

Condominium Project Registration

Reminders Real Estate Commission Memorandum 2017-1 (8/30/17)

The information provided here is intended to provide developers including where applicable their attorneys and agents as well as interested others with supplemental information in the form of reminders about the condominium project registration process.*

- ☐ The chapter 514A, HRS, Developer's Public Report has been revised as of March 2017. Please use the current form which can be downloaded from the REC website at http://cca.hawaii.gov/reb/rec_forms/. The form has been revised to make it form fillable for user convenience.
- ☐ Act 181, SLH 2017 repeals chapter 514A, HRS, on January 1, 2019. The rationale for the repeal was to reduce confusion between the two existing condominium laws. While most of the governance sections of chapter 514A, HRS, were superseded by the 2006 recodification into chapter 514B, HRS, the development sections still applied. Despite §514B-22, HRS, explicitly defining the applicability of specific sections and part VI of chapter 514B, HRS, to all condominiums, both the Legislature and the Real Estate Branch received regular inquiries regarding which law applies to their condominium's governance.

Act 181, repeals chapter 514A, HRS, including the development sections. Pursuant to the law's safe harbor provision, the most recent final report, supplementary, and disclosure abstracts, if any, of non-expired, active chapter 514A, HRS, projects will be treated as non-expiring chapter 514B, HRS, reports. Sales will be allowed to continue post January 1, 2019, on such previously issued chapter 514A developer's public reports if the developer's public reports are accurate and not misleading. Should any pertinent and/or material changes occur, developers must file an amended chapter 514B, HRS, report that supersedes all prior reports. Chapter 514A, HRS, projects that are active and non-expired on January 1, 2019, and that must file a chapter 514B, HRS, report will be exempt from the conversion requirements of §514B-84(a)(1) and (2), HRS.

Chapter 514A, HRS, contingent and preliminary reports will not be treated as non-expiring chapter 514B, HRS, reports and must file as a new project under chapter 514B, HRS, to sell units after January 1, 2019. Any condominium property regime created pursuant to chapter 514A, HRS, that was not issued an effective date must also file as a new project under chapter 514B, HRS, to sell units after January 1, 2019.

Developers with registered chapter 514A, HRS, projects containing unsold inventory who fail to have an active report subject to §§514A-4 and 41, HRS, on January 1, 2019, will be forced to withdraw any previously filed registration granted an effective date and refile as a completely new project to sell units outside of the exemptions listed under §514B-51(b), HRS. A property cannot be submitted simultaneously to both condominium laws, thus necessitating the withdraw before registering under chapter 514B, HRS.

The Commission strongly recommends that developers who still retain inventory to file extensions and supplementary reports to ensure that their projects are active and non-expired on January 1, 2019. Two-unit projects granted non-expiring status by the Commission should review their developer's public reports to ensure that there are no changes requiring supplementary reports.

Please plan accordingly as the review process may be delayed due to the large numbers of developers filing reports in response to Act 181's deadline of January 1, 2019. Developers who have worked exclusively with chapter 514A, HRS, should familiarize themselves with the development provisions of chapter 514B, HRS, as any changes must be filed as an amended report pursuant to that chapter.

As a reminder, §514A-1.5(a)(2)(B), HRS, remains in effect and thus unless a developer had provided the Commission with notice of intent prior to July 1, 2006, they must register their created but not registered project subject to chapter 514B, HRS.

Should you have any further questions, please contact the Real Estate Branch at (808) 586-2643 or your attorney.

**** The provided information is unofficial, informal, and non-binding on the Real Estate Commission and is being provided pursuant to §16-201-92, Hawaii Administrative Rules. Please contact the Real Estate Commission at (808) 586-2643 between 7:45 AM and 4:30 PM, Monday through Friday and your attorney for more information.***

Chapter 514A Repeal - Frequently Asked Questions

(December 2017)

We at the Real Estate Commission ("Commission") understand that the repeal of Hawaii Revised Statutes (HRS) Chapter 514A, can be a confusing topic. Thus, we've created a frequently asked question list to help condominium developers and owners understand how they may be impacted by the repeal.

What are HRS Chapter 514A and Chapter 514B?

They are the two Hawaii state laws that govern condominium projects in their registration and governance. Chapter 514A is being repealed. Chapter 514A governs the registration of condominium projects created prior to July 1, 2006, and Chapter 514B governs the registration of condominium projects created after July 1, 2006, and governance for all condominium projects. You may check to see which law your unit was created by searching the Commission's database here: http://hawaii.gov/dcca_condo/index.html

I'm an owner in a condominium which voted to adopt HRS Chapter 514B. Does this concern me?

DEPENDS: Your association's vote to adopt Chapter 514B impacts the governance of your condominium, not the legal creation and development and thus the repeal may concern you. Please see the following questions to determine if this impacts you.

I'm a condominium owner who bought my Commission-registered Chapter 514A unit from another owner or a developer in a regular sale. Does this repeal affect me?

NO: The repeal of Chapter 514A does not impact your unit or your ability to sell your unit. Furthermore, since 2007, condominium governance has been under Chapter 514B for all condominium projects. You should not be affected by the repeal.

I'm a condominium owner who inherited or was gifted my Chapter 514A unit from a developer (such as a parent or grandparent) who previously registered the project. Does this impact me?

DEPENDS: Check with the person from whom you received the property as a gift or inheritance to see whether your condominium developer's public report is active (and will be active on January 1, 2019) and is accurate. Owners who received their unit in such a manner are not generally considered to have engaged in a first or regular sale. If the report is active, the project will automatically transfer to HRS Chapter 514B and you should not be affected. If it has expired, will expire before January 1, 2019, or material changes have occurred, seek advice from the attorney who prepared your project's report or contact the Commission as soon as possible. Please check the Commission's database at http://hawaii.gov/dcca_condo/index.html to determine the status of your project's developers public report.

I'm a developer of a registered Chapter 514A project with units remaining to be sold. Does this affect me?

YES: You have two options, keep your Chapter 514A developer's public report active and accurate on January 1, 2019, to make certain that your project meets the requirements for an automatic transfer to Chapter 514B or apply for a transition to a Chapter 514B report pursuant to Act 244, SLH 2007. Furthermore, please read in detail the attached Commission's developer's memorandum, contact the attorney who prepared your report, and the Commission.

I'm a developer of a registered Chapter 514A project with a preliminary or contingent report. Does this impact me?

YES: Preliminary and contingent reports will not be automatically transferred to Chapter 514B. You may either apply for a developer's final public report or transition to a Chapter 514B report pursuant to Act 244, SLH 2007. Please contact your attorney or the Commission for more information.

It appears that the repeal of HRS Chapter 514A impacts me as a developer. What's the timeline for extensions or supplementary reports?

The Commission is anticipating a sizable increase in applications along with its regular workload. Thus, the Commission strongly recommends submitting supplemental developer's public reports if there are any changes as soon as possible and no later than August 2018 to ensure that your project will have an active effective date on January 1, 2019. For developers with no changes requesting extensions which extends the effective date for 13 months, please make sure that the extension date will last through January 1, 2019.

I'm a Developer. Do I receive any documentation from the Commission confirming that my registered Chapter 514A project was transferred to Chapter 514B? If I don't meet the requirements and my project is not automatically transferred to Chapter 514B on January 1, 2019, what are my options at that point?

The Commission is not planning to send any documentation regarding automatic transfer and refers all developers and buyers to the Commission's online database for the most recent active status of a project on January 1, 2019. If the database notes an active status through January 1, 2019 and no material changes are known, the project will be considered to have been automatically transferred.

Should your project not meet the requirements to automatically transfer to Chapter 514B, all sales must stop, and the registration with the Commission must be withdrawn and resubmitted as a new Chapter 514B project.

I'm a developer of a registered Chapter 514A project, and I've sold all the units. What do I have to do?

NOTHING: All your obligations to update the report ended with the sale of the last unit. Just make sure that you do not have any other Chapter 514A projects with units remaining to be sold.

I'm a developer of a registered Chapter 514B project. Does this concern me?

NO: Act 181, SLH 2017 only repeals Chapter 514A. There are no changes to your responsibilities as a Chapter 514B developer.

I'm an owner of a registered Chapter 514B unit. Does this concern me?

NO: Act 181, SLH 2017 only repeals Chapter 514A. The repeal does not impact owners of Chapter 514B units in any way.

I'm a developer of an unregistered Chapter 514A project intending to sell units. Does this impact me?

YES: Unless you provided notice of intent to the Commission prior to 2007, you must register as a Chapter 514B project. Please contact the Commission and/or an attorney for more information.

I'm an attorney or property manager for a condominium project. What should I do?

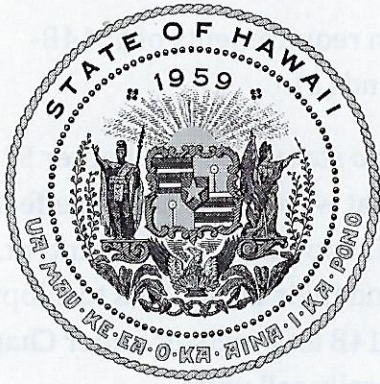
Check to see if the project(s) that you're working on is a Chapter 514A project and whether all of the units have been sold. If there are remaining developer's units left, contact the developer to inform them of the deadline.

Where can I get a copy of the repeal law?

You may find a copy of Act 181 on the Hawaii State Legislature website, <http://www.capitol.hawaii.gov>, and search for SB 292 in the "bills status" field.

I'm a renter in a condominium unit. Should I worry?

NO: The repeal has no impact upon renters.



Learn more about the Real Estate Branch (REB) of the Department of Commerce and Consumer Affairs

Check out the REB website
www.hawaii.gov/hirec for more
information and some frequently asked
questions.

- What services does the REB provide to the condominium community?
- Where do I file a complaint against my association?
- What laws apply to my condominium association?
- How do I get a copy of my association documents?
- And many more questions answered.

Real Estate Branch

About Us

The Real Estate Branch, as part of the Professional and Vocational Licensing Division, assists the Real Estate Commission in carrying out its responsibility for the education, licensure and discipline of real estate licensees; registration of condominium projects, condominium associations, condominium managing agents, and condominium hotel operators; and intervening in court cases involving the real estate recovery fund.

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Receive emails on relevant condominium educational materials. Sign up now at
<http://cca.hawaii.gov/reb/subscribe/>

Contact Us

Condominium Hotline: 808-586-2644

Hours: 9:00 AM – 3:00 PM

Email: hirec@dcca.hawaii.gov

Web: www.hawaii.gov/hirec



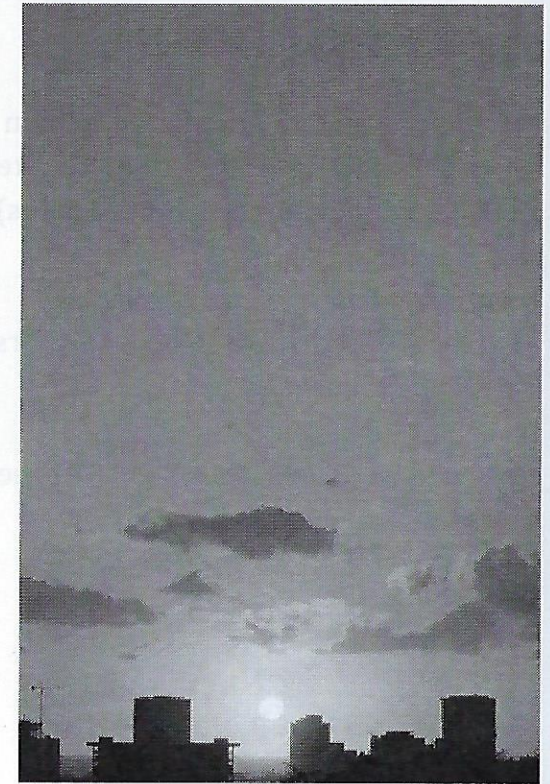
CONDOMINIUM:

THE REPEAL OF CHAPTER 514A

Real Estate Branch

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Honolulu, HI 96813



CONDOMINIUM:

THE REPEAL OF CHAPTER 514A

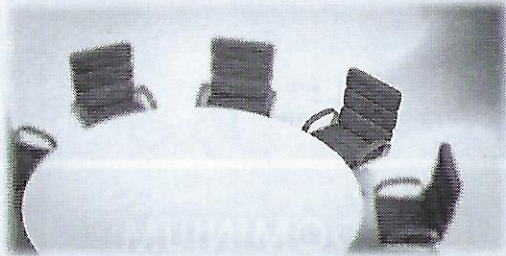
*Real Estate Branch
Department of Commerce and
Consumer Affairs*

November 2017

Chapter 514A Repeal

Act 181 of the 2017 Legislative Session repeals Hawaii Revised Statutes Chapter 514A (condominium property regimes), effective January 1, 2019, to reduce confusion about the applicability of Chapters 514A and 514B. Many owners are still misinformed that their condominium projects are entirely governed by Chapter 514A. Act 181 seeks to alleviate some of that confusion.

Governance



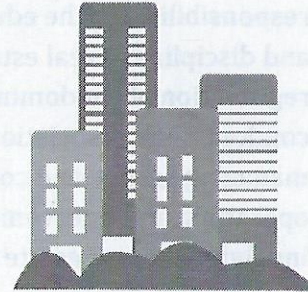
In general, the recodification of the condominium law in 2007 into Chapter 514B **automatically** superseded the governance laws of Chapter 514A.

However, one key section, §514B-32(11), which only requires 67% of the common interest to amend the declaration, does **not** supersede §514A(11), which requires 75% of the common interest to amend the declaration. Projects that wish to adopt

the lower 67% threshold are suggested to amend their declaration to fully adopt Chapter 514B. Unless otherwise indicated, all references are to the Hawaii Revised Statutes.

Development

As many condominium projects were registered under Chapter 514A, there may be



some projects with remaining developer's inventory. The repeal of Chapter 514A raises questions regarding their future sales.

Act 181 states that Chapter 514A projects with active final or supplemental reports may continue to sell past January 1, 2019, if their developer's public reports are accurate and not misleading. Such active, non-expired Chapter 514A reports on that date will be treated as non-expiring Chapter 514B reports. If any pertinent and/or material changes occur, developers must file an amended Chapter 514B report that supersedes all prior reports. Note that such projects and their subsequent reports are exempt from the

conversion requirements of §514B-84(a)(1) and (2).

Act 181 also states that all Chapter 514A projects that were not issued an effective date and did not file a notice of intent, must amend their documents to adopt Chapter 514B and register under Chapter 514B to legally sell units.

Developers may legally continue to submit Chapter 514A filings up to December 31, 2018, but should be aware that the processing time may take up to six months on complex projects. The Commission strongly urges developers to be timely with extensions, non-expiring applications, and final and supplementary reports to have their developer's public reports active on January 1, 2019. If a developer with remaining inventory misses the January 1, 2019 deadline, they must refile as a new project under Chapter 514B. ***Don't miss the boat!***

