

A Bill for an Act Relating to Horizontal Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 521, part III, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 521- Tenants subject to rental agreement; notice of conversions.

When a period of tenancy is pursuant to any rental agreement and where a landlord contemplates conversion to horizontal property regime under chapter 514A, the landlord:

- (1) Shall provide notice to the tenant at least ninety days in advance of the termination of the rental agreement, and

- (2) Shall comply with the provisions relating to such conversions provided in section 514A-105.”

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

“PART VI. SALES TO OWNER-OCCUPANTS

Sec. 514A-101 Definitions. As used in this part:

“Owner-occupant” means any individual in whose name sole or joint legal title is held in a residential unit which, simultaneous to such ownership, serves as the individual’s dwelling place for a period of not less than three hundred and sixty-five consecutive days; provided that the individual shall retain complete possessory control of the premises of the residential unit during the period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held.

“Residential unit” means “apartment” as defined in section 514A-3, but excludes:

- (1) Any apartment intended for commercial use; and
- (2) Any apartment designed and constructed for hotel or resort use which is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to:
 - (A) Section 46-4; or
 - (B) Any other authority granted by law to a county.

Sec. 514A-102 Announcement, publication. Beginning fifteen calendar days prior to the date any developer notifies the commission of the developer’s intention to sell a project which is subject to this chapter, the developer shall cause to be published in the classified section of at least one newspaper published daily in the State and having a general circulation in the county in which the project is to be located, not less than twice in each of two successive weeks, an announcement containing at least the following information:

- (1) The location of the project;
- (2) A fair and reasonable estimate of:
 - (A) The total number of apartments to be included in the project;
 - (B) The number of apartments designated as residential units;
 - (C) The number of floors in the project;
 - (D) The number of bedrooms and square feet of each residential unit; and
 - (E) The price and amount of monthly maintenance fees for each residential unit;
- (3) The statement that the apartments shall be offered for sale upon the issuance of the first public report by the commission, and the approximate date of the issuance;
- (4) A statement of the intended use, such as, but not limited to, commercial, timesharing, or vacation rental, of any apartment in the project other than a residential unit designated for use by an owner-occupant;
- (5) The statement that fifty per cent of the residential units shall initially be offered for a ten-day period to only prospective owner-occupants, and a designation of such residential units;

- (6) The name and address of a real estate broker, which shall be designated by the developer, who any interested individual may contact to be placed on a reservation list, and to obtain further information on the project; and
- (7) A statement that a public report has not been issued for the project, and that the commission has not yet determined whether the developer has adequately disclosed all material facts as required by law.

Proof of publication of the announcement, and a copy thereof, shall be filed with the commission as a condition of issuance of any public report.

Sec. 514A-103 Designation of residential units. The developer of any project containing residential units shall designate at least fifty per cent of such units for sale to prospective owner-occupants pursuant to section 514A-105. Such units shall constitute a proportionate representation of all the residential units in the project with regard to factors of square footage, number of bedrooms, floor level, and whether or not such unit has a lanai.

Sec. 514A-104 Reservation list, requirements. From the date of the first publication of an announcement of the intended sale of a project made pursuant to section 514A-102, until ten calendar days have elapsed following the date of issuance of the first public report on such project, the developer's designated broker shall compile a reservation list consisting of the names of all individuals stating a desire to purchase a residential unit contained in the announced project in the order in which they have submitted to the agent the following:

- (1) A duly executed affidavit of intent to become an owner-occupant of the residential unit upon the completion of the project. Any individual who makes any false statement in the affidavit is subject to chapter 710, part V; provided that no individual shall be deemed to have made a false statement of intent if circumstances, such as serious illness of the individual or of a member of the individual's family, job or military transfer, unforeseeable change in marital status, or the birth of a child, subsequent to execution of the affidavit, cause the individual to be unable to occupy the residential unit; and
- (2) An earnest money deposit in a reasonable amount designated by the developer; provided that if no sales contract is offered to the individual, the entire deposit shall be returned and the developer shall not be required to pay any interest on such deposit.

Sec. 514A-105 Sale of residential units. From the issuance of the first public report until ten calendar days thereafter, the developer shall offer all the residential units designated pursuant to section 514A-103 for sale to only the individuals whose names are on the reservation list in the order in which their names appear on such list; provided that in the case of a project which includes one or more existing structures being converted to condominium status, each residential unit contained in the project shall first be offered for sale to any individual occupying such unit immediately prior to the conversion and who otherwise complies with section 514A-104.

Each contract for the purchase of a designated residential unit by an owner-occupant shall be conditioned upon the buyer obtaining adequate financing, or a commitment for adequate financing, within thirty calendar days following the end of the ten calendar day period during which the developer is limited to selling to owner-occupants, and if such financing or commitment is not obtained, the contract shall be

canceled. If during the ten calendar day period following the issuance of the first public report, any individual with whom a contract for the sale of one of the designated residential units was entered desires to cancel the contract on account of hardship circumstances such as those set forth in section 514A-104(1), or indicates an intent not to become an owner-occupant of such unit, the developer shall cancel the sales contract and shall offer the unit to persons whose names are on the reservation list, beginning with the first name listed; provided that if there are no additional names on the list, at the end of the ten calendar day period the developer may honor the original sales contract, or cancel the contract and sell to any other person without any further restriction imposed by this part.

Upon the cancellation of any contract, the developer shall return all moneys paid pursuant to the contract but may deduct from the moneys returned any reasonable amount representing expenses incurred by the developer to process the sales contract; provided that the cancellation shall be approved by any lender financing the project; and provided further that the deposit of each individual on the reservation list who has not been offered a residential unit shall be refunded in full. Any individual on the reservation list may at any time be offered any residential unit in the project not subject to the designation required by section 514A-103.

Sec. 514A-106 Financial institutions, obligations. Any person subject to chapter 403, 407, 408, 410, or 454, or who is subject to any other law for the purpose of lending money upon the security of real property shall:

- (1) Within thirty days after receipt of an application for credit from any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, notify the applicant of the action on the application; and
- (2) Prior to making any commitment to extend credit to any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, take all reasonable steps necessary to determine that the individual, in fact, intends to become an owner-occupant of such residential unit.

Sec. 514A-107 Enforcement, real estate commission. Whenever the commission believes from satisfactory evidence that any person has violated any provision of this part, it shall conduct an investigation on such matter and bring an action in the name of the commission in any court of competent jurisdiction against the person to enjoin such person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof. The commission shall adopt rules, pursuant to chapter 91, within six months from the effective date of this part, to carry out its responsibilities under this part.

Sec. 514A-108 Inapplicability of part. This part shall not apply to any project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 206, 206E, 356, 359, or 359G.”

SECTION 3. Section 514A-49, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who, in any respect, violates or fails to comply with any of the

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provisions set forth in sections 514A-2, 514A-31 to 514A-39, 514A-41, [514A-42]†, 514A-44 to 514A-49, 514A-62 to 514A-66, 514A-68, 514A-69, 514A-85, or 514A-102 to 514A-106, or who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the real estate commission under sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-66, 514A-68, 514A-69, 514A-85, or 514A-102 to 514A-106, is guilty of a misdemeanor, and shall be punished by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding one year, or both.”

SECTION 4. Section 521-71, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least twenty-eight days in advance of the anticipated termination. Before a landlord terminates a month-to-month tenancy where he contemplates voluntary demolition of the dwelling units, or conversion to horizontal property regime under chapter 514A, he shall provide notice to the tenant at least ninety days in advance of the anticipated demolition or anticipated termination, and shall comply with the provisions relating to conversions provided in section 514A-105. If notice is revoked or amended and reissued, the ninety-day period shall begin from the date it was reissued or amended.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 6. This Act shall take effect upon its approval, terminate on December 31, 1985, and shall apply to projects for which a notice of intent has not been filed with the real estate commission prior to the effective date.

(Approved May 30, 1980.)

†“514A-42” substituted for “514-42” to correct manifest clerical error.

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.