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MEMORANDUM 2004-1

To: Condominium Developers, Their Attorneys, and Other Interested Individuals

From: Calvin Kimura, Supervising Executive Officer
Real Estate Branch

Date: April 14, 2004

Subject: Sales to Owner-Occupants and First Publication of the Announcement or Advertisement

Developers, including their attorneys, real estate brokers and salespersons, and other agents who are engaged in the sale or marketing of apartments in a condominium project to prospective owner-occupants in Hawaii are reminded that they should do the following:

- Comply with the requirements as set forth in Part VI of Chapter 514A, HRS, "Sales to Owner-Occupants".
- Designate at least 50% of and offer the designated residential apartments to prospective owner-occupants, using either a chronological system or a lottery system at any time after issuance of an effective date for a developer's public report which has not expired.
- Elect to market or sell the non-designated prospective owner-occupant apartments to other individuals or entities upon the Real Estate Commission's (Commission) issuance of an effective date for the developer's public report prior to or concurrently with the sales to owner-occupants.

- Compute any required time period for offering the residential apartments to prospective owner-occupants by excluding the first day of the publication and including the last, unless the last day is a Sunday or holiday and then it is also excluded.
- Maintain all advertising and promotional materials on the condominium plan or project at the developer's place of business subject to Commission's examination and inspection upon request. Commission no longer requires developers to submit all advertising and promotional materials prior to its use and circulation.

There are different requirements for each system which requirements are set forth in Part VI of Chapter 514A, HRS.

Chronological System

When using a chronological system in addition to other requirements as specified in Part VI, the developer or the developer's real estate broker shall:

- Designate at least fifty per cent of the apartments for sale to prospective owner-occupants pursuant to Part VI including, but not limited to, sections 514A-103, 514A-104 and 514A-105, HRS.
- Offer for a thirty day period which period begins on the day immediately following the date of the first publication of the announcement or advertisement and ending on midnight of the thirtieth day immediately following the first publication (unless this last day is a Sunday or holiday, then the last day shall be the next day), the designated owner-occupant residential apartments to prospective owneroccupant 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 subject to the escrow requirements.
- Make available reservation agreements or sales contracts and affidavits for prospective owner-occupants to execute beginning on the day immediately following the date of the first publication of the announcement or advertisement and ending on midnight of the thirtieth day (unless this last day is a Sunday or holiday, then the last day shall be the next day).
- Keep secret information about and refrain from informing any prospective owner-occupant about the publication announcement or advertisement referred to in section 514A-102, including the date it is to appear and when the chronological system will be initiated, until after the announcement or advertisement is published.

Public Lottery System

When using a public lottery system in addition to other requirements as specified in Part VI, the developer or the developer's real estate broker shall:

- Designate at least fifty per cent of the apartments for sale to prospective owner-occupants pursuant to Part VI including, but not limited to, sections 514A-103, 514A-104 and 514A-105, HRS.
- Compile and maintain a list of all prospective owner-occupants. Include on the list all prospective owner-occupants who during the time period which begins on the day immediately following the date of the first publication of the announcement or advertisement and ending on midnight of the fifth day after the last published announcement or advertisement (unless this last day is a Sunday or holiday, then the last day shall be the next day) have submitted to the developer or the developer's real estate broker a duly executed owner-occupant affidavit.
- Make available affidavits for prospective owner-occupants to execute beginning on the day immediately following the date of the first publication of the announcement or advertisement and ending on the fifth calendar day after the last published announcement or advertisement (unless this last day is a Sunday or holiday, then the last day shall be the next day).
- Conduct a public lottery on the date, time, and location as set forth in the published announcement, or advertisement; the date of the lottery shall be set no later than the thirtieth day following the date of the first published announcement or advertisement.
- Conduct the public lottery so that no prospective owner-occupant shall have an unfair advantage. This includes conducting the lottery without regard to the order in which the affidavits were submitted to the developer or the developer's real estate broker within the prescribed time period. This also includes keeping information secret about and refrain from informing any prospective owneroccupant about the publication announcement or advertisement referred to in section 514A-102, including the date it is to appear and when the public lottery system will be initiated, until after the announcement or advertisement is published.

Sanctions for Non-Compliance

Developers, their attorneys, their real estate brokers and salespersons, and other agents are also advised of the following that:

- Developers shall not violate or aid any other person in violating the provisions of Part VI, Sales to Owner-Occupants requirements.
- Whenever the Commission believes from satisfactory evidence that any person *is violating or has violated any provision of Part VI Sales to Owner-Occupants* requirements or rules of the Commission adopted pursuant thereto, it 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 engaging therein or doing any act or acts in furtherance thereof.
- Any developer, employee or agent of a developer, or real estate broker or *salesperson who violates or fails to comply with any of the provisions of Part VI,*

Sales to Owner-Occupants requirements 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.

- The Commission may revoke, suspend, or fine any license or licensee for violating Chapter 514A, HRS.

The information contained in this memorandum is being provided to you pursuant to section §16-201-92 , Hawaii Administrative Rules, for informational and explanatory purposes only and is not an official opinion or decision of the Real Estate Commission, and thus is not binding on the Real Estate Commission or the Department of Commerce and Consumer Affairs.

Should you have any questions or require additional information, please call or write any condominium specialist at (808) 586-2643.