

BENJAMIN J. CAYETANO
GOVERNOR



KATHRYN S. MATAYOSHI
DIRECTOR
NOE NOE TOM
LICENSING ADMINISTRATOR

STATE OF HAWAII
REAL ESTATE BRANCH
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
230 SOUTH KING STREET, ROOM 702
HONOLULU, HAWAII 96813

TO: Condominium Developers, Attorneys and Interested Parties
FROM: Real Estate Commission
DATE: October 30, 1996
SUBJECT: Summary of Decisions Affecting Condominium Developers

The following is a summary of the Real Estate Commission's ("Commission") informal, non-binding interpretations relating to condominium development and project registration for informational and explanatory purposes only from the last update of October, 1994.

**REPLACEMENT OF SHED APARTMENT WITH RESIDENTIAL DWELLING -
DISCLOSURE REQUIRED**

A supplementary public report is not required to disclose the change of a shed apartment to a residential dwelling where the public report discloses that such changes to the project are permitted. The Commission will require the developer to provide prospective purchasers with a copy of all amendments to the declaration of condominium property regime and the amended condominium map. (November, 1994)

**ISSUANCE OF EFFECTIVE DATE FOR PUBLIC REPORT WHERE DECLARATION
DESCRIBES APARTMENTS IN A PROJECT AS BEING HELD IN FEE SIMPLE AND
OTHERS IN LEASEHOLD**

Where an original lessor conveys the fee simple interest in some of the apartments of a CPR to the current developer, thereby creating a CPR with some apartments in fee and some apartments in leasehold, and where the declaration does not state that only leasehold apartments will be conveyed, an amendment to the declaration of condominium property regime is not required for the Commission to issue an effective date for a public report.

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 of the Real Estate Commission and therefore are not binding on the Commission.

revised form 10/96

Memorandum - Update on Current Commission Decisions
October 30, 1996
Page 2

However, the current developer shall be required, regarding the apartments held by it in fee, to obtain an endorsement to each apartment purchaser's title insurance policy, insuring that as to the apartment being purchased, the purchaser has succeeded to the current developer's interest (who succeeded the original lessor) in the fee simple title under the declaration and bylaws. Prior to the issuance of an effective date for the developer's public report, the developer shall provide to the Commission, in a form and content satisfactory to the Commission, the form of such endorsement, the developer's agreement not to close the sale of any apartment without such endorsement being issued and the title company's agreement to issue such endorsement for each closing that occurs. (January, 1995)

NO EFFECTIVE DATE FOR A PUBLIC REPORT WILL BE GIVEN WHERE DEVELOPER TO PURCHASE PROPERTY UNDER AN OPTION AGREEMENT

The Commission will not issue an effective date for a public report where the developer holds only an option agreement to purchase the condominium project from the fee owner. (April, 1995)

SECTION 514A-40(A)(5), HRS, REQUIREMENT OF PERFORMANCE BOND OR SUBSTANTIAL EQUIVALENT

The Commission ruled that a completion guaranty from the developer is not a substantial equivalent to a performance bond pursuant to Section 514A-40(a)(5), HRS. (June, 1995)

MISLEADING ADVERTISING REFERENCES

The descriptive terms "single family", "home" or "residence" may be used to describe individual apartments as long as it is used in conjunction with the word "condominium", e.g., "condominium homes", "single family condominium residences". (November, 1995)

APARTMENTS BUILT PURSUANT TO CHAPTER 444, HRS, WILL NOT BE ISSUED EFFECTIVE DATES FOR A PUBLIC REPORT

The Commission will not issue effective dates for public reports for apartments which are subject to the one year period pursuant to Chapter 444, HRS, specifically, Section 444-2(7), HRS, (Contractors' licensing law). A final or supplementary public report will be required for those apartments which are subject to the one year sales moratorium upon the expiration of the year should those apartments then be offered for sale. (February, 1996)

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Memorandum - Update on Current Commission Decisions
October 30, 1996
Page 3

DEVELOPER TO DISCLOSE WHETHER RESERVE STUDY CONDUCTED

When completing the exhibit to the Commission's public report form "ESTIMATE OF INITIAL MAINTENANCE FEES AND ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS", the developer shall disclose whether or not a reserve study was done in accordance with Section 514A-83.6 and Hawaii Administrative Rules, Chapter 107, as amended, in arriving at the estimate of reserve funds necessary to maintain the condominium project. (June, 1996)

DISCLOSING MATERIAL CHANGES TO A PROJECT THROUGH A SHORT FORM SUPPLEMENTARY PUBLIC REPORT

The Commission will allow a developer to disclose up to two material changes which would render a public report misleading, through a short form supplementary public report subject to the Commission retaining the right to require a full supplementary public report. (June, 1996)

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