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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
250 SOUTH KING STREET, ROOM 702
HONOLULU, HAWAII 96813

September 1, 1992

MEMORANDUM

TO: CONDOMINIUM DEVELOPERS

FROM: REAL ESTATE COMMISSION

SUBJECT: NON-EXPIRATION OF EFFECTIVE DATE FOR TWO APARTMENT PUBLIC REPORT EXCEPTION

The 1992 Legislature has amended section 514A-43, Hawaii Revised Statutes (HRS) to provide the following exception to the thirteen month expiration of the effective date of the public report. (See attached copy of section 514A-43, HRS, as amended). The exception may be granted only for a two apartment condominium project upon submission of:

- 1) a timely written request;
- 2) "satisfactory evidence" that one or both apartments are retained by the developer, or conveyed to an irrevocable trust to benefit a family member; and
- 3) Payment of a non-refundable fee.

After a review of the information presented at its August 28, 1992 meeting, the Real Estate Commission has accepted the following as pre-approved documentation that the Commission will find as "satisfactory evidence" pursuant to section 514A-43(b)(2), Hawaii Revised statutes, for the two unit exception to the public report automatic expiration:

- 1) -developer-affidavit-stating:
 - a) that one or both apartments are either retained by the developer, or conveyed to an irrevocable trust to benefit a spouse or family member of the developer;
 - b) the designated apartment(s) retained;
 - c) the name(s) and date of conveyance of the apartment sold, if applicable; and
 - d) the name of the spouse or family member involved and their relationship to developer.

- 2) a title report no more than sixty (60) days old at the date of request for a non-expiring final public report for the retained unit(s).

The Commission has directed and delegated to the staff to review and act on any request that complies precisely with the above. That should any other "satisfactory evidence" be submitted, the commission will act on a "case by case basis" at its regular monthly meeting upon request.

This informal interpretation is non-binding on the Commission and is being provided for informational and explanatory purposes only pursuant to Subchapter 5, Hawaii Administrative Rules, Title 16, chapter 201, Administrative Practice and Procedure.

If a formal opinion is preferred, a petition for declaratory relief may be submitted pursuant to Subchapter 3, Hawaii Administrative Rules, Title 16, Chapter 201, Administrative Practice and Procedure.

enclosure (1)

§514A-43 Automatic expiration of public reports; exceptions. (a) A public report shall expire thirteen months after the effective date of the report. The commission, upon submission of a written request for an extension by the developer at least thirty calendar days prior to the expiration date, together with such supporting information as may be required by the commission, a review of the registration, and after payment of a non-refundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, may issue an order extending the effective date of the report

(b) The commission may issue an order that the final public report for a two apartment condominium project shall have no expiration date, provided that the developer submits to the commission:

- (1) A written request for such an order not later than thirty calendar days prior to the next expiration date of the final public report;
- (2) Satisfactory evidence that one or both apartments are either retained by the developer, or conveyed to an irrevocable trust to benefit a spouse or family member of the developer. A family member is anyone related by blood, descent, or adoption; and
- (3) Payment of a non-refundable fee as provided by rules adopted by the department of commerce and consumer affairs pursuant to chapter 91.

The final report shall be subject to the supplemental public report requirements as provided in section 514A-41(a).

The developer receiving an order under this subsection shall provide written notification to the commission within thirty calendar days of any subsequent sale and conveyance of either apartment to any person.