
A BILL FOR AN ACT

RELATING TO THE OWNER-BUILDER EXEMPTION.

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

1 SECTION 1. In the State of Hawaii, a contractor's license
2 is required to obtain a building permit from the various
3 counties, unless the applicant is an owner-builder. The owner-
4 builder exemption allows owners to perform their own home
5 improvements and construction. As an owner-builder, an owner
6 can hire employees and contract directly with subcontractors to
7 construct improvements on their property. However, as an owner-
8 builder, an owner also takes on the responsibilities associated
9 with acting as a general contractor, including compliance with
10 building codes, occupational safety and health regulations, wage
11 standards, taxes, and the like.

12 Oftentimes, owners are advised by unlicensed contractors to
13 obtain an owner-builder permit to enable the owner to hire or
14 contract with an unlicensed person. Too often, owners are not
15 fully aware of the risks and responsibilities they have assumed
16 until it is too late.

17 The purpose of this Act is to limit the application of the
18 owner-builder exemption to residential or farm property only, to



1 improve the ability of the regulated industries complaints
2 office to investigate possible violations of the owner-builder
3 law, and to offer additional disclosures for owner-builders when
4 they enter into agreements with licensed subcontractors.

5 SECTION 2. Section 444-2.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§444-2.5 Owner-builder exemption.** (a) This chapter
8 shall not apply to owners or lessees of property who build or
9 improve residential[~~7~~] or farm[~~7~~,~~industrial~~,~~or commercial~~]
10 buildings or structures on property for their own use, or for
11 use by their grandparents, parents, siblings, or children and
12 who do not offer the buildings or structures for sale or lease;
13 provided that:

14 (1) To qualify for an exemption under this section, the
15 owner or lessee shall register for the exemption as
16 provided in section 444-9.1; [~~and~~]

17 (2) The exemption under this section shall not apply to
18 electrical or plumbing work that must be performed
19 only by persons or entities licensed in accordance
20 with this chapter, unless the owner or lessee of the
21 property is licensed for such work under chapter
22 448E[~~7~~];



- 1 (3) An owner or lessee exempted under this section shall:
- 2 (A) Supervise the construction activity on the exempt
- 3 buildings or structures;
- 4 (B) Hire subcontractors appropriately licensed under
- 5 this chapter to perform all or part of the
- 6 construction activity;
- 7 (C) Ensure that any electrical or plumbing work is
- 8 performed by persons and entities appropriately
- 9 licensed under this chapter or chapter 448E;
- 10 (D) Deduct Federal Insurance Contributions Act and
- 11 withholding taxes, and provide workers'
- 12 compensation insurance for persons working on the
- 13 construction activity who are not licensed under
- 14 this chapter or chapter 448E and who shall be
- 15 considered employees of the owner or lessee; and
- 16 (E) Ensure that the construction activity complies
- 17 with all applicable laws, ordinances, building
- 18 codes, and zoning regulations;
- 19 (4) Until completion of the construction activity, an
- 20 owner or lessee exempted under this section shall make
- 21 available the following records for immediate
- 22 inspection upon request by the department:



- 1 (A) A copy of the building permit application;
- 2 (B) A copy of the issued building permit;
- 3 (C) Copies of all contracts with the names of all
- 4 persons who performed or are performing work on
- 5 the exempt buildings and structures; and
- 6 (D) Proof of payment to all persons contracted to
- 7 work on the exempt buildings and structures; and
- 8 (5) Upon completion of the construction activity, an owner
- 9 or lessee exempted under this section shall keep and
- 10 maintain the records identified in paragraph (4) for a
- 11 period of three years from completion of the
- 12 construction activity and shall make such records
- 13 available for inspection within seven business days
- 14 upon request by the department.

15 (b) Proof of the sale or lease, or offering for sale or
16 lease, of the structure within one year after completion shall
17 be prima facie evidence that the construction or improvement of
18 the structure was undertaken for the purpose of sale or lease;
19 provided that this subsection shall not apply to:

- 20 (1) Residential properties sold or leased to employees of
- 21 the owner or lessee;



1 (2) Construction or improvements performed pursuant to an
2 approved building permit where the estimated valuation
3 of work to be performed, as reflected in the building
4 permit, is less than \$10,000; or

5 (3) Any sale or lease caused by an eligible unforeseen
6 hardship as determined by the board pursuant to
7 subsection (c).

8 (c) The board shall determine the eligibility of an
9 unforeseen hardship claimed by an owner under subsection (b);
10 provided that an alleged unforeseen hardship shall not be deemed
11 eligible if the board determines that the construction or
12 improvement of the structure was undertaken for the purpose of
13 sale or lease. An exemption for an unforeseen hardship shall
14 not be denied solely because of lack of completion, as the term
15 is defined in subsection (e). An owner seeking a determination
16 of eligibility of an unforeseen hardship shall:

17 (1) Be in compliance with the requirements set forth in
18 the disclosure statement required to be provided under
19 section 444-9.1; and

20 (2) Submit a written application to the board at any time
21 prior to selling, leasing, or offering to sell or
22 lease the property describing the nature of the



1 applicant's unforeseen hardship. The application
2 shall include supporting documentation detailing the
3 hardship, such as:

- 4 (A) Evidence of receipt of unemployment compensation;
- 5 (B) Tax returns;
- 6 (C) Medical records;
- 7 (D) Bank statements;
- 8 (E) Divorce decrees ordering sale of property;
- 9 (F) Mortgage default letters; or
- 10 (G) Bankruptcy filings.

11 The board shall communicate its determination to the owner in
12 writing within ninety days of receiving a completed application
13 under this subsection.

14 (d) Any owner or lessee of property found to have violated
15 this section shall not be permitted to engage in any activities
16 pursuant to this section or to register under section 444-9.1
17 for a period of three years. There is a rebuttable presumption
18 that an owner or lessee has violated this section, when the
19 owner or lessee obtains an exemption from the licensing
20 requirements of section 444-9 more than once in two years.

21 (e) For the purposes of this section, "completion" means
22 the date of final inspection approval by the county.



1 (f) An owner or lessee exempted under this section shall
2 not be eligible to recover from the contractors recovery fund.

3 (g) This section shall not apply to agricultural
4 buildings, structures, or appurtenances thereto that do not
5 require a building permit or are exempt from the building code."

6 SECTION 3. Section 444-23, Hawaii Revised Statutes, is
7 amended by amending subsection (e) to read as follows:

8 "(e) Any person who violates section 444-2.5 [~~or fails to~~
9 ~~comply with the requirements set forth in the disclosure~~
10 ~~statement required to be provided under section 444-9.1]~~ shall
11 be fined:

12 (1) \$5,000 or [~~forty~~] fifty per cent of the [~~appraised~~]
13 value of the [~~building~~] construction or improvement as
14 [~~determined by the county tax appraiser,~~] indicated on
15 the building permit application, whichever is greater,
16 for the first offense; and

17 (2) \$10,000 or [~~fifty~~] sixty per cent of the [~~appraised~~]
18 value of the [~~building~~] construction or improvement as
19 [~~determined by the county tax appraiser,~~] indicated on
20 the building permit application, whichever is greater,
21 for any subsequent offenses."



1 SECTION 4. Section 444-25.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§444-25.5 Disclosure; contracts.** (a) Prior to entering
4 into a contract with a homeowner or at the time a homeowner
5 signs a contract, involving home construction or improvements
6 [~~and prior to the application for a building permit~~], licensed
7 contractors shall:

8 (1) Explain verbally in detail to the homeowner all lien
9 rights of all parties performing under the contract
10 including the homeowner, the contractor, any
11 subcontractor, or any materialman supplying
12 commodities or labor on the project;

13 (2) Explain verbally in detail the homeowner's option to
14 demand bonding on the project, how the bond would
15 protect the homeowner, and the approximate expense of
16 the bond; and

17 (3) Disclose all information pertaining to the contract
18 and its performance and any other relevant information
19 that the board may require by rule.

20 (b) All licensed contractors performing home construction
21 or improvements shall provide a written contract to the
22 homeowner. The written contract shall:

1 (1) Contain the information provided in subsection (a) and
2 any other relevant information that the board may
3 require by rule;

4 (2) Contain notice of the contractor's right to resolve
5 alleged construction defects prior to commencing any
6 litigation in accordance with section 672E-11;

7 (3) Be signed by the contractor and the homeowner; and

8 (4) Be executed prior to the performance of any home
9 construction or improvement.

10 (c) For the purpose of this section, "homeowner" means the
11 owner or lessee of residential real property, including owners
12 or lessees of condominium or cooperative units[-],
13 notwithstanding owner-builder status.

14 (d) Any violation of this section shall be deemed an
15 unfair or deceptive practice and shall be subject to provisions
16 of chapter 480, as well as the provisions of this chapter."

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act, upon its approval, shall take effect
20 on July 1, 2013.



Report Title:

Owner-Builder Exemption; Responsibilities of and Protections for Owner-Builders; Fees

Description:

Limits owner-builder exemption to residential and farm structures. Specifies owner-builder responsibilities for compliance with construction and labor laws. Amends penalties for noncompliance. Clarifies contractor disclosure requirements to owner-builders. Effective July 1, 2013. (HB846 HD2)

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

