

ACT 175**S.B. NO. 1003**

A Bill for an Act Relating to Land Sales.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The intent of this Act is to amend chapter 484, Hawaii Revised Statutes, the Uniform Land Sales Practices Act, to modernize the procedural aspects of the Act, and assure that consumers are adequately protected.

Presently, chapter 484, Hawaii Revised Statutes, prohibits the disposition of lots in a subdivision until the subdivision is registered with the state department of commerce and consumer affairs, and the prospective purchasers are provided a copy of the current public offering statement and have had a reasonable opportunity to examine the statement. Certain types of transactions, subdividers, and small subdivisions are exempt from the chapter. The intent of chapter 484, Hawaii Revised Statutes, is to assure that potential purchasers are protected, by requiring the subdivider to provide adequate disclosure of information on the subdivision to prospective purchasers of lots.

The county governments also regulate the sale of lots in a subdivision. For example, Rule 1-103(d) of the Subdivision Rules and Regulations of the City and County of Honolulu provides that "No person shall sell, transfer, or advertise, any interest in land located in a subdivision...until the final map thereof has been approved by the Director [of Land Utilization] and recorded in (sic) the State Registrar of Conveyances, Registrar of the Land Courts or Office of the State Surveyor."

Although certain types of subdivisions are exempt from chapter 484, Hawaii Revised Statutes, to assure that prospective purchasers are protected, the state department of commerce and consumer affairs does not grant the exemption until the subdivision receives final approval from the county government.

To obtain final approval of the subdivision from the county government, various conditions must be met. For example, in the city and county of Honolulu, detailed construction plans of the subdivision must be prepared, and approved by the city agencies, and the park dedication ordinance requirement must be satisfied. Then, to obtain final approval of the subdivision, either the subdivision improvements must be completed and accepted by the city (by dedication of all roads and easements by the subdivider to the city), or the subdivider must provide the city with a financial guarantee that the improvements will be completed. If the subdivider

chooses to obtain final approval of the subdivision by providing a financial guarantee, the city will require that the contractor's performance bond, the subdivider's completion bond, a maintenance bond, and an energizing bond be posted by the subdivider.

Since most subdivisions are completed by way of financing through a construction loan, and since the construction lender will not disburse any loan funds without the city-approved subdivision as security underlying its construction loan mortgage, the subdivider must solicit a surety company to underwrite the bonds required by the city to obtain final approval of the subdivision to satisfy the lender's legal requirements for security of the construction loan.

Before the surety issues the bonds to the city, however, the surety will require that the construction lender issue a set-aside letter to the surety. The set-aside letter irrevocably sets aside funds in the construction loan for the use of the surety in the event that the subdivider defaults in any manner in completing the subdivision as required by the city. The construction lender, however, will not issue the set-aside letter until it is assured that the subdivision project is viable, and its loan is secure. Thus, the lender requires that the subdivider pre-sell enough lots to cover the construction loan amount, to assure that the loan is secure, before it issues the set-aside letter to the surety. The subdivider, therefore, must pre-sell lots to obtain final approval of the subdivision, although state and city requirements prohibit these pre-sales until after final approval is granted.

This Act resolves the above-cited legal dilemma, by allowing the sale of lots upon preliminary approval of the subdivision, yet assuring that purchasers are protected. This Act establishes a procedure to allow a purchaser to rescind the transaction if there is a material difference with regard to the lot or the terms of the purchase between the preliminary and final approvals. This procedure has been patterned after the State's condominium law, which was drafted to allow pre-sales before the final public report is issued.

This Act also makes various housekeeping amendments to the law, including amendments giving the director rule-making authority in connection with obtaining a certification by the Secretary of the Department of Housing and Urban Development pursuant to 15 U.S.C. section 1708.

This Act also amends the Act to allow the Director to make rules which assist in obtaining certification of our state law by the Secretary of Housing and Urban Development, pursuant to 15 U.S.C. section 1708. This certification will allow any offering statement for land in Hawaii to suffice for the requirements of any other State which has its law certified. This will obviate the reregistration of a public offering statement for land in Hawaii in a multiplicity of other states where the subdivision may be sold.

This Act also makes various housekeeping amendments, including allowing the Director to hire consultants to review any applications submitted, and raising the fees for applications and property inspections. The existing sections on revocation of orders, penalties, and civil remedies have also been amended for housekeeping purposes.

SECTION 2. Section 484-3, Hawaii Revised Statutes, is amended to read as follows:

“§484-3 Exemptions. (a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, this chapter does not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for his own account in a single or isolated transaction;
 - (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months[;], unless the subdivider files with the director a written election that this chapter shall apply to that subdivision;
 - (3) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years from date of disposition;
 - (4) To persons who are engaged in the business of construction of building for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in the business of construction of building for resale[;], unless the subdivider files with the director a written election that this chapter shall apply to that subdivision;
 - (5) Pursuant to court order;
 - (6) By any government or government agency;
 - (7) As cemetery lots of interests;
 - (8) Established as a horizontal property regime pursuant to chapter 514A.
- (b) Unless the method of disposition is adopted for the purpose of evasion of this chapter, this chapter does not apply to:
- (1) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;
 - (2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
 - (3) A subdivision as to which the plan of disposition is to dispose to ten or fewer persons;
 - [(4)] A subdivision as to which the director of regulatory agencies has granted an exemption as provided in section 484-10;
 - [(5)] (4) Offers or dispositions of securities currently registered with the commissioner of securities of this State; [and
 - [(6)] (5) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the commissioner of securities of this State; and
 - [(7)] (6) Subdivisions of less than twenty lots, parcels, units, or interests, if they are all located in jurisdictions requiring the developer prior to sale to provide or post bond for road access, sewage disposal, water, and other public utilities, if such requirements have been complied with.”

SECTION 3. Section 484-4, Hawaii Revised Statutes, is amended to read as follows:

“§484-4 Prohibitions on dispositions of interests in subdivisions. Unless the subdivided lands or the transaction is exempt by section 484-3[:] or exempted by the director under section 484-10(g):

- (1) No person may offer or dispose of any interest in subdivided lands located in this State, [nor] or offer or dispose in this State of any interest in subdivided lands located without this State [prior to the time the subdivided lands are registered] before a preliminary or final order registering the subdivided land is entered in accordance with this chapter;
- (2) No person may dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.”

SECTION 4. Section 484-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The application for registration of subdivided lands shall be filed [as prescribed by the director of regulatory agencies’ rules] in accordance with this chapter and rules adopted by the director pursuant to chapter 91, and shall contain the following documents and information:

- (1) An irrevocable appointment of the director to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;
- (2) A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, and the land area of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;
- (3) The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
- (4) The applicant’s name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this State;
- (5) The name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty days of the filing of the application;
- (6) A statement, in a form acceptable to the director, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the director;

- (7) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;
- (8) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;
- (9) If there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
- (10) Copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands;
- (11) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;
- (12) A statement of the existing provisions for access, sewage disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion, and a statement as to the provisions for improvement maintenance;
- (13) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which [has] have been prepared for public distribution by any means of communication;
- (14) The proposed public offering statement;
- (15) An executed copy of the escrow agreement between the subdivider and a bank, savings and loan association, trust company authorized to do business in the State under an escrow arrangement, or a corporation licensed as an escrow depository under chapter 449; which agreement:
 - (A) Provides that all funds and instruments received from purchasers or prospective purchasers shall be held by the escrow agent in accordance with this chapter and any rules adopted by the director pursuant to chapter 91; and
 - (B) Complies with the requirements of this chapter and any rules adopted by the director pursuant to chapter 91;
- [(15)] (16) Any other documents or information, including any current financial statement, which the director by [his] the director's rules requires [for]:
 - (A) For the protection of purchasers; or
 - (B) To obtain, or as a result of having obtained, certification of Hawaii law by the Secretary of the Department of Housing and Urban Development pursuant to 15 U.S.C. section 1708;
- [(16)] (17) A statement which indicates the existing zoning and the general plan land use designation of each lot and the proposed use of each lot in the subdivision, to include without limitation such uses as residential

dwelling, churches, agriculture, hospitals, schools, low density apartments, high density apartments and hotels, and a subdivision map which shows such information.”

SECTION 5. Section 484-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the director [of regulatory agencies] shall be in a form prescribed by [his] the director’s rules and shall include the following:

- (1) The name and principal address of the subdivider;
- (2) A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;
- (3) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;
- (4) A statement of the use for which the property is offered;
- (5) Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;
- (6) Additional information required by the director to assure full and fair disclosure [to]:
 - (A) To prospective purchasers; or
 - (B) To obtain, or as a result of having obtained, certification by the Secretary of the Department of Housing and Urban Development pursuant to 15 U.S.C. section 1708;
- (7) A statement which indicates the existing zoning and the general plan land use designation of each lot and the proposed use of each lot in the subdivision, to include without limitation such uses as residential dwellings, churches, agriculture, hospitals, schools, low density apartments, high density apartments and hotels, and a subdivision map which shows such information[.]; and
- (8) A statement that the purchaser has a seven-day period, after signing a contract to purchase subdivided lands from the subdivider, the rescind the contract at no penalty to the purchaser.”

SECTION 6. Section 484-7, Hawaii Revised Statutes, is amended to read as follows:

“§484-7 **[Inquiry] Notice of filing; inquiry and examination.** (a) Upon receipt of an application for registration in proper form, the director shall issue a

notice of filing to the applicant subject to section 484-20, and forthwith initiate an examination to determine that:

- (1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;
- (2) There is reasonable assurance that all proposed improvements will be completed as represented;
- (3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the rules adopted by the director [in his rules] and afford full and fair disclosure;
- (4) The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this State, United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;
- (5) The public offering statement requirements of this chapter have been satisfied[.];
- (6) The purchaser has a seven-day period, after signing a contract to purchase subdivided lands from the subdivider, to rescind the contract at no penalty to the purchaser, and the subdivider has established a mechanism by which the purchaser will receive and sign a receipt for a written notice of such rescission right and the receipt will be deposited with the escrow agent.

(b) Upon receipt of an application for exemption from registration pursuant to section 484-10(g) in proper form, the director shall issue a notice of filing to the applicant, and forthwith initiate an examination to determine that:

- (1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;
- (2) There is reasonable assurance that all proposed improvements will be completed as represented;
- (3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the rules adopted by the director and afford full and fair disclosure;
- (4) The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this State, United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;

- (5) If the subdivided land has not yet received final subdivision approval from the county:
- (A) Preliminary subdivision approval has been granted by the county in which the land is situated;
 - (B) The purchaser has a seven-day period after signing a contract to purchase subdivided lands from the subdivider to rescind the contract at no penalty to the purchaser;
 - (C) The subdivider has established a mechanism by which the purchaser will receive and sign a receipt for a written notice of such rescission right and the receipt will be deposited with the escrow agent."

SECTION 7. Section 484-8, Hawaii Revised Statutes, is amended to read as follows:

"§484-8 [Notice of filing and registration.] Orders of registration, exemption, and rejection; general provisions. (a) [Upon receipt of the application for registration in proper form, the director of regulatory agencies shall issue a notice of filing to the applicant.] Within forty-five days from the date of the notice of filing, the director shall enter [an] a preliminary or final order registering the subdivided lands or rejecting the registration[. If no order of rejection is entered within forty-five days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.], or shall enter a preliminary or final order exempting the subdivided lands pursuant to section 484-10(g) or rejecting the application for exemption.

Unless the applicant has consented in writing to a delay, the land shall be deemed registered in the case of an application for registration, or the land shall be deemed exempt from registration in the case of an application for a section 484-10(g) exemption, if the director fails to enter an order of rejection within forty-five days from the date of the notice of filing.

(b) If, in the case of an application for a final order of registration, the director affirmatively determines, upon inquiry and examination, that the requirements of section 484-7 have been met, [he] the director shall enter [an] a final order registering the subdivided lands and shall designate the form of the public offering statement.

If, in the case of an application for a final order exempting the subdivided lands pursuant to section 484-10(g), the director affirmatively determines, upon inquiry and examination, that the requirements of section 484-10(g) have been met, the director shall enter a final order exempting the subdivided lands from registration pursuant to section 484-10(g).

(c) If the director determines upon inquiry and examination that, in the case of an application for a final order of registration, any of the requirements of section 484-7, or, in the case of an application for a final order of exemption under section 484-10(g), any of the requirements of section 484-10(g), have not been met, the director shall notify the applicant that the application for a final order of registration, or exemption under section 484-10(g), must be corrected in the particulars specified within ten days. If the requirements are not met within the time allowed the director shall enter an order rejecting the registration or application for a

section 484-10(g) exemption, which order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing."

SECTION 8. Chapter 484, Hawaii Revised Statutes, is amended by adding four new sections to read as follows:

"§484-8.5 Preliminary order of registration or exemption. (a) The director shall enter a preliminary order of registration or of exemption under section 484-10(g) when:

- (1) The director receives a request therefor together with an application for registration or for exemption under section 484-10(g);
- (2) The director affirmatively determines, upon inquiry and examination, that the applicable requirements of section 484-7 have been met except for some particular requirement or requirements which is, or are, at the time not fulfilled, but which reasonably may be expected to be fulfilled; and
- (3) Preliminary subdivision approval has been granted by the county in which the land is situated.

No preliminary order of registration shall be issued unless the director is satisfied that the public offering statement adequately discloses all matters required by section 484-6(a).

(b) If the director determines upon inquiry and examination that any of the requirements for issuance of a preliminary order of registration or of exemption under section 484-10(g) have not been met, the director shall notify the applicant that the application for a preliminary order of registration or exemption must be corrected in the particulars specified within forty-five days. If the requirements are not met within the time allowed the director shall enter an order rejecting the registration or application for a section 484-10(g) exemption, which order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

(c) Upon issuance by the director of a preliminary order of registration or of exemption under section 484-10(g), the subdivider may solicit and accept binding sales contracts (subject to any rights of rescission in favor of the purchaser as set forth in this chapter) or non-binding reservation agreements to purchase the subdivided lands, notwithstanding any law requiring that final subdivision approval be granted prior to the offer or sale of subdivided lands; provided that any earnest money deposits received by the subdivider or its agents shall take the form of a check or other instrument within the meaning of article 3 of chapter 490 and shall be payable to the escrow agent, and that no cash shall be accepted by the subdivider or its agents.

(d) All sums paid by purchasers and prospective purchasers prior to the time the director issues a final order registering the subdivided lands or exempting the subdivided lands pursuant to section 484-10(g) shall be placed in an escrow account under an escrow agreement which provides that no disbursements shall be made from such escrow account to or on behalf of the subdivider until the director

enters a final order registering the subdivided lands or exempting the subdivided lands pursuant to section 484-10(g) and the requirements of sections 484-8.7 and 484-8.6(b) and (c) have been met. However, the subdivider or its agents may hold, until the expiration of the seven-day cancellation period provided by section 484-7(a)(6) or any longer purchaser cancellation period (not exceeding sixty days) provided in the sales contract, any instrument made by a purchaser:

- (1) For which subsequent holders may not claim holder-in-due-course status within the meaning of article 3 of chapter 490; or
- (2) Where the payee is the escrow agent.

(e) Rights under contracts for the sale of subdivided lands, although binding on the purchaser, may not be enforced against the purchasers so as to require the purchasers to close until:

- (1) A final order of registration or of exemption pursuant to section 484-10(g) is entered by the director; and
- (2) If the purchasers are provided a rescission right under section 484-8.7 or 484-8.6(b) or (c), the purchasers have had a full opportunity to obtain a refund of any sums paid and a release from their obligations under their sales contracts.

§484-8.6 Final order of registration or exemption. (a) If the subdivider has obtained a preliminary order of registration or section 484-10(g) exemption, then upon the issuance of final subdivision approval of the subdivision by the county in which the land is situated, the subdivider shall submit to the director an application for a final order of registration or exemption pursuant to section 484-10(g), which application shall contain, among other things:

- (1) A copy of the subdivision map for the subdivision and evidence satisfactory to the director that final subdivision approval has been granted by the county; and
- (2) A written statement disclosing any material changes to the subdivision which may have occurred between the date of preliminary subdivision approval and the date of final subdivision approval.

Upon receipt of the subdivider's application, the director shall enter a final order of registration or exemption, or rejection, pursuant to section 484-8.

(b) As a condition to issuing a final order of registration or exemption for a subdivision with respect to which a preliminary order was entered, the director may require that the subdivider:

- (1) Amend the public offering statement, in the case of an application for registration, to provide fair and full disclosures to the purchasers of any material changes to the subdivision; or
- (2) In the case of an application for section 484-10(g) exemption, prepare a written summary in form approved by the director providing fair and full disclosure to the purchasers of any material changes to the subdivision.

The amended public offering statement or written summary shall be delivered to the purchaser either personally or by certified or registered mail with return receipt requested, and at the same time the purchaser shall be notified in writing of the purchaser's right of refund and cancellation of obligation and the waiver of such

right upon the purchaser's failure to act within a seven-day period. Each purchaser shall have a right to cancel the sales contract signed by the purchaser and receive a refund of all sums paid by the purchaser within seven-day period from the date of delivery of the amended public offering statement or written summary to exercise the purchaser's right of refund and cancellation of obligation, after which period such right shall be deemed waived.

(c) If the final order of registration or section 484-10(g) exemption is not issued within one year from the date of entry of the preliminary order, each purchaser shall have a right to cancel the sales contract signed by the purchaser and receive a refund of all sums paid by the purchaser; provided that if the final order is issued after the one-year period and a written notice is delivered to the purchaser either personally or by certified or registered mail with return receipt requested, notifying the purchaser of the issuance of the final order of registration or section 484-10(g) exemption and of the purchaser's right of refund and cancellation of obligation and the waiver of such right upon the purchaser's failure to act within a seven-day period, which notice shall be accompanied by an amended public offering statement or written summary required under subsection (b), the purchaser shall have seven days from the date of delivery of the notice to exercise the purchaser's right of refund and cancellation of obligation, after which period such right shall be deemed waived.

(d) The requirements of subsections (b) and (c) shall apply only to purchasers who sign a sales contract before the issuance of a final order of registration or of section 484-10(g) exemption. The requirements of subsections (b) and (c) do not apply to prospective purchasers holding a reservation agreement which may be canceled at the request of the purchaser at any time prior to the execution by such prospective purchaser of a sales contract, or to persons who sign a sales contract or reservation agreement after the issuance of a final order by the director.

§484-8.7 Copy of amended public offering statements or written summary to be given to prospective purchasers. If a subdivider enters into a reservation agreement with a prospective purchaser for the subdivision before the issuance of a final order, any sales contract later entered into by the subdivider and that prospective purchaser after the final order is issued shall not be binding on the purchaser until the requirements of section 484-8.6 (b) have been met, and unless any amended public offering statement or written summary required by the director under section 484-8.6(d) is provided to the prospective purchaser before the purchaser signs the sales contract.

The requirements of section 484-8.6(b) shall apply as if the purchaser had signed the purchaser's sales contract before the final order was entered by the director; provided that the requirements of this section shall not apply if the director does not require under section 484-8.6(b) that an amended public offering statement or written summary be prepared in connection with the issuance of a final order.

§484-8.8 Receipt for amended public offering statement and written summary. (a) Whenever the director requires pursuant to section 484-8.6(b) that an amended public offering statement or written summary be prepared by the subdivider, the subdivider shall obtain a receipt therefor from each purchaser or prospective purchaser who signed a sales contract or reservation agreement to

purchase subdivided lands before the issuance of the director's final order. If the amended public offering statement or written summary is delivered to the purchaser or prospective purchaser by certified or registered mail, return receipt requested, and the prospective purchaser does not execute and return the purchaser's receipt for the amended public offering statement or written summary within seven days from the date of delivery, the purchaser shall be deemed to have receipted for it; provided that the receipt shall be effective only if at the time of the delivery of the amended public offering statement or written summary the prospective purchaser is notified in writing of the fact that the purchaser will be deemed to have executed the receipt for it upon the purchaser's failure to act within the seven-day period.

(b) Receipts taken for any amended public offering statement or written summary shall be kept on file in possession of the subdivider, subject to inspection at any reasonable time by the director, for a period of three years from the date the receipt was taken."

SECTION 9. Section 484-10, Hawaii Revised Statutes, is amended to read as follows:

"§484-10 General powers and duties. (a) The director [of regulatory agencies] shall prescribe reasonable rules which shall be adopted, amended, or repealed in compliance with chapter 91. The rules shall include, but not be limited to, provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for; provisions for operating procedures; and other rules as are necessary and proper to accomplish the purpose of this chapter.

(b) The director by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or a rule or order hereunder, the director, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The director is not required to post a bond in any court proceedings.

(d) The director may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the director notice of the suit and copies of all pleadings.

(e) The director may:

- (1) Accept registrations filed in other states or with the federal government;
- (2) Contract with similar agencies in this [state] State or other jurisdictions to perform investigative functions;
- (3) Accept grants-in-aid from any source.

(f) The director shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices. The director may seek certification of this Act from the Secretary of Housing and Urban Development pursuant to 15 U.S.C. section 1708.

(g) The director may exempt a subdivision of one hundred or fewer lots, parcels, units, or interests from registration required by this chapter if [he] the director determines that [the plan of promotion and disposition is primarily directed to persons in the local community or county in which the subdivision is situated.], the requirements of section 484-7(b) and the applicable provisions of section 484-8.5 are met.

This subsection shall not be construed or interpreted to exempt subdivisions, subdividers, or any persons from the enforcement provisions of this chapter.

The director shall establish, through properly adopted rules, a section 484-10(g) exemption from registration application procedure, subject to section 484-8.

(h) The director, from time to time, may hire consultants, who shall not be subject to chapters 76 and 77, to do any detailed inspection reports permitted or required by this chapter, the cost of which shall be borne by the applicant pursuant to section 484-20(b)(3).

(i) The director, from time to time, may hire consultants in connection with the review of a subdivider's application for a preliminary or final order of registration or section 484-10(g) exemption. The consultant shall be asked to review thoroughly the application for the purpose of examining its compliance with the requirements of this chapter and any rules adopted, including the documentation and other materials provided in connection therewith, and, in the case of an application for registration, the disclosure thereof in the public offering statement, or in the case of a final order of registration or section 484-10(g) exemption, any amended public offering statement or written summary to be provided to the purchasers. Upon completing the review, the consultant shall provide a written analysis of the application and any public offering statement or written summary, and an opinion of the nature and extent to which they comply with this chapter and the rules adopted thereto. The consultant shall not be subject to chapters 76 and 77, and the cost of retaining them shall be borne by the subdivider."

SECTION 10. Section 484-13, Hawaii Revised Statutes, is amended to read as follows:

"§484-13 Revocation. (a) A registration or exemption may be revoked by the director after notice and hearing upon a written finding of fact that the subdivider has:

- (1) Failed to comply with the terms of a cease and desist order;
- (2) Been convicted in any court subsequent to the filing of the application for registration or exemption for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
- (3) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

- (4) Failed faithfully to perform any stipulation or agreement made with the director [of regulatory agencies] as an inducement to grant any registration[,] or exemption, to reinstate any registration[,] or exemption, or to approved any promotional plan or public offering statement;
- (5) Made intentional misrepresentations or concealed material facts in an application for registration[.] or exemption.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the director finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, [he] the director may issue a cease and desist order instead."

SECTION 11. Section 484-15, Hawaii Revised Statutes, is amended to read as follows:

"§484-15 Penalties. Any person who wilfully violates this chapter or a rule adopted under it or any person who wilfully, in an application for registration or exemption makes any untrue statement of a material fact or omits to state a material fact is guilty of a felony and may be fined not less that \$1,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000; or may be imprisoned for not more than two years, or both."

SECTION 12. Section 484-16, Hawaii Revised Statutes, is amended to read as follows:

"§484-16 Civil remedy. (a) Any person who disposes of subdivided lands in violation of section 484-4, or who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be stated in a registration statement, an application, or public offering statement or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved by the subdivider that the purchaser knew of the untruth or omission, or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care of a person in such person's occupation could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.

(b) In addition to any other remedies, the purchaser, under the preceding subsection, may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands together with interest at the rate of six per cent a year from the date of payment, property taxes paid, costs, and reasonable attorneys fees less the amount of any income received from the subdivided lands upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six per cent a year on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under subsection (a), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every

employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care of a person in such person's occupation could not have known the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or exemption or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(e) A tender of reconveyance may be made at any time before the entry of judgment.

(f) A person may not recover under this section in actions commenced more than four years after his first payment of money to the subdivider in the contested transaction.

(g) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with any provision of this chapter or any rule or order under it [is] shall be void.

(h) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity."

SECTION 13. Section 484-20, Hawaii Revised Statutes, is amended to read as follows:

"§484-20 Fees and inspection expenses. (a) Notices of filing pursuant to section 484-8 shall not be issued until the applicant has paid to the director [of regulatory agencies] the proper registration or section 484-10(g) exemption fee and advanced the inspection expenses[, which shall not be refunded in the event registration is rejected. The] set forth in subsection (b). Neither the fee nor the advanced inspection expenses shall be refunded regardless of whether the application for registration or exemption is rejected or approved; provided that the director may return any unused inspection expenses moneys advanced under this section. The registration and exemption fee shall be based upon the number of lots, parcels, units, or interests to be registered[,] or exempt from registration, at the following rates:

(1) up to 100 lots	[25] <u>\$100</u>
(2) 101 to 500 lots	[50] <u>\$200</u>
(3) over 500	[75] <u>\$300</u>

(b) In addition to the registration or section 484-10(g) exemption fee, the applicant shall deposit with the director sufficient sums to cover the following inspection expenses:

- (1) Round trip air and ground transportation from Honolulu to site of the subdivision;
- (2) Per diem of [\$30] \$65 per day for each day in which travel is required, plus one day for site inspection; and
- (3) [\$75] \$150 per day for salary of state official or consultant¹ inspecting [out-of-state] all subdivisions.
- (c) The director may waive the requirement for inspection.
- (d) The director, from time to time, may raise the registration fee, exemption fee, and inspection expenses under this section by rules adopted in accordance with chapter 91."

SECTION 14. Statutory material to be repealed is bracketed. New material is underscored.²

SECTION 15. This Act shall take effect upon its approval.

(Approved June 6, 1983.)

Notes

- 1. Underscoring missing.
- 2. Edited pursuant to HRS §23G-16.5.