

**ACT 210**

S.B. NO. 3160

A Bill for an Act Relating to the Sale of Residential Condominium Apartments to Owner-Occupants.

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

SECTION 1. The legislature finds that certain governmental regulations pertaining to the sale of residential condominium apartments in Hawaii unnecessarily add to the time, cost, and efficiency of selling those apartments, all of which negatively impact the consumer. Of particular concern is part VI of chapter 514A, Hawaii Revised Statutes, which sets forth procedures to be followed in the sale of residential condominium apartments to prospective owner-occupants.

The legislature finds that procedures governing the sale of condominium apartments to owner-occupants were initially imposed in 1980 when real estate prices in Hawaii were rising rapidly and speculative purchasing limited the number of homes available to bona fide owner-occupants, or resulted in an owner-occupant paying more for an apartment. The presale notice and other restrictive sales proce-

quirements were seen as ways to offer a bona fide owner-occupant a first opportunity to purchase a condominium apartment at its initial offering price.

The real estate market has drastically changed since these presale notice and restrictive sales practice requirements were enacted. Speculative investment is no longer a reality, and the skyrocketing real estate prices of the late 1970s and early 1980s no longer exist. The large number of condominium apartments available for sale and healthy competition in the marketplace have resulted in competitive prices and an environment in which an owner-occupant buyer may make a selective purchase. The legislature therefore finds that some of the owner-occupancy sales requirements of part VI of chapter 514A, Hawaii Revised Statutes, are no longer relevant in today's market. Certain statutory requirements are confusing and cumbersome and often inhibit sales and discourage buyers, especially first-time homebuyers who are not familiar with condominiums and related statutory requirements. The requirements are also difficult to monitor and regulate. Accordingly, the legislature believes that changes to chapter 514A, Hawaii Revised Statutes, are warranted to facilitate the marketing and sale of condominium apartments.

The purpose of this Act is to amend part VI of chapter 514A, Hawaii Revised Statutes, in order to set forth sales and marketing requirements that give priority to the sale of residential condominium apartments to owner-occupants, without hampering a developer's need to maintain flexibility in an ever-changing market.

SECTION 2. Section 514A-101, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“‘Initial date of sale’ means the date of the first publication of the announcement or advertisement pursuant to section 514A-102.”

2. By amending the definitions of “chronological system”, “owner-occupant”, and “residential unit” to read:

“‘Chronological system’ means a system in which the residential [units] apartments 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[,] or reservations, and earnest money deposits.

“‘Owner-occupant’ means any individual in whose name sole or joint legal title is held in a residential [unit] apartment which, simultaneous to such ownership, serves as the individual's 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 retains complete possessory control of the premises of the residential [unit] apartment during 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[.]; except that an individual shall be deemed to have complete possessory control even when the individual conveys or transfers the apartment into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period.

“‘Residential [unit]’ apartment” 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] that is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to[:
  - (A) Section] section 46-4; [or] and

[(B)] (3) Any other use pursuant to authority granted by law to a county.”

SECTION 3. Section 514A-102, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-102 Announcement[,] or advertisement; publication.** [(a) 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, 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 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;
- (4) A statement of the residential units by apartment numbers that have been designated by the developer pursuant to section 514A-103, and that such apartments shall initially be offered for a thirty-day period after the first publication of the announcement to only prospective owner-occupants who will use the residential units as their principal residences for a period of not less than three hundred sixty-five consecutive days;
- (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;
- (6) A statement that the 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 designated real estate broker by a date designated by the developer;
- and
- (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, public report, and to obtain further information on the project.

(b) 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 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.] At least once in each of two successive weeks, and at any time following the issuance of an effective date of the first public report for the condominium project, the developer shall cause to be published in 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 that is published at least weekly in the county in which the project is to be located, an announcement or advertisement containing at least the following information:

- (1) The location of the project;
- (2) The minimum price of the residential apartments;
- (3) A designation as to whether the residential apartments are to be sold in fee simple or leasehold;
- (4) A statement that for a thirty-day period following the initial date of sale of the condominium project, at least fifty per cent of the residential apartments being marketed shall be offered only to prospective owner-occupants;
- (5) The name, telephone number, and address of the developer or other real estate broker designated by the developer that an interested individual may contact to secure an owner-occupant affidavit, public report, and any other information concerning the project; and
- (6) If applicable, a statement that the residential apartments will be offered to prospective purchasers through a public lottery."

SECTION 4. Section 514A-103, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-103 Designation of residential [units.] apartments.** (a) The developer of any project containing residential [units] apartments shall designate at least fifty per cent of [such] the [units] apartments for sale to prospective owner-occupants pursuant to section 514A-105. [Such units] The designation shall be set forth either in the public report or in the announcement or advertisement required by section 514A-102, and may be set forth in both. The apartments shall constitute a proportionate representation of all the residential [units] apartments in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not [such unit] the apartment has a lanai.

(b) A developer shall have the right to substitute an apartment designated for owner-occupants with an apartment that is not so designated; provided that the apartments are similar with regard to factors enumerated in subsection (a). The substitution shall not require the developer's submission of a supplementary public report."

SECTION 5. Section 514A-104, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-104 [Unit] Apartment selection, requirements.** (a) When the chronological system is used, the developer or the developer's real estate broker, as

the case may be, shall offer the residential [units] apartments that have been designated pursuant to section 514A-103 as follows:

- (1) For thirty days from the date of the first published announcement or advertisement required under section 514A-102, the developer or developer's real estate broker shall offer the residential [units] apartments that have been designated pursuant to section 514A-103 to prospective purchasers chronologically in the order in which they submit to the developer or the developer's real estate broker, a completed owner-occupant affidavit, an executed sales contract[,], or reservation, 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] apartment 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,] apartment, only one residential [unit] apartment 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 or advertisement 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 or advertisement is published[.]; and
  - (4) The developer shall compile and maintain a list of all prospective purchasers that [submitted] submit a completed owner-occupant affidavit, an executed sales contract[,], or reservation, and an earnest money deposit, and maintain [the] a 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 offer the residential [units] apartments that have been designated pursuant to section 514A-103 as follows:
- (1) From the date of the first published announcement or advertisement required under section 514A-102[,], until five calendar days after the last published announcement[,], or advertisement, 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. All prospective owner-occupants on this list shall be included in the public lottery described [below.] in paragraph (2). The [developers] developer and the developer's real estate broker shall maintain at all times sufficient copies of [such] affidavits for prospective owner-occupants to execute. Upon the request of the commission, the developer shall provide a copy of the lottery list of [those] prospective owner-occupants[.];
  - (2) The developer or developer's real estate broker shall conduct a public lottery [no later than 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[.], or advertisement. 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] so 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,] apartment, only one of them shall be entitled to enter the public lottery[.]; and
- (4) [At] After 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] apartments 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] apartments designated pursuant to section 514A-103. Those prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential [units] apartments 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."

SECTION 6. Section 514A-104.5, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-104.5 Affidavit.** (a) The owner-occupant affidavit required by section 514A-104 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, foreclosure under power of sale, or a conveyance in lieu of foreclosure.

(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].

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

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

SECTION 7. Section 514A-104.6, Hawaii Revised Statutes, is amended to read as follows:

“**[[§514A-104.6]] 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] apartment until at least three hundred sixty-five consecutive days have elapsed since the recordation of the purchase[.]; provided that a person who continues in the use of the premises as the individual’s principal residence during this period may convey or transfer the apartment into a trust for estate planning purposes. 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.]”

SECTION 8. Section 514A-105, Hawaii Revised Statutes, is amended to read as follows:

**§514A-105 Sale of residential [units.] apartments; developer requirements.** [(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 only as set forth in section 514A-104; provided 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 an owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

(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 on the back-up reservation list who have not executed a sales contract for a residential unit in the project in the order in which their names appear on that list.

(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 on the back-up reservation list who have not executed a sales contract for a residential unit in the project, in the order in which their names appear on 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.

(d) Any prospective owner-occupant on the 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.

(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.] (a) The developer may go to sale using either a chronological system or a lottery system at any time after issuance of an effective date for a public report for which the effective date has not expired.

(b) For a thirty-day period following the initial date of sale of apartments in a condominium project, at least fifty per cent of the apartments being sold shall be offered for sale only to prospective owner-occupants; provided that notwithstanding this part, in the case of a project that includes one or more existing structures being converted to condominium status, each residential apartment contained in the project first shall be offered for sale to any individual occupying the apartment immediately prior to the conversion and who submits an owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

(c) Each contract for the purchase of a residential apartment by an owner-occupant may be conditioned upon the purchaser obtaining adequate financing, or a commitment for adequate financing. If the sales contract is canceled, the developer shall re-offer the residential apartment first to prospective owner-occupants on the back-up reservation list described in sections 514A-104 and 514A-105, in the order in which the names appear on the reservation list; provided that the prospective owner-occupant has not already executed a sales contract or reservation for a residential apartment in the project.

(d) At any time, any prospective owner-occupant on the back-up reservation list may be offered any residential apartment in the project that has not been sold or set aside for sale to prospective owner-occupants.”

SECTION 9. Section 514A-107, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(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;] apartment;
- (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] apartment that the person obtained pursuant to this part, shall have the burden of proving his or her compliance with the requirements of this part.”

SECTION 10. Section 514A-107.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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] apartment to which the violation relates, whichever is the greater.”

SECTION 11. 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] a project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201G, or 206[,]; provided that the developer of [such a] the 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)]. 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] specified 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] the governmental agency. The developer of a project specified in subsection (a) who exercises [such an] the election shall provide detailed written notification to the commission of [which] the [specified] specific provisions that 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] A copy of this notification shall be filed [with the notification requirements of section 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 12. Section 514A-106, Hawaii Revised Statutes, is repealed.

SECTION 13. This Act shall not apply to any condominium project for which the announcement required under section 514A-102, Hawaii Revised Statutes, was published prior to the effective date of this Act.

SECTION 14. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

**ACT 210**

**Note**

1. Edited pursuant to HRS §23G-16.5.