

ACT 176

S.B. NO. 1077

A Bill for an Act Relating to the Owner-Builder Exemption.

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

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

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

The purpose of this Act is to limit the application of the owner-builder exemption to residential or farm property only, to improve the ability of the regulated industries complaints office to investigate possible violations of the owner-builder law, and to offer additional disclosures for owner-builders when they enter into agreements with licensed subcontractors.

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

“§444-2.5 Owner-builder exemption. (a) This chapter shall not apply to owners or lessees of property who build or improve residential[,] or farm[,] ~~industrial, or commercial~~ buildings or structures on property for their own use, or for

use by their grandparents, parents, siblings, or children, and who do not offer the buildings or structures for sale or lease; provided that:

- (1) To qualify for an exemption under this section, the owner or lessee shall register for the exemption as provided in section 444-9.1; ~~and~~
- (2) The exemption under this section shall not apply to electrical or plumbing work that must be performed only by persons or entities licensed in accordance with this chapter, unless the owner or lessee of the property is licensed for such work under chapter 448E[-];
- (3) An owner or lessee exempted under this section shall:
 - (A) Supervise the construction activity on the exempt buildings or structures;
 - (B) Hire subcontractors appropriately licensed under this chapter to perform any part of the construction activity for which a license is required;
 - (C) Ensure that any electrical or plumbing work is performed by persons and entities appropriately licensed under this chapter or chapter 448E;
 - (D) Deduct Federal Insurance Contributions Act and withholding taxes and provide workers' compensation insurance for persons working on the construction activity who are not licensed under this chapter or chapter 448E and who shall be considered employees of the owner or lessee; and
 - (E) Ensure that the construction activity complies with all applicable laws, ordinances, building codes, and zoning regulations;
- (4) Until completion of the construction activity, an owner or lessee exempted under this section shall make available the following records for immediate inspection upon request by the department:
 - (A) A copy of the building permit application;
 - (B) A copy of the issued building permit;
 - (C) Copies of all contracts with the names of all persons who performed or are performing work on the exempt buildings and structures; and
 - (D) Proof of payment to all persons contracted to work on the exempt buildings and structures; and
- (5) Upon completion of the construction activity, an owner or lessee exempted under this section shall keep and maintain the records identified in paragraph (4) for a period of three years from completion of the construction activity and shall make the records available for inspection within seven business days upon request by the department.
 - (b) Proof of the sale or lease, or offering for sale or lease, of the structure within one year after completion shall be prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this subsection shall not apply to:
 - (1) Residential properties sold or leased to employees of the owner or lessee;
 - (2) Construction or improvements performed pursuant to an approved building permit where the estimated valuation of work to be performed, as reflected in the building permit, is less than \$10,000; or
 - (3) Any sale or lease caused by an eligible unforeseen hardship as determined by the board pursuant to subsection (c).
 - (c) The board shall determine the eligibility of an unforeseen hardship claimed by an owner under subsection (b); provided that an alleged unforeseen hardship shall not be deemed eligible if the board determines that the construc-

tion or improvement of the structure was undertaken for the purpose of sale or lease. An exemption for an unforeseen hardship shall not be denied solely because of lack of completion, as the term is defined in subsection (e). An owner seeking a determination of eligibility of an unforeseen hardship shall:

- (1) Be in compliance with the requirements set forth in the disclosure statement required to be provided under section 444-9.1; and
- (2) Submit a written application to the board at any time prior to selling, leasing, or offering to sell or lease the property describing the nature of the applicant's unforeseen hardship. The application shall include supporting documentation detailing the hardship, such as:
 - (A) Evidence of receipt of unemployment compensation;
 - (B) Tax returns;
 - (C) Medical records;
 - (D) Bank statements;
 - (E) Divorce decrees ordering sale of property;
 - (F) Mortgage default letters; or
 - (G) Bankruptcy filings.

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

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

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

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

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

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

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

- (1) Up to \$5,000 or [forty] fifty per cent of the [appraised] value of the [building] construction or improvement as [determined by the county tax appraiser,] indicated on the building permit application, whichever is greater, and as determined based on a review of the circumstances of each case, for the first offense; and
- (2) \$10,000 or [fifty] sixty per cent of the [appraised] value of the [building] construction or improvement as [determined by the county tax appraiser,] indicated on the building permit application, whichever is greater, for any subsequent offenses."

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

1. By amending subsection (a) to read:

"(a) Prior to entering into a contract with a homeowner, or at the time a homeowner signs a contract, involving home construction or improvements [and prior to the application for a building permit], licensed contractors shall:

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- (1) Explain verbally in detail to the homeowner all lien rights of all parties performing under the contract, including the homeowner, the contractor, any subcontractor, or any materialman supplying commodities or labor on the project;
- (2) Explain verbally in detail the homeowner's option to demand bonding on the project, how the bond would protect the homeowner, and the approximate expense of the bond; and
- (3) Disclose all information pertaining to the contract and its performance and any other relevant information that the board may require by rule."

2. By amending subsection (c) to read:

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

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 7. This Act shall take effect on July 1, 2013.

(Approved June 25, 2013.)