

ACT 217

S.B. NO. 819

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

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

SECTION 1. Section 514A-104.5, Hawaii Revised Statutes, is amended:

1. By amending subsection (b) to read as follows:

“(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. The affidavit shall expire prior to this period upon acquisition of title to the property by an institutional lender or investor through mortgage foreclosure.”

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foreclosure under power of sale, or a conveyance in lieu of foreclosure.”

2. By amending subsection (e) to read as follows:

“(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.] as provided in subsection 514A-105(d).”

SECTION 2. Section 514A-105, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-105 Sale of residential units.** (a) From the issuance of an effective date of the first public report until 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 prospective owner-occupants whose names are on the final reservation list in the order in which their names appear on [such] the 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 the unit immediately prior to the conversion and who 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 may be conditioned upon the purchaser obtaining adequate financing, or a commitment for adequate financing, by a date which is no earlier than fifty calendar days after the developer’s execution and acceptance of the sales contract, and if the financing or commitment is not obtained, the contract 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) Any prospective owner-occupant who executes an affidavit as set forth in section 514A-104.5 and a sales contract for the sale of one of the designated residential units shall be required to reaffirm [at closing of escrow such] the person’s intent to be an owner-occupant [as set forth in section 514A-104.5. Any person who is unable to make such a reaffirmation shall be required to rescind the sales contract.] no earlier than the person’s receipt for a final public report and no later than closing of escrow for the unit. The developer may provide in its sales contract that failure to sign the reaffirmation upon reasonable request shall constitute a default under the sales contract by the person failing to sign. The developer

shall [accept such rescission] cancel the sales contract or reservation of any person failing to make the reaffirmation pursuant to this subsection and 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. 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.] exercise the remedies provided for in the sales contract and any other remedies provided by law.

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

(f) The developer, escrow agent, or any other party, at the direction of the developer, shall mail twice to each owner-occupant by registered or certified mail, once by the sixtieth day and once by the two hundred seventieth day following the conveyance of the first unit to an owner-occupant listed on the final reservation list, a complete copy of the executed affidavit to inform them of their legal obligations and penalties as provided for in this part.

The developer shall keep records of its notice mailings and the owner-occupant affidavits for a period of three years starting from the date of its first mailing pursuant to this subsection and the date of the conveyance of the first unit to an owner-occupant listed on the final reservation list. Failure of the developer to give the notices required by this subsection shall not affect title to the owner-occupant unit or the obligations of the owner-occupant pursuant to this part.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 10, 1993.)