



STATE OF HAWAII
REAL ESTATE BRANCH
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
250 SOUTH KING STREET, ROOM M2
HONOLULU, HAWAII 96813

July 30, 1993

MEMORANDUM

TO: CONDOMINIUM DEVELOPERS AND THEIR AGENTS

FROM: REAL ESTATE COMMISSION

SUBJECT: AMENDED OWNER-OCCUPANT AFFIDAVIT - ACT 217 SLH 1993

The 1993 Hawaii Legislature has amended sections 514A-104.5 and 514A-105, Hawaii Revised Statutes to provide, in part, that the owner-occupant affidavit shall expire: "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."

Recordation of the affidavit at the Bureau of Conveyances is no longer required. Although reaffirmation of the affidavit is still required, the time for reaffirmation has been modified. Reaffirmation is to be "no earlier than the person's receipt for a final public report and no later than closing of escrow for the unit."

Additional requirements include two notice mailings to the owner-occupant purchaser by the developer or its agent, "once by the sixtieth day and once by the two hundred seventieth day following the conveyance of the first unit to an owner-occupant ..."

Note also that the developer's remedies for binding sales contracts are no longer limited to retention of up to five per cent of the purchaser's deposit or actual damages. The developer may exercise remedies provided under the sales contract or as provided by law.

Interested persons are encouraged to review the amendments made by Act 217, SLH, as the above is merely a summary and does not detail all changes made to the law.

After a review of the information presented and a discussion at its July 14, 1993 meeting, the Condominium and Cooperative Review Committee ("CCRC") of the Real Estate Commission approved

Immediate use of the **amended owner-occupant affidavit dated 7/14/93(attached for your convenience)**. At its July 30, 1993 meeting the Commission ratified the affidavit and adopted the following opinion:

I. For those projects where the prospective owner-occupant has not yet signed an owner-occupant affidavit, the developer should utilize the "new" affidavit dated 7/14/93.

II. For those projects where the prospective owner-occupant has signed the "old" affidavit form and has not yet closed the sale of the apartment, the developer has the option to:

A. utilize the "old" affidavit with buyer reaffirming at closing in accordance with the provisions of the "old" affidavit. Recordation of the affidavit shall not be mandatory; or

B. have the prospective owner-occupant sign the "new" affidavit dated 7/14/93 in substitution of the "old" affidavit previously executed. In such event, the prospective owner-occupant may be asked to reaffirm the affidavit in accordance with the provisions of Act 217, SLH 1993. Recordation of the affidavit shall not be mandatory. Developer to retain the "old" affidavit along with the "new" affidavit.

The above opinion is an informal, non-binding interpretation pursuant to Subchapter 5, Hawaii Administrative Rules, Title 16, Chapter 201, Administrative Practice and Procedure, which is provided for informational and explanatory purposes only, is not an official opinion or decision, and therefore is not to be viewed as binding on the Commission.

If a formal opinion/decision is desired, application for declaratory relief may be filed pursuant to Subchapter 3, Hawaii Administrative Rules, Title 16, Chapter 201, Administrative Practice and Procedure. Any interested person may petition the authority for a declaratory ruling as to the applicability of any statutory provision or of any rule to a particular factual situation.