

ACT 135

H.B. NO. 793

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. (a) The legislature makes the following findings:

- (1) Condominium development has increased home ownership and fueled a significant portion of the State's construction industry. Because land available for single-family home development is becoming increasingly scarce for a number of reasons, condominium development is emerging as a growing component of the new housing market in the State, particularly within the urban core of the city and county of Honolulu;
- (2) To ensure that all condominium purchasers are adequately informed regarding a condominium project, chapter 514A, Hawaii Revised Statutes (HRS), prohibits a developer from marketing apartments in a condominium project until the State real estate commission (commission) has issued an effective date for the developer's condominium public report. This report must describe and disclose material information regarding the project, and may be either in the form of a preliminary or final public report;
- (3) A preliminary public report is issued before all material elements of the development of a project have been finalized. Developers have traditionally used preliminary public reports to test market feasibility before deciding to proceed with a development. Because a preliminary public report is subject to change, chapter 514A, HRS, provides that contracts to purchase condominium apartments are not binding, and that purchasers' deposits must be held in escrow;
- (4) Chapter 514A, HRS, allows the commission to issue an effective date for a proposed project's final public report only when the developer has:
 - (A) Finalized and recorded the project's plans and organizational documents;
 - (B) Acquired the land on which the project is to be developed;
 - (C) Completed construction documents, including specifications;
 - (D) Secured construction financing and building permits for the project;
 - (E) Executed a contract for the construction of the project; and
 - (F) Obtained a one hundred per cent performance and payment bond;
- (5) Because a purchaser is deemed to be adequately protected when a developer has satisfied all of these requirements, chapter 514A, HRS, provides that a contract to purchase a condominium apartment in a project for which a final public report has been issued only becomes binding once the purchaser has received the final public report and had a thirty-day period to review it and cancel the purchase contract. Once a contract becomes binding, purchasers' deposits may be disbursed to pay for construction and other approved costs, and the purchaser has no further right under chapter 514A, HRS, to cancel the purchase contract unless there is a material change to the project;
- (6) Chapter 514A, HRS, also requires the developer of any condominium project that contains residential apartments to designate at least fifty per cent of those apartments for sale to qualified "owner-occupants" before the project is offered for sale under either a preliminary or final public report;
- (7) Chapter 514A, HRS, requires developers to incur virtually all of the costs and risk of development such as design, land acquisition, financing (debt and equity), construction contracts, bonds, building permits, and other development costs, before being able to bind purchasers under a final public report. This requirement ignores the fact that, in the current economic climate, banks and other construction lenders gener-

ally will not provide financing for a condominium project until after a final public report has been issued, the developer has “presold” most of the apartments in the project, and the purchase contracts for those apartments have become legally binding;

- (8) This requirement forces developers to put significant amounts of their own funds at risk —or to secure expensive financing from investors willing to bear these risks —before the developers know whether a project is feasible and can go forward. This creates a significant financial and development hurdle that many condominium developers are unwilling or unable to overcome, especially for small development companies with less capital to put at risk. It also has created an environment that makes it very difficult for small local development companies to successfully compete with foreign or out of state companies that are well capitalized;
- (9) Because of the costs that must be incurred to obtain a final public report, developers have traditionally tested market feasibility by initially offering their projects for sale under a preliminary public report. This results in developers of new, residential condominium projects marketing their projects in three distinct phases: first to owner-occupants only; then to the general public under a preliminary public report; and then to the general public under a final public report. Under the current statutory scheme, each of these marketing phases requires its own extensive documentation and filings with the commission;
- (10) Requiring the owner-occupant sales to occur before the issuance of a public report unnecessarily complicates the owner-occupant process because a developer cannot offer sales contracts on the apartments that owner-occupants select prior to the issuance of a public report, thus adding additional steps and costs to the sales process; and
- (11) The ban on marketing to nonowner occupants before the issuance of a preliminary or final public report also makes it more difficult to effectively test-market a project to the general public, a critical step to determine a project’s market feasibility.

(b) This Act proposes amendments to chapter 514A, HRS, to ease these hurdles to the development of condominium housing, while preserving the existing buyer protections contained in chapter 514A, HRS. This Act amends chapter 514A, HRS, to:

- (1) Permit a developer’s contingent final public report for a project before a developer has acquired the land, obtained financing commitments, and, in the case of a new development, executed construction contracts, and obtained building permits. As with a final public report, purchasers could be bound under their purchase contracts based on a contingent final public report. However, where the commission has issued an effective date for a developer’s contingent final public report, there would not be any disbursement of purchasers’ deposits from escrow unless and until the developer has satisfied those requirements within a maximum of nine months after issuance of the contingent final public report. If the developer has not satisfied those conditions and obtained a final public report within this period, then the developer and the purchasers would have the right to rescind their contracts and the purchasers would get their money back from escrow with interest and would be reimbursed by the developer for any escrow fees and financing commitment fees that they incurred. This change would allow developers to minimize some of the significant up-front costs and risks that presently increase the cost of condominium housing or prevent

condominium development altogether. Because purchasers' deposits would be protected until the developer satisfies these requirements, this change would not affect the buyer protections that are already contained in chapter 514A, HRS; and

- (2) Allow developers to satisfy the owner-occupant requirements in part VI of chapter 514A, HRS, after the developers obtain from the commission an effective date for the first public report on a project, at which time the developer would begin marketing the project simultaneously to both prospective owner-occupants and the general public. Simplifying the marketing process under chapter 514A, HRS, as set forth in this Act would reduce marketing costs and allow early, more effective, test marketing of a project in order to determine market feasibility and fulfill lenders' presale requirements. It would also streamline and simplify what is, from both a buyer's and developer's perspective, a very complex and confusing process. Combining the owner-occupant and general public marketing phases in this way will not affect existing rights of qualified owner-occupant purchasers to buy up to fifty per cent of the residential units in a project.

This Act also proposes certain amendments to Act 106, Session Laws of Hawaii 1996, to conform that Act with chapter 514A, HRS.

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§514A- Contingent final public report. (a) Prior to the issuance of an effective date for a final public report, the developer may request that the commission issue an effective date for a contingent final public report. The contingent final public report shall be in the form and content as prescribed by the commission.

(b) No effective date shall be issued by the commission for a developer's contingent final public report unless there is submitted to the commission:

- (1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (2) The proposed developer's contingent final public report;
- (3) All documents, information, and other requirements under section 514A-37 if the commission has not issued an effective date for a preliminary public report;
- (4) An executed and recorded option agreement, agreement of sale, deed, or master lease for the property;
- (5) The executed and recorded declaration, bylaws, and floor plans as filed with 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;
- (6) 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 project;
- (7) A verified estimate of the time of completion of construction of the total project;
- (8) An executed copy of the escrow agreement which complies with the requirements of section 514A- and, if purchaser's funds are to be used for construction, the requirements of sections 514A-40(a)(6) and 514A-67;

- (9) 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; and
- (10) A letter of interest in financing construction of the project from a lender authorized to do business in the State.

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

- (1) A verified statement signed by an appropriate county official that the project is in compliance with all zoning and building ordinances and codes applicable to the project, and specifying, if applicable:
 - (A) Any variances which have been granted to achieve compliance; and
 - (B) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.
- (2) A statement by the declarant, based upon a report prepared by an independent Hawaii 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 project; and
- (3) A statement by the declarant of the expected useful life of each item reported on in paragraph (2) or a statement that no representations are made in that regard; provided that this paragraph and paragraph (2) apply only to apartments that may be occupied for residential use and have been in existence for five years or more.

(d) A contingent final public report shall expire nine months after the effective date of the report and, notwithstanding anything to the contrary in section 514A-43, may not be extended or renewed.

(e) A contingent final public report is subject to sections 514A-41 and 514A-63.

§514A- Protection of purchasers' funds. (a) If the commission issues an effective date for a contingent final public report for a project, the escrow agent shall deposit all purchasers' funds in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. The escrow agent shall not disburse the purchasers' funds from the account until the commission issues an effective date for a final public report for the project.

(b) If the commission does not issue an effective date for a final public report for a project by the date on which the project's contingent final public report expires, then the developer shall promptly notify all purchasers thereof by certified mail and the developer or the purchaser, after the expiration of the contingent final public report, may rescind the purchaser's sales contract by giving written notice thereof to the other. In the event of rescission pursuant to this subsection a purchaser shall be entitled to a prompt and full refund of the purchaser's entire deposit together with all interest earned thereon, reimbursement of any required escrow fees, and, if the developer required the purchaser to secure a financing commitment, the purchaser shall also be entitled to reimbursement by the developer of any fees the purchaser incurred in securing that financing commitment.

(c) If the commission issues an effective date for a contingent final public report for a project, the following notice shall be included in the contingent final public report and the receipt and notice required under section 514A-62(d):

“The effective date for the Developer’s Contingent Final Public Report was issued before the Developer submitted to the Real Estate Commission: the executed and recorded deed or master lease for the project site; the executed construction contract for the project; the building permit; satisfactory evidence of sufficient funds to cover the total project cost; or satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the Commission. Until the Developer submits each of the foregoing items to the Commission, all Purchaser deposits will be held by the escrow agent in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. If the Developer does not submit each of the foregoing items to the Commission and the Commission does not issue an effective date for the Final Public Report before the expiration of the Contingent Final Public Report, then:

- (1) The Developer will notify the Purchaser thereof by certified mail; and
- (2) Either the Developer or the Purchaser shall thereafter have the right under Hawaii law to rescind the Purchaser’s sales contract. In the event of a rescission, the Developer shall return all of the Purchaser’s deposits together with all interest earned thereon, reimbursement of any required escrow fees, and, if the Developer required the Purchaser to secure a financing commitment, reimburse any fees the Purchaser incurred to secure that financing commitment.””

SECTION 3. Section 514A-12, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-12 Copy of the floor plans to be filed.** Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the verified statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with [and approved by] the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings[.] and, if construction of the building or buildings is completed, as approved by the county or city and county officer. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, there shall be recorded within thirty days from the date of completion of the building or buildings as “date of completion” is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, which amendment shall require only the vote or written consent of the declarant or such other person or persons as are provided in the declaration. The plans shall be kept by the recording officer as provided by rules adopted by the department of land and natural resources, pursuant to chapter 91, indexed in the same manner as a conveyance entitled to

record, numbered serially in the order of receipt, each designated “apartment ownership,” with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.”

SECTION 4. Section 514A-31, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-31 Notification of intention.** Prior to the time when apartments in a condominium project are to be offered for sale in this State, the developer shall register the project with the commission by notifying the commission in writing of the developer’s intention to sell such apartments. No offer of sale or sale shall be made until the project has been registered with the commission and the commission has issued an effective date for the project’s preliminary, contingent final, or final public report.”

SECTION 5. Section 514A-33, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-33 Inspection.** After appropriate notification has been made or additional information has been received pursuant to sections 514A-31, 514A-32, 514A-40, 514A-___, or 514A-41, an inspection of the condominium project may be made by the commission.”

SECTION 6. Section 514A-35, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-35 Waiver of inspection.** The commission may waive an inspection when in its opinion, a preliminary, contingent final, final, or supplementary public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries.”

SECTION 7. Section 514A-36, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Concurrently with its filing with the commission of the notification of intention pursuant to sections 514A-31 and 514A-32, the developer shall prepare and submit to the commission a public report disclosing all material facts pertaining to the project. The public report shall be in such form and content as prescribed by the commission. Such public report may not be used for the purpose of selling any apartments in the project unless and until the commission issues an effective date for the public report. The commission’s issuance of an effective date for a public report shall not be construed to constitute the commission’s approval or disapproval of the project, or the commission’s representation that all material facts concerning the project have been fully or adequately disclosed, or the commission’s judgment of the value or merits of the project. No effective date for a final public report shall be issued until execution and recordation of the deed or master lease, the declaration, the bylaws, 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.”

2. By amending subsection (c) to read:

“(c) The developer shall be assessed [a nonrefundable fee] nonrefundable fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, for each effective date requested for a public report, including extensions, if any.”

SECTION 8. Section 514A-40, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No effective date shall be issued by the commission for a final public report prior to completion of construction of the project, unless there is filed with the 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 attorney’s fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the project;
- (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 issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the commission;
- (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 expressly shall provide for:
 - (A) No disbursements by the escrow agent for payment of construction costs, unless bills are submitted with the request for disbursements that have been approved or certified for payment by the project lender or an otherwise qualified 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 construction of the project has been completed and 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; [and]
- (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 [.] and
- (8) A copy of the disclosure statement required by section 514A-62(f)(3) if an effective date for a contingent final public report has been issued by the commission and the report has not expired.”

SECTION 9. Section 514A-43, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [A] Except as provided in section 514A- , a public report shall expire thirteen months after the effective date of the report. The commission, upon submission of a written request for an extension by the developer at least thirty calendar days prior to the expiration date, together with such supporting information as may

be required by the commission, a review of the registration, and after payment of a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, may issue an order extending the effective date of the preliminary, final, or supplemental public report.”

SECTION 10. Section 514A-62, Hawaii Revised Statutes, is amended to read as follows:

“§514A-62 Copy of public report to be given to prospective purchaser.

(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) The commission has issued an effective date for either a contingent final public report or a final public report on the project, and the developer has delivered, or caused to be delivered, to the prospective purchaser, either personally or by registered or certified mail with return receipt requested, a true copy of either the contingent final public report or the final public report together with a true copy of all prior public reports on the project, if any, which have not been previously delivered to such prospective purchaser; except that such prior public reports need not be delivered to the prospective purchaser if the contingent final public report or the final public report supersedes such prior public reports. If, prior to the entering into of such contract or agreement for sale or resale, the commission has, subsequent to its issuance of an effective date for the contingent final public report or the final public report, issued an effective date for a supplementary public report on the project, then a true copy of such supplementary public report shall also be delivered to such prospective purchaser in the same manner as the contingent final public report or the final public report, except that if the supplementary public report supersedes all prior public reports on the project, then only the supplementary public report need be delivered to the prospective purchaser.
- (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 the prospective purchaser’s 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 receipted for the reports and to have waived the prospective purchaser’s right to cancel.

(b) The receipts and notices taken hereunder shall be kept on file in possession of the developer (or such other person as may offer any apartment in a condominium project prior to completion of its construction), and shall be subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date the receipt and notice was taken.

(c) Unless such right has previously been waived pursuant to subsection (a), a prospective purchaser shall have the right to cancel any agreement for the purchaser¹ or reservation of an apartment at any time prior to the earlier of:

- (1) [the] The conveyance of the apartment to the prospective purchaser; or

- (2) [midnight] Midnight of the thirtieth day following the date of delivery of the first of either the contingent final public report or the final public report to such purchaser,

and, upon any such cancellation, shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchaser,¹ up to a maximum of \$250.

(d) Whenever a contingent final public report, 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 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 Developer’s (Preliminary, Contingent Final, Final, 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 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 down payment 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 HAVE RECEIVED A COPY OF:

- (1) THE DEVELOPER’S (PRELIMINARY, CONTINGENT FINAL, 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

AND I HAVE HAD AN OPPORTUNITY TO READ THE PUBLIC REPORT(S)

[] I WAIVE MY RIGHT TO CANCEL.

[] I HEREBY EXERCISE MY RIGHT TO CANCEL.

Purchaser's signature _____

_____ Date''

(e) No obligation to purchase an apartment under any agreement for the purchase or reservation of an apartment entered into prior to the purchaser's receipt of either a contingent final public report or a final public report is enforceable against the purchaser under such agreement.

(f) Where a developer has delivered to a purchaser a contingent final public report and the purchaser has previously waived the purchaser's right to cancel the purchaser's agreement for the purchase or reservation of an apartment pursuant to this section:

- (1) The issuance of an effective date for a final public report prior to the expiration of the contingent final public report shall not affect the enforceability of the purchaser's obligations under the purchaser's agreement for the purchase of an apartment;
- (2) The developer shall not be required to deliver to the purchaser the final public report for the project and receipt and notice set forth in subsection (d); and
- (3) The developer shall promptly deliver to the purchaser a disclosure statement informing them that the commission has issued an effective date for the final public report and containing all information contained in the final public report that is not contained in the contingent final public report."

SECTION 11. Section 514A-65, Hawaii Revised Statutes, is amended to read as follows:

"§514A-65 Escrow requirement. All moneys paid by purchasers prior to the purchaser's receipt of the contingent final public report or the final public report on the project shall be deposited in trust under escrow arrangement with instructions that no disbursements shall be made from such trust funds on behalf of the seller until the contract has become binding, and the requirements of sections 514A-40, 514A-____, and 514A-63 have been met."

SECTION 12. Section 514A-101, Hawaii Revised Statutes, is amended by amending the definitions of "chronological system" and "lottery system" to read as follows:

"'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.] residential units designated for sale to prospective owner-occupants are offered for sale to prospective owner-occupants in the chronological order in which the prospective owner-occupants deliver to the developer or the designated real estate broker completed owner-occupant affidavits, executed sales contracts, and earnest money deposits.

"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] the order in which residential units designated for sale to prospective owner-occupants are offered for sale because the order is determined by a lottery."

SECTION 13. Section 514A-102, Hawaii Revised Statutes, is amended to read as follows:

“§514A-102 Announcement, publication. (a) [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.] At least once in each of the two successive weeks following the issuance of an effective date of the first public report for the condominium project, the developer shall cause to be published in the classified section of at least one newspaper published daily in the State 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 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 an effective date by the commission for the first public report, and the estimated effective date;
- (4) (3) A statement of the intended use, such as, but not limited to, commercial, time sharing, or vacation rental, of any apartment in the project other than a residential unit designated for use by an owner-occupant;
- [(5)] (4) A statement of the residential units by apartment numbers that [has] have been designated by the developer pursuant to section 514A-103, and that such apartments shall initially be offered for a [ten-day] thirty-day period after the [issuance of an effective date for the first public report] first publication of the announcement 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;
- [(6)] (5) 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 Code of Federal Regulations §100 et seq., for persons with disabilities;
- [(7)] (6) 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] residential units that have been designated by the developer pursuant to section 514A-103 shall be offered to prospective purchasers:
 - (A) Chronologically in the order in which the purchasers submit to the developer a completed owner-occupant affidavit, an executed sales contract, and an earnest money deposit in a reasonable amount designated by the developer; or
 - (B) In an order determined by a public lottery, to be held at a date, time, and place specified in the announcement; provided that any person interested in participating in the lottery shall submit a completed owner-occupant affidavit to the developer or desig-

nated real estate broker by a date designated by the developer;
and

[(8)] (7) The name, telephone number, and address of the developer or the real estate broker, who shall be designated by the developer, 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,], public report, and to obtain further information on the project[; and].

[(9) A statement that a public report has not been issued for the project.]

(b) [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 sections 514A-31 and 514A-32.]

Within thirty days of the issuance of an effective date of the first public report for the condominium project, the developer shall file with the commission proof of publication of the announcement required under subsection (a).

(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;]

first public report for the condominium project 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 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.]'

SECTION 14. Section 514A-104, Hawaii Revised Statutes, is amended to read as follows:

“§514A-104 [Reservation list,] Unit selection, requirements. (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:] offer the residential units that have been designated pursuant to section 514A-103 as follows:

- (1) [From] For thirty days 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] offer the residential units that have been designated pursuant to section 514A-103 to prospective purchasers chronologically in the order in which they [have submitted both] submit to the developer or the developer's real estate broker, a completed owner-occupant affidavit, [the form of which shall have been previously approved by the commission,] an executed sales contract, 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 sales contracts and affidavits for prospective owner-occupants to execute. Prospective purchasers who do not have the opportunity to select a residential unit during the thirty-day period shall be placed on a back-up reservation list in the order in which they submit a completed owner-occupant affidavit and earnest money deposit in a reasonable amount designated by the developer.

- (2) If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one residential unit designated pursuant to section 514A-103 shall be offered to them or only one of them shall be placed on the back-up 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.]
- (4) The developer shall compile and maintain a list of all prospective purchasers that submitted a completed owner-occupant affidavit, an executed sales contract, and an earnest money deposit, and maintain the back-up reservation list, if any. Upon the request of the commission, the developer shall provide a copy of the list of all prospective purchasers and the back-up reservation list.

(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] offer the residential units that have been designated pursuant to section 514A-103 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 and maintain 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] Upon

- the request of the commission, the developer shall provide a 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 [fifteen²] thirty calendar days after the first published announcement, but no earlier than six 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.] At the public lottery, each prospective owner-occupant purchaser, in the order in which they are selected in the lottery, shall be given the opportunity to select one of the residential units that have been designated pursuant to section 514A-103, execute a sales contract, and submit an earnest money deposit in a reasonable amount designated by the developer. The developer shall maintain a list, in the order of selection, of all prospective purchasers selected in the lottery, and maintain a list of all prospective purchasers who selected one of the residential units designated pursuant of section 514A-103. Those prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential units designated pursuant to section 514A-103 but who submitted an earnest money deposit in a reasonable amount designated by the developer shall be placed on a back-up reservation list in the order in which they were selected in the public lottery. Upon request of the commission, copies of the aforementioned lists shall be submitted.
 - (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.]”

SECTION 15. Section 514A-104.5, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-104.5 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)] (a) The owner-occupant affidavit required by section 514A-104 shall expire after three hundred sixty-five consecutive days have elapsed after the recording 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, foreclosure under power of sale, or a conveyance in lieu of foreclosure.

[(c)] (b) 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; and
- (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)] (c) 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)] (d) The affidavit shall be reaffirmed as provided in [[]section[]] 514A-105(d).”

SECTION 16. 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 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 the list;] only as set forth in section 514A-104; provided[, however,] that notwithstanding 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] an 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) [(b) 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 prospective owner-occupants [whose names have not been removed from the final] on the back-up 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] that list.

[(d) (c) 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 the person's intent to be an owner-occupant 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 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 prospective owner-occupants [whose names have not been removed from the final] on the back-up 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] that list. If the sales contract has become binding upon the purchaser pursuant to section 514A-62, the developer may exercise the remedies provided for in the sales contract and any other remedies provided by law.

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

[(f) (e) 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 17. Section 514A-108, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(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, 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 section [514A-102(b)(1).] 514A-102(b). Disclosure of the election shall be made through an additional statement in the announcement pursuant to section 514A-102(a).”

2. By amending subsection (d) to read:

“(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 section [514A-102(b)(1)] 514A-102(b) 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 section 514A-102(a).”

SECTION 18. Act 106, Session Laws of Hawaii 1996, is amended by repealing section 10.

[“SECTION 10. Notwithstanding any other provision of law to the contrary, any fee imposed pursuant to section 6, 7, or 9 of this Act shall not exceed the existing fee amount required to be paid for the same purpose as of April 1, 1996; provided that for a biennial registration or re-registration, the re-registration fee, compliance resolution fund fee, and condominium management education fund fee shall not exceed twice the existing annual fee.”]

SECTION 19. Until such time as fees for a contingent final public report are prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes, the fees assessed shall be identical as those that apply to final public reports as prescribed in existing rules.

SECTION 20. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 21. This Act shall take effect on July 1, 1997. The provisions of sections 13, 14, 15, 16, and 17 of this Act shall not affect any condominium project for which the announcement required under section 514A-102, Hawaii Revised Statutes, is published prior to July 1, 1997.

(Approved June 16, 1997.)

Notes

1. Prior to amendment “purchase” appeared here.
2. Prior to amendment “calendar days” appeared here.
3. Edited pursuant to HRS §23G-16.5.