

**“THE NEW CONDOMINIUM LAW  
CHAPTER 514B, HRS –BUILDING ON  
THE PAST”**

*Presentation of the Hawaii Real Estate  
Commission*

*Selected Provisions of Chapter 514B, HRS*

Funded by the Condominium Education Fund,  
Real Estate Commission, Professional and  
Vocational Licensing Division, Department of  
Commerce and Consumer Affairs, State of  
Hawaii

June 16, 2006

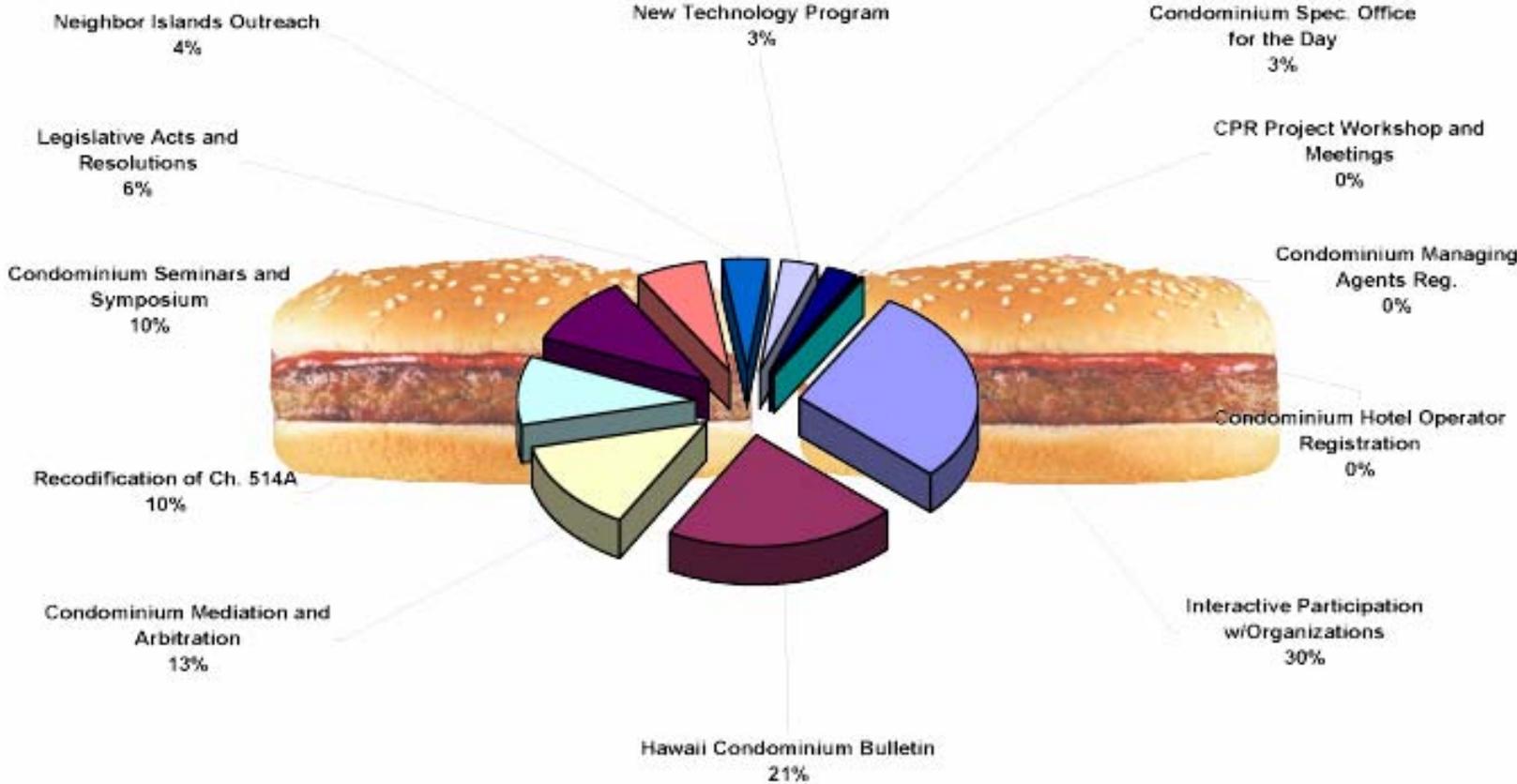
# Condominium Education Fund

- Each Condominium owner contributes \$4 biennially to the condominium education fund
- Developers contribute \$5 for each unit
- Fund is administered by the Real Estate Commission for educational purposes

CONDOMINIUMS CREATED  
JULY 1, 2006 AND THEREAFTER

- **Educational purposes include financing or promoting:**
  - Education and research in the field of condominium management, registration, real estate for the benefit of the public and those registered;
  - Improvement and more efficient administration of condominium associations; and
  - Expeditious and inexpensive procedures for resolving condominium association disputes.

# CEF Education and Research Expenditures FY 2005



# HAWAII CONDOMINIUM BULLETIN

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**Funded through the Condominium Education Fund**

## What Is Available on the Real Estate Commission's Website?

Have you visited the Real Estate Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) recently? Condominium and real estate information is easily accessible on the Real Estate Commission's website including information and/or forms for condominium registration and education and real estate licensing education. The topics are:

### Condominium Registration and Education:

- General Condominium Information/Education/Publications
- Board of directors guides, other educational publications, Con...

## Act 92 Expands Condominium Dispute Resolution

The Condominium Dispute Resolution two-year pilot program was introduced in July 2004, with an end date of June 2006. This program provided a hearing with the Office of Administrative Hearings (OAH), Department of Commerce and Consumer Affairs, should a condominium dispute not be resolved through mediation attempt. However, there were restrictions on the qualified condominium issues.

In June 2005, the twenty-third Legislature enacted Act

# CAVEAT

## *Notes to the User*

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# ***DISCLAIMERS***

- Information provided is for Educational Purposes
- Informal and Non Binding on the Real Estate Commission
- Only the Real Estate Commission acting as a whole may make binding decisions, informal, and formal interpretations
- Staff and speakers do not and cannot speak for the Commission unless directed and authorized
- The new law is subject to change annually by the legislature
- Any inconsistencies between the materials and information presented and the law, the law controls
- Materials and information are not intended to be an exhaustive discussion of the subject

# THE NEW RECODIFIED LAW INCLUDES . . . SOME . . .

- Provisions carried forward from Chapter 514A, HRS, the old law
- Completely new provisions
- Lessons gleaned from court decisions

# **ANY FUTURE AMENDMENTS TO THE NEW RECODIFIED LAW**

- Subject to certain provisions, apply to condominiums created after July 1, 2006 and condominiums opting in to the new condominium law regardless when the amendments are adopted
- Minimizes the impact of the issues of prospective application and retrospective application

# THE NEW RECODIFIED LAW APPLIES

- To New Condominium Projects Created July 1, 2006 and thereafter
- To existing condominiums, new management provisions and related definitions apply
  - to events and circumstances occurring after July 1, 2006 provided the application does not invalidate existing provisions of the declaration, bylaws, condo map
  - may be adopted or restated

# Awaiting Governor's Action

## HB 3225 HD1, SD1, CD1

- Makes the management and certain other provisions of the new Condominium Law, Chapter 514B, HRS, apply to existing condominiums provided:
  - Applies to events and circumstances occurring on or after July 1, 2006; **and**
  - Where the application does not invalidate existing declaration, bylaws, condominium map, other governing documents, and developer's reserved rights or be an unreasonable impairment of contract.
- **NOTE** - an “ \* ” indicates HB 3225 HD1, SD1, CD1 changes awaiting Governor's Action

# **EXISTING ASSOCIATIONS CAN SPECIFICALLY ADOPT PROVISIONS OF THE NEW LAW BY:**

- Amending the Association's \*
  - declaration, bylaws, condominium map or other governing documents by the vote or written consent of majority of all unit owners;
  - provided the amendment does not invalidate the reserved rights of a developer.

# New Law Impacts

- Developers
- Sales Agents
- Condominium Owners and Association Boards
- Related Professionals, i.e., Condominium Managing Agents

# Myths

- Real Estate Commission Approves Condominium Projects

## –Reality

- Developer's Disclosure Document
- Commission does not approve or disapprove condominium projects
- Real Estate Commission has authority over the whole Condominium Law

## –Reality

- Has limited authority of 37 sections of 135 sections
- Of the 37 only 9 sections concern condominium association management

## **Myths** Continued . . .

- Real Estate Commission Enforces the Condominium Management Governance Provisions

### **–Reality**

- Commission's involvement is limited by law
- Basically Condominium Governance is self governance – owners supervise and oversee their boards

# Commission's Limited Condominium Governance Areas July 1, 2006

- Association Registration
- Managing Agents
- Management and contracts, developer, managing agent and association
- Association fiscal matters; handling and disbursement of funds
- Association records generally
- Association records to be maintained
- Association records; availability; disposal; prohibitions

# Mandatory Mediation and Arbitration Areas July 1, 2006

- Association's Declaration
- Bylaws
- House Rules
- Interpretation, application or enforcement of Chapter 514B, HRS (subject to certain exceptions of § -161(b) (c) (Act 164 SLH 2004)

# Complaints and Investigation Delegated to:

- Regulated Industries Complaints Office
  - Oahu 587-3222
  - Kauai 274-3200
  - Maui 243-5808
  - Hilo 933-8846
  - Kona 322-1908
  - <http://www.hawaii.gov/dcca/rico>

# **New Condominium Law Impact On**

- Condominium Owners
- Board of Directors
- Managing Agents
- Resident Managers

# **THE NEW RECODIFIED LAW APPLIES**

- To New Condominium Projects Created July 1, 2006 and thereafter

# **BUT DECLARATIONS AND BYLAWS MAY PROVIDE . . .**

- The non applicability of the **management** provisions of the new law to condominiums where
  - Units are restricted to non residential uses; or
  - Condominiums having no more than five units and not subject to any continuing development rights (association need not register with the Commission)

# **SUMMARY: WHAT'S NEW FOR THE CONDOMINIUM COMMUNITY**

- Provisions carried forward from Chapter 514A, HRS, the old law
- Completely new provisions
- Lessons gleaned from court decisions

# Existing Associations Can Specifically Adopt the Management and Other Provisions Of The New Law By:

- Amending the Association's \*
  - declaration, bylaws, condominium map or other governing documents by the vote or written consent of majority of all unit owners;
  - provided the amendment does not invalidate the reserved rights of a developer

## Increasing Owners' Self Help Governance Tools

- Other amendments to declarations and bylaws require the vote or written consent of at least 67% of all unit owners;
- Mandatory mediated areas **expanded** to any issue relating to declaration, bylaws, house rules, and **any provision of the new recodified law** (arbitrated areas include the same).

# Associations Coming Into Existence After July 1, 2006 Can Restate Declarations And Bylaws By:

- Board resolution to set forth all amendments;
- Board resolution to conform:
  - with Chapter 514B, HRS, as amended,
  - any other statute, ordinance, or rule; or
  - to correct the percentage of common interest for the project so it totals one hundred percent (proportion of percentage of common interest remains the same);\*
  - provided where there are conflicts the restated declaration or bylaws are subordinated to the original declarations and bylaws;

# INCREASING OWNERS' SELF HELP GOVERNANCE TOOLS –

- Association and Board

- Powers and Limitations Clarified and Listed (§514B-104, §514B-105, §514B-106, HRS) subject to declaration and bylaws
- Unless otherwise permitted by the declaration, bylaws, or 514B, HRS, an association may adopt rules and regulations that affect use of or behavior in residential units for certain circumstances
- Board by resolution can determine that certain limited common element expenses be paid by all owners in accordance with common interest

# Increasing Owners' Self Help Governance Tools continued...

- HB 3225 Amendments to Association Powers. Subject to declarations, bylaws and limitations on association's powers, the board may:
  - approve the purchase of a unit for a resident manager's use;
  - pursuant to a board resolution where the bylaws are silent, establish a fining procedure to include a basis for the fine and allow an appeal to the board; where fine is paid owner shall have right to initiate a dispute resolution process by filing a request for an administrative hearing with the CDR pilot program

# Increasing Owners' Self Help Governance Tools continued ..

- HB 3225 HD1, SD1, CD1, Amendments to Board Powers – Requires:
  - An elected board of at least 3 members;
  - An elected board of at least nine members where the project has been created after May 18, 1984, \*unless an amendment to bylaws to reduce the board to as few as five members (by written consent of a majority of owners or the vote of a majority of a quorum at any annual meeting or special meeting); does not deprive an incumbent director of remaining term.

# Increasing Owners' Self Help Governance Tools . . . continued

- HB 3225 HD1, SD1, CD1, Amendments to Board limitations:
  - Prohibits any owner who is a board member and an employee of the managing agent from participating in any discussion regarding a management contract at a board meeting;
  - Excludes such person from any executive session of the board where the management contract or the property manager will be discussed;

# Increasing Owners' Self Help Governance Tools continued . . .

- **Unit Boundaries §514B-35.** Clarifies who is responsible for maintenance, upkeep, and repairs of a number of listed items where the declaration is silent, i.e. plasterboard repairs, painting, if panels are removed to fix common element repairs

# Increasing Owners' Self Help Governance Tools

continued...

- **Common elements.**

- Means all portions of the condominium other than the units; any other real estate interests subject to the declarations.
- Amongst other provisions, each unit owner may use the common elements as permitted under the declaration, subject to owner's rights to amend the declaration to change use.
- HB 3225 HD1, SD1, CD1 amends this provision and allow without amending the declaration (subject to the provisions relating to solar energy devices):
  - Changing open or landscaped common elements to other uses,
  - Making minor changes to the common elements for the benefit of one owner that does not substantially impact the interest of other owners as the board determines.

# Increasing Owners' Self Help Governance Tools

continued...

- **Circuit Court's** may excuse certain provision in a declaration or bylaws if the provision unreasonably interferes with the association's ability to:
  - manage the common property,
  - administer the condominium property regime;
  - or carry out any other function set forth in the declaration or bylaws;
  - and compliance is not necessary to protect the interests of the members or lenders
  - (require notice to owners of the court hearing)

# Circuit Court's continued...

- Certain provisions include
  - Assessment amount
  - Lender approval of amendment
  - 67% to amend the bylaws subject to certain provisions
  - Requirement that an amendment to the declaration be signed by unit owners
  - Quorum requirement for meetings of unit owners.

## Increasing Owners' Self Help Governance Tools continued

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- Associations Financial and other records:
  - Be made reasonably available for examination by unit owner and agents;
  - Stored on island condominium is located
  - Original records, including invoices, can be kept off island but copies shall be on island;
  - Records and vouchers authorizing the payments and statements shall be kept and maintained at the address of the project or elsewhere within the state as the board determines

## Increasing Owners' Self Help Governance Tools continued

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- Association records, availability, disposal:
  - Current financial statement and minutes of board's meeting, once approved, shall be provided to an interested owner at no cost or on 24 hours loan;
  - Minutes of meetings of the board and association for the current and prior year shall be available for examination within 15 days of request; copy provided; owner to pay cost of duplication and postage;

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JULY 1, 2006 AND THEREAFTER

- Association minutes:
  - Available within 7 calendar days after approval; unapproved 60 days (approved at next succeeding meeting or by the board within 60 days if authorized by owners)
  - Allows owners to offer corrections to minutes at the meeting
- Board minutes (except executive session):
  - Available within 7 calendar days after approval; unapproved 60 days (approved no later than second succeeding regular meeting)

# Increasing Owners' Self Help Governance Tools

continued...

- Association meetings -- Substantially unchanged additions include:
  - Where the declaration and bylaws provide, board meeting may be conducted by any means allowing participation by all unit owners in any deliberation or discussion (i.e. telephone/video /conference call)
  - In case of natural disaster can meet outside the State
  - Permits the secretary or other association officer to give notice of an association meeting at the option of the owner (written), delivery of the notice by email

# Increasing Owners' Self Help Governance Tools

continued...

- Board Meetings -- Substantially unchanged additions include:
  - Unless prohibited in the declaration and bylaws, board meeting may be conducted by any means allowing simultaneous hearing by all board members (i.e. telephone/video conference call)
  - Provides for a definition of “Conflict of interest” prohibiting a director from voting

# Increasing Owners' Self Help Governance

## Tools continued . . .

- Executive Session grounds expanded to cover:
  - personnel;
  - litigation;
  - necessary to protect the attorney-client privilege;
  - necessary to protect the interest of the association while negotiating contracts, leases, and other commercial transactions.

# Increasing Owners' Self Help Governance

## Tools continued . . .

- Financial statements, general ledgers, accounts receivable, payable, check ledgers, insurance policies contract and invoice of the association shall be available to condominium owners for the duration the records are kept by the AOA, subject to the owners providing an affidavit, payment of costs, etc.
- After association meeting, owners can examine proxies, tally sheets, ballots, owners' check-in lists, certificate of elections within 30 days

## Increasing Owners' Self Help Governance Tools continued

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- Managing agent, employee of association or designated board member required to provide copies of the requested records upon payment of duplicating and administrative costs
- Owners may file written request to examine other documents with the board
- Association may comply with the a request for information at the option of each unit owner by providing downloading through an internet site

## Increasing Owners' Self Help Governance Tools continued

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- Director's Duty. Members of the board and officers owe association a fiduciary duty and the degree of care and loyalty required of officers and directors of nonprofit corporations including:
  - Good faith
  - Care of ordinarily prudent person
  - Best interest of the association
  - Reliance on information, opinions, reports, financial statements etc prepared by experts
  - Making available a copy of the budget to all unit owners within 30 days of adoption of any proposed budget (current before annual meeting)

## Increasing Owners' Self Help Governance Tools continued

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- **Aging in Place.** Without legal responsibility or liability, a board can act upon a report, observation, or complaint relating to an elderly (62 years and older) unit owner aging or aging in place and can:
  - Request a functional assessment of the condition of an elderly unit owner
  - Request recommendations for the services such may require to maintain a level of independence to continue to live in the condominium
  - No affirmative duty to make requests
  - Assess problems relating to aging in place including inability to clean and maintain unit, mental confusion, abusing others, inability to care for one self; loneliness and neglect; inappropriate request of others for assistance

## Increasing Owners' Self Help Governance Tools continued

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- High-risk Components. Board may determine after notice and opportunity to all unit owners for comment:
  - Determine certain portions of the units, objects or appliance within the units i.e. washing machine hoses, water heaters, pose a risk of damage to other units if not properly maintained, repaired or replace as “high risks components”;
  - Require inspection and replacement at specified intervals whether or not component is defective or deteriorated
  - Repair or replace the high risk components if owners fail to do so, the costs and expenses to be a lien on the unit ; may enter unit to perform the repairs, replacement etc.

## Increasing Owners' Self Help Governance Tools continued . . .

- Assessments. Board may:
  - Not exceed its total operating budget by 20% except for emergency situations, or approval of the majority of the unit owners
  - Collect “regular monthly common assessments” which does not include:
    - Any other special assessment, except for special assessment imposed on all units as part of the budget;
    - Late charges, fines, or penalties;
    - Any lien arising out of the assessment; or
    - Any fees or costs related to the collection or enforcement of the assessment, including attorneys’ fees and court costs.

# Increasing Owners' Self Help Governance Tools continued...

- Unpaid Assessments\*

- Subject to certain procedures and majority of unit owners approval can collect monthly assessments from tenants or rental agents if the owner of a unit rents or leases the unit and is in default (HB 3225 HD1, SD1, CD1)

## Increasing Owners' Self Help Governance Tools continued

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- Voting - Substantially unchanged additions include:
  - One page (8 ½ x 11) statement of owner's qualifications to serve on the board;
  - Unit owner may vote using a [directed \*] proxy by mail or electronic transmission;
  - Allow the bylaws to provide for cumulative voting [if the owner gives notice of owner's intent to cumulatively vote before the voting commences\*]

## Increasing Owners' Self Help Governance Tools continued

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- Pets

- Allowed if bylaws permit, is silent no specific provision disallowing;
- When bylaws amended to prohibit keeping pets, owners can continue to keep the pet acquired before the amendment made (replace pets too);
- Tenants can keep pets where owners can subject to certain conditions;
- Reasonable restrictions are allowed;
- Association may immediately act to remove vicious animals to protect persons or property.

# Increasing Owners' Self Help Governance Tools

continued...

- **Association Insurance.** Unless the declaration or bylaws provide otherwise, associations shall purchase and maintain:
  - Property insurance on the common elements; special form causes of loss, for not less than the full insurable replacement cost, less deductible, and increased costs of construction due to building code requirements;
  - Commercial general liability insurance (minimum amount \$1,000,000);
  - Fidelity bond (assn with more than 5 dwelling units) covering persons handling the funds, including managing agent;
  - directors and officers liability coverage limited by the declaration or bylaws;
  - Flood Insurance if property is in special flood hazard area;
  - Other insurance as required by the declaration, bylaws, or the board.

# Increasing Owners' Self Help Governance Tools continued . . .

- **Unit owner's insurance.** \*The board with the vote or written consent of a majority of the owners may require unit owners to:
  - \* Obtain reasonable types and levels of insurance
    - Unit owners liability includes but not limited to the owner's deductible whose unit was damage, any uncovered damage, as well as decorating, painting, wall and floor coverings, trim, etc.
  - Reimburse the association for insurance obtained for the unit owner in the event the unit owner refuses to obtain the insurance.

CONDOMINIUMS CREATED  
JULY 1, 2006 AND THEREAFTER

# LIABILITY

- Actions arising out of the condition or use of the common elements, may be maintained only against the association not any unit owner
- Association's right of action against a developer is tolled until the period of developer control terminates

# ASSOCIATION REGISTRATION

- Does not apply to projects with non residential uses or projects without any continuing development rights containing no more than five units as provided by the declarations or bylaws
- Fidelity bond requirement increased to \$200,000

# MANAGING AGENTS

- Registration requirements do not apply to active licensed real estate brokers;
- Required to obtain and keep current a fidelity bond in amounts not less than \$20,000 nor greater than \$500,000;
- Required to distribute any commission-generated information, documents of the association, its board, or units owners, at the association's costs

# **New Condominium Law Impact On**

- Creation of Condominiums
- Registration of Condominium Projects
- Timing of Binding Sales Contract

# SUMMARY WHAT'S NEW FOR DEVELOPERS

- Exemptions from Registrations with the Real Estate Commission
  - Dispositions by foreclosure or deed in lieu of foreclosure;
  - Sale of units in bulk; subsequent sales to the public must be first registered;
  - Non residential condominium projects and all units are sold for \$1,000,000 or more;
  - Gratuitous disposition;
  - Government disposition;
  - Court order disposition;

# DEVELOPERS WILL BE ABLE TO

- Market a condominium project using one developer's public report form that is non-expiring;
- Advertise the condominium project prior to registering with the Real Estate Commission;
- Enter into nonbinding preregistration agreements with prospective purchasers, ***provided*** no monies are collected and the agreements do not become a sales contract;

*CONTINUED ...* **DEVELOPERS WILL BE ABLE TO**

- Continue selling when there are changes to the developer's public report, ***provided*** the developer does the following:
  - Discloses the changes to purchasers;
  - Submits immediately to the Commission any amendment to the developer's public report or an amended developer's public report.

*CONTINUED...* **DEVELOPERS WILL BE  
ABLE TO**

- Offer for sale condo projects comprised of converted structures where the zoning, building ordinances or codes violations are curable subject to:
  - disclosure of such and the conditions required to cure; and
  - further subject to purchasers right to cancel the sales contract if violations are not cured on or before a stated completion deadline;

*CONTINUED ...*

# **DEVELOPERS WILL BE ABLE TO**

- Sell “units” as opposed to “apartments”
- Expands “unit” to include the sale of “spatial” units – “airspace condominiums”
- Qualify county compliance declaration for conversion to identify curable zoning, building, code violations by date certain
- Elect to continue sales of registered projects under existing law Chapter 514A, HRS

CONTINUED ...

# DEVELOPERS WILL BE ABLE TO

- Receive an effective date for a developer's public report where the developer has a right to acquire the fee or leasehold interest ***subject to meeting certain requirements;***
- Deliver a description of the material change on a form prescribed by the Commission (30 day right to rescind)

Continued...

## Developers Will Be Able To

- Use purchaser's funds prior to closing or prior to the completion of construction of the project ***subject to the developers meeting certain requirements;***

*Continued*

## **The Requirements Include:**

- Prominent display in the developer's public report and inclusion in the sales contract a notice of the risk or possibility that the purchaser **may lose his or her deposits** should the developer use the purchaser's deposits to pay for project construction costs and the project is not completed;

# **DEVELOPERS WILL BE REQUIRED TO . . .**

- Provide annual updates to its public report
- Amend its public report where there is a “material or pertinent change”

# NEW DEFINITIONS

- **“Material Change”** any change that directly, substantially, and adversely affects the use or value of
  - Purchaser’s unit or appurtenant limited common elements; or
  - Amenities of the project available for purchaser’s use
- **“Pertinent Change”** means, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information in the report or disclosure statement inaccurate, including but not limited to
  1. Size, construction materials, location, or permitted use; limited common element;
  2. Size, use location, or construction materials of the common elements; or
  3. The common interestA pertinent change does not necessarily constitute a material change.

## DIFFERENT TIMING FOR BINDING SALES CONTRACT

- Developers may elect when sales contract becomes binding;
- Purchaser may cancel a sales contract up to midnight on the thirtieth (30th) day after the **latest** date when all of the following are completed:
  - 1. The date the sales contract was signed;
  - 2. The date the developer delivered to the purchaser the Developer's Public Report including any amendments, with an effective date issued by the Real Estate Commission on or before the receipt date;
  - 3. The date the developer delivered to the purchaser the project's recorded declaration, bylaws, house rules (if any), a letter-sized copy of the condominium map, and any amendments to date; and
  - 4. The date the developer delivered to the purchaser the Notice of Right to Cancel Sales Contract.

# **EXISTING CONDOMINIUM LAW 514A, HRS, APPLIES**

- Where developer files a notice of intention prior to July 1, 2006; and
- Creates a condominium project prior to July 1, 2006; must record declarations, master deed or lease, condominium map, bylaws, floor plans and elevations.

# Existing Condominium Projects

- Developers of registered projects can elect to continue sales provided that the developer's . . .
  - Public report is issued an effective date under Chapter 514A, HRS, before the new law took effect (declarations must be recorded); or
  - Public reports issued an effective date pursuant to the new condominium law – recod law applies (514B, HRS)

# 514A, HRS, CONDOMINIUM PROJECTS HYBRID ELECTION

- Section 9 Act 93 (2005) allows a developer of a registered 514A condominium project to:
  - Register under the new condominium law, Chapter 514B, HRS; terminating 514A registration
  - Provide new public report to all existing purchasers (30 day cancellation right not required)
  - Go forward with any previously binding purchase contract (except for material change, no rights to rescind)
  - Rights and obligations governed by new chapter

## **COMMISSION MAY ISSUE EFFECTIVE DATES FOR DEVELOPERS PUBLIC REPORT WHEN IT RECEIVES THE FOLLOWING:**

- Non refundable fees;
- Developer's public report prepared by developer disclosing information specified
  - in 514B-83 (general content requirements for a developer's public report), and
  - if applicable, 514B-84 (requirements for special types of condominiums);
- Copy of deed, master lease, agreement of sale or sales contract evidencing developer holds fee or leasehold interest; or has a right to acquire;
- Copies of executed (recorded) declarations, bylaws, condominium map meeting certain requirements; and
- Specimen copy of proposed sales contract

# **COMMISSION MAY ISSUE EFFECTIVE DATES FOR DEVELOPERS PUBLIC REPORT WHEN IT RECEIVES THE FOLLOWING: CONTINUED**

- Executed copy of escrow agreement for retention and disposition of purchaser's funds that meets requirement of section 514B-91, HRS;
- As applicable, the documents and information required in section 514B-92 (use of purchaser's deposits to pay project costs) or 514B-93(early conveyance to pay project costs), HRS;
- A county compliance declaration with pursuant to section 514B-5 and 514B-32(a)(13) subject to penalties set forth in 514B-69 (b), HRS;
- Other documents and information that the Commission may require.

# **NEW CONDOMINIUM LAW IMPACTS REGISTRATION**

**CONTINUED . . .**

- **Where purchaser's funds are being disbursed prior to closing to pay project costs Commission will issue an effective date when developers submit:**
  - A project budget for the completion of the condominium project;
  - Evidence of sufficient funds to pay all costs necessary to complete the project;
  - Executed construction contract;
  - Building permits;
  - Satisfactory evidence of security for completion of the construction including a completion or performance bond, or material house bond.

**Where Purchaser's Funds are Being Disbursed Prior to Closing to Pay Project Costs There Must Be A . . .**

- Prominent display in the developer's public report and inclusion in the sales contract a notice of the risk or possibility that the purchaser **may lose his or her deposits** should the developer use the purchaser's deposits to pay for project costs and the project is not completed;

# **DIFFERENT TYPES OF DISCLOSURES FOR DIFFERENT TYPES OF CONDOMINIUM PROJECTS**

- Conversion of existing structures to condominiums
- Agriculture condominiums
- Projects containing Assisted Living Facilities

# CONVERSION OF EXISTING STRUCTURES TO CONDOMINIUMS

- Residential units at least five years old disclosures include:
  - Developers required statement and expected useful life (or no representations) based on report prepared by Hawaii licensed architect or engineer
  - Disclosures substantially unchanged additions include
    - List of outstanding notices of uncured violations of building code or other county regulations; together with
    - Estimated costs to cure violations

# CONVERSION OF EXISTING STRUCTURES TO CONDOMINIUMS . . . CONTINUED

- All projects with converted structures submit verified signed county official statement that (disclosures required):
  - Structures are in compliance with zoning, building ordinances and codes at the time structure was built and if applicable any:
    - variances granted
    - legal nonconforming uses or structures
    - violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance; or
  - Based on available information, the county official cannot make a determination

## **AGRICULTURE CONDOMINIUMS DISCLOSURES INCLUDE WHETHER ANTICIPATED STRUCTURES AND USES ARE:**

- In compliance with applicable state and county land use laws;
- In compliance with applicable county real property tax laws and penalties for non compliance;
- Other Commission required disclosures and information;

## **PROJECTS CONTAINING ASSISTED LIVING FACILITIES DISCLOSURES INCLUDE**

- Licensing requirements and impact on condominium projects costs, operations, management, governance
- Nature and scope of services delivered
- Duration of services
- Other appropriate information to describe possible impacts services will have on the project
- Other commission required disclosures

# **New Condominium Law Impact On**

- Real Estate Sales
  - Listings for “initial sales” only

CONDOMINIUMS CREATED  
JULY 1, 2008 AND THEREAFTER



## Licensed Real Estate Brokers As *Agents* of Developers May Find Themselves:

- Marketing a condominium project using one developer's public report form that is non-expiring;
- Advertising the condominium project prior to registering with the Real Estate Commission;
- Taking nonbinding preregistration agreements from prospective purchasers, ***provided*** no monies are collected and the agreements do not become a sales contract;

Continued

## **. . . Licensed Real Estate Brokers As Agents of Developers May Find Themselves:**

- Continuing to sell condo projects when there are changes to the developer's public report, ***provided*** the developer does the following:
  - Advises the real estate broker or brokers of the changes; ***and***
  - Discloses the changes to purchasers;
  - Submits immediately to the Commission any amendment to the developer's public report or an amended developer's public report.

Continued

## **. . . Licensed Real Estate Brokers As *Agents* of Developers May Find Themselves:**

- Selling condominium projects:
  - Comprised of physical or spatial portions of the condominium subject to meeting certain requirements;
  - Where the developer has a right to acquire the fee or leasehold interest subject to meeting certain requirements;
  - Using different public report forms, existing version or a new developer's public report;

# Selling condominium projects: Continued

- Comprised of converted structures with zoning, building ordinances or codes violations that are curable, subject to making appropriate disclosures; ***developers must disclose*** in its public report such non compliance and the conditions required to cure;
- With sales contracts which give purchasers right to cancel the sales contract if the completion of construction or repairs to bring a converted building into county code and ordinance compliance do not occur on or before a stated completion deadline;

# Selling condominium projects: Continued

- That are exempt from registering with the Commission prior to offering to sell:
  - Dispositions by foreclosure or deed in lieu of foreclosure;
  - Sale of units in bulk; subsequent sales to the public must be first registered;
  - Non residential condominium projects and all units are sold for \$1,000,000 or more;
  - Gratuitous disposition;
  - Government disposition;
  - Court order disposition;
- Where purchaser's funds may be used prior to closing or prior to the completion of construction of the project ***subject to the developers meeting certain requirements.***

# Some Listings and Sales Challenges:

- Pre recodification developer's public report versus new recodified developer's public report
  - Developers with existing projects can elect to use current form or register the project under the new chapter; new recodified law applies;
  - Pre recodified law requires developers (sales agent) to stop sales of the project when there are changes to the project and information in the public report;
  - Recodified law allows developers (sales agents to continue to sell project when there are changes subject to certain requirements);

# Challenges continued ...

- Condominium documents referenced on resales may differ - pre recodified condominium project vs. recodified condominium project (may impact disclosure of material facts):
  - Governing documents (declarations, bylaws, house rules, etc.) of pre recodified Associations of Apartment Owners differ from new recodified condominiums, i.e.
    - 75% and 65% owner approval to amend declarations and bylaws vs. minimum of 67% with new recodified condominium projects

# ***Some Things Remain the Same...***

- Developers and their sales agents will still have to provide purchasers and prospective purchasers with:
  - A true copy of the Developer's Public Report including amendments with an effective date issued by the Commission;
  - A notice and receipt of their thirty-day cancellation right on a form prescribed by the Commission;
  - Ascertain and disclose all material facts about the condominium project including changes reported in amendments and annual updates to the developer's public report;
  - Offers of at least 50% of residential units to prospective owner occupants, etc.

# **NEW CONDOMINIUM LAW IMPACTS TIMING OF BINDING SALES CONTRACT**

- Timing may be delayed by electing to deliver developer's public report separate from the delivery of the purchaser's 30 day right to cancel notice and the signing of the sales contract (allows for interfacing with ILSFDA 2-year completion commitment);
- May be rescinded by purchaser upon delivery of a description of the material change on a form prescribed by the Commission (30 day right to rescind)

# NEW CONDO LAW IMPACTS 30 DAY CANCELLATION NOTICE AND BINDING SALES

- Developer's may elect when sales contract becomes binding;
- Purchaser may cancel a sales contract up to midnight on the thirtieth (30th) day after the **latest** date when all of the following are completed:
  - 1. The date the sales contract was signed;
  - 2. The date the developer delivered to the purchaser the Developer's Public Report including any amendments, with an effective date issued by the Real Estate Commission on or before the receipt date;
  - 3. The date the developer delivered to the purchaser the project's recorded declaration, bylaws, house rules (if any), a letter-sized copy of the condominium map, and any amendments to date; and
  - 4. The date the developer delivered to the purchaser the Notice of Right to Cancel Sales Contract.

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## (HIGHLIGHTS OF DRAFT)

- Material Facts Disclosure Document
- Prepared By The Developer

### DEVELOPER'S PUBLIC REPORT FOR A CONDOMINIUM

|                             |  |
|-----------------------------|--|
| CONDOMINIUM<br>PROJECT NAME |  |
| Address                     |  |
| Registration Number         |  |
| Effective Date of Report    |  |
| Developer                   |  |

#### Preparation of this Report

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; or (3) is not the Commission's judgment of the value or merits of the project.

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT (HIGHLIGHTS OF DRAFT) CONTINUED...

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# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## *(HIGHLIGHTS OF DRAFT)* CONTINUED...

### 1.11 Special Use Restrictions

|  |  |
|--|--|
| The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below. |  |
|  | Pets:                                  |
|  | Number of Occupants:                   |
|  | Other:                                 |
|  | There are no special use restrictions. |

### 1.12 Developer's Reserved Rights

|   |  |
|---|--|
| If Developer has reserved rights to add, merge or phase this project, a summary of those rights is set forth below. Other rights reserved by Developer are also summarized below. |  |
|   |  |
|   |  |
|   |  |

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## (HIGHLIGHTS OF DRAFT) CONTINUED...

### 2. PERSONS CONNECTED WITH THE PROJECT

|  |  |
|--|--|
| <b>2.1 Developer</b>   | Name:<br>Address:<br><br>Business Phone Number:<br>E-mail Address: |
| Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary). |  |
| <b>2.2 Real Estate Broker</b>  | Name:<br>Address:<br><br>Business Phone Number:<br>E-mail Address: |
| <b>2.3 Escrow Depository</b>   | Name:<br>Address:<br><br>Business Phone Number:                    |
| <b>2.4 General Contractor</b>  | Name:<br>Address:<br><br>Business Phone Number:                    |
| <b>2.5 Condominium Managing Agent</b>  | Name:<br>Address:<br><br>Business Phone Number:                    |
| <b>2.6 Attorney for Developer</b>  | Name:<br>Address:<br><br>Business Phone Number:                    |

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## *(HIGHLIGHTS OF DRAFT)* CONTINUED...

### 3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents

|     |   |
|-----|---|
| [ ] | No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).   |
| [ ] | Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows: |

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## *(HIGHLIGHTS OF DRAFT)* CONTINUED...

### 5.5 Status of Construction, Date of Completion or Estimated Date of Completion

Status of Construction:

Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.

Completion Deadline for any unit not yet constructed, as set forth in the sales contract:

Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## (HIGHLIGHTS OF DRAFT) CONTINUED...

### 5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

#### 5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project. |
| <input type="checkbox"/> | If the box to the left is checked, Sections 5.6.2 and 5.7, which follow below, will not be applicable to the project.  |

#### 5.6.2 Purchaser Deposits May Be Disbursed Before Closing

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):

|                          |   |
|--------------------------|---|
| <input type="checkbox"/> | For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or          |
| <input type="checkbox"/> | For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses. |

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## *(HIGHLIGHTS OF DRAFT)* CONTINUED...

In connection with the use of purchaser deposits (check Box A or Box B):

|                           |   |
|---------------------------|---|
| <b>Box A</b><br><br><hr/> | The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report. |
|---------------------------|---|

If Box A is checked, you should read and carefully consider the following notice, which is required by law:

**Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.**

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## *(HIGHLIGHTS OF DRAFT)* CONTINUED...

### 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

#### 5.8.1 Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

- (1) The purchaser has signed the sales contract.
- (2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration, Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report).
- (3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.
- (4) The purchaser does at least one of the following:
  - (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or
  - (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
  - (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser,

# NAVIGATING THE DEVELOPER'S PUBLIC REPORT

## *(HIGHLIGHTS OF DRAFT)* CONTINUED...

The Developer declares subject to the penalties set forth in Section 514B-69 that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a)(13). For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Sections 1.16 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

The Developer hereby certifies that all the information contained in this report and the exhibits attached to this report and all documents to be furnished by the Developer to purchasers concerning the project have been reviewed by the Developer and are, to the best of the Developer's knowledge, information and belief, true, correct and complete. The Developer hereby agrees promptly to amend this report to report any pertinent or material change or both in any information contained in this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

---

Printed Name of Developer

# THE COMMISSION APPROVED FORMS (*HIGHLIGHTS OF DRAFT*)

## DRAFTS OF FORMS FOR CHAPTER 514B

|   | <b>Name of Form</b>   |
|---|---|
| 1 | Nonbinding Preregistration Agreement  |
| 2 | Receipt for Developer's Public Report   |
| 3 | Notice of Right to Cancel Sales Contract  |
| 4 | Notice of Right to Rescind Sales Contract and Purchaser's Receipt with Option – Rescission or Waiver Form |
|   |   |
| 5 | Notice of Material Change   |
| 6 | Developer's Public Report for a Condominium   |
|   |   |

## NONBINDING PREREGISTRATION AGREEMENT

### THIS NONBINDING PREREGISTRATION AGREEMENT:

- IS NOT A SALES CONTRACT FOR THE PURCHASE OF A UNIT;
- INDICATES YOUR INTEREST IN RESERVING A UNIT IN THE PROPOSED CONDOMINIUM PROJECT NAMED HEREIN BUT DOES NOT GUARANTEE YOU A UNIT;
- DOES NOT LEGALLY OBLIGATE YOU TO PURCHASE A UNIT IN THE PROPOSED CONDOMINIUM PROJECT;
- DOES NOT LEGALLY OBLIGATE DEVELOPER TO SELL YOU A UNIT IN THE PROPOSED CONDOMINIUM PROJECT;
- CAN BE CANCELLED AT ANY TIME BY EITHER YOU OR DEVELOPER;
- DOES NOT REQUIRE ANY MONEYS FROM YOU, AND DEVELOPER or REAL ESTATE AGENTS CANNOT ACCEPT ANY MONEYS FROM YOU.

Developer has not yet met the legal requirements to offer to sell any units in the proposed condominium project to you or any other prospective purchaser because Developer has not registered the proposed condominium project with the Real Estate Commission and the Real Estate Commission has not issued an effective date for a Developer's Public Report which would disclose to you information about the proposed condominium project as required by law. Developer is, however, allowed to enter into this Nonbinding Preregistration Agreement with you so that you can indicate your desire to reserve for purchase a unit in the proposed condominium project.

**You have signed this Nonbinding Preregistration Agreement to indicate your desire to reserve for purchase a unit in the proposed condominium project and, if noted below, the unit specified below, at the estimated purchase price, if noted below.**

**Purchaser acknowledges and Developer confirms by signing below that:**

- (1) Developer has not collected any moneys from Purchaser or anyone on behalf of Purchaser in connection with this Nonbinding Preregistration Agreement; and
- (2) Developer has not required or requested that Purchaser sign any document other than this Nonbinding Preregistration Agreement.

**This Nonbinding Preregistration Agreement may be canceled at any time by either Developer or Purchaser by written notice by the party cancelling to the other party at the other party's address or by facsimile transmission.**

Purchaser understands that, if the unit noted below is or becomes a part of an owner-occupant offering, Developer is not allowed to give Purchaser special treatment under any owner-occupant offering.

**RECEIPT FOR DEVELOPER'S PUBLIC REPORT**

|  |
|--|
| Condominium Project: _____<br>Registration No.: _____ Effective Date of Developer's Public Report: _____ |
|--|

Section A

I acknowledge receipt of the Developer's Public Report in connection with my purchase of Unit No. \_\_\_\_\_ in the condominium project called \_\_\_\_\_  
*(insert name of project)*

I also acknowledge receipt of the following amendments to the Developer's Public Report (check one):

- \_\_\_\_\_ (a) None
- \_\_\_\_\_ (b) Amendment with effective date of \_\_\_\_\_.
- \_\_\_\_\_ (c) Amendment with effective date of \_\_\_\_\_.

Section B

I understand that no sales contract for the purchase of a unit in the project will be binding on me or the developer until the developer has delivered to me:

1. A copy of the Developer's Public Report with an effective date issued by the Real Estate Commission, which includes the project's recorded declaration, bylaws, house rules (if any), a letter-sized copy of the condominium map,\* and any amendments to the report or the project's documents; and
2. A notice of my right to cancel my sales contract in substantially the form attached hereto.

**I RECEIVED A COPY OF THE DOCUMENTS DESCRIBED IN SECTIONS A and B1, ABOVE ON \_\_\_\_\_**  
*(insert date)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\* If it is impractical to include a letter-sized map, the developer must provide written notice and an opportunity to examine the map.

NOTICE OF RIGHT TO CANCEL SALES CONTRACT

Condominium Project: \_\_\_\_\_  
Registration No.: \_\_\_\_\_ Effective Date of Developer's Public Report: \_\_\_\_\_

- A. I have signed a sales contract for Unit No. \_\_\_\_\_ in the condominium project described above.
- B. I understand that I have a right under Hawaii law to cancel my sales contract up to midnight on the thirtieth (30th) day after the developer has delivered to me:
  - 1. The Developer's Public Report with an effective date issued by the Real Estate Commission, which includes the project's recorded declaration, bylaws, house rules (if any), a letter-sized copy of the condominium map,\* and any amendments to the report or the project's documents; and
  - 2. This Notice of Right to Cancel Sales Contract.
- C. If I cancel my sales contract, I understand that I will be entitled to the refund of any down payment or deposit that I have made, less any escrow cancellation fee and other costs, up to \$250. If I decide to cancel, I understand that I may do so by notifying the developer in writing by: (a) personal delivery; (b) registered or certified mail with adequate postage, at the following address: \_\_\_\_\_; or (c) facsimile (fax) transmission at the following fax number: \_\_\_\_\_. My written cancellation may be any written statement signed and dated by me that states my decision to cancel my sales contract, or I may use this Notice by checking the appropriate box, signing and dating this Notice and returning it to the developer.
- E. I understand that if I do not cancel my sales contract by the deadline described in Section B above, or if I close the purchase of the unit before the deadline described in Section B above, I will be considered to have waived my right to cancel my sales contract. I also understand that I can waive my right to cancel my sales contract by checking the appropriate box below, signing and dating this Notice and returning it to the developer.
- F. If I have received this Notice of Right to Cancel Sales Contract more than six (6) months after the date I received the Developer's Public Report, I understand that the developer is required to either resend me a copy of the report and any amendments to it, or to make the documents available on a publicly accessible website. If this applies to me, I would like delivery as follows (*check one*):

- \_\_\_\_\_ Mail them to me at my address on the sales contract.
- \_\_\_\_\_ I will view them on the website at \_\_\_\_\_  
(insert web address)
- \_\_\_\_\_ I received them at the same time I received this Notice of Right to Cancel Sales Contract.

I HAVE RECEIVED AND READ THIS NOTICE, I HAVE HAD AN OPPORTUNITY TO READ THE DEVELOPER'S PUBLIC REPORT, I UNDERSTAND THE DEVELOPER'S PUBLIC REPORT, AND (*check one or none of the following*):

- I WAIVE MY RIGHT TO CANCEL THE SALES CONTRACT.
- I EXERCISE MY RIGHT TO CANCEL THE SALES CONTRACT.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\* If it is impractical to include a letter-sized map, the developer must provide written notice and an opportunity to examine the map.

**NOTICE OF RIGHT TO RESCIND SALES CONTRACT  
AND PURCHASER'S RECEIPT**

Condominium Project: \_\_\_\_\_  
Registration No.: \_\_\_\_\_ Effective Date of Developer's Public Report: \_\_\_\_\_

- A. I have signed a sales contract for Unit No. \_\_\_\_\_ in the condominium project described above.
- B. I understand that I may rescind my sales contract if there is a material change in the project. A "material change" is defined by Hawaii law as any change that directly, substantially, and adversely affects the use or value of (1) my unit or appurtenant limited common elements; or (2) the project amenities available for my use. If I rescind my sales contract, I understand that I will be entitled to the refund of any moneys that I have paid.
- C. I hereby acknowledge notice of a material change in the project by (*check one*):  
\_\_\_\_\_ written notice from the developer describing the change  
\_\_\_\_\_ receipt of a Developer's Amended Public Report including a description of the material change
- D. I understand that I have a right under Hawaii law to rescind my sales contract and not purchase the unit up to midnight on the thirtieth (30th) day after the date I received the notice and description of a material change.
- E. If I decide to rescind, I understand that I may do so by notifying the developer in writing by: (a) personal delivery; (b) registered or certified mail with adequate postage, at the following address: \_\_\_\_\_; or (c) facsimile (fax) transmission at the following fax number: \_\_\_\_\_. My written rescission may be any written statement signed and dated by me that states my decision to rescind my sales contract, or I may use the attached Option to Rescind Sales Contract – Rescission or Waiver Form by checking the appropriate box, signing and dating the Option form and delivering it to the developer.
- F. If I (1) let the thirty (30) days expire without rescinding; or (2) close my purchase of the unit before the thirty (30) days expire, then I will be considered to have waived my right to rescind my sales contract. I may also waive my right to rescind by checking the waiver box on the attached Option form, signing and dating the Option form and returning it to the developer.

**I HAVE RECEIVED NOTICE AND A DESCRIPTION OF A MATERIAL CHANGE IN THE PROJECT.**

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**OPTION TO RESCIND SALES CONTRACT – RESCISSION OR WAIVER FORM**

Condominium Project: \_\_\_\_\_  
Registration No.: \_\_\_\_\_ Effective Date of Developer's Public Report: \_\_\_\_\_

I have signed a sales contract for Unit No. \_\_\_\_\_ in the condominium project described above.

I have received notice and a description of a material change in the project and have had an opportunity to read and understand it, and:

*(check one)*

- I WAIVE MY RIGHT TO RESCIND THE SALES CONTRACT  
 I EXERCISE MY RIGHT TO RESCIND THE SALES CONTRACT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**TO BE AN EFFECTIVE RESCISSION, THIS NOTICE MUST BE SIGNED BY ALL PURCHASERS OF THE UNIT, AND POSTMARKED BEFORE MIDNIGHT OF THE THIRTIETH (30TH) DAY AFTER THE DATE YOU RECEIVED THIS FORM AND THE NOTICE OF A MATERIAL CHANGE.**

**IF YOU (1) LET THE THIRTY (30) DAYS EXPIRE WITHOUT RESCINDING; OR (2) CLOSE YOUR PURCHASE OF THE UNIT BEFORE THE THIRTY (30) DAYS EXPIRE, THEN YOU WILL BE CONSIDERED TO HAVE WAIVED YOUR RIGHT TO RESCIND YOUR SALES CONTRACT.**

Return this notice to the developer by: (a) personal delivery; (b) registered or certified mail with adequate postage, at the following address: \_\_\_\_\_; or (c) facsimile (fax) transmission at the following fax number: \_\_\_\_\_.



# IN CONCLUSION

- Expect the new recodified condominium law will have growing pains
- Anticipate that the Commission, DCCA, real estate licensees, the condominium community, the consuming public, and the legislature will have to work through the growing pains
- Stay tuned for the development of Internal Policies and Procedures

<http://www.hawaii.gov/hirec>

➤ Contact Any Condominium Specialist at

• (808) 586-2643

King Kalakaua Building  
335 Merchant Street, Room 333  
Honolulu, Hawaii 96813

Email – [hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov)