

ACT 93

S.B. NO. 1132

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Act 164, Session Laws of Hawaii 2004, section 2, is amended by adding a new definition to section -3, Hawaii Revised Statutes, to be appropriately inserted and to read as follows:

““Structures” includes buildings.”

SECTION 2. Act 164, Session Laws of Hawaii 2004, section 2, is amended by amending part III of chapter , Hawaii Revised Statutes, to read as follows:

**“PART III. CREATION, ALTERATION, AND TERMINATION
OF CONDOMINIUMS [~~RESERVED~~]**

§ -31 Creation. (a) To create a condominium property regime, all of the owners of the fee simple interest in land shall execute and record a declaration submitting the land to the condominium property regime. Upon recordation of the master deed together with a declaration, the condominium property regime shall be deemed created.

(b) The condominium property regime shall be subject to any right, title, or interest existing when the declaration is recorded if the person who owns the right, title, or interest does not execute or join in the declaration or otherwise subordinate the right, title, or interest. A person with any other right, title, or interest in the land may subordinate that person's interest to the condominium property regime by executing the declaration, or by executing and recording a document joining in or subordinating to the declaration.

§ -32 Contents of declaration. (a) A declaration shall describe or include the following:

- (1) The land submitted to the condominium property regime;
- (2) The number of the condominium property regime map filed concurrently with the declaration;
- (3) The number of units in the condominium property regime;
- (4) The unit number of each unit and common interest appurtenant to each unit;
- (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
- (6) The permitted and prohibited uses of each unit;
- (7) To the extent not shown on the condominium property regime map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
- (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
- (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
- (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the approval of the owners of at least sixty-seven per cent of the common interest shall be required for all amendments to the declaration;
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium property regime map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
- (13) A declaration, subject to the penalties set forth in section -69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section -5, and specifying in the case of a property that includes one or more existing structures being converted to condominium property regime status:

 - (A) Any variances that have been granted to achieve the compliance; and
 - (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures; except that a

property that is registered pursuant to section -51 shall instead provide this declaration pursuant to section -54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section -5, and the developer intends to use purchaser's funds pursuant to the requirements of section -92 or -93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain.

(b) The declaration may contain any additional provisions that are not inconsistent with this chapter.

§ -33 Condominium property regime map. (a) A condominium property regime map shall be recorded with the declaration. The condominium property regime map shall contain the following:

- (1) A site plan for the condominium property regime, depicting the location, layout, and access to a public road of all buildings and projects included or anticipated to be included in the condominium property regime, and depicting access for the units to a public road or to a common element leading to a public road;
- (2) Elevations and floor plans of all buildings in the condominium property regime;
- (3) The layout, location, boundaries, unit numbers, and dimensions of the units;
- (4) To the extent that there is parking in the condominium property regime, a parking plan for a project, showing the location, layout, and stall numbers of all parking stalls included in the project and the condominium property regime;
- (5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information of the limited common elements, if any; and
- (6) A description in sufficient detail, as may be determined by the commission, to identify any land area that constitutes a limited common element.

(b) The condominium property regime map may contain any additional information that is not inconsistent with this chapter.

§ -34 Condominium property regime map; certification of architect, engineer, or surveyor. (a) The condominium property regime map shall bear the statement of a licensed architect, engineer, or surveyor certifying that the condominium property regime map is consistent with the plans of the condominium's building or buildings filed or to be filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located. If the building or buildings have been built at the time the condominium property regime map is recorded, the certification shall state that, to the best of the architect's, engineer's, or surveyor's knowledge, the condominium property regime map depicts the layout, location, dimensions, and numbers of the units substantially as built. If the building or buildings, or portions thereof, have not been built at the time the condominium property regime map is recorded, within thirty days from the completion of construction, the developer shall execute and record an amendment to the declaration accompanied by a certification of a licensed architect, engineer, or surveyor certifying that the condominium

property regime map previously recorded, as amended by the revised pages filed with the amendment, if any, fully and accurately depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built.

(b) If the condominium property regime is a conversion and the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located is unable to locate the original permitted construction plans, the certification need only state that the condominium property regime map depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built. If there are no buildings, no certification shall be required.

§ -35 Unit boundaries. Except as provided by the declaration:

- (1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings, are a part of the common elements;
- (2) If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element appurtenant solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements;
- (3) Subject to paragraph (2), all spaces, interior non-loadbearing partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and
- (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit.

§ -36 Leasehold units. An undivided interest in the land that is subject to a condominium property regime equal to a unit's common interest may be leased to the unit owner, and the unit and its common interest in the common elements exclusive of the land may be conveyed to the unit owner. The conveyance of the unit with an accompanying lease of an interest in the land shall not constitute a division or partition of the common elements, or a separation of the common interest from its unit. Where a deed of a unit is accompanied by a lease of an interest in the land, the deed shall not be construed as conveying title to the land included in the common elements.

§ -37 Common interest. Each unit shall have the common interest it is assigned in the declaration. Except as provided in sections -32(a)(12), -46, and -140(d) and except as provided in the declaration, a unit's common interest shall be permanent and remain undivided, and may not be altered or partitioned without the consent of the owner of the unit and the owner's mortgagee, expressed in a duly executed and recorded declaration amendment. The common interest shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned or described in the conveyance or other instrument.

§ -38 Common elements. Each unit owner may use the common elements in accordance with the purposes permitted under the declaration, subject to:

- (1) The rights of other unit owners to use the common elements;
- (2) Any owner's exclusive right to use of the limited common elements as provided in the declaration;
- (3) The right of the owners to amend the declaration to change the permitted uses of the common elements or to designate any portion of the common elements as a limited common element;
- (4) Any rights reserved in the declaration to amend the declaration to change the permitted uses of the common elements;
- (5) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are not actually used by any of the unit owners for a purpose permitted in the declaration. Unless the lease is approved by the owners of at least sixty-seven per cent of the common interest, the lease shall have a term of no more than five years and may be terminated by the board or the lessee on no more than sixty days prior written notice; and
- (6) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are actually used by one or more unit owners for a purpose permitted in the declaration. The lease or use shall be approved by the owners of at least sixty-seven per cent of the common interest, including all directly affected unit owners that the board reasonably determines actually use the common elements, and the owners' mortgagees.

§ -39 Limited common elements. If the declaration designates any portion of the common elements as limited common elements, those limited common elements shall be subject to the exclusive use of the owner or owners of the unit or units to which they are appurtenant, subject to the provisions of the declaration and bylaws. No amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the unit or units to which the limited common elements are appurtenant.

§ -40 Transfer of limited common elements. Except as provided in the declaration, any unit owner may transfer or exchange a limited common element that is assigned to the owner's unit to another unit. Any transfer shall be executed and recorded as an amendment to the declaration. The amendment need only be executed by the owner of the unit whose limited common element is being transferred and the owner of the unit receiving the limited common element; provided that unit mortgages and leases may also require the consent of mortgagees or lessors, respectively, of the units involved. A copy of the amendment shall be promptly delivered to the association.

§ -41 Common profits and expenses. (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners, including the developer, in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws. In a mixed-use project containing units for both residential and nonresidential use, the charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration. Except as otherwise provided in subsection (c) or the declaration or bylaws, all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and im-

provements, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.

(b) A unit owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to the owner's unit at the time the certificate of occupancy relating to the owner's unit is issued by the appropriate county agency; provided that a developer may assume all the actual common expenses in a project by stating in the developer's public report required by section -54 that the unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time as the developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. The developer shall mail the written notice to the owners, the association, and the managing agent, if any, at least thirty days before the specified date.

(c) Unless otherwise provided in the declaration or bylaws, if the board reasonably determines that the extra cost incurred to separately account for and charge for the costs of maintenance, repair, or replacement of limited common elements is not justified, the board may adopt a resolution determining that certain limited common element expenses will be assessed in accordance with the undivided common interest appurtenant to each unit. In reaching its determination, the board shall consider:

- (1) The amount at issue;
- (2) The difficulty of segregating the costs;
- (3) The number of units to which similar limited common elements are appurtenant;
- (4) The apparent difference between separate assessment and assessment based on the undivided common interest; and
- (5) Any other relevant factors, as determined by the board.

The resolution shall be final and binding in the absence of a determination that the board abused its discretion.

(d) Unless made pursuant to rights reserved in the declaration and disclosed in the developer's public report, if an association amends its declaration or bylaws to change the use of the condominium property regime from residential to nonresidential, all direct and indirect costs attributable to the newly permitted nonresidential use shall be charged only to the unit owners using or directly benefiting from the new nonresidential use, in a fair and equitable manner as set forth in the amendment to the declaration or bylaws.

§ -42 Metering of utilities. (a) Units in a project that includes units designated for both residential and nonresidential use shall have separate meters, or calculations shall be made, or both, as may be practicable, to determine the use by the nonresidential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of such utilities shall be paid by the owners of the nonresidential units; provided that the apportionment of the charges among owners of nonresidential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. The requirements of this subsection shall not apply to projects for which construction commenced before January 1, 1978.

(b) Subject to any approval requirements and spending limits contained in a project's declaration or bylaws, a board may authorize the installation of meters to determine the use by the individual units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage. The cost of metered utilities shall be paid by the owners of the units based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, may be

collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to owners for the cost of metered utilities.

§ -43 Liens against units. (a) For purposes of this section:

(1) "Visible commencement of operations" shall have the meaning it has in section 507-41; and

(2) "Lien" means a lien created pursuant to chapter 507, part II.

(b) If visible commencement of operations occurs prior to the creation of the condominium, then, upon creation of the condominium, liens arising from this work shall attach to all units in the condominium described in the declaration and their respective undivided interests in the common elements, but not to the common elements as a whole. If visible commencement of operations occurs after creation of the condominium, then liens arising from this work shall attach only to the unit or units described in the declaration on which the work was performed in the same manner as other real property, and shall not attach to the common elements.

(c) If the developer contracts for work on the common elements, either on its behalf or on behalf of the association prior to the first meeting of the association, then liens arising from this work may attach to all units owned by the developer described in the declaration at the time of visible commencement of operations.

(d) If the association contracts for work on the common elements after the first meeting of the association, there shall be no lien on the common elements, but the persons contracting with the association to perform the work or supply the materials incorporated in the work shall be entitled to their contractual remedies, if any.

§ -44 Contents of deeds or leases of units. Deeds or leases of units adequately describe the property conveyed or leased if they contain the following information:

(1) The title and date of the declaration and the declaration's bureau of conveyances or land court document number or liber and page numbers;

(2) The unit number of the unit conveyed or leased;

(3) The common interest appurtenant to the unit conveyed or leased; provided that the common interest shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned in the conveyance or other instrument, as provided in section -37;

(4) For a unit, title to which is registered in the land court, the land court certificate of title number for the unit, if available; and

(5) For a unit, title to which is not registered in the land court, the bureau of conveyances document number or liber and page numbers for the instrument by which the grantor acquired title.

Deeds or leases of units may contain additional information and details deemed desirable and consistent with the declaration and this chapter, including without limitation a statement of any encumbrances on title to the unit that are not listed in the declaration. The failure of a deed or lease to include all of the information specified in this section shall not render it invalid.

§ -45 Blanket mortgages and other blanket liens affecting a unit at time of first conveyance or lease. At the time of the first conveyance or lease of each unit, every mortgage and other lien, except any improvement district or utility assessment, affecting both the unit and any other unit shall be paid and satisfied of

record, or the unit being conveyed or leased and its common interest shall be released therefrom by a duly recorded partial release.

§ -46 Merger of projects or increments. (a) Two or more projects, or increments of a project, whether or not adjacent to one another, but that are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the units in the merged projects. A merger may be implemented with the vote or consent that the declaration requires for a merger, pursuant to any reserved rights set forth in the declaration, or upon vote of sixty-seven per cent of the common interest.

(b) A merger becomes effective at the earlier of:

(1) A date certain set forth in the certificate of merger; or

(2) The date that the certificate of merger is recorded.

The certificate of merger may provide for a single association and board for the merged projects and for a sharing of the common expenses of the projects among all the owners of the units in the merged projects. The certificate of merger may also provide for a merger of the common elements of the projects so that each unit owner in the merged projects has an undivided ownership interest in the common elements of the merged projects. In the event of a merger of common elements, the common interests of each unit in the merged projects shall be adjusted in accordance with the merger provisions in the projects' declarations so that the total common interests of all units in the resulting merged project totals one hundred per cent. If the certificate of merger does not provide for a merger of the common elements, the common elements and common interests of the merged projects shall remain separate, but shall be subject to the provisions set forth in the respective declarations with respect to merger.

(c) Upon the recording of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the registrar shall cancel all existing certificates of title for the units in the projects being merged and shall issue new certificates of title for the units in the merged project, covering all of the land of the merged projects. The new certificates of title for the units in the merged project shall describe, among other things, each unit's new common interest. The certificate of merger shall at least set forth all of the units of the merged projects, their new common interests, and to the extent practicable, their current certificate of title numbers in the common elements of the merged projects.

(d) In the event of a conflict between declarations and bylaws upon the merger of projects or increments, unless otherwise provided in the certificate of merger, the provisions of the first declaration and bylaws recorded shall control.

§ -47 Removal from provisions of this chapter. (a) If:

(1) Owners of units to which are appurtenant at least eighty per cent of the common interests execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of such units consent thereto by duly recorded instruments; or

(2) The common elements suffer substantial damage or destruction and the damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof, or the unit owners have earlier determined as provided in the declaration that the damage or destruction shall not be rebuilt, repaired, or restored;

the property shall be subject to an action for partition by any unit owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on

the property, if any, shall be considered as one fund and, except as otherwise provided in the declaration, shall be divided among all the unit owners in proportion to their respective common interests; provided that no payment shall be made to a unit owner until there has first been paid in full out of the owner's share of the net proceeds all liens on the owner's unit. Upon this sale, the property ceases to be a condominium property regime or subject to this chapter.

(b) All of the unit owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, if the holders of all liens affecting any of the units consent thereto, by duly recorded instruments. Upon this removal from this chapter, the property, or the part of the property designated in the instrument, shall cease to be the subject of a condominium property regime or subject to this chapter, and shall be deemed to be owned in common by the unit owners in proportion to their respective common interests.

(c) Notwithstanding subsections (a) and (b), if the unit leases for a leasehold condominium property regime (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

- (1) The estate and interest of the unit owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the condominium property regime;
- (2) The unit owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the unit owner's leasehold interest;
- (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;
- (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the unit owners of the buildings and improvements in accordance with their interests; and
- (5) The unit lease rents are reduced in proportion to the land so acquired or possessed;

the lessor and the developer shall file and record an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the unit owners or their respective mortgagees shall not be required, if the land acquired or possessed constitutes no more than five per cent of the total land of the condominium property regime. Upon the recordation of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or subject to this chapter. The lessor shall notify each unit owner in writing of the filing of the amendment and the rent abatement, if any, to which the unit owner is entitled. The lessor shall provide the association, through its board, with a copy of the recorded amendment.

(d) For purposes of subsection (c), the acquisition or right to possession may be effected:

- (1) By a taking or condemnation of property by the State or a county pursuant to chapter 101;
- (2) By the conveyance of property to the State or county under threat of condemnation; or
- (3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.

(e) The removal provided for in this section shall in no way bar the subsequent resubmission of the property to the requirements of this chapter."

SECTION 3. Act 164, Session Laws of Hawaii 2004, section 2, is amended by amending part IV of chapter _____, Hawaii Revised Statutes, to read as follows:

“PART IV. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS [(RESERVED)]

§ -51 Registration required; exceptions. (a) A developer may not offer for sale any units in a project unless the project is registered with the commission and an effective date for the developer’s public report is issued by the commission.

(b) The registration requirement of this section shall not apply to:

- (1) The disposition of units exempted from the developer’s public report requirements pursuant to section _____-81(b);
- (2) Projects in which all units are restricted to nonresidential uses and all units are to be sold for \$1,000,000 or more; or
- (3) The sale of units in bulk, such as where a developer undertakes to develop and then sells all or a portion of the developer’s entire inventory of units to a purchaser who is a developer. The registration requirements of this section and the developer’s amended developer’s public report requirements of section _____-56 shall apply to any sale of units to the public following a sale of units in bulk.

§ -52 Application for registration. (a) An application for registration of a project shall:

- (1) Be accompanied by nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; and
- (2) Contain the documents and information concerning the project and the condominium property regime as required by sections _____-54, _____-83, and _____-84, as applicable, and as otherwise may be specified by the commission.

(b) The commission need not process any incomplete application and may return an incomplete application to the developer and require that the developer submit a new application, including nonrefundable fees. If an incomplete application is not completed within six months of the date of the original submission, it shall be deemed abandoned and registration of the project shall require the submission of a new application, including nonrefundable fees.

(c) A developer shall promptly file amendments to report either any actual or expected pertinent or material change, or both, in any document or information contained in the application.

§ -53 Inspection by commission. (a) After appropriate notification has been made or additional information has been received pursuant to this part, an inspection of the project may be made by the commission.

(b) When an inspection is to be made of a project, the developer shall be required to pay an amount estimated by the commission to be necessary to cover the actual expenses of the inspection, not to exceed \$500 a day for each day consumed in the examination of the project, plus reasonable transportation expenses.

§ -54 Developer’s public report; requirements for issuance of effective date. (a) Prior to the issuance of an effective date for a developer’s public report, the commission shall have received the following:

- (1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;

- (2) The developer's public report prepared by the developer disclosing the information specified in section -83 and, if applicable, section -84;
- (3) A copy of the deed, master lease, agreement of sale, or sales contract evidencing either that the developer holds the fee or leasehold interest in the property or has a right to acquire the same;
- (4) Copies of the executed declaration, bylaws, and condominium map that meet the requirements of sections -32, -33, and -108;
- (5) A specimen copy of the proposed contract of sale for units;
- (6) An executed copy of an escrow agreement with a third party depository for retention and disposition of purchasers' funds that meets the requirements of section -91;
- (7) As applicable, the documents and information required in section -92 or -93;
- (8) A declaration, subject to the penalties set forth in section -69(b), that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to sections -5 and -32(a)(13); and
- (9) Other documents and information that the commission may require.

(b) The developer's public report shall not be used for the purpose of selling any units in the project until the commission issues an effective date for the developer's public report. The commission's issuance of an effective date for a developer's public report shall not be construed to constitute the commission's approval or disapproval of the project; the commission's representation that either all material facts or all pertinent changes, or both, concerning the project have been fully or adequately disclosed; or the commission's judgment of the value or merits of the project.

§ -55 Developer's public report; request for hearing by developer. If an effective date for a developer's public report is not issued within a reasonable time after compliance with registration requirements, or if the developer is materially grieved by the form or content of the developer's public report, the developer, in writing, may request and shall be given a hearing by the commission within a reasonable time after receipt of the request.

§ -56 Developer's public report; amendments. (a) After the effective date for a developer's public report has been issued by the commission, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the developer's public report, or if the developer desires to update or change the information set forth in the developer's public report, the developer shall immediately submit to the commission an amendment to the developer's public report or an amended developer's public report clearly reflecting the change, together with such supporting information as may be required by the commission, to update the information contained in the developer's public report, accompanied by nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Within a reasonable period of time, the commission shall issue an effective date for the amended developer's public report or take other appropriate action under this part.

(b) The submission of an amendment to the developer's public report or an amended developer's public report shall not require the developer to suspend sales, subject to the power of the commission to order sales to cease as set forth in section -66; provided that the developer shall advise the appropriate real estate broker or brokers, if any, of the change and disclose to purchasers any change in the informa-

tion contained in the developer's public report pending the issuance of an effective date for any amendment to the developer's public report or amended developer's public report; and provided further that if the amended developer's public report is not issued within thirty days after its submission to the commission, the commission may order a suspension of sales pending the issuance of an effective date for the amended developer's public report. Nothing in this section shall diminish the rights of purchasers under section -94.

(c) The developer shall provide all purchasers with a true copy of:

(1) The amendment to the developer's public report, if the purchaser has received copies of the developer's public report and all prior amendments, if any; or

(2) A restated developer's public report, including all amendments.

(d) The filing of an amendment to the developer's public report or an amended developer's public report, in and of itself, shall not be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by sections -86 and -87, the terms and conditions of the purchaser's contract for sale, and applicable common law.

§ -57 Commission oversight of developer's public report. (a) The commission at any time may require a developer to amend or supplement the form or substance of a developer's public report to assure adequate and accurate disclosure to prospective purchasers.

(b) The developer's public report shall not be used for any promotional purpose before registration, and may be used after registration only if it is used in its entirety. No person shall advertise or represent that the commission has approved or recommended the condominium project, the developer's public report, or any of the documents contained in the application for registration.

§ -58 Annual report. (a) A developer, its successor, or assign shall file annually a report to update the material contained in the developer's public report, together with the payment of nonrefundable fees, at least thirty days prior to the anniversary date of the effective date for a developer's public report. If there is no change to the developer's public report, the developer shall so state. This subsection shall not relieve the developer, its successor, or assign of the obligation to file amendments to the developer's public report pursuant to section -56. Failure to file the annual report required by this section may subject the developer to the penalties set forth in section -69(b).

(b) The developer, its successor, or assign shall be relieved from filing annual reports pursuant to this section when the initial sales of all units have been completed and the developer, its successor, or assign has no ownership interest in any unit in the project.

§ -59 Expiration of developer's public reports. Except as otherwise provided in this chapter, upon issuance of an effective date for a developer's public report or any amendment, the developer's public report and amendment or amendments shall not expire until such time as the developer has sold all units in the project.

§ -60 No false or misleading information. It shall be unlawful for any person or person's agent to testify falsely or make a material misstatement of fact before the commission or to file with the commission any document required by this chapter that is false, contains a material misstatement of fact, or that contains forgery. All documents shall be true, complete, and accurate in all respects, including the developer's public report, prepared by or for the developer and submitted to

the commission in connection with the developer's registration of the project, and all information contained in the documents, and shall not contain any misleading information, or omit any pertinent change in the information or documents submitted to the commission.

§ -61 General powers and duties of commission. (a) The commission may:

- (1) Adopt, amend, and repeal rules pursuant to chapter 91;
- (2) Assess fees;
- (3) Conduct investigations, issue cease and desist orders, and bring an action in any court of competent jurisdiction to enjoin persons, consistent with and in furtherance of the objectives of this chapter;
- (4) Prescribe forms and procedures for submitting information to the commission; and
- (5) Prescribe the form and content of any documents required to be submitted to the commission by this chapter.

(b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this part, part V, section -103, -132, -134, -149, sections -152 to -154, or any of the commission's related rules or orders, the commission, without prior administrative proceedings, may maintain an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The commission shall not be required to post a bond or to prove that no adequate remedy at law exists in order to maintain the action.

(c) The commission may exercise its powers in any action involving the powers or responsibilities of a developer under this part, part V, section -103, -132, -134, -149, or sections -152 to -154.

(d) The commission may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.

(e) The commission may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the commission's duties.

(f) In issuing any cease and desist order or order rejecting or revoking the registration of a condominium project, the commission shall state the basis for the adverse determination and the underlying facts.

(g) The commission, by rule, may require bonding at appropriate levels over time, escrow of portions of sales proceeds, or other safeguards to assure completion of all improvements that a developer is obligated to complete, or has represented that it will complete.

§ -62 Deposit of fees. Unless otherwise provided in this chapter, all fees collected under this chapter shall be deposited by the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).

§ -63 Condominium specialists; appointment; duties. The director of commerce and consumer affairs may appoint condominium specialists, not subject to chapter 76, to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominiums. The director may also appoint secretaries, not subject to chapter 76, to provide assistance in carrying out these duties. The condominium specialists and secretaries shall be members of the employees' retirement system of the State and shall be eligible to

receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State.

§ -64 Private consultants. The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of the review by private consultants shall be borne by the developer.

§ -65 Investigative powers. If the commission has reason to believe that any person is violating or has violated this part, part V, section -103, -132, -134, -149, sections -152 to -154, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of all relevant parties. For purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker in accordance with chapter 467 and the rules of the commission, and shall make the records accessible to the commission upon reasonable notice and demand.

§ -66 Cease and desist orders. In addition to its authority under sections -67 and -68, whenever the commission has reason to believe that any person is violating or has violated this part, part V, section -103, -132, -134, -149, sections -152 to -154, or the rules of the commission adopted pursuant thereto, it may issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or rules charged in the complaint. If the commission finds that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.

§ -67 Termination of registration. (a) The commission, after notice and hearing, may issue an order terminating the registration of a condominium project upon determination that a developer, or any officer, principal, or affiliate of a developer has:

- (1) Failed to comply with a cease and desist order issued by the commission affecting that condominium project;
- (2) Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of units in that condominium project;
- (3) Failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that condominium project;
- (4) Misrepresented or failed to disclose a material fact in the application for registration; or
- (5) Failed to meet any of the conditions described in this part necessary to qualify for registration.

(b) A developer may not convey, cause to be conveyed, or contract for the conveyance of any interest in a unit while an order revoking the registration of the condominium project is in effect, without the consent of the commission.

(c) The commission may issue a cease and desist order in lieu of an order of revocation where appropriate.

§ -68 Power to enjoin. Whenever the commission believes from satisfactory evidence that any person has violated this part, part V, section -103, -132, -134, -149, sections -152 to -154, or the rules of the commission adopted pursuant thereto, it may conduct an investigation of the matter and bring an action against the person in any court of competent jurisdiction on behalf of the State to enjoin the person from continuing the violation or doing any acts in furtherance thereof.

§ -69 Penalties. (a) Any person who violates or fails to comply with this part, part V, section -103, -132, -134, -149, or sections -152 to -154, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000, or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails to comply with any rule, order, decision, demand, or requirement of the commission under this part, part V, section -103, -132, -134, -149, or sections -152 to -154, shall be punished by a fine not exceeding \$10,000.

(b) In addition to any other actions authorized by law, any person who violates or fails to comply with this part, part V, section -103, -132, -134, -149, sections -152 to -154, or the rules of the commission adopted pursuant thereto, shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.

§ -70 Limitation of actions. No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which the actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.

§ -71 Condominium education trust fund. (a) The commission shall establish a condominium education trust fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:

- (1) Education and research in the field of condominium management, condominium project registration, and real estate, for the benefit of the public and those required to be registered under this chapter;
- (2) The improvement and more efficient administration of associations;
and
- (3) Expedient and inexpensive procedures for resolving association disputes.

(b) The commission may use any and all moneys in the condominium education trust fund for purposes consistent with subsection (a).

§ -72 Condominium education trust fund; payments by associations and developers. (a) Each project or association with more than five units shall pay to the department of commerce and consumer affairs a condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association's first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91.

(b) Each developer shall pay to the department of commerce and consumer affairs the condominium education trust fund fee for each unit in the project, as prescribed by rules adopted by the director of commerce and consumer affairs

pursuant to chapter 91. The project shall not be registered and no effective date for a developer's public report shall be issued until the payment has been made.

(c) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable. Failure to pay the required fee by the due date shall result in a penalty assessment of ten per cent of the amount due and the association shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association to pay a fee required under this section shall not impair the validity of any claim of the association for common expenses or other assessments, or prevent the association from defending any action in any court of this State.

(d) The department of commerce and consumer affairs shall allocate the fees collected under this section to the condominium education trust fund established pursuant to section -71.

§ -73 Condominium education trust fund; management. (a) The sums received by the commission for deposit in the condominium education trust fund shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium education trust fund to employ necessary personnel not subject to chapter 76 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium education trust fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees' retirement system of the State. The interest and earnings from these investments shall be deposited to the credit of the condominium education trust fund.

(d) The commission shall annually submit to the legislature, no later than twenty days prior to the convening of each regular session:

- (1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund; and
- (2) A copy of the budget for the current fiscal year, including summary information on programs that were funded or are to be funded.'

SECTION 4. Act 164, Session Laws of Hawaii 2004, section 2, is amended by amending part V of chapter , Hawaii Revised Statutes, to read as follows:

**“PART V. PROTECTION OF CONDOMINIUM PURCHASERS
[(RESERVED)]**

A. GENERAL PROVISIONS

§ -81 Applicability; exceptions. (a) This part applies to all units subject to this chapter, except as provided in subsection (b).

(b) No developer's public report shall be required in the case of:

- (1) A gratuitous disposition of a unit;
- (2) A disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure; or
- (5) The sale of units in bulk, as defined in section -51(b); provided that the requirements of this part shall apply to any sale of units to the public following the sale of units in bulk.

§ -82 Sale of units. Except as provided in section -85, no sale or offer of sale of units in a project by a developer shall be made prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and except as provided by law with respect to time share units, the delivery of the developer's public report to prospective purchasers. Notwithstanding any other provision to the contrary, where a time share project is duly registered under chapter 514E and a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser, the developer's public report need not be delivered to the purchaser or prospective purchaser.

§ -83 Developer's public report. (a) A developer's public report shall contain:

- (1) The name and address of the project, and the name, address, telephone number, and electronic mail address, if any, of the developer or the developer's agent;
- (2) A statement of the deadline, pursuant to section -89, for completion of construction or, in the case of a conversion, for the completion of any repairs required to comply with section -5, and the remedies available to the purchaser, including but not limited to cancellation of the sales contract, if the completion of construction or repairs does not occur on or before the completion deadline;
- (3) A breakdown of the annual maintenance fees and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles, and a statement regarding when a purchaser shall become obligated to start paying the fees pursuant to section -41(b);
- (4) A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties, or a statement that no warranties exist;
- (5) A summary of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use;
- (6) A description of any development rights reserved to the developer or others;
- (7) A declaration, subject to the penalties set forth in section -69(b), that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to sections -5 and -32(a)(13); and
- (8) Any other facts, documents, or information that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use, or that may be required by the commission.

(b) A developer shall promptly amend the developer's public report to report any pertinent or material change or both in the information required by this section.

§ -84 Developer's public report; special types of condominiums. (a) In addition to the information required by section -83, the developer's public report for a project containing any existing structures being converted to condominium status shall contain:

- (1) Regarding units that may be occupied for residential use and that have been in existence for five years or more:
 - (A) A statement by the developer, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present

- condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units;
- (B) A statement by the developer of the expected useful life of each item reported on in subparagraph (A) or a statement that no representations are made in that regard; and
- (C) A list of any outstanding notices of uncured violations of building code or other county regulations, together with the estimated cost of curing these violations;
- (2) Regarding all projects containing converted structures, a verified statement signed by an appropriate county official that:
 - (A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:
 - (i) Any variances or other permits that have been granted to achieve compliance;
 - (ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and
 - (iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance; or
 - (B) Based on the available information, the county official cannot make a determination with respect to the matters described in subparagraph (A); and
- (3) Other disclosures and information that the commission may require.
- (b) In addition to the information required by section -83, the developer's public report for a project in the agricultural district pursuant to chapter 205 shall disclose:
 - (1) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable state and county land use laws;
 - (2) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable county real property tax laws, and the penalties for noncompliance; and
 - (3) Other disclosures and information that the commission may require.
- (c) In addition to the information required by section -83, the developer's public report for a project containing any assisted living facility units regulated or to be regulated pursuant to rules adopted under section 321-11(10) shall disclose:
 - (1) Any licensing requirements and the impact of the requirements on the costs, operations, management, and governance of the project;
 - (2) The nature and scope of services to be provided;
 - (3) Additional costs, directly attributable to the services, to be included in the association's common expenses;
 - (4) The duration of the provision of the services;
 - (5) Any other information the developer deems appropriate to describe the possible impacts on the project resulting from the provision of the services; and
 - (6) Other disclosures and information that the commission may require.

§ -85 Preregistration solicitation. (a) Prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and the delivery of the developer's public report to prospective purchasers, and subject to the limitations set forth in subsection (b), the developer may solicit prospective purchasers and enter into

nonbinding preregistration agreements with the prospective purchasers with respect to units in the project. As used in this section, "solicit" means to advertise, to induce, or to attempt in whatever manner to encourage a person to acquire a unit.

(b) The solicitation activities authorized under subsection (a) shall be subject to the following limitations:

- (1) Prior to registration of the project with the commission and the issuance of an effective date for the developer's public report, the developer shall not collect any moneys from prospective purchasers or anyone on behalf of prospective purchasers, whether or not the moneys are to be placed in an escrow account, or whether or not the moneys would be refundable at the request of the prospective purchaser; and
- (2) The developer shall not require or request that a prospective purchaser execute any document other than a nonbinding preregistration agreement. The preregistration agreement may, but need not, specify the unit number of a unit in the project to be reserved and may, but need not, include a price for the unit. The preregistration agreement shall not incorporate the terms and provisions of the sales contract for the unit and, by its terms, shall not become a sales contract. Notwithstanding anything contained in the preregistration agreement to the contrary, the preregistration agreement may be canceled at any time by either the developer or the prospective purchaser by written notice to the other. The commission may prepare a form of preregistration agreement for use pursuant to this section, and use of the commission-prepared form shall be deemed to satisfy the requirements of the preregistration agreement as provided in this section.

§ -86 Requirements for binding sales contracts; purchaser's right to cancel. (a) No sales contract for the purchase of a unit from a developer shall be binding on the developer, prospective purchaser, or purchaser until:

- (1) The developer has delivered to the prospective purchaser:
 - (A) A true copy of the developer's public report including all amendments with an effective date issued by the commission. The developer's public report shall include the report itself, the condominium project's recorded declaration and bylaws, house rules if any, a letter-sized condominium project map, and all amendments. Where it is impractical to include a letter-sized condominium project map, the prospective purchaser or purchaser shall be provided a written notice of an opportunity to examine the map. The copy of the recorded declaration and bylaws creating the project shall indicate the document number or land court document number, or both, as applicable; and
 - (B) A notice of the prospective purchaser's thirty-day cancellation right on a form prescribed by the commission, upon which the prospective purchaser may indicate that the prospective purchaser has had an opportunity to read the developer's public report, understands the developer's public report, and exercises the right to cancel or waives the right to cancel; and
- (2) The prospective purchaser has waived the right to cancel or is deemed to have waived the right to cancel.

(b) Purchasers may cancel a sales contract at any time up to midnight of the thirtieth day after:

- (1) The date that the purchaser signs the contract; and
- (2) All of the items specified in subsection (a)(1) have been delivered to the purchaser.

(c) The prospective purchaser may waive the right to cancel, or shall be deemed to have waived the right to cancel, by:

- (1) Checking the waiver box on the cancellation notice and delivering it to the developer;
- (2) Letting the thirty-day cancellation period expire without taking any action to cancel; or
- (3) Closing the purchase of the unit before the cancellation period expires.

(d) The receipts, return receipts, or cancellation notices obtained under this section shall be kept on file in possession of the developer and shall be subject to inspection at any reasonable time by the commission or its staff or agents for a period of three years from the date the receipt or return receipt was obtained.

§ -87 Rescission after sales contract becomes binding. (a) Purchasers shall have a thirty-day right to rescind a binding sales contract for the purchase of a unit from a developer if there is a material change in the project. This rescission right shall not apply, however, in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the declaration.

(b) Upon delivery to a purchaser of a description of the material change on a form prescribed by the commission, the purchaser may waive the purchaser's rescission right provided in subsection (a) by:

- (1) Checking the waiver box on the option to rescind sales contract instrument, signing it, and delivering it to the seller;
- (2) Letting the thirty-day rescission period expire without taking any action to rescind; or
- (3) Closing the purchase of the unit before the thirty-day rescission period expires.

(c) In order to be valid, a rescission form must be signed by all purchasers of the affected unit, and postmarked no later than midnight of the thirtieth calendar day after the date that the purchasers received the rescission form from the seller. In the event of a valid exercise of a purchaser's right of rescission pursuant to this section, the purchasers shall be entitled to a prompt and full refund of any moneys paid.

(d) The rescission form obtained by the seller under this section shall be kept on file in possession of the seller and shall be subject to inspection at a reasonable time by the commission or its staff or agents, for a period of three years from the date the receipt or return receipt was obtained.

(e) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

§ -88 Delivery. In this part, delivery shall be made by:

- (1) Personal delivery;
- (2) Registered or certified mail with adequate postage, to the recipient's address; provided that delivery shall be considered made three days after deposit in the mail or on any earlier date upon which the return receipt is signed;
- (3) Facsimile transmission, if the recipient has provided a fax number to the sender; provided that delivery shall be considered made upon the sender's receipt of automatic confirmation of transmission; or
- (4) Any other way prescribed by the commission.

§ -89 Sales contracts before completion of construction. If a sales contract for a unit is signed before the completion of construction or, in the case of a conversion, the completion of any repairs required to comply with section -5, the

sales contract shall contain an agreement of the developer that the completion of construction shall occur on or before the completion deadline, and the completion deadline shall be referenced in the developer's public report. The completion deadline may be a specific date, or the expiration of a period of time after the sales contract becomes binding, and may include a right of the developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. The sales contract may provide additional remedies to the purchaser if the actual completion of construction does not occur on or before the completion deadline as set forth in the contract.

§ -90 Refunds upon cancellation or termination. Upon any cancellation under section -86 or -89, the purchaser shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

§ -91 Escrow of deposits. All moneys paid by purchasers shall be deposited in trust under a written escrow agreement with an escrow depository licensed pursuant to chapter 449. An escrow depository shall not disburse purchaser deposits to or on behalf of the developer prior to closing except:

- (1) As provided in sections -92 and -93; or
- (2) As provided in the purchaser's sales contract in the event the sales contract is canceled. An escrow depository shall not disburse a purchaser's deposits at closing unless the escrow depository has received satisfactory assurances that all blanket mortgages and liens have been released from the purchaser's unit in accordance with section -45. Satisfactory assurances shall include a commitment by a title insurer licensed under chapter 431 to issue the purchaser a title insurance policy ensuring the purchaser that the unit has been conveyed free and clear of the liens.

§ -92 Use of purchaser deposits to pay project costs. (a) Subject to the conditions set forth in subsection (b), purchaser deposits that are held in escrow pursuant to a binding sales contract may be disbursed before closing to pay for project construction costs, including, in the case of a conversion, for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

(b) Disbursement of purchaser deposits prior to closing shall be permitted only if:

- (1) The commission has issued an effective date for the developer's public report for the project;
- (2) The developer has recorded the project's declaration and bylaws; and
- (3) The developer has submitted to the commission:
 - (A) A project budget showing all costs that are required to be paid in order to complete the project, including lease payments, real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;
 - (B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity

- funds, interim or permanent loan commitments, and other sources of funds; and
- (C) If purchaser funds are to be disbursed prior to completion of construction of the project:
- (i) A copy of the executed construction contract;
 - (ii) A copy of the building permit for the project; and
 - (iii) Satisfactory evidence of security for the completion of construction, which evidence may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the developer's public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) A purchaser's deposits may be disbursed prior to closing only to pay costs set forth in the project budget submitted pursuant to subsection (b)(3)(A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, purchaser deposits may be disbursed prior to closing to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer.

(d) If purchaser deposits are to be disbursed prior to closing, the following notice shall be prominently displayed in the developer's public report for the project:

"Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."

§ -93 Early conveyance to pay project costs. (a) Subject to the conditions set forth in subsection (b), if units are conveyed or leased before the completion of construction of the building or buildings for the purpose of financing the construction, all moneys from the sale of the units, including any payments made on loan commitments from lending institutions, shall be deposited by the developer under an escrow arrangement into a federally-insured, interest-bearing account designated solely for that purpose, at a financial institution authorized to do business in the State. Disbursements from the escrow account may be made to pay for project construction costs, including, in the case of a conversion, for repairs necessary to

cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

(b) Conveyance or leasing of units before completion of construction shall be permitted only if:

- (1) The commission has issued an effective date for the developer's public report for the project;
- (2) The developer has recorded the project's declaration and bylaws; and
- (3) The developer has submitted to the commission:
 - (A) A project budget showing all costs required to be paid in order to complete the project, including real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;
 - (B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds;
 - (C) A copy of the executed construction contract;
 - (D) A copy of the building permit for the project; and
 - (E) Satisfactory evidence of security for the completion of construction, that may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the developer's public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) Moneys from the conveyance or leasing of units before completion of construction may be disbursed only to pay costs set forth in the project budget submitted pursuant to subsection (b)(3)(A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, such moneys may be disbursed to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer. The balance of any purchase price may be disbursed to the developer only upon completion of construction of the project and the satisfaction of any mechanic's and materialman's liens.

(d) If moneys from the conveyance or leasing of units before completion of construction are to be disbursed to pay for project costs, the following notice shall be prominently displayed in the developer's public report for the project:

"Important Notice Regarding Your Funds: Payments that you make under your sales contract for the purchase of the unit may be disbursed upon closing of your purchase to pay for project costs, including construction costs, project

architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your payments are disbursed to pay project costs and the project is not completed, there is a risk that your payments will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.”

§ -94 Misleading statements and omissions; remedies. (a) No person may:

- (1) Knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease; or
- (2) Issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning a project that contains any false written statement or is misleading due to the omission of a material fact.

(b) Every sale made in violation of this section shall be voidable at the election of the purchaser; and the person making the sale and every director, officer, or agent of or for the seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, shall be jointly and severally liable to the purchaser in an action in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorneys’ fees; provided that no action shall be brought for the recovery of the purchase price after two years from the date of the sale; and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by the purchaser, together with interest at six per cent on the amount for the period from the date of payment by the purchaser down to the date of repayment.

B. SALES TO OWNER-OCCUPANTS

§ -95.1 Definitions. As used in this subpart:

“Chronological system” means a system in which the 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 or reservations, and earnest money deposits.

“Initial date of sale” means the date of the first publication of the announcement or advertisement pursuant to section -95.2.

“Lottery system” means a system in which no prospective owner-occupant has an unfair advantage in the determination of 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.

“Owner-occupant” means any individual in whose name sole or joint legal title is held in a residential unit that, simultaneous to such ownership, serves as the individual’s principal residence, as defined by the department of taxation, for a period of not less than three hundred sixty-five consecutive days; provided that the individual shall retain complete possessory control of the premises of the residential unit 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 unit 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" means "unit" as defined in section -3, but excludes:

- (1) Any unit intended for commercial use;
- (2) Any unit designed and constructed for hotel or resort use that is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to section 46-4; and
- (3) Any other use pursuant to authority granted by law to a county.

"Thirty-day period" or "thirty days" means thirty full consecutive calendar days, including up to midnight on the thirtieth day.

§ -95.2 Announcement or advertisement; publication. At least once in each of two successive weeks, and at any time following the issuance of an effective date of the first developer's 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 units;
- (3) A designation as to whether the residential units 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 units 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, developer's public report, and any other information concerning the project; and
- (6) If applicable, a statement that the residential units will be offered to prospective purchasers through a public lottery.

§ -95.3 Designation of residential units. (a) The developer of any project containing residential units shall designate at least fifty per cent of the units for sale to prospective owner-occupants pursuant to section -95.7. The designation shall be set forth either in the developer's public report or in the announcement or advertisement required by section -95.2, and may be set forth in both. The units shall constitute a proportionate representation of all the residential units in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not the unit has a lanai.

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

§ -95.4 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 offer the residential units that have been designated pursuant to section -95.3 as follows:

- (1) For thirty days from the date of the first published announcement or advertisement required under section -95.2, the developer or devel-

oper's real estate broker shall offer the residential units that have been designated pursuant to section -95.3 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 and shall make them first available to prospective owner-occupants on the day immediately following the date of the first publication of the announcement or advertisement for the duration of the time period as specified in this paragraph. 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 -95.3 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, either directly or through any other person, shall release any information or inform any prospective owner-occupant about the publication announcement or advertisement referred to in section -95.2, including the date it is to appear and when the chronological system will be initiated, until after the announcement or advertisement is published; provided that a developer, as part of any preregistration solicitation permitted under section -85, may disclose whether units will be offered to owner-occupants pursuant to this subpart and whether a chronological or lottery system will be used; and
- (4) The developer shall compile and maintain a list of all prospective purchasers that submit a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit, and maintain 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 that have been designated pursuant to section -95.3 as follows:

- (1) From the date of the first published announcement or advertisement required under section -95.2 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 in paragraph (2). The developer and the developer's real estate broker shall maintain at all times sufficient copies of affidavits for prospective owner-occupants to execute and shall make them first available to prospective owner-occupants on the day immediately following the date of the first publication of the announcement or advertisement for the duration of the time period as specified in this subsection. Upon the request of the commission, the

- developer shall provide a copy of the lottery list of prospective owner-occupants;
- (2) The developer or developer's real estate broker shall conduct a public lottery on the date, time, and location as set forth in the published announcement, or advertisement. The lottery shall be held no later than the thirtieth day following the date of the first 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 so that no prospective owner-occupant shall have an unfair advantage and, as to all owner-occupants whose affidavits were submitted to the developer or the developer's real estate broker within the time period specified in paragraph (1), shall 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; and
 - (4) 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 that have been designated pursuant to section -95.3, 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 to section -95.3. Prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential units designated pursuant to section -95.3, 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 lists shall be submitted.

§ -95.5 Affidavit. (a) The owner-occupant affidavit required by section -95.4 shall expire after three hundred sixty-five consecutive days have elapsed after the recordation of the instrument conveying the unit 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 the affiant shall notify the commission immediately upon any decision to cease being an owner-occupant.

(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.

§ -95.6 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 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 unit into a trust for estate planning purposes. Any contract or instrument entered into in violation of this subpart shall be subject to the remedies provided in section -95.9(a).

(b) No developer, employee or agent of a developer, or real estate licensee shall violate or aid any other person in violating this subpart.

§ -95.7 Sale of residential units; developer requirements. (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 developer's public report for which the effective date has not expired.

(b) For a thirty-day period following the initial date of sale of units in a condominium project, at least fifty per cent of the units being sold shall be offered for sale only to prospective owner-occupants; provided that notwithstanding this subpart, in the case of a project that includes one or more existing structures being converted to condominium status, each residential unit contained in the project first shall 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.

(c) Each contract for the purchase of a residential unit 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 unit first to prospective owner-occupants on the back-up reservation list described in section -95.4, in the order in which the names appear on the reservation list; provided that the prospective owner-occupant shall not have already executed a sales contract or reservation for a residential unit in the project.

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

§ -95.8 Enforcement. (a) Whenever the commission finds based upon satisfactory evidence that any person is violating or has violated any provision of this subpart or rules of the commission adopted pursuant thereto, the commission may conduct an investigation on the matter and bring an action in the name of the commission in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or doing any acts in furtherance thereof.

(b) Before the commission brings an action in any court of competent jurisdiction pursuant to subsection (a) against any person who executed an affidavit pursuant to this subpart, 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 of any other person who was to or has occupied the residential unit;
- (2) Unforeseeable job or military transfer;
- (3) Unforeseeable change in marital status, or change in parental status; or
- (4) Any other unforeseeable occurrence subsequent to execution of the affidavit.

If the commission finds that extenuating circumstances exist, 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 subpart 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 that the person obtained pursuant to this subpart, shall have the burden of proving the person's compliance with the requirements of this part.

(d) Upon request, the commission may require verification that a presumed owner-occupant continues to be an "owner-occupant", as defined in this subpart. If, due to a sale, lease, assignment, or transfer of the residential unit, the presumed owner-occupant is unable to verify continuing owner-occupancy status, that person may be subject to a fine in an amount equal to the profit made from the sale, lease, assignment, or transfer.

(e) The commission shall adopt rules, pursuant to chapter 91, to carry out the purposes of this subpart.

§ -95.9 Penalties. (a) Any person who executes an affidavit required by this subpart and who violates or fails to comply with any of the provisions of this subpart or any rule adopted by the commission pursuant thereto, shall be subject to a civil penalty of up to \$10,000; or fifty per cent of the net proceeds received or to be received by the person from the sale, lease, rental, assignment, or other transfer of the residential unit to which the violation relates, whichever is the greater amount.

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

§ -95.10 False statement. It shall be unlawful for any person to make a false statement in the affidavit required by this subpart or for any person to file with the commission any notice, statement, or other document required under this subpart or any rule adopted by the commission pursuant thereto which is false or contains a material misstatement or omission of fact. Any violation of this section shall be a misdemeanor punishable by a fine not to exceed \$2,000, or by imprisonment for a term not to exceed one year, or both.

§ -95.11 Inapplicability of laws. (a) This subpart shall not apply to:

- (1) A project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201G, or 206; provided that the developer of the project may elect to be subject to this subpart through a written notification to the commission;
- (2) Condominium projects where the developer conveys all of the residential units in the project to a spouse, or family members related by blood, descent or adoption; and
- (3) Condominium projects consisting of two or fewer units.

(b) A developer of a project specified in subsection (a)(1) who elects to be subject to this subpart, or of a project developed pursuant to an affordable housing requirement established by a state or county governmental agency, may elect to waive specific provisions of this subpart that conflict with the eligibility or preference requirements imposed by the governmental agency. The developer of a project specified in subsection (a)(1) who exercises the election shall provide detailed written notification to the commission of the 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)(1) or a project for which a governmental agency has imposed eligibility or preference requirements. A copy of this notification shall be filed with the affected governmental agency.

(c) A filing to meet the notification requirements of subsection (a)(1) or (b) shall not be construed to be an approval or disapproval of the project by the commission.”

SECTION 5. Act 164, Session Laws of Hawaii 2004, section 2, is amended by amending section -149, Hawaii Revised Statutes, to read as follows:

“§ -149 Association fiscal matters; handling and disbursement of funds. (a) The funds in the general operating account of the association shall not be commingled with funds of other activities such as lease rent collections [and rental operations], rental, time share, and assisted living facility operations, nor shall a

managing agent commingle any association funds with the managing agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual unit owners of a project and the payment of such ground lease rents to the ground lessor if:

- (1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual unit leases of the project;
- (2) A management contract requires the managing agent to collect ground lease rents from the individual unit owners and pay the ground lease rents to the ground lessor;
- (3) The system of lease rent collection has been approved by a majority vote of all unit owners at a meeting of the association; and
- (4) The managing agent or association does not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual unit owners.

(c) All funds collected by an association, or by a managing agent for any association, shall be:

- (1) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;
- (2) Held by a corporation authorized to do business under article 8 of chapter 412;
- (3) Held by the United States Treasury; or
- (4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation[; provided that deposits and certificates of deposit shall not be purchased through a securities broker].

~~(d)~~ All funds collected by an association, or by a managing agent for any association, shall be invested only in:

- (1) Deposits, investment certificates, savings accounts, and certificates of deposit~~[of an institution as defined in subsection (e)(1)]~~;
- (2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or
- (3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board.

~~[(e)]~~ (d) A managing agent or board shall not, by oral instructions over the telephone, transfer association funds between accounts, including but not limited to the general operating account and reserve fund account.

~~[(f)]~~ (e) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.

~~[(g)]~~ (f) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association shall be guilty of a class C felony."

SECTION 6. Chapter 514A, Hawaii Revised Statutes, is repealed.

SECTION 7. Act 164, Session Laws of Hawaii 2004, is amended by amending section 35 to read as follows:

"SECTION 35. This Act shall take effect on ~~[July 1, 2005;]~~ July 1, 2006; provided that:

- (1) ~~[Section —146]~~ The text of section ~~—146~~ in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;
- ~~[(2)]~~ Section ~~—161~~ in part I of this Act, relating to mediation shall take effect on ~~July 1, 2006;~~
- ~~[(3)]~~ (2) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006;
- ~~[(4)]~~ (3) Sections 30 to 33 of this Act shall take effect on July 1, 2004; and
- ~~[(5)]~~ (4) If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective ~~[July 1, 2005;]~~ July 1, 2006, parts I and II of this Act shall be repealed on ~~[June 30, 2005.]~~ June 30, 2006."

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. (a) Nothing contained in the new chapter of the Hawaii Revised Statutes established by section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act, shall affect the rights and obligations established under any sales contract between a developer and a purchaser of an apartment in a condominium project that was registered by the developer pursuant to part III of chapter 514A, Hawaii Revised Statutes, prior to the effective date of the new chapter. The rights and obligations of these developers and purchasers shall continue to be governed by chapter 514A, Hawaii Revised Statutes.

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(b) The developer of a project registered pursuant to chapter 514A, Hawaii Revised Statutes, may elect to register the project under the new chapter established by section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act, by submitting the application, documentation, and fees required under sections -52 and -54, Hawaii Revised Statutes, in section 3 of this Act. Upon the issuance of an effective date for the project's public report pursuant to the new chapter, the project's registration under chapter 514A, Hawaii Revised Statutes, shall terminate, the developer shall provide copies of the new public report to all existing purchasers, and the rights and obligations of the developer and all purchasers shall thereafter be governed by the new chapter; provided that unless the new public report reflects a material change to the project:

- (1) The issuance of the new public report shall not affect the enforceability of any purchase contract that previously became binding upon the purchaser;
- (2) A purchaser shall have no right to rescind the purchase contract; and
- (3) A developer shall not be required to deliver a notice of thirty-day right of cancellation as specified in section -86, Hawaii Revised Statutes, in section 4 of this Act.

SECTION 10. Section 16-53-16.8, Hawaii Administrative Rules, shall remain in effect until the director of commerce and consumer affairs adopts rules establishing fees pursuant to section 26-9(1), Hawaii Revised Statutes, and the new chapter established pursuant to section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2005; provided that:

- (1) Section 7 shall take effect on June 30, 2005; and
- (2) Sections 6, 8, 9, and 10 shall take effect on July 1, 2006.

(Approved June 2, 2005.)