



IMANAKA KUDO & FUJIMOTO

HAWAII CONDO FAX

A Faxletter on Condominium Development Issues in Hawaii

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With the recodification of Hawaii's Condominium Law barely a half-year old, much of the proposed legislation and discussion during the 2007 Legislative Session focuses on clarification of Chapter 514B, Hawaii Revised Statutes, and its reconciliation with Chapter 514A.

CLARIFICATION OF RECODIFIED CONDOMINIUM LAW

SENATE BILL 1815 / HOUSE BILL 1678. These measures seek to amend Section 514B-132 of the Hawaii Revised Statutes ("HRS") to prohibit the managing agent of a condominium from operating as both a condominium hotel operator (as defined in HRS Section 467-30) and managing agent for the same project.

Senate Bill 1815 was referred to the Tourism and Government Operations and Commerce, Consumer Protection and Housing Committees on January 30, 2007; House Bill 1678 was referred to the Consumer Protection and Commerce Committee on January 26, 2007. The full text of these measures can be viewed at: <http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB1815.htm> and <http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB1678.htm>, respectively.

SENATE BILL 234. This measure would amend HRS Chapters 514A and 514B to require condominium associations to regulate and maintain the *limited common elements* of a project. Section 514B-39 will be modified to provide that the association will regulate "the use, maintenance, repair, replacement, and modification" of limited common elements. This provision would also be retroactively applied to those projects registered prior to an effective date for this measure and under Chapter 514A, by a required adoption of the provisions of Section 514B-39 upon amendment of such projects' declarations and bylaws. As currently drafted, the measure does not make clear who will be responsible for maintenance of common elements under Chapter 514B, as the provision authorizing their regulation by the association appears to have been removed without replacement.

Senate Bill 234 was referred to the Commerce, Consumer Protection and Housing Committee on January 22, 2007. The full text of this measure can be viewed at: <http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB234.htm>.

SENATE BILL 1704 / HOUSE BILL 1627. These measures seek to amend portions of Chapters 467 and 514B, HRS, and Act 93 of the 2005 Session Laws of Hawaii as follows:

- Section 514B-86, HRS, would be amended to allow a developer to provide the governing instruments of a condominium to purchasers by either physically attaching them to the developer's public report *or concurrently delivering them to the purchaser* in conjunction with the public report. This is intended to clarify that the recorded instruments may be provided in either form and need not be physically attached as exhibits to the developer's public report. Purchasers may also elect to receive the instruments electronically in accordance with HRS Chapter 489E (Uniform Electronic Transactions Act).
- Section 9(b) of Act 93, 2005 Session Laws of Hawaii, would be amended to require that a condominium registered pursuant to HRS Chapter 514A must additionally be removed from that Chapter in accordance with Section 514A-21, if the developer elects to register the project under Chapter 514B.
- Section 514B-103, HRS, would be amended to adapt certain provisions of Chapter 514A, clarifying the bonding requirements for a condominium association.
- Finally, Section 467-14, HRS, would be amended to reflect the recodification of the Condominium Law regarding real estate broker and salespersons' licenses.

Senate Bill 1704 was referred to the Commerce, Consumer Protection and Housing Committee on January 30, 2007 and has been scheduled for public hearing on February 21, 2007; House Bill 1627 was referred to the Consumer Protection and Commerce Committee on January 26, 2007, and its decision has been deferred. The full text of these measures can be viewed at: <http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB1704.htm> and

<http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB1627.htm>, respectively.

REAL ESTATE COMMISSION

A notable aspect of HRS Chapter 514B is that it permits the "airspace" condominium, which condominiumizes land without an overlying physical improvement. A point of confusion, however, has been whether a particular description of such a "spatial unit" is adequate under Chapter 514B.

On December 6, 2006, the Real Estate Commission ("Commission") informally clarified that the unit description for a "spatial unit" would be subject to HRS Sections 514B-3, 514B-32(a)(7), and 514B-32(a)(13). A valid unit description must:

- be designated for separate ownership or occupancy; [HRS § 514B-3]
- have unit boundaries in accordance with HRS Section 514B-35; [HRS § 514B-3]
- have access to a public road or a common element leading to a public road; [HRS § 514B-3]
- indicate a location; [HRS § 514B-32(a)(7)]
- have dimensions with both horizontal and vertical boundaries; [HRS § 514B-32(a)(7)]
- include spatial coordinates with both a beginning and an end point; [HRS § 514B-32(a)(7)]
- comply with county requirements, including zoning and building ordinances and codes, and moreover, its dimensions must not exceed height, set back, and other such requirements. [HRS § 514B-32(a)(13)]

The Commission also opined that developers should disclose the applicable county requirements in their public report.

As the transition period from prior to current Condominium Law has shown and will continue to demonstrate, worthwhile change seldom occurs without the attendant pains of growth. We will continue to follow the progress of these measures in the coming months, as well as other legislation and trends that will impact future development in our islands. Until then, all the best from us at Imanaka Kudo & Fujimoto.

E lauhoe mai a wa'a; i ke kā, i ka hoe; i ka hoe, i ke kā; pae aku i ka aina.
Everybody paddle the canoes together; bail and paddle, paddle and bail, and the shore is reached.
Pitch in with a will, everybody, and the work is quickly done.

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