
A BILL FOR AN ACT

RELATING TO OWNER-BUILDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the intent of
2 contractor licensing laws under chapter 444, Hawaii Revised
3 Statutes, is to:

4 (1) Protect the public from the dangers of unlicensed
5 contracting activity;

6 (2) Afford owner-builders a limited exemption from
7 contractor licensing requirements for structures built
8 for their own use, and which, at the time the
9 exemption is obtained, the owner-builder does not
10 intend to sell or lease; and

11 (3) Prevent uses of the owner-builder exemption that
12 circumvent contractor licensing requirements.

13 The legislature further finds that widespread economic
14 hardship has forced many owner-builders into the unplanned sale
15 of their property, despite their original intent to use the
16 property for their own purposes. The legislature finds that it
17 is necessary to provide relief for these owner-builders so that
18 they may sell or lease their properties under these difficult



1 circumstances without violating chapter 444, Hawaii Revised
2 Statutes.

3 The purpose of this Act is to provide further relief for
4 owner-builders who must sell or lease a property prior to the
5 expiration of the one-year prohibition on sales or leases and to
6 clarify the applicability of the owner-builder exemption.

7 SECTION 2. Chapter 444, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§444-A Owner-builder exemption. (a) This chapter shall
11 not apply to owners or lessees of property who build or improve
12 residential, farm, industrial, or commercial buildings or
13 structures on property for their own use, or for use by their
14 grandparents, parents, siblings, or children and who do not
15 offer the buildings or structures for sale or lease; provided
16 that this exemption shall not apply to:

17 (1) Electrical or plumbing work that must be performed
18 only by persons or entities licensed under this
19 chapter; or

20 (2) The owner or lessee of the property if the owner or
21 lessee is licensed under chapter 448E.



1 (b) Proof of the sale or lease, or offering for sale or
2 lease, of the structure not more than one year after completion,
3 unless the sale or lease was caused by an eligible unforeseen
4 hardship of the owner, shall be prima facie evidence that the
5 construction or improvement of the structure was undertaken for
6 the purpose of sale or lease; provided that this subsection
7 shall not apply to:

8 (1) Residential properties sold or leased to employees of
9 the owner or lessee;

10 (2) Improvements with an aggregate value of less than
11 \$10,000;

12 (3) A lender or mortgagee taking title to a property
13 through a non-judicial foreclosure.

14 The eligibility of an unforeseen hardship shall be
15 determined by the contractors license board and communicated to
16 the owner in writing.

17 (c) Any owner or lessee of property found to have violated
18 this section shall not be permitted to engage in any activities
19 pursuant to this paragraph or to register under section 444-9.1
20 for a period of three years. There is a rebuttable presumption
21 that an owner or lessee has violated this section, when the



1 owner or lessee obtains an exemption from the licensing
2 requirements of section 444-9 more than once in five years.

3 (d) For the purposes of this section, "completion" means
4 the earliest of:

5 (1) The closing of the building permit or expiration of
6 the dates specified by an owner-builder pursuant to
7 section 444-9.1(a)(4);

8 (2) The publication of a notice that an improvement has
9 been completed or abandoned;

10 (3) One year from the actual completion or abandonment of
11 the improvement or construction;

12 (4) Issuance of a certificate of occupancy;

13 (5) Issuance of an architect's certificate of substantial
14 completion; or

15 (6) Substantial completion of the construction or
16 improvements so as to permit normal occupancy.

17 (d) In order to qualify for an exemption under this
18 section, the owner or lessee must register for the exemptions as
19 provided in section 444-9.1."

20 SECTION 3. Section 444-2, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "§444-2 Exemptions. This chapter shall not apply to:



- 1 (1) Officers and employees of the United States, the
2 State, or any county while in the performance of their
3 governmental duties;
- 4 (2) Any person acting as a receiver, trustee in
5 bankruptcy, personal representative, or any other
6 person acting under any order or authorization of any
7 court;
- 8 (3) A person who sells or installs any finished products,
9 materials, or articles of merchandise that are not
10 actually fabricated into and do not become a permanent
11 fixed part of the structure, or to the construction,
12 alteration, improvement, or repair of personal
13 property;
- 14 (4) Any project or operation for which the aggregate
15 contract price for labor, materials, taxes, and all
16 other items is not more than [~~\$1,000.~~] \$2,000. This
17 exemption shall not apply in any case where a building
18 permit is required regardless of the aggregate
19 contract price, nor where the undertaking is only a
20 part of a larger or major project or operation,
21 whether undertaken by the same or a different
22 contractor or in which a division of the project or



1 operation is made in contracts of amounts not more
2 than [~~\$1,000~~] \$2,000 for the purpose of evading this
3 chapter or otherwise;

4 (5) A registered architect or professional engineer acting
5 solely in the person's professional capacity;

6 (6) Any person who engages in the activities regulated in
7 this chapter as an employee with wages as the person's
8 sole compensation;

9 ~~(7) [Owners or lessees of property who build or improve
10 residential, farm, industrial, or commercial buildings
11 or structures on property for their own use, or for
12 use by their grandparents, parents, siblings, or
13 children and who do not offer the buildings or
14 structures for sale or lease; provided that this
15 exemption shall not apply to electrical or plumbing
16 work that must be performed only by persons or
17 entities licensed under this chapter, or to the owner
18 or lessee of the property if the owner or lessee is
19 licensed under chapter 448E. In all actions brought
20 under this paragraph, proof of the sale or lease, or
21 offering for sale or lease, of the structure not more
22 than one year after completion is prima facie evidence~~



1 ~~that the construction or improvement of the structure~~
2 ~~was undertaken for the purpose of sale or lease,~~
3 ~~provided that this provision shall not apply to~~
4 ~~residential properties sold or leased to employees of~~
5 ~~the owner or lessee; provided further that in order to~~
6 ~~qualify for this exemption the owner or lessee must~~
7 ~~register for the exemptions as provided in section~~
8 ~~444-9.1. Any owner or lessee of property found to~~
9 ~~have violated this paragraph shall not be permitted to~~
10 ~~engage in any activities pursuant to this paragraph or~~
11 ~~to register under section 444-9.1 for a period of~~
12 ~~three years. There is a presumption that an owner or~~
13 ~~lessee has violated this section, when the owner or~~
14 ~~lessee obtains an exemption from the licensing~~
15 ~~requirements of section 444-9 more than once in two~~
16 ~~years;] Owner-builders exempted under section 444-A;~~

17 (8) Any joint venture if all members thereof hold licenses
18 issued under this chapter;

19 (9) Any project or operation where it is determined by the
20 board that less than ten persons are qualified to
21 perform the work in question and that the work does



1 not pose a potential danger to public health, safety,
2 and welfare; or

3 (10) Any public works project that requires additional
4 qualifications beyond those established by the
5 licensing law and which is deemed necessary and in the
6 public interest by the contracting agency."

7 SECTION 4. Section 444-9.1, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Each county or other local subdivision of the State
10 which requires the issuance of a permit as a condition precedent
11 to the construction, alteration, improvement, demolition, or
12 repair of any building or structure shall also require that each
13 applicant for such a permit file as a condition to the issuance
14 of a permit a statement that the applicant and all specialty
15 contractors are licensed under this chapter, giving the license
16 numbers and stating that the licenses are in full force and
17 effect, or, if the applicant is exempt from this chapter, the
18 basis for the claimed exemption; provided that if the applicant
19 claims an exemption under section [~~444-2(7)~~] 444-A, the
20 applicant shall also be required to certify that the building or
21 structure is for the applicant's personal use and not for use or
22 occupancy by the general public. Each county or local



1 subdivision of the State shall maintain an owner-builder
2 registration list which shall contain the following information:
3 (1) the name of any owner or lessee who claims an exemption from
4 this chapter as provided in section [~~444-2(7)~~], 444-A, (2) the
5 address of the property where exempt building or improvement
6 activity is to occur; (3) a description of the type of building
7 or improvement activity to occur; (4) the approximate dates of
8 construction activity; and (5) whether any electrical or
9 plumbing work is to be performed and if so, the name and license
10 number of the person or entity who will do the work. The
11 absence of such registration is prima facie evidence that the
12 exemption in section [~~444-2(7)~~] 444-A does not apply.

13 SECTION 5. Section 444-9.1, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

15 "(c) To qualify for the exemption under section [~~444-~~
16 ~~2(7)~~], 444-A, the county shall provide the applicant with a
17 disclosure statement in substantially the following form:

18 "Disclosure Statement

19 State law requires construction to be done by licensed
20 contractors. You have applied for a permit under an
21 exemption to that law. The exemption provided in section
22 [~~444-2(7)~~], 444-A, Hawaii Revised Statutes, allows you, as



1 the owner or lessee of your property, to act as your own
2 general contractor even though you do not have a license.
3 You must supervise the construction yourself. You must
4 also hire licensed subcontractors. The building must be
5 for your own use and occupancy. It may not be built for
6 sale or lease. If you sell or lease a building you have
7 built yourself within one year after the construction is
8 complete, the law will presume that you built it for sale
9 or lease, which is a violation of the exemption, and you
10 may be prosecuted for this. It is your responsibility to
11 make sure that subcontractors hired by you have licenses
12 required by state law and by county licensing ordinances.
13 Electrical or plumbing work must be performed by
14 contractors licensed under chapters 448E and 444, Hawaii
15 Revised Statutes. Any person working on your building who
16 is not licensed must be your employee which means that you
17 must deduct F.I.C.A. and withholding taxes and provide
18 workers' compensation for that employee, all as prescribed
19 by law. Your construction must comply with all applicable
20 laws, ordinances, building codes, and zoning regulations.
21 If you violate section [~~444-2(7)~~] 444-A you may be fined
22 \$5,000 or forty per cent of the appraised value of the



1 building as determined by the county tax appraiser,
 2 whichever is greater, for the first offense; and \$10,000 or
 3 fifty per cent of the appraised value of the building as
 4 determined by the county tax appraiser, whichever is
 5 greater for any subsequent offense."

6 The county shall not issue a building permit to the owner-
 7 applicant until the applicant signs a statement that the
 8 applicant has read and understands the disclosure form."

9 SECTION 6. Section 444-23, Hawaii Revised Statutes, is
 10 amended by amending subsection (e) to read as follows:

11 "(e) Any person who violates section [~~444-2(7)~~], 444-A,
 12 shall be fined:

13 (1) \$5,000 or forty per cent of the appraised value of the
 14 building as determined by the county tax appraiser,
 15 whichever is greater, for the first offense; and

16 (2) \$10,000 or fifty per cent of the appraised value of
 17 the building as determined by the county tax
 18 appraiser, whichever is greater, for any subsequent
 19 offenses."

20 SECTION 7. This Act does not affect rights and duties that
 21 matured, penalties that were incurred, and proceedings that were
 22 begun before its effective date.



1 SECTION 8. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 9. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 10. This Act shall take effect upon its approval.
8

INTRODUCED BY: _____



JAN 14 2010



Report Title:

Contractors; Owner-Builders

Description:

Amends Chapter 444 by: (1) Allowing an exemption for the sale or lease of a property by an owner builder prior to the expiration of the one-year prohibition period in the event of hardship; (2) Defining when a construction or improvement is completed; (3) Exempting improvements of less than \$10,000 in value; (4) Exempting lenders and mortgages in cases of non-judicial foreclosure; (5) Creating a rebuttable presumption that an owner or lessee is in violation when more than one exemption is obtained within five years. Increases the handyman exemption to \$2,000.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

