

ACT 295

H.B. NO. 2194-86

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Section 514A-36, Hawaii Revised Statutes, is amended to read as follows:

“§514A-36 Public reports and issuance fees. (a) When the real estate commission makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts reasonably available. A public report shall neither be construed to be an approval nor disapproval of a project. No final public report for a condominium project shall be issued until execution and recordation of the deed or master lease, the declaration with a true copy of the bylaws annexed thereto, and floor plans as approved by the county officer having jurisdiction over the issuance of permits for the construction of buildings, as provided by sections 514A-12, 514A-20, and 514A-81.

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

(c) No additional fee shall be imposed for the issuance by the commission of the first public report. The developer shall be assessed a fee of \$150 for the issuance of a subsequent public report and \$75 for the issuance of a supplementary public report.”

SECTION 2. Section 514A-40, Hawaii Revised Statutes, is amended to read as follows:

“§514A-40 Issuance of final reports, [prior to completion of construction.] **(a)** No final public report shall be issued prior to completion of construction of the project, unless there is filed with the real estate commission:

- (1) A verified 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 building;

- (2) A verified 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 of not less than one hundred per cent of the cost of construction;
- (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 shall expressly provide for:
 - (A) No disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and
 - (B) No disbursements from the balance of the trust fund after payment of construction costs pursuant to the preceding paragraph until 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[.];

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

- [(8) In the case of a project which includes one or more existing structures being converted to condominium status, a] (1) A verified statement signed by an appropriate county official that the project is in compliance with all ordinances, codes, rules, regulations, and other requirements in force at the time of its construction;
- [(9) In the case of a project which includes one or more existing structures being converted to condominium status, a] (2) A verified statement signed by an appropriate county official of whether any variance has been granted from any ordinance, code, rule, regulation, or any other requirement in force at the time of its construction or from any current ordinance, code, rule, regulation, or other requirement;
- [(10) In the case of a project which includes one or more existing structures being converted to condominium status:
 - (A)] (3) A statement by the declarant, based upon a report prepared by an independent 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;

- [(B)] (4) A statement by the declarant of the expected useful life of each item reported on in [subparagraph (A)] paragraph (3) or a statement that no representations are made in that regard;
- [(C)] (5) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations; [and]
- (6) A statement whether the project is on a lot, or has structures, or uses which do not conform to present zoning requirements;
- [(D) Subparagraphs (A), (B), and (C)] provided that paragraphs (3), (4), and (5) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years."

SECTION 3. Section 514A-41, Hawaii Revised Statutes, is amended to read as follows:

"§514A-41 Supplementary public report. (a) If after [a final] any public report has been issued, any circumstance occurs which would render the [final] public report misleading as to purchasers in any material respect, the developer shall stop all sales and immediately submit sufficient information to the real estate commission to enable it to issue a supplementary public report [describing the circumstance.] to update the information contained in the public report. Sales shall not resume until the supplementary public report has been issued. Unless the supplementary public report has been superseded, all prospective purchasers shall receive a true copy of any supplementary public report issued after a final public report.

(b) The real estate 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[, if any,] 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."

SECTION 4. Section 514A-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 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; [and]
- (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;

[(4) Paragraphs] 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.”

SECTION 5. Section 514A-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall be administered by the real estate commission. The real estate 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 real estate commission’s public report on the project.”

SECTION 6. Section 514A-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 which is binding upon any prospective purchaser until:

(1) A true copy of the real estate commission’s final public report thereon has been delivered to the prospective purchaser, either personally or by registered or certified mail with return receipt requested, together with a true copy of all other public reports thereon, if any, issued prior to the date of such delivery and not previously delivered to such prospective purchaser[.]. Public reports issued prior to the final public report need not be delivered to the prospective purchaser if:

(A) The final public report supersedes all prior public reports;

or

(B) A supplementary public report has been issued which supersedes the final public report and any other prior public reports, in which case a true copy of the real estate commission’s supplementary public report shall be delivered instead of the final public report;

(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 his 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 accepted for the reports and to have waived his right to cancel.”

SECTION 7. Section 514A-62, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Whenever a 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 [12 point] 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 Hawaii Real Estate Commission’s (Preliminary, Final, [and/or] 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 also acknowledge that I have had an opportunity to read the Public Report(s).]

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 downpayment 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 WISH TO CANCEL.]

I HAVE RECEIVED A COPY OF:

- (1) THE HAWAII REAL ESTATE COMMISSION’S (PRELIMINARY, 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] Date” ”

SECTION 8. Section 514A-102, Hawaii Revised Statutes, is amended to read as follows:

“§514A-102 **Announcement, publication.** (a) Beginning fifteen calendar days prior to the date any developer notifies the commission of the developer’s intention to sell a project which is subject to this chapter, the developer shall cause to be published in the classified section of at least one newspaper published daily in the State and having a general circulation in the county in which the project is to be located, not less than once in each of two successive weeks, an announcement containing a summary of at least the following information:

- (1) The location of the project;
- (2) A fair and reasonable estimate of:
 - (A) The total number of apartments to be included in the project;
 - (B) The number of apartments designated as residential units;
 - (C) The price range of the units;
 - (D) The approximate size of the units; and
 - (E) A designation whether the units are fee simple or leasehold;
- (3) [The] A statement that the apartments shall be offered for sale upon the issuance of the first public report by the commission, and the approximate date of the issuance;
- (4) A statement of the intended use, such as, but not limited to, commercial, timesharing, or vacation rental, of any apartment in the project other than a residential unit designated for use by an owner-occupant;
- (5) [The] A statement that fifty per cent of the residential units shall initially be offered for a ten-day period to only prospective owner-occupants, and a designation of such residential units;
- (6) The name and address of a real estate broker, which shall be designated by the developer, who any interested individual may contact to be placed on a reservation list, and to obtain further information on the project; and
- (7) A statement that a public report has not been issued for the project, and that the commission has not yet determined whether the developer has adequately disclosed all material facts as required by law.

(b) Proof of publication of the announcement summarizing the information required [by paragraphs (1) to (7) of this section,] under subsection (a) and a copy [thereof,] of the announcement, shall be filed with the commission as a condition of issuance of any public report.

(c) The developer or the developer’s broker shall also provide a copy of the announcement and the following information:

- (1) [the] The number of floors in the project;
- (2) [the] The number of bedrooms and square feet of each residential unit;
- (3) [the] The price and amount of monthly maintenance fees for each residential unit;
- (4) [the] The amount of lease rent for each residential unit and the applicable time periods;

to each prospective purchaser and [to any individual] by certified mail, delivered to the addressee only, return receipt requested, to any individual occupying such unit immediately prior to any conversion. The developer or the developer’s broker may provide prospective purchasers with a true copy

of the commission's public report in lieu of the disclosures required by this subsection if the public report contains all the information required under this section."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 30, 1986.)