty period will expire in ninety days. The notice shall set forth specific methods which apartment owners may pursue in seeking remedies for defects, if any, prior to expiration.

**PART V. REPEALED [January 1,2019]**

PART VI. REPEALED [January 1,2019]

PART VII. REPEALED [January 1,2019]

PART VIII. REPEALED [January 1,2019]