



REAL ESTATE COMMISSION  
STATE OF HAWAII  
PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P. O. BOX 3469  
HONOLULU, HAWAII 96601

June 6, 1990

MEMORANDUM

To: Developers of Condominium Projects

From: Real Estate Commission

Subject: Performance Bond Issued by Material House (Non-Licensed Surety)

In the past, the Real Estate Commission has accepted a performance bond issued by a material house (non-licensed surety) to meet the requirements of Section 514A-40(a)(5). This policy is a result of Commission meetings on February 22, 1985, April 24, 1986, September 26, 1986, and May 25, 1990.

The Commission may accept a performance bond issued by a material house (non-licensed surety) subject to the satisfaction of the following conditions:

1. All funds received from purchasers of apartments shall be placed in an escrow account established with the project's escrow agent;
2. The purchasers' funds in escrow shall not be disbursed to pay for construction costs or other expenses of the development of the condominium project until both the completion of the apartment to be conveyed and the closing of the sale;

(Continued)

3. If closing is to occur prior to the expiration of the applicable mechanics' lien period, then the developer shall be required to:
  - a) provide the purchaser with an owner's title insurance policy with a mechanics' lien endorsement, protecting the purchaser against all future mechanics' and materialmen's liens and
  - b) provide the Commission with a release by the general contractor of the contractor's lien rights;
4. The financial institution lending funds to develop the condominium project shall accept the performance bond issued by the material house;
5. The material house is not disapproved by the commission;  
and
6. Adequate disclosure is made in the public report concerning the developer's non-use of surety bond and the restrictions on the developer's use of purchasers' funds.