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TO: Condominium Consultants
FROM: Real Estate Branch, Condominium Section
DATE: June 29, 1994
SUBJECT: UPDATE ON CURRENT COMMISSION DECISIONS; CHAPTER 107 HAR REVISIONS

REQUEST TO ACCEPT ALTERNATIVE TO PERFORMANCE BOND

Commission denied the request for two reasons. The proposal was not a substantially equivalent instrument and suggested the developer consider the applicable rule, 16-107-9, HAR. (November, 1992)

OWNER-OCCUPANT AFFIDAVIT - IMPACT ON MORTGAGES

The owner-occupant affidavit required by Part VI, Chapter 514A, HRS is intended to be binding only upon the affiant(s). Therefore the owner-occupant affidavit is not binding upon mortgage lenders who acquire or convey title of the subject apartment at or in lieu of foreclosure. In addition, as long as the owner-occupant affidavit is recorded, recordation of the subject mortgage may occur immediately prior to recordation of the owner-occupant affidavit.

Pursuant to Act 217, which became effective June 10, 1993, recordation of an owner-occupant affidavit is no longer required. Instead, the developer is required to mail notice to each purchaser pursuant to §514A-105(f), HRS. (January, 1993)

BUREAU OF CONVEYANCES - SINGLE APARTMENT CONDO PROJECT UNACCEPTABLE

The Bureau of Conveyances does not accept condominium documents for recordation which consist of only one apartment. Pursuant to Chapter 514A, HRS, the definitions of "condominium" and "project" state it must consist of two or more apartments.

The commission may issue an effective date for a final or preliminary public report for a single apartment of a phased condominium project where the recorded declaration and map provide for a minimum of two apartments. A declaration which simply states that the developer reserves the right to build a second apartment is inadequate. (March, 1993)

OWNER-OCCUPANT ANNOUNCEMENT - THIRTY DAY REVIEW PERIOD

The commission does not have the authority to reduce the thirty day review period required by §514A-102(b)(1), HRS. (March, 1993)

EXTENSION OF EFFECTIVE DATE FOR A PUBLIC REPORT WHEN THE PUBLIC REPORT FORM HAS SUBSTANTIALLY CHANGED

A caveat is to be placed in the commission's order granting extension of the effective date of a public report if the original effective date was issued for a public report on the "prose" legal size form utilized prior to 1987. The caveat should note the law and requirements for a public report have been amended since the original effective date of the public report was issued and that the public report may not conform to current standards for public reports.

Prospective purchasers should be encouraged to review current public report requirements for comparison (a copy of the public report form and instructions may be obtained from the commission), question developer as to any additional information desired and, if they wish, contact an attorney for counsel. (March 1993)

AUCTIONS

The auction method of sale for condominium project sales will not in and of itself require specific disclosure in the public report, disclosure abstract or a supplementary public report. However, the developer is reminded:

- 1) to submit updated materials and information of all appropriate registration documents and information;
- 2) to file all advertising and promotional materials with the commission prior to issuance, circulation or publication;
- 3) the method and terms of sale by auction shall comply with the requirements of Chapters 484 and 514A, HRS and Chapter 107, HAR; and
- 4) the supplementary public report requirements still apply where applicable. (March 1993)

LETTER OF CREDIT IN LIEU OF BOND

The commission approved the use of a letter of credit in lieu of a bond for one hundred per cent of the cost of moving a structure to its permanent site as described by the condominium declaration and condominium map.

A letter of credit or a performance bond shall also be required for one hundred per cent of the cost of any additional construction required to adapt the structure as well as for any additional construction necessary to complete the project pursuant to §514A-40, HRS. (April, 1993)

BROKER LISTING AGREEMENT FOR PROJECT REGISTRATION

The broker listing agreement requirement for condominium project registration may be waived by a developer for projects sold by the owner, pursuant to §467-2(1), HRS, as indicated in the public report or subsequent disclosure abstract. (April, 1993)

OWNER-OCCUPANT ANNOUNCEMENT REQUIREMENT

An owner-occupant announcement should be published for a three-apartment condominium project of which two apartments are residential. (July, 1993)

ZERO-UNIT CONDOMINIUM

The commission denied the request to process registration of a "zero-unit" condominium. This condominium does not appear to be consistent with Hawaii's statutory scheme or with commission policy regarding the creation and regulation of condominium property regimes. (September, 1993)

DEVELOPER'S RIGHT TO SELECT DATE OF OWNER-OCCUPANT REAFFIRMATION

Developer of a condominium project subject to the owner-occupant requirements under Part VT, Chapter 514A, HRS, shall provide notice in the public report to supplement the sales contract disclosure regarding the specific time by which the prospective owner-occupant has to re-affirm the owner-occupant affidavit, pursuant to §514A-105(d), HRS.

If an effective date for the public report has previously been issued, developer shall provide a letter to each prospective owner-occupant being offered the owner-occupant designated unit, specifically referencing the time period for re-affirmation of the owner-occupant supplementary public report. Developer shall provide a copy of such letter to the Real Estate Commission prior to distribution. (September, 1993)

COUNTY STATEMENT REQUIREMENTS

Upon review of §514A-40(b)(1), HRS, the commission confirmed that the verified statement from the county required for a final public report for a condominium conversion shall not disclose building code or zoning ordinance violations.

Therefore, building code or zoning ordinance violations as noted in the verified statements from the county required by §514A-40 (b)(1), HRS should be cured prior to receipt of an effective date

for a final public report for condominium conversions.

The commission will accept one statement from the following county agencies to satisfy compliance with both the building code and zoning ordinances:

City and County of Honolulu, Building Department;
County of Maui, Land Use and Codes Administration, Department of
Public Works and Waste Management;
County of Kauai, Planning Department.

The commission will accept one statement from the Planning Department, County of Hawaii regarding compliance with the zoning ordinances and a separate statement from the Building Division, Department of Public Works for compliance with the building codes. (January, 1994)

§16-107-16. - COPIES OF PUBLIC REPORT TO BE PROVIDED TO THE COMMISSION BY DEVELOPER

§16-107-16, HAR is amended to read as follows:

"Within thirty days of the issuance of an effective date for a public report, the developer shall provide the commission with copies of the public report at no charge, the number and color to be prescribed by the commission."

in addition, the developer shall provide the Real Estate Commission with six (6) copies of the public report. However, the developer of a condominium project located in the County of Hawaii shall provide seven (7) copies of the public report to the Commission. Copies of public reports shall be provided as follows:

Preliminary public reports - yellow paper
Final public reports - white paper
Supplementary public reports - pink paper (January 1994)

GIFT V. SALE

Under the facts of this specific situation, where a father has a large lot with one residential unit, after construction of a second unit and submission of the property to CPR, the father gifts the unit to the son, the following applies:

Registration of a condominium project is not required where an apartment is conveyed by way of gift.

If a person wills a condominium unit to another family member, or the unit passes to a family member by way of a revocable living trust, the condominium project must be registered with the commission prior to the time the unit is ever sold. The recipient of the unit has stepped into the shoes of the developer. (January, 1994)

OWNER-OCCUPANT ANNOUNCEMENT - MULTIPLE BROKERS

To prevent any potential for consumer harm, only one broker may be designated by a developer in the owner-occupant announcement to receive the owner-occupant affidavit and earnest money deposit. (March, 1994)

OFFER FOR SALE TO TENANTS IN CONVERSION

Any discussion with existing tenants initiated by the building owner regarding a possible conversion to condominium status for non-residential property which does not include price or otherwise encourage or promote the sale of apartments is permitted. (February, 1994)

KAUAI COUNTY CODE RELATING TO ADDITIONAL DWELLING UNITS

Ordinance No. 644, Bill No. 1541, Draft 1 has extended the deadline which allows additional dwelling units to be developed to December 31, 1996. (February, 1994)

FILING OF ADVERTISEMENT MATERIALS

Submission of advertising materials pursuant to §16-107-23, HAR, is limited only to those advertising materials intended to be issued, circulated or published prior to the issuance of an effective date for an initial public report where the offering is limited only to bona-fide prospective owner-occupants. (March, 1994)

APPLICABILITY OF OWNER-OCCUPANT REQUIREMENTS

The sales to owner-occupant requirements of chapter 514A, HRS, do not apply to condominium projects where the notice of intention was filed with the commission prior to the enactment of the owner-occupant provisions, pursuant to section 6, Act 189, 1980. (April, 1994)

INCOMPLETE/ABANDONED PROJECT REGISTRATION FILES

File retention policy pursuant to §436B-(9)(b), HRS, to be adopted as follows:

"[a] n application may be considered to be abandoned if it is not completed and the required documents and other information are not submitted to the department within one year from the date first filed. The licensing authority shall not be required to act on any abandoned application, and the application may be returned or destroyed by the licensing authority or its delegate."

In addition, six months following the initial submission of registration, staff to work with the condominium consultants to endeavor to issue a notice to the developer if the registration is

still incomplete.

The registration shall be deemed abandoned if incomplete and the required documents and other information are not submitted within one year from the date the registration was first filed, unless otherwise determined by the commission. The commission shall not be required to act on any abandoned registration. Reasonable attempts shall be made to return the registration file to the applicant; otherwise the file may be destroyed.

Should the developer decide to reopen the filing after it has been deemed abandoned, the registration shall be considered a new filing, subject to all requirements at the subsequent date of filing, unless otherwise determined by the Commission. (May, 1994)

PROJECT REGISTRATION MATERIALS AVAILABLE FOR REVIEW

Materials submitted by the developer pursuant to Part III. Registration and Administration, Chapter 514A, HRS, shall be available for public review at a location designated by the commission upon the issuance of an effective date for the public report to which the materials pertain.

Material submitted by developer subsequent to the issuance of an effective date for a public report pursuant to §514A-61, Disclosure requirements and §514A-43, Automatic expiration of public reports; exceptions, shall be available for public report after review by the commission. (April, 1994)