



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

TO: Condominium Developers, Real Estate Brokers, Attorneys and Others
FROM: Real Estate Commission
DATE: June 1, 1992
SUBJECT: ACT 50, SLR 1992, RELATION TO SALES TO OWNER-OCCUPANT

Act 50, SLH 1992, has become law, effective April 29, 1992, which provides for major amendments to Part VI of Chapter 514A, Hawaii Revised Statutes (HRS), "Sales to Owner-Occupants." We recommend that you review this new law immediately as it will have a major impact on your condominium projects and how you handle reservations/sales to prospective owner-occupants. In particular you should review how Act 50 provides for new reporting requirements, new time deadlines, an optional chronological or public lottery system and new requirements for reservations and offers for sale. A copy of the new Act is attached for your convenience.

In summary, the major provisions, are as follows:

OWNER-OCCUPANT

The major amendment is that the designated residential unit serve as the principal residence for 365 consecutive days.

Units in structures converted to condominium status must first be offered to any individual occupying the unit immediately prior to conversion who has submitted a completed affidavit and earnest money deposit.

OWNER-OCCUPANT ANNOUNCEMENT

The developer shall file with the Commission a copy of the proposed announcement at least 30 days prior to its initial publication. Note: The Commission recommends filing more than 30 days in advance to be assured a timely response to any concerns.

The developer shall publish the announcement no earlier than 60 calendar days prior to registering the project with the Commission.

The developer shall notify the Commission when the last date for publication of the owner-occupant announcement is planned for lottery system projects.

For non-Oahu projects, the announcement shall also be published in a county newspaper which has at least a twice weekly publication, in addition to the statewide circulation newspaper.

The requirements for the content of the announcement have been amended and include principal residence requirement, whether lottery or chronological reservation system is being used, submission of a completed owner-occupant affidavit and earnest money deposit, a list of the owner-occupant units by apartment number, and if applicable, special statements for exempted or government connected projects.

In addition, the first and last date for prospective owner-occupants to sign up for the reservation list or lottery, as well as the date, time and location of the lottery, if applicable, should be indicated in the announcement. The estimated effective date is currently approximately six weeks from the date of public report registration submission.

No one shall release any information or inform any prospective owner-occupant about the owner-occupant announcement, including the date it is to appear, until after it is published.

AFFIDAVIT

The required affidavit shall be approved and issued by the Commission. The developer and real estate broker have a duty to use the most recent version of the affidavit. See enclosed Commission approved affidavit. Note: to protect the public, the reaffirmation is not a separate sheet simply attached to the affidavit.

The affidavit includes affirmation of representations relating to application for: owner-occupant mortgage loan, notification of intention to cease being owner-occupant, filing of claim for homeowner's exemption, reaffirmation at escrow closing, recordation of affidavit and reaffirmation with conveying documents and expiration of affidavit and reaffirmation 365 consecutive days after recordation.

The affidavit shall be personally executed by all the prospective owner-occupants of the residential unit and shall not be executed by an attorney-in-fact.

RESERVATION LIST - CHRONOLOGICAL SYSTEM

If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be placed on the reservation list.

The final reservation list shall be compiled from the date the first owner-occupant announcement is published until the effective date for the first public report is issued, in the order the affidavits and earnest money deposits are submitted.

Prospective owner-occupants who do not select or do not have the opportunity to select a designated residential unit shall be part of the final reservation list as back-ups.

The developer must submit a certified copy of the final reservation list to the Commission within 15 calendar days after the issuance of the first public report.

RESERVATION LIST - PUBLIC LOTTERY

If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be entitled to enter the lottery.

The lottery list shall be compiled from the date the first owner-occupant announcement is published until 5 calendar days after the last announcement is published.

The developer must submit a certified copy of the lottery participant list to the commission within **10** calendar days after the last publication of the announcement.

The public lottery must be held within 15 calendar days after the last publication of the announcement, as stated in the announcement. The developer must submit to the Commission within 2 business days of the lottery, a certified copy of the preliminary reservation list of the prospective owner-occupants in the order selected at the lottery.

A certified copy of the final reservation list, including unit selected by the prospective owner-occupant, shall be submitted to the Commission within 30 calendar days after the lottery.

SALES CONTRACT AND BACKUPS

The developer must strike from the reservation list those prospective owner-occupants who elect not to execute the sales contract, and the subject units shall be re-offered to the backups whose names are on the reservation list.

The sales contract may be conditioned on the purchaser obtaining adequate financing or a commitment for adequate financing by a date which is no earlier than 50 calendar days after the developer accepts the contract. If the contract is canceled, the developer must re-offer the subject unit to the backups whose names

are on the reservation list.

If no sales contract is offered to a prospective owner-occupant within 6 months of the lottery or issuance of the first public report, or upon the request of a person who requests to be removed from the final reservation list or who has elected not to execute a sales contract, the entire earnest money deposit shall be returned to the prospective owner-occupant and the developer shall not be required to pay any interest.

A prospective owner-occupant has at least 10 calendar days to execute the sales contract once a unit is selected.

If at escrow closing, the owner-occupant is unable to reaffirm the affidavit, then the developer must accept the rescission of the sales contract and re-offer to the backups. If the contract is binding, pursuant to section 514A-62, the developer may retain the deposit up to an amount not to exceed the greater of five percent (5%) of the deposit or actual damages.

EXEMPT GOVERNMENT AND GOVERNMENT CONDITIONED PROJECTS

The developers of exempt government condominium projects (section 514A-108, HRS) may elect to be subject to the sales to owner-occupant provisions through written notification to the Commission with simultaneous filing of a copy of the proposed owner-occupant announcement, which shall disclose this election.

The developers of exempt government condominium projects and condominium projects developed pursuant to an affordable housing condition or provision by a governmental agency may elect to waive certain provisions that conflict with the imposed eligibility or preference requirements. Written notification shall be submitted to the Commission of the specific provisions to be waived, an explanation of each waived provision, and a statement from the appropriate agency declaring either 1) the project is an exempt government condominium project, or 2) the project has been imposed affordable housing eligibility/preference requirements. This notification shall be filed at least 30 days prior to the publication of the owner-occupant announcement. In addition, the subject announcement shall have disclosure statements on the waived provisions. Note: the Commission recommends filing the notification more than 30 days in advance to be assured a timely response to any concerns.

PROHIBITIONS

The developer, employee or agent of the developer, or real estate licensee:

- 1) shall not violate or aid any other person in violating

Part VI of Chapter 514A;

2) has an affirmative duty to immediately report to the Commission any person who violates or attempts to violate Part VI of Chapter 514A; and

3) shall not file with the Commission any notice, statement, or other document which is false or contains a material misstatement of fact.

Any contract or instrument entered into in violation of Part VI of Chapter 514A shall also be subject to the remedies provided in section 514A-69, HRS.

THIS IS MERELY A SUMMARY OF SOME OF THE IMPORTANT PROVISIONS OF ACT 50. IT DOES NOT COVER ALL THE PROVISIONS. CONSEQUENTLY, DO NOT RELY ON THIS SUMMARY. PLEASE REVIEW THE ACTUAL LANGUAGE OF THE LAW AND RULES TO MAKE YOUR OWN DETERMINATION ABOUT HOW ACT 50 APPLIES TO YOUR PROJECT.

REMINDER

For all types of advertising on a condominium project especially advertising occurring prior to the issuance of a public report, please read the enclosed Commission Memorandum, dated July 17, 1991. Advertisements of real property with any real estate broker information must also comply with section 16-99-11, Hawaii Administrative R

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