

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Monday, January 31, 2011
2:00 p.m.

Comments

TESTIMONY ON HOUSE BILL NO. 319, RELATING TO OWNER-BUILDERS.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Denny Sadowski, Legislative Committee Chair of the Contractors License Board ("Board"). The Board appreciates the opportunity to express its concerns regarding House Bill No. 319, Relating to Owner-Builders.

Section 444-2.5, Hawaii Revised Statutes, presumes there is a violation of the statute if an owner-builder sells or leases the structure less than a year after completion. Last year, the statute was amended to allow owner-builders who are experiencing financial hardship to apply to the Board for an exemption to sell or lease the property within one year after completion. The Board has been denying the exemption for applicants with open permits based on their interpretation that the exemption applies to the one year period **after** completion; therefore, if the permits are still open, then the project is not complete and not eligible for the exemption. This bill amends this section to clarify that owner-builders with open permits may be eligible for the hardship exemption.

The Board has not had the opportunity to review this bill at a Board meeting; however, based on past discussions, it is my understanding that the Board is not comfortable with the responsibility of determining whether owner-builders are eligible for the hardship exemption. The Board feels that they are relying solely on the word of the owner-builder, and that they do not have the time nor resources to fully investigate whether the owner-builder is experiencing a legitimate hardship.

The reason for the owner-builder permit is to allow owners to act as their own general contractor or perform the work themselves. The restriction on selling the property within a year of completion is to prevent owners from flipping properties without using licensed contractors. While the Board understands that some owner-builders must sell their property or face financial peril, if any owner-builder who applies for an exemption citing financial hardship were allowed to sell their property, then it defeats the purpose of having the one-year restriction.

In summary, the Board feels that this bill will allow many more owner-builders to become eligible for the hardship exemption, and will compromise the intent of the one-year restriction. Therefore, the Board continues to have concerns about allowing owner-builders with open permits to become eligible for the hardship exemption.

Thank you for the opportunity to testify on this bill.



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January 31, 2011

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 319 Relating to Owner-Builders

HEARING: Monday, January 31, 2011 at 2:00 p.m.

Aloha Chair Herkes, Vice-Chair Yamane and Members of the Committee:

I am Brian Benton, Chair of the Government Affairs Committee, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate and its 8,500 members in Hawai'i. HAR **supports the intent** of H.B. 319, which clarifies that open permits are qualified for exemptions for the sale or lease of a property by an owner builder in the event of hardship.

HRS §444-2 defines owner-builders as individual homeowners who act as their own contractor for building or improving their residence for personal use or use by their immediate family. To qualify as an owner-builder, one restriction under the present law is that the residence cannot be sold, leased or offered for sale or lease within one-year after completion of the construction.

Over the past several years, many owner builder permits were obtained to build homes, additions, and to upgrade owner's residences. However, due to recent economic hardships facing these same owners, many of the owner builders have not been able to **complete** the improvements, and are being forced to sell with unfinished work on an open permit.

In recognition of this, the Legislature enacted Act 44 in 2010 so that 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 unforeseen hardship would be permitted.

The intent of this bill is to further clarify the law to allow those owners with open permits to qualify for the exemption.

Recognizing the intent of the bill and the possibility for homeowners to continue to face greater hardship, HAR respectfully requests your favorable consideration of this measure for continued dialogue to ensure that all concerns in regard to this issue can be adequately addressed.

Mahalo for the opportunity to testify.





Prudential

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January 30, 2011

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House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813
RE: H.B. 319, Relating to Owner-Builders
HEARING: Monday, January 31, 2011 at 2:00 PM.

Comments

Dear Chairman Herkes and fellow members of the Committee on Consumer Protection and Commerce,

Last year with the passage of HB 1927 HD2 SD1 into Act 44, it was expected that individuals with Owner Builder Permits that had suffered a hardship would be able to apply for a "hardship exemption" from the Contractor's License Board (CLB). Under Act 44, if the hardship exemption is approved by the CLB, that individual would be able to sell their home prior to waiting at least one year from completion as stipulated in HRS 444.9.1.

While individuals that suffered a hardship after completion have been able to obtain an exemption, the CLB choose to interpret Act 44 very narrowly so that open permits were not applicable. Unfortunately, most of the owner builders needing relief caused by the economy, or health and marital problems have uncompleted homes. These individuals also lack the funds to have their homes completed. Therefore, in the real estate industry we are seeing many foreclosures of unfinished homes.

When these homes are sold by the Lender, no Seller's Disclosure Statement is required or delivered to the buyer. From the standpoint of consumer protection, it is preferable to have the owner builder sell the home with a State of Hawaii required Disclosure Statement.

Therefore, it is in the public's best interest to amend Act 44 so that all owner builders that have bonafide hardships are able to sell their homes with an exemption.

Sincerely,

Robert G. Williams
President, Principal Broker

The current bill uses the term "open permits", but does not offer a definition. I propose the following changes to HB 319 to correct that problem.

On page 2, line 19 of HB 319, it should be changed to, "For the purposes of this subsection, no valid county building permit, whether completed or not completed shall bar an applicant's eligibility for the hardship exemption under section 444-9.1."

Sincerely,

Robert G. Willaims

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