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H.B. NO. 664

A Bill for an Act Relating to Sales to Owner-Occupants.

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

SECTION 1. Chapter 514A, Part VI, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§514A- Affidavit. (a) The affidavit of intent to become an owner-

occupant required by section 514A-104 shall be approved and issued by the commission.

(b) The affidavit shall expire after three hundred sixty-five consecutive days have elapsed after the recordation of the instrument conveying the apartment to the affiant.

(c) The affidavit shall include statements by the affiant affirming that:

- (1) If the affiant intends to secure financing from a financial institution, the financing shall be an owner-occupant mortgage loan;
- (2) At any time after obtaining adequate financing or a commitment for adequate financing up until the expiration of the affidavit, the affiant shall notify the commission immediately upon any decision to cease being an owner-occupant;
- (3) At closing of escrow the affiant shall file a claim for an owner-occupant property tax exemption with the appropriate county office; and
- (4) The affiant shall comply with any other provision that the commission deems appropriate and expressly includes in the affidavit.

(d) The affidavit shall be personally executed by all the prospective owner-occupants of the residential unit and shall not be executed by an attorney-in-fact.

(e) The affidavit shall be reaffirmed at escrow by all the prospective owner-occupants of each residential unit and recorded or made part of the conveying documents.

§514A- Prohibitions. (a) No person who has executed an owner-occupant affidavit shall sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, or convey the unit until at least three hundred sixty-five consecutive days have elapsed since the recordation of the purchase. Any contract or instrument entered into in violation of this part shall be subject to the remedies provided in section 514A-69.

(b) No developer, employee or agent of a developer, or real estate licensee shall violate or aid any other person in violating this part. It is the affirmative duty of any developer, employee or agent of a developer, and real estate licensee to immediately report to the commission any person who violates or attempts to violate this part.

§514A- Penalties. (a) Any person who executes an affidavit required by this part and violates or fails to comply with any of the provisions of this part or any rule adopted by the commission pursuant thereto shall be subject to a civil penalty of up to \$10,000 or fifty per cent of the net proceeds received or to be received by the person from the sale, lease, rental, assignment, or other transfer of the residential unit to which the violation relates, whichever is the greater.

(b) Any developer, employee or agent of a developer, or real estate licensee who violates or fails to comply with any of the provisions of this part or any rule adopted by the commission pursuant thereto shall be subject to a civil penalty of up to \$10,000. Each violation shall constitute a separate offense.

§514A- False statement. It shall be unlawful for any person to make a false statement in the affidavit required by this part or for any person to file with the commission any notice, statement, or other document required under this part or any rule adopted by the commission pursuant thereto which is false or contains a material misstatement of fact. Any violation of this section shall be a misdemeanor punishable by a fine not to exceed \$2,000, or by imprisonment for a term not to exceed one year, or both."

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by amending Part VI to read as follows:

“PART VI. SALES TO OWNER-OCCUPANTS

§514A-101 Definitions. As used in this part:

“Chronological system” means a system in which the final reservation list is determined by the chronological order in which the developer or the designated real estate broker receives both completed owner-occupant affidavits and earnest money deposits from prospective owner-occupants.

“Lottery system” means a system in which no prospective owner-occupant has an unfair advantage in the determination of that owner-occupant’s place on the final reservation list since the place on the list is determined by a lottery.

“Owner-occupant” means any individual in whose name sole or joint legal title is held in a residential unit which, simultaneous to such ownership, serves as the individual’s [dwelling place] principal residence, as defined by the state department of taxation, for a period of not less than three hundred and sixty-five consecutive days; provided that the individual [shall retain] retains complete possessory control of the premises of the residential unit during [the] this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held.

“Residential unit” means “apartment” as defined in section 514A-3, but excludes:

- (1) Any apartment intended for commercial use; and
- (2) Any apartment designed and constructed for hotel or resort use which is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to:
 - (A) Section 46-4; or
 - (B) Any other authority granted by law to a county.

§514A-102 Announcement, publication. (a) [Beginning fifteen] No earlier than sixty calendar days prior to the date any developer notifies the commission pursuant to sections 514A-31 and 514A-32 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] with a general circulation in the county in which the project is to be located, and, if the project is located other than on the island of Oahu, in at least one newspaper which is published at least twice weekly 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 statement 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) A statement that the apartments shall be offered for sale upon the issuance of [the first public report] an effective date by the commission[, for the first public report, and the [approximate] estimated effective 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) A statement [that fifty per cent] of the residential units by apartment numbers that has been designated by the developer pursuant to section 514A-103, and that such apartments shall initially be offered for a ten-day period after the issuance of an effective date for the first public report to only prospective owner-occupants[,] on the final reservation list, who will use the residential units as their principal residences for a period of not less than three hundred and sixty-five consecutive days [and a designation of such residential units];
- (6) A statement of the availability and number of residential units in the project that are "accessible" and "adaptable," as those terms are defined and interpreted in 24 C.F.R. §100 et. seq., for persons with disabilities;
- (7) A statement that the final reservation list for the subject residential units shall be determined by either a chronological system or a public lottery, and that any person interested in participating in either system shall submit a completed owner-occupant affidavit and earnest money deposit to the developer or designated real estate broker by a date designated by the developer;

[(7)](8) The name, telephone number, and address of [a] the developer or the real estate broker, [which] who shall be designated by the developer, [who] whom any interested individual may contact to secure an owner-occupant affidavit and to be placed on a reservation list or in the public lottery, and to obtain further information on the project; and

[(8)](9) 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 under subsection (a) and a copy of the announcement, shall be filed with the commission as a condition of issuance of any public report.] The commission shall not issue an effective date for any public report for a project unless the developer files with the commission:

- (1) A copy of the announcement at least thirty days prior to its initial publication; and
- (2) Proof of publication of the announcement required under subsection (a) and a copy of the actual announcement when the developer files the notice of intention pursuant to section 514A-31 and 514A-32.

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

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

to each prospective purchaser and 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 real estate broker may

provide prospective purchasers with a true copy of the [commission's] project's public report in lieu of the disclosures required by this subsection if the public report contains all the information required under this section.

§514A-103 Designation of residential units. The developer of any project containing residential units shall designate at least fifty per cent of such units for sale to prospective owner-occupants pursuant to section 514A-105. Such units shall constitute a proportionate representation of all the residential units in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not such unit has a lanai.

§514A-104 Reservation list, requirements. [From the date of the first publication of an announcement of the intended sale of a project made pursuant to section 514A-102, until ten calendar days have elapsed following the date of issuance of the first public report on such project, the developer's designated broker shall compile a reservation list consisting of the names of all individuals stating a desire to purchase a residential unit contained in the announced project in the order in which they have submitted to the agent the following:

- (1) A duly executed affidavit of intent to become an owner-occupant of the residential unit upon the completion of the project. Any individual who makes any false statement in the affidavit is subject to chapter 710, part V; provided that no individual shall be deemed to have made a false statement of intent if circumstances, such as serious illness of the individual or of a member of the individual's family, job or military transfer, unforeseeable change in marital status, or the birth of a child, subsequent to execution of the affidavit, cause the individual to be unable to occupy the residential unit; and
- (2) An earnest money deposit in a reasonable amount designated by the developer; provided that if no sales contract is offered to the individual, the entire deposit shall be returned and the developer shall not be required to pay any interest on such deposit.]

(a) When the chronological system is used, the developer or the developer's real estate broker, as the case may be, shall determine the final reservation list as follows:

- (1) From the date of the first published announcement required under section 514A-102 until the date of issuance of the first public report on the project, the developer or developer's real estate broker shall compile a reservation list of prospective owner-occupants in the order in which they have submitted both a completed owner-occupant affidavit, the form of which shall have been previously approved by the commission, and an earnest money deposit in a reasonable amount designated by the developer. The developer or the developer's real estate broker shall maintain at all times a sufficient number of affidavits for prospective owner-occupants to execute.
- (2) If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be placed on the reservation list.
- (3) No developer, employee or agent of the developer, or any real estate licensee shall, either directly or through any other person, release any information or inform any prospective owner-occupant about the publication announcement referred to in section 514A-102, including the date it is to appear and when the chronological system will be initiated, until after the announcement is published.

- (4) The reservation list referred to in subsection (a)(1) shall be the final reservation list. Prospective owner-occupants shall be given the opportunity to select one of the owner-occupant residential units in the order in which their names appear on the list. Prospective owner-occupants who do not select, or do not have the opportunity to select, an owner-occupant apartment shall be part of the final reservation list as back-up prospective owner-occupants in the order in which they submitted both a completed owner-occupant affidavit and an earnest money deposit.
 - (5) If no sales contract is offered to a prospective owner-occupant within six months of the issuance of the first public report, or upon the request of a person who requests to be removed from the final reservation list or who has elected not to execute a sales contract, the entire earnest money deposit shall be returned to the prospective owner-occupant and the developer shall not be required to pay any interest thereon.
 - (6) The developer or developer's real estate broker shall submit to the commission a certified copy of the final reservation list within fifteen calendar days after the date of issuance of the first public report on the project.
- (b) When the public lottery system is used, the developer or the developer's broker, as the case may be, shall determine the final reservation list as follows:
- (1) From the date of the first published announcement required under section 514A-102, until five calendar days after the last published announcement, the developer or developer's real estate broker shall compile a list of all prospective owner-occupants who have submitted to the developer or the developer's real estate broker a duly executed owner-occupant affidavit, the form of which affidavit shall have been previously approved by the commission. All prospective owner-occupants on this list shall be included in the public lottery described below. The developers and the developer's real estate broker shall maintain at all times sufficient copies of such affidavits for prospective owner-occupants to execute. A certified copy of the lottery list of those prospective owner-occupants shall be submitted to the commission within ten calendar days after the last publication of the announcement.
 - (2) The developer or developer's real estate broker shall conduct a public lottery no later than fifteen calendar days after the last published announcement. The public lottery shall be held on the date, time, and location as set forth in the published announcement. Any person, including all prospective owner-occupants eligible for the lottery, shall be allowed to attend the lottery.
 - (3) The public lottery shall be conducted in such a manner that no prospective owner-occupant shall have an unfair advantage, and shall, as to all owner-occupants whose affidavits were submitted to the developer or the developer's real estate broker within the time period referred to in the first sentence of subsection (b)(1) above, be conducted without regard to the order in which the affidavits were submitted. If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be entitled to enter the public lottery.
 - (4) Each of the prospective owner-occupants on the list referred to in

- subsection (b)(1) shall be placed on the preliminary reservation list in the order in which they are selected at the lottery.
- (5) Within thirty calendar days after the date of the lottery, each prospective owner-occupant on the preliminary reservation list shall, in the order in which their names appear on the preliminary reservation list, be given the opportunity to select one of the owner-occupant residential units and submit an earnest money deposit, if not already submitted, in a reasonable amount designated by the developer. Those prospective owner-occupants selecting residential units shall be placed on a final reservation list, together with the units selected. Those prospective owner-occupants who did not select, or did not have the opportunity to select, an owner-occupant apartment shall be part of the final reservation list as back-up prospective owner-occupants, in the order in which they were as selected in the public lottery.
 - (6) If no sales contract is offered to the prospective owner-occupant within six months of the public lottery, or upon the request of a person who requests to be removed from the final reservation list or who has elected not to execute a sales contract, the entire earnest money deposit shall be returned to such prospective owner-occupant and the developer shall not be required to pay any interest thereon.
 - (7) The developer or developer's real estate broker shall submit to the commission, a certified copy of:
 - (a) The preliminary reservation list within two business days after the date of the public lottery. Should the due date be a holiday or weekend, the required document shall be due the next working day after the holiday or weekend;
 - (b) The final reservation list within thirty calendar days after the date of the public lottery.

§514A-105 Sale of residential units. (a) From the issuance of an effective date of the first public report until [ten calendar days thereafter,] the developer has complied with the provisions of section 514A-104, the developer shall offer all the residential units designated pursuant to section 514A-103 for sale to only the [individuals] prospective owner-occupants whose names are on the final reservation list in the order in which their names appear on such list; provided, however, that notwithstanding anything to the contrary set forth in this part, in the case of a project which includes one or more existing structures being converted to condominium status, each residential unit contained in the project shall first be offered for sale to any individual occupying [such] the unit immediately prior to the conversion and who [otherwise complies with section 514A-104.] submits a commission approved owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

(b) Each prospective owner-occupant who has selected a residential unit shall be given not less than ten calendar days to execute a sales contract for the unit selected. Those owner-occupants who have been offered such a contract, but elect not to execute the contract, shall be permanently stricken from the final reservation list. Those residential units for which a sales contract is not executed shall be aggregated by the developer and re-offered to the back-up prospective owner-occupants in the order in which their names appear on the final reservation list. The developer shall be required to make this re-offer once only. After complying with the foregoing requirements, the developer shall not be obligated to re-offer any of the designated residential units to prospective owner-occupants.

except as otherwise provided in this part.

(c) Each contract for the purchase of a designated residential unit by an owner-occupant [shall] may be conditioned upon the [buyer] purchaser obtaining adequate financing, or a commitment for adequate financing, [within forty-five] by a date which is no earlier than fifty calendar days [following the end of the ten calendar day period during which the developer is limited to selling to owner-occupants,] after the developer's execution and acceptance of the sales contract, and if [such] the financing or commitment is not obtained, the contract [shall] may be canceled[.] by either the developer or the purchaser. If the sales contract is so canceled, the developer shall re-offer the residential unit first to those owner-occupants whose names have not been removed from the final reservation list and who have not executed a sales contract for a residential unit in the project in the order in which their names appear on the final reservation list.

(d) [If during the ten calendar day period following the issuance of the first public report, any individual with whom a] Any prospective owner-occupant who executes a sales contract for the sale of one of the designated residential units [was entered desires to cancel the contract on account of hardship circumstances such as those set forth in section 514A-104(1), or indicates an intent not to become an owner-occupant of such unit, the developer shall cancel the sales contract and shall offer the unit to persons whose names are on the reservation list, beginning with the first name listed; provided that if there are no additional names on the list, at the end of the ten calendar day period the developer may honor the original sales contract, or cancel the contract and sell to any other person without any further restriction imposed by this part.] shall be required to reaffirm at closing of escrow such person's intent to be an owner-occupant as set forth in section 514A- . Any person who is unable to make such a reaffirmation shall be required to rescind the sales contract. The developer shall accept such rescission and re-offer the residential unit first to those owner-occupants whose names have not been removed from the final reservation list and who have not executed a sales contract for a residential unit in the project, in the order in which their names appear on the final reservation list. If the sales contract has become binding upon the purchaser pursuant to section 514A-62, the developer may retain the purchaser's deposit up to an amount not to exceed the greater of five per cent of the deposit or actual damages, and shall refund to the purchaser any balance of the deposit.

[Upon the cancellation of any contract, the developer shall return all moneys paid pursuant to the contract but may deduct from the moneys returned any reasonable amount representing expenses incurred by the developer to process the sales contract; provided that the cancellation shall be approved by any lender financing the project; and provided further that the deposit of each individual on the reservation list who has not been offered a residential unit shall be refunded in full.]

(e) Any [individual] prospective owner-occupant on the final reservation list may at any time be offered any residential unit in the project not subject to the designation required by section 514A-103.

§514A-106 Financial institutions[,] and escrow companies, obligations.

(a) Any person subject to chapter 403, 407, 408, 410, or 454, or who is subject to any other law for the purpose of lending money upon the security of real property shall:

- (1) Within forty-five days after receipt of an application for credit from any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, notify the applicant of the

- action on the application; and
- (2) Prior to making any commitment to extend credit to any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, take all reasonable steps necessary to determine that the individual, in fact, intends to become an owner-occupant of such residential unit.

§514A-107 Enforcement[, real estate commission]. (a) Whenever the commission believes from satisfactory evidence that any person is violating or has violated any provision of this part[,] or rules of the commission adopted pursuant thereto, it [shall] may conduct an investigation on [such] the matter and bring an action in the name of the commission in any court of competent jurisdiction against the person to enjoin [such] the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Before the commission brings an action in any court of competent jurisdiction pursuant to subsection (a) against any person who executed an affidavit pursuant to this part, it may consider whether the following extenuating circumstances affected the person's ability to comply with the law:

- (1) Serious illness of any of the owner-occupants who executed the affidavit or any other person who was to or has occupied the residential unit;
- (2) Unforeseeable job or military transfer;
- (3) Unforeseeable change in marital status, or change in parental status;
or
- (4) Any other unforeseeable occurrence subsequent to execution of the affidavit.

Thereafter, the commission may cease any further action and order release of any net proceeds held in abeyance.

(c) Any individual who executes an affidavit pursuant to this part and who subsequently sells or offers to sell, leases or offers to lease, rents or offers to rent, assigns or offers to assign, or otherwise transfers any interest in the residential unit which the person obtained pursuant to this part, shall have the burden of proving his or her compliance with the requirements of this part.

(d) Upon request, the commission may require a verification of owner-occupancy from the presumed owner-occupant. In the event that the presumed owner-occupant fails to submit verification of continuing owner-occupancy, as defined in this section, because of sale, lease, assignment, or transfer, the presumed owner-occupant may also be subject to a fine in the amount equal to the profit made from the sale, assignment or transfer.

(e) The commission shall adopt rules, pursuant to chapter 91, [within six months from May 30, 1980,] to carry out the purposes of, and its responsibilities under, this part.

§514A-108 Inapplicability of part or sections. (a) This part shall not apply to any project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201E, 206, 356, or 359[, or 359G.], provided that the developer of such a project may elect to be subject to this part through a written notification to the commission with the notification requirements of paragraph 514A-102(b)(1). Disclosure of the election shall be made through an additional statement in the announcement pursuant to subsection 514A-102(a).

(b) This part shall not apply to [small] condominium projects where the developer [sells or] intends to [sell] convey, and does in fact convey, all of the residential apartment units in the project to a spouse or family members related

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by blood, descent or adoption.

(c) This part shall not apply to condominium projects [where the developer builds or converts two houses on a single lot.] consisting of two or fewer apartments.

(d) A developer of a project enumerated in subsection (a) electing to be subject to this part or a project developed pursuant to an affordable housing condition or provision by a state or county governmental agency may elect to waive certain specific provisions of this part that conflict with the eligibility or preference requirements imposed by such governmental agency. The developer who exercises such an election shall provide detailed written notification to the commission of which specified provisions will be waived, an explanation for each waived provision, and a statement from the affected government agency that the project is either an inapplicable project pursuant to subsection (a) or a project whereby a governmental agency has imposed eligibility or preference requirements. This notification shall be filed with the notification requirements of 514A-102(b)(1) and a copy simultaneously filed with the affected governmental agency. Disclosure of the election to waive certain specific provisions of this part shall be made through an additional statement in the announcement pursuant to subsection 514A-102(a).

(e) Such filing to meet the notification requirements of subsections (a) or (d) shall not be construed to be an approval or disapproval of the project by the commission."

SECTION 3. Section 514A-49, Hawaii Revised Statutes, is amended to read as follows:

"§514A-49 Penalties. (a) Any person who in any respect violates or fails to comply with any of the provisions set forth in sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, or 514A-134, is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, or 514A-134 shall be punished by a fine not exceeding \$10,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto also shall be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense and the collection of the fine shall be by suit brought by the attorney general on behalf of the commission."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved April 29, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.