**PREFACE**

The Expert’s Guide to Hawaii’s Recodified Condominium Law

 By: Gordon M. Arakaki, Esq.\*

In 1961, Hawaii became the first state to pass a law enabling the creation of condominiums.[[1]](#endnote-1) In 2005, the Legislature completed passage of the long-awaited recodification of Hawaii’s condominium property regimes law.[[2]](#endnote-2) After a one-year delayed effective date allowing for additional public review and “fine-tuning” by the 2006 Legislature,[[3]](#endnote-3) Hawaii’s then new condominium law [Chapter 514B, Hawaii Revised Statutes (“HRS”)] went into effect on July 1, 2006. HRS Chapter 514B is now twelve years old, and this publication will help you understand how, when, and why each provision of Hawaii’s recodified condominium law came to be.

**What Is In This Publication?**

● The complete text of HRS Chapter 514B, as annotated by the Revisor of Statutes, with color-coded highlighting to indicate when particular language was added or amended. With the color-coded highlighting, you can tell at a glance if the law has changed since you last reviewed your documents and letters.

● The transition and safe harbor provisions for the adoption of HRS Chapter 514B and repeal of HRS Chapter 514A.[[4]](#endnote-4)

● Translation tables showing the sources of HRS Chapter 514B [e.g., HRS Chapter 514A, Hawaii Administrative Rules, proposed drafts of the Hawaii Administrative Rules, the Uniform Common Interest Ownership Act, and other laws and treatises], with the first table sorted by HRS Chapter 514B section numbers and the second table sorted by the sources of HRS Chapter 514B.

● Annotated individual Parts of HRS Chapter 514B (i.e., Part I – General Provisions, Part II – Applicability, Part III – Creation, Alteration, and Termination of Condominiums, Part IV – Registration and Administration of Condominiums, and Part VI – Management of Condominiums).

- Statutory language is presented in Ramseyer format (i.e., deletions are bracketed and lined-out and new material is underscored) to graphically show amendments made by the Legislature from 2006 through 2018.

- Individual Parts contain the Real Estate Commission’s official comments from its “Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000),” dated December 31, 2003. It is important to note that, pursuant to Act 164 (SLH 2004), the Commission’s 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B), and may therefore be cited as such. The Commission’s 2003 Final Report comments are reproduced verbatim, except to fill in references to HRS Chapter 514B [since the actual chapter and section numbers were not inserted until after Acts 164 (SLH 2004) and 93 (SLH 2005) were enacted].

- The author has inserted additional explanatory comments under “Arakaki’s Comment.” Where it makes sense, language from committee reports as well as purpose sections from bills that amended HRS Chapter 514B are reproduced under “Arakaki’s Comment.” Language from such committee reports and purpose sections may be cited as official legislative history indicating the intent of the Legislature in amending the law.

● The Hawaii condominium law recodification work plan crafted by the author for the Hawaii Real Estate Commission. The work plan can serve as an excellent model for the drafting and passage of any major legislation. Indeed, the Campaign Spending Commission used it as a template for its recodification of Hawaii’s campaign finance law (Act 211, SLH 2010). In addition, the Blue Ribbon Recodification Advisory Committee described in the work plan is an excellent example of the use of a task force in helping to craft legislation.

**Why Was Hawaii’s Condominium Law Recodified?**

The 1961 “Horizontal Property Regime” law consisted of 33 sections covering a little more than three pages in the Revised Laws of Hawaii. Since that time, the law has been amended constantly. In 2004 (when the Legislature first considered the proposed condominium law recodification), Hawaii’s existing condominium property regimes law – Chapter 514A, Hawaii Revised Statutes (“HRS”) – consisted of 119 sections and over one hundred pages (including the supplement). As noted by the 2000 Legislature, “[t]he present law is the result of numerous amendments enacted over the years made in piecemeal fashion and with little regard to the law as a whole.”[[5]](#endnote-5)

The 2000 Legislature recognized that “[Hawaii’s] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations . . . [t]he law is also overly regulatory, hinders development, and ignores technological changes and the present day development process.”[[6]](#endnote-6) Consequently, the Legislature directed the Real Estate Commission to conduct a review of Hawaii’s condominium property regimes law and to submit draft legislation to the Legislature.

The purpose of the recodification was “to update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law.”[[7]](#endnote-7)

**Why Should People Care?**

More than 31% of Hawaii’s housing units are held in condominium ownership. For decades, Hawaii has had the highest percentage of condominium housing units in the United States of America.[[8]](#endnote-8) This alone makes the new condominium law extremely important for Hawaii’s people.

Condominiums are important for land use, housing, and growth policy reasons. The rapid growth of condominiums, cooperatives, and planned communities (i.e., common interest ownership communities) since the 1960’s has been spurred by government policies – driven by popular sentiment – requiring that new development “pay its own way.” As more and more people in existing developments objected to their tax dollars being used to pay for the infrastructure necessary for new developments, government responded to such objections by shifting much of the infrastructure costs to the new developments.[[9]](#endnote-9)

Condominiums and other common interest ownership communities – with their regimes of *privately enforceable* covenants governing use of property and establishing financial obligations (e.g., maintenance fees) to pay for formerly *public* facilities and services such as roads, trash collection, and recreational areas – are a fundamental necessity in having new development “pay its own way.” Indeed, virtually all new development in Hawaii for the past 45 years consists of common interest ownership communities.

Given the importance of condominiums to the quality of life of Hawaii’s people, the goal of the recodification was to make Hawaii’s condominium property regimes law better for people who build, sell, buy, manage, and *live* in condominiums.

**What *Is* A “Condominium Property Regimes” Law?**

When reading HRS Chapter 514B, it is useful to understand exactly what a “condominium property regimes law” is – and what it isn’t. A condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a *community governance* law. It is not a land *us*e law (*i.e.*, it does not govern what structures may be built on real property; separate state and county land use laws control – or should control – land use matters).

A condominium property regimes law is essentially an *enabling* law, allowing people to:

* Own real estate under the condominium form of property ownership (*i.e.*, a form of real property ownership where each individual member holds title to a specific unit and an undivided interest as a “tenant-in-common” with other unit owners in common elements such as the exterior of buildings, structural components, grounds, amenities, and internal roads and infrastructure);
* Protect purchasers through adequate disclosures; and
* Manage the ongoing affairs of the condominium community.

The ability to build, sell, buy, borrow/lend money, insure title, insure property, and more are all part of real property ownership and, therefore, part of the condominium law.

**Conclusion**

No law is ever perfect. Even if a law were to be perfect when adopted, it would immediately begin to become obsolete as times and circumstances changed. It is a given, then, that Hawaii’s recodified condominium law, HRS Chapter 514B, has been and will continue to be re-examined and, from time-to-time, amended.

The author hopes that this publication will help all members of Hawaii’s condominium community better understand HRS Chapter 514B and the amendments that have been made to the chapter to date.

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1. Kerr, William; “Condominium – Statutory Implementation,” 38 St. John’s L. Rev. 1 (1963), at page 5. *See also*, Act 180, Session Laws of Hawaii (“SLH”) 1961, codified as Chapter 170A, Revised Laws of Hawaii (“RLH”). In 1968, RLH Chapter 170A was redesignated Chapter 514, Hawaii Revised Statutes (“HRS”) (Act 16, SLH 1968). In 1977, HRS Chapter 514 was re-enacted as a restatement without substantive change and redesignated HRS Chapter 514A (Act 98, SLH 1977). [↑](#endnote-ref-1)
2. Act 93, SLH 2005, with Act 164, SLH 2004, *codified as* HRS Chapter 514B.

The drafting, introduction and passage of Hawaii’s recodified condominium law represented the work of many dedicated volunteers over a number of years. HSBA Real Property & Financial Services section members Richard T. Asato, Jr., Gail O. Ayabe, Randy Brooks, Andy Bunn, David Callies, Ken Chong, Deb Chun, Lorrin B. Hirano, Mitchell A. Imanaka (also the Chair of the Real Estate Commission’s Condominium Review Committee that spear-headed the recodification effort), Ray Iwamoto, Rick Kiefer, Bernice Littman, John A. Morris, Milton Motooka, Joyce Y. Neeley, Hiroshi Sakai, and Jane Sugimura were among those who helped immensely in the effort to recodify Hawaii’s 40+ year old (at that time) condominium law. In addition to these HSBA-RPFS section members, the Real Estate Commission’s Blue Ribbon Recodification Advisory Committee included Steve Glanstein (representing the Hawaii Chapter of the Community Associations Institute), Len Kacher (representing the Hawaii Association of Realtors), Calvin Kimura and Cynthia Yee (representing the Real Estate Branch of the State Department of Commerce & Consumer Affairs), Richard Port (representing Hawaii Independent Condominium & Cooperative Owners), and Ted Walkey (representing the Hawaii Association of Realtors). Finally, many other individuals and groups have been involved in the “fine-tuning” of HRS Chapter 514B since its passage. [↑](#endnote-ref-2)
3. The Real Estate Commission explicitly made the following recommendation in its 2003 Final Report (“Miscellaneous Matters”), with the belief that the recodification would be passed by the 2004 Legislature:

The Commission recommends that the recodified Hawaii condominium law should have a delayed effective date of July 1, 2005. The vast majority of the public does not pay close attention to potential legislation until it is adopted. Considering the scope of the recodified Hawaii condominium law and the number of people, businesses, and agencies affected by the law, it makes sense to have a delayed effective date to give people (many of whom will not have followed the proposed legislation) a chance to become educated about the new law. It will also be possible to consider recommendations received during this educational period and to fine-tune the law in the next legislative session. [↑](#endnote-ref-3)
4. *See*, Act 93, §9 (SLH 2005), as amended by Act 244, §8 (2007), and Act 181, §45 (SLH 2017). Pursuant to Act 181 (SLH 2017), HRS Chapter 514A will be repealed effective January 1, 2019. [↑](#endnote-ref-4)
5. Act 213, SLH 2000. [↑](#endnote-ref-5)
6. *Id.* [↑](#endnote-ref-6)
7. *Id.* [↑](#endnote-ref-7)
8. *Community Associations Factbook*, by Clifford J. Treese (1999), at page 18; State of Hawaii Data Book (2017), compare Table 21.10 (“Condominium Associations and Apartments Registered: 1990 to 2017”) and Table 21.20 (“Housing Units, by County: 2007 to 2017”). In addition, please be aware that condominium associations consisting of five or less units are *not* required to be registered. [*See*, HRS §514B-103(a) and HRS §514A-95.1(a).] [↑](#endnote-ref-8)
9. *See, e.g.*, *Paying for Growth in Hawaii: An Analysis of Impact Fees and Housing Exactions Programs*, sponsored by the Land Use Research Foundation of Hawaii (1988). [↑](#endnote-ref-9)