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TO: Condominium Developers, Attorneys and Interested Others  
FROM: Real Estate Commission  
DATE: October 28, 1994  
SUBJECT: UPDATE ON CURRENT COMMISSION DECISIONS

The following is a summary of recent Real Estate Commission ("Commission") informal, non-binding interpretations relating to condominium development and project registration for informational and explanatory purposes only, which may be of interest:

**BUREAU OF CONVEYANCES - SINGLE APARTMENT CONDOMINIUM PROJECT UNACCEPTABLE**

The Bureau of Conveyances has advised that it will not accept a Declaration of Condominium Property Regime for recordation which consists of only one apartment. Pursuant to Chapter 514A, Hawaii Revised Statutes ("HRS"), the definitions of "condominium" and "project" state it must consist of two or more apartments.

The Commission may issue an effective date for a final or preliminary public report for a single apartment of a phased condominium project where the recorded declaration and map provide for a minimum of two apartments. A declaration which simply states that the developer reserves the right to build a second apartment is inadequate. (March, 1993)

**OWNER-OCCUPANT ANNOUNCEMENT REVIEW PERIOD**

The Commission does not have the authority to reduce the thirty day review period required by S514A-102 (b)(1), HRS. (March, 1993).

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The decisions provided are informal, non-binding interpretations pursuant to Subchapter 5, HAR, Title 16, Chapter 201, Administrative Practice and Procedure for informational and explanatory purposes only and are not official opinions or decisions and therefore are not to be viewed as binding on the Commission.

**EXTENSION OF EFFECTIVE DATE FOR A PUBLIC REPORT WHEN PUBLIC REPORT FORM HAS SUBSTANTIALLY CHANGED**

A caveat shall be placed in the Commission's order granting extension of the effective date of a public report if the original effective date was issued for a public report on the "prose" legal size form utilized prior to 1987. The caveat should note the law and requirements for a public report have been amended since the original effective date of the public report was issued and that the public report may not conform to current standards for public reports.

Prospective purchasers should be encouraged to review current public report requirements for comparison (a copy of the public report form and instructions may be obtained from the Commission), question developer as to any additional information desired and, if they wish, contact an attorney for counsel. (March, 1993).

**SALE OF CONDOMINIUM APARTMENTS - AUCTION**

The auction method of sale for condominium project sales will not in and of itself require specific disclosure in the public report or disclosure abstract. The developer is reminded: 1) to submit updated materials and information of all appropriate registration documents and information; 2) to file all advertising and promotional materials with the Commission prior to issuance, circulation or publication; 3) the method and terms of sale by auction shall comply with the requirements of Chapters 484 and 514A, HRS and chapter 107, HAR; and 4) the supplementary public report requirements still apply where appropriate. (March, 1993).

**LETTER OF CREDIT IN LIEU OF BOND**

The Commission approved the use of a letter of credit in lieu of a bond for one hundred per cent of the cost of moving a structure to its permanent site as described by the condominium declaration and condominium map.

An irrevocable letter of credit\_ or a performance bond shall also be required for one hundred per cent of the cost of any additional construction required to adapt the structure as well as for any additional construction necessary to complete the project

pursuant to §514A-40, HRS. (April, 1993)

**BROKER LISTING AGREEMENT - WAIVER**

The broker listing agreement requirement for condominium project registration may be waived by a developer for projects sold by the owner, pursuant to §467-2(1), HRS, as indicated in the public report or subsequent disclosure abstract. (April, 1993).

**OWNER-OCCUPANT ANNOUNCEMENT REQUIRED FOR THREE APARTMENT PROJECT**

An owner-occupant pre-sale notice should be published for a three-apartment condominium project of which two apartments are residential. (July, 1993).

**ZERO-UNIT CONDOMINIUM**

The commission denied the request to process registration of a "zero-unit" condominium. This condominium does not appear to be consistent with Hawaii's statutory scheme and Commission policy regarding the creation and regulation of condominium property regimes. (September, 1993).

**DEVELOPER'S RIGHT TO SELECT DATE OF OWNER-OCCUPANT REAFFIRMATION**

The Commission advised that the sales contract disclosure regarding the time period for reaffirmation of the owner-occupant affidavit must be supplemented by a further disclosure in the public report.

Disclosure shall be made to purchasers as to the specific time period the purchaser shall have to reaffirm the owner-occupant affidavit and the consequences to the purchaser of failing to reaffirm within the specified period. Reaffirmation must occur within the statutory period. If notice is to be provided solely in the sales contract, disclosure shall also be provided in the public report. (September, 1993).

**§16-107-16, HAR - REDUCTION OF COPIES OF PUBLIC REPORT TO BE PROVIDED TO THE COMMISSION BY DEVELOPER**

S16-107-16, HAR, shall be amended as follows:

"Within thirty days of the issuance of an effective date for a public report, the developer shall provide the commission with copies of the public report at no charge, the number and color to be prescribed by the commission."

In addition, the developer shall provide the Commission with six (6) copies of the public report. However, the developer of a condominium project located in the County of Hawaii shall provide seven (7) copies of the public report to the Commission. Copies of public reports shall be provided as follows:

Preliminary public reports - yellow paper  
Final public reports - white paper  
Supplementary public reports -- pink paper

**§514A-40(b)(1), HRS - COUNTY STATEMENT REQUIREMENT**

Upon review of §51.4A-40(b)(1), HRS, the Commission confirmed that the verified statement from the county required by that section for a final public report for a condominium conversion shall not be accepted by the Commission if the verified statement discloses building code or zoning ordinance violations. Therefore, building code or zoning ordinance violations should be cured prior to receipt of an effective date for a final public report for condominium conversions.

The Commission will accept one statement from the following county agencies to satisfy compliance with both the building code and zoning ordinances: 1) City and County of Honolulu - Building Department; 2) County of Maui - Land Use and Codes Administration, Department of Public Works and Waste Management; 3) County of Kauai - Planning Department.

The commission will accept one statement from the Planning Department, County of Hawaii regarding compliance with the zoning ordinances and a separate statement from the Building Division, Department of Public Works for compliance with the building codes. (January, 1994).

**5514A-31 - GIFT VS. SALE**

Under the facts of this specific situation, where a father has

a large lot with one residential unit, after construction of a second unit and submission of the property to CPR, the father gifts the unit to the son, the following applies: 1) registration of a condominium project pursuant to §514A-31, HRS, is not required where an apartment is conveyed by way of gift; 2) where a condominium apartment passes by will or revocable living trust from a family member, the condominium project must be registered with the commission prior to the time the apartment is sold or offered for sale. The recipient of the unit has stepped into the shoes of the developer. (January, 1994).

**OWNER-OCCUPANT ANNOUNCEMENT - MULTIPLE BROKERS**

Only one broker may be designated by a developer in the owner-occupant announcement to receive the owner-occupant affidavit and earnest money deposit. (January, 1994).

**SUPPLEMENTARY PUBLIC REPORT REQUIRED - TIMESHARE AMENDMENT**

An amendment of the declaration and project rules to include timeshare use shall be disclosed through a Supplementary public report. Developer shall also provide rescission rights pursuant to §514A-63, HRS. (January, 1994).

**ABBREVIATED SUPPLEMENTARY PUBLIC REPORT**

The Commission has researched administration of a short form supplementary public report to facilitate an inexpensive means for the prompt issuance of an effective date where material changes have occurred to the project or public report without the need for the condominium consultant to review the entire registration file. (January, 1994).

The Commission has begun to accept registration of abbreviated Supplementary public reports with the \$75 Supplementary public report fee. (The \$700 consultant fee will be charged only if such review is deemed necessary.) The abbreviated report shall consist of a minimum of pages 1, 2, 19 and 21 and shall be read together with the previous public report. The developer is to review the previous report(s) for incorrect information and submit the appropriate pages needed to provide corrected information for the Supplementary public report. Additional documentation may be

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required to supplement the registration.

#### **OFFER FOR SALE TO NON-RESIDENTIAL -TENANTS IN CONVERSION**

The commission has informally agreed that discussion with existing tenants initiated by the building owner regarding possible conversion to condominium status for non-residential property which does not include price or otherwise encourage or promote the sale of apartments is permitted. (February, 1994).

#### **KAUA'I COUNTY CODE RELATING TO ADDITIONAL DWELLING UNITS**

Ordinance No. 644, Bill No. 1541, Draft 1 has extended the deadline which allows additional dwelling units to be developed to December 31, 1996. (February, 1994).

#### **FILING OF ADVERTISEMENT MATERIALS PURSUANT TO §16-107-23, HAR**

Submission of advertising materials pursuant to §16-107-23, HAR, will be limited to advertising materials submitted before the issuance of an effective date for a public report where the offering is limited only to bona-fide prospective owner-occupants. (March, 1994).

Developer is not required to file advertising materials which shall be issued, circulated or published after the issuance of an effective date for the initial public report. Advertising materials submitted before the issuance of an effective date for the initial public report should clearly state the of offering is limited to bona-fide owner-occupants only.

#### **INCOMPLETE/ABANDONED PROJECT REGISTRATION FILES**

File retention policy pursuant to §436B-(9)(b), HRS, to be adopted as follows:

"[a]n application may be considered to be abandoned if it is not completed and the required documents and other information are not submitted to the department within one year from the date first filed. The licensing authority shall not be required to act on any abandoned application, and the application may be returned or

destroyed by the licensing authority or its delegate."

In addition, six months following the initial submission of registration, staff to endeavor to issue a notice to the developer if the registration is still incomplete. The registration shall be deemed abandoned if incomplete and the required documents and other information are not submitted within one year from the date the registration was first filed, unless otherwise determined by the Commission. The Commission shall not be required to act on any abandoned registration. Reasonable attempts shall be made to return the registration file to the applicant; otherwise the file shall be destroyed.

Should the developer decide to reopen the filing at a future date after abandonment, the registration shall be considered a new filing, subject to all requirements applicable at the subsequent date of filing, unless otherwise determined by the Commission. (May, 1994).

#### **PROJECT REGISTRATION MATERIALS AVAILABLE FOR REVIEW**

Registration materials submitted by the developer shall be available for public review at a location designated by the Commission upon the issuance of an effective date for the public report to which the materials pertain.

Materials submitted by developer subsequent to the issuance of an effective date for a public report pursuant to §514A-61, Disclosure requirements and §514A-43, Automatic expiration of public reports; exceptions, shall be available for public review after review by the commission. (May, 1994).

#### **SUPPLEMENTARY PUBLIC REPORT REQUIRED - LIMITED COMMON ELEMENT/Common Element Amendments**

Developer is required to submit a Supplementary public report and provide rescission rights to disclose amendment to the Declaration of Condominium Property Regime regarding the change in description of the limited common elements and common elements. (July, 1994).

**REGARDING TITLE REPORT REQUIREMENT FOR SUPPLEMENTARY PUBLIC REPORT  
AND EXTENSIONS OF EFFECTIVE DATE**

A title report shall be required on a case by case basis (for situations including but not limited to disclosures regarding liens and encumbrances against title) for supplementary public reports and all forms of extensions of effective dates. Language shall be placed in the Supplementary public report regarding developer's assurance that there are no further encumbrances against title. (August, 1994).

Note that a title report is no longer required as "satisfactory evidence" that one or both apartments are retained by the developer pursuant to §514A-43(b)(2), HRS, when requesting an order that the public report for a two apartment condominium project have no expiration date.

**PROCESSING PROJECT REGISTRATION WHILE AWAITING COUNTY VERIFIED  
STATEMENT**

Commission staff will process condominium public report registrations with a statement from the developer which evidences a request to the County for a verified statement pursuant to §514A-40(b), HRS, allowing the County a reasonable time in which to respond. In such cases, staff will continue to process an otherwise completed registration file. However, no effective date for a public report will issue until a verified county statement has been received. (September, 1994).

**REACTIVATING EXPIRING PUBLIC REPORTS WITHOUT A SUPPLEMENTARY PUBLIC  
REPORT**

Where a public report has lapsed, and a developer requests an extension to a public report and administrative review of all requested materials establishes that no material changes to the project have occurred, commission staff may reactivate an expired public report without requiring a supplementary public report. Should a question as to material changes arise, staff shall provide all current documents to a consultant for review and determination. (September, 1994).



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**SUPPLEMENTARY PUBLIC REPORT REQUIRED - CHANGES TO COMMON  
EXPENSES, THE APARTMENT, EASEMENTS**

Developer is required to submit a Supplementary public report to: 1) report the change in status of the common expenses; 2) describe the change to the apartment(s); and 3) describe the effect of the easement to the project. Submission of a title report is required to document the release of the judgment lien. (September, 1994).

**ANONYMOUS CONCERNS INVOLVING THE COMMISSION**

Commission policy is that it is unable to respond to anonymous letters which do not cite specific examples or explain alleged problem areas. (October, 1994).

**FINAL PUBLIC REPORT - CONDOMINIUM MAP REQUIREMENT**

The Commission reviewed the registration requirements of Chapter 514A, HRS, and affirmed that "[n]o effective date for a final public report shall be issued until execution and recordation of the deed or master lease, the declaration, the bylaws, and floor plans as approved by the county officer having jurisdiction over the issuance of permits for the construction of buildings" pursuant to §514A-36, HRS. (Emphasis added).

Project registration will be considered incomplete without such approval for projects whose notice of intention and registration pursuant to §§514A-31, -32, HRS, are received after December 1, 1994. County approval may be evidenced by submission of copies of building permits or for conversions, the verified county statement pursuant to §514A-40(b)(1), HRS. (October, 1994).