

ACT 132

H.B. NO. 3028

A Bill for an Act Relating to Uniform Land Sales Practices Act.

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

SECTION 1. Section 484-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately designated.

““Common promotional plan” means a plan, undertaken by a single developer or group of developers acting in concert, to offer subdivided land for sale or lease; provided that where such land is offered for sale by the developer or group of developers acting in concert, and the land is contiguous or is known, designated, or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan.

“Material change” means any change which either renders the information contained in the application or public offering statement misleading or which substantively affects the rights or obligations of a purchaser or a prospective purchaser of a subdivision lot, such as, but not limited to, change in the nature or usage of the subdivision, or change in the underlying encumbrances or restrictive covenants.

“Public offering statement” means a statement that fully and accurately discloses the physical characteristics of the subdivided lands offered and all unusual or material circumstances or features affecting the subdivided lands. The statement shall include the information and statements required by section 484-6, and any other information or statements required by rules adopted by the director pursuant to chapter 91.”

2. By amending the definition of “subdivider” to read:

““Subdivider” means any owner of subdivided land who offers [it] the land for disposition or the principal agent of an [inactive] owner[.], who has been duly authorized in a writing filed with the director.”

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, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider’s subdivision, this chapter does not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser’s 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 the date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;
- (4) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of [building] buildings for resale[, unless the subdivider files with the director a written election that this chapter shall apply to that subdivision]; provided that said persons are legally obligated in writing to construct a residential, commercial, or industrial building on the subdivided land within two years

from the date the person acquired an interest in the subdivided land;

- (5) Pursuant to court order;
- (6) By any government or government agency;
- (7) As cemetery lots [of] or interests;
- (8) [Established] Registered as a condominium property regime pursuant to chapter 514A.

(b) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider's subdivision, 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) Offers or dispositions of securities currently registered with the commissioner of securities of this State;
- (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] the interests are regulated as securities by the United States or by the commissioner of securities of this State; and
- (6) Subdivisions of less than twenty lots, parcels, units, or interests, if [they] the lots, parcels, units, or interests 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] the 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, or offer or dispose in this State of any interest in subdivided lands located without this State 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 to read as follows:

"§484-5 Application for registration. (a) The application for registration of subdivided lands shall be filed 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 the applicant's personal representative;

- (2) A [legal description of the subdivided lands offered for registration, together with a] map or maps of the subdivided lands offered for registration showing the name and location of the subdivided lands, the division proposed or made, the topographic features of the lands, and the land area of the lots, parcels, units, or interests and the relation of the subdivided lands to existing and proposed streets, roads, easements, 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[;], current evidence of being admitted to conduct business in this State, and the address of each of [its] the applicant's 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[;], including, but not limited to, every director and officer of the managing general partner of a partnership; and the extent and nature of the director's and officer's or person's 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 containing a legal description of the subdivided lands offered for registration, including all encumbrances thereon, as of a specified date within thirty days of the date of application by a title report prepared by a title company authorized to do business in the State of Hawaii, or 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 the purchaser's interest in the subdivided lands and copies 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 by the subdivider and a statement of [any lien or encumbrance] all liens or encumbrances upon the subdivider's title to the subdivided lands, and copies of the instruments creating the [lien or encumbrance,] liens or encumbrances, if any, with data as to recording;
- (9) If there is a monetary lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences [for] to a purchaser in the event of a 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, and a statement describing all proposed 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[;] and evidence that all current taxes and assessments have been paid;
- (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[,], schedule, 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 have been prepared for public distribution by any means of communication[;], or a statement that no such advertising materials have been produced as of the date of application;
- (14) The proposed public offering statement[;] and a copy of the receipt for the 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; and
 - (C) Contains a statement that no disbursement shall be made from the escrow account to or on behalf of the subdivider until the director enters a final order registering the subdivided land and until the requirements of sections 484-8.6(b) and (c) and 484-8.7 are met;
- (16) Any other documents or information, including any current financial statement, which the director by the director's rules requires:
- (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;
- (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] including, without limitation, such uses as roadway lots, residential dwellings, churches, agriculture, hospitals, schools, low density apartments, high density apartments and hotels, and a subdivision map which shows such information[.];
- (18) If federal registration is required, the date of registration (date of filing if pending registration) and a copy of the "Statement of Record";
- (19) A letter of preliminary or final subdivision approval, or both, from the county or other appropriate jurisdiction;
- (20) A description of a road maintenance fund or any other maintenance fund that may have been established by the developer;
- (21) A specimen of a receipt for the written notice advising of the purchaser's right to rescind a contract within seven days after signing the contract, without penalty to the purchaser;

- (22) An executed copy of a listing agreement between the subdivider and a real estate broker duly licensed and in good standing under the laws of this State;
- (23) The name, address, and telephone number of the subdivider's representative or real estate broker in this State; and
- (24) A statement that the subdivider has not, or if a corporation, the officers, directors, and principals, or if a partnership, general partners, have not been convicted of a crime involving land dispositions or any aspect of land sales business in the United States or any foreign country within the past ten years, and have not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions.

(b) If the subdivider registers additional subdivided lands to be offered for disposition, the subdivider may consolidate or incorporate by reference the subsequent registration with any earlier registration offering subdivided lands for disposition under the same common promotional plan[.] if the subdivider files an application for the subsequent registration within two years after a final order of registration has been issued in connection with the earlier registration.

(c) The application shall be submitted with payment of the appropriate registration, consultant, and inspection fees.

[(c)] (d) The subdivider shall immediately report any material changes in the information contained in any application for registration."

SECTION 5. Section 484-6, Hawaii Revised Statutes, is amended to read as follows:

"§484-6 Public offering statement. (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 shall be in a form prescribed by the director's rules and shall include, but not be limited to, 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, current or proposed 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:
 - (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 roadway lots, 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, to rescind the contract at no penalty to the purchaser.

(b) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the director approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement, except for headings, may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director requires it[.] or as prescribed in rules adopted in accordance with chapter 91.

(c) The director may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the director and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated."

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

"§484-7 Notice of filing; inquiry and examination. [(a)] Upon receipt of [an] a complete application for registration in proper form, including all standardized application forms, if any, prescribed by the director, 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 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 and the rules 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[.]; and
- (7) Preliminary or final subdivision approval has been granted by the county in which the land is situated.

[(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 Orders of registration[, exemption,] and rejection; general provisions. (a) Within forty-five days from the date of the notice of filing, the director shall enter a preliminary or final order registering the subdivided lands or rejecting the registration[, 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, the director shall enter 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] 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."

SECTION 8. Section 484-8.5, Hawaii Revised Statutes, is amended 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] a complete application for registration [or for exemption under section 484-10(g);] containing all information required under this chapter, including, without limitation, all standardized application forms prescribed by the director;
- (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)[.] and the rules adopted by the director hereunder.

(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 nonbinding 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] all earnest money deposits, if any, received by the subdivider or [its] the subdivider's 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] the subdivider's 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] the subdivider's agents may hold, until the expiration of the seven-day cancellation period provided by section 484-7(6)¹ 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] 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,] purchasers, 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 484-8.7 or 484-8.6(b) or (c), the] The purchasers have had a full opportunity to obtain a refund of any sums paid and a release from [their] the purchasers' obligations under [their] the purchasers' sales contracts[.] in accordance with section 484-8.7 or section 484-8.6(b) or (c)."

SECTION 9. Section 484-8.6, Hawaii Revised Statutes, is amended to read as follows:

"§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[.] or a statement that no changes have occurred.

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] 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 statements [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, without penalty, within the 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 waiver of such right upon the purchaser's failure to act within a seven-day period, which notice shall be accompanied by any 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 binding 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] the 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."

SECTION 10. Section 484-8.7, Hawaii Revised Statutes, is amended to read as follows:

"§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."

SECTION 11. Section 484-8.8, Hawaii Revised Statutes, is amended to read as follows:

"§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 12. Section 484-10, Hawaii Revised Statutes, is amended by amending subsections (e), (f), and (g) to read as follows:

"(e) The director may[:], but shall not be obligated to:

- (1) Accept registrations filed in other states or with the federal government;
- (2) Contract with similar agencies in this 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 chapter 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 the director

determines that, 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.] seek certification of this chapter from the Secretary of Housing and Urban Development pursuant to 15 U.S.C. section 1708."

SECTION 13. Section 484-10, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(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], or 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] the application and any public offering statement comply with this chapter and the rules adopted pursuant thereto. The [consultant] consultants shall not be subject to chapters 76 and 77, and the cost of retaining them shall be borne by the subdivider."

SECTION 14. Section 484-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the director [of commerce and consumer affairs] determines after notice and hearing that a person has:

- (1) Violated this chapter;
- (2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (3) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the director;
- (4) Disposed of any subdivided lands which have not been registered with the director[;] or are exempted under this chapter;
- (5) Violated any lawful order or rule of the director;

the director may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter."

SECTION 15. 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 as an inducement to grant any registration [or exemption], to reinstate any registration [or exemption], or to approve any promotional plan or public offering statement;
- (5) Made intentional misrepresentations or concealed material facts in an application for registration [or exemption.] or in the public offering statement.

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, the director may issue a cease and desist order instead."

SECTION 16. Section 484-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

SECTION 17. Section 484-16, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) [A] No person [may not] shall be entitled to recover under this section [in actions] unless the person has commenced [more than] action for such recovery within four years after [his] the person's first payment of money to the subdivider in the contested transaction."

SECTION 18. 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 the proper registration or [section 484-10(g) exemption fee] consultant fees, and has advanced the inspection expenses set forth in subsection (b). Neither the [fee] registration or consultant fees, 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] monies 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 \$100
- (2) 101 to 500 lots \$200
- (3) over 500 \$300

(b) In addition to the registration [or section 484-10(g) exemption fee,] and consultant fees, 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 \$65 per day for each day in which travel is required, plus one day for site inspection; and
- (3) \$150 per day for salary of state official or consultant inspecting all subdivisions.] established by rules adopted in accordance with chapter 91.

(c) The director may waive the requirement for inspection.

(d) The director, from time to time, may raise the registration fee, [exemption fee,] consultant fees, and inspection expenses under this section by rules adopted in accordance with chapter 91.”

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 20. This Act shall take effect upon its approval.

(Approved June 3, 1992.)

Note

1. Prior to amendment “484-7(a)(6)” appeared here.