

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 104

UNIFORM LAND SALES PRACTICES

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-104-1 Objective. This chapter is intended to clarify and implement chapter 484, Hawaii Revised Statutes, to the end that the provisions thereunder may best be effectuated and the public interest most effectively served. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §454-10)

§16-104-2 Definitions. Definitions of terms found in section 484-1, HRS, shall be adopted by reference. In addition, the following definitions shall be included:

"Current financial statement" means the balance sheet, income statement, and any other financial reports as deemed appropriate by the director for the most recent fiscal year.

"Director" means the director of commerce and consumer affairs.

"Material change" means any change which either renders the information contained in the application or public offering statement misleading or which substantively affects the rights and obligations of a purchaser or a prospective purchaser of a subdivision lot, such as, but not limited to change in the nature or usage of the subdivision, or change in the underlying encumbrances or restrictive covenants.

"Public offering statement" means a statement that fully and accurately discloses the physical characteristics of the subdivided lands offered and all unusual or material circumstances or features affecting the subdivided lands. The statement shall incorporate the requirements of section 484-6, HRS. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-10)

SUBCHAPTER 2

APPLICATIONS FOR REGISTRATION OR EXEMPTION

§16-104-8 Forms and instructions. (a) An application for registration or exemption shall not be accepted by the director unless it contains complete information called for in the application form and any filing instructions. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-5)

§16-104-9 Filing required. Unless the subdivided lands or the transaction is exempt by section 484-3, HRS, and as provided in section 16-104-12, filing of an application for registration or exemption is required of all real estate subdivisions located in the State or elsewhere offered for sale in the State where land is divided or proposed to be divided into two or more lots, parcels, units, or interests and also includes any land whether contingent or not if two or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale. An application is filed when it is received in the office of the director. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-5)

§16-104-10 Application for registration. (a) An application for registration shall contain the documents and information required under section 484-5, HRS, and:

- (1) A current financial statement of the subdivider prepared according to generally accepted accounting principles and properly notarized, or the most current audited financial report prepared by a certified public accountant which shall be not more than twelve months old. Any false or fraudulent financial statement or report submitted by the subdivider may be grounds for rejection or revocation of registration;
- (2) A statement that the subdivider has not, or if a corporation, its officers, directors, and principals, or if a partnership, the general partners have not been convicted of a crime involving land

dispositions or any aspect of land sales business in the United States or foreign country within the past ten years or has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;

- (3) If federal registration is required, the date of registration (date of filing if pending registration) and a copy of the "Statement of Record";
 - (4) A letter of preliminary or final subdivision approval, or both, from the county or other appropriate jurisdictions;
 - (5) The name, address, and phone number of the subdivider's representative or real estate agent in Hawaii; and
 - (6) A description of a road maintenance fund or any other maintenance fund that may have been established by the developer.
- (b) The application shall be submitted with a payment of the appropriate registration fee and inspection expenses. [Eff 8/8/87] (Auth: HRS §§484-10, 484-5) (Imp: HRS §484-5)

§16-104-11 Application for section 484-10(g), HRS, exemption. (a) All applications for section 484-10(g), HRS, exemption shall contain the following documents and information:

- (1) A statement of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty days of the date of application by a title report prepared by a qualified title company, or by other evidence of title acceptable to the director;
- (2) Copies of the instruments which shall be delivered to a purchaser to evidence the purchaser's interest in the subdivided lands and of the contracts and other agreements which a purchaser shall be required to agree to or sign;
- (3) If there is a lien or encumbrance affecting any lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
- (4) A statement of the existing provisions for access, sewage, disposal, water, and other public utilities in the subdivision; a statement for the improvements to be installed, the schedule for their completion, and a statement as to the provisions for improvement maintenance;
- (5) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising

material which have been prepared for public distribution by any means of communication;

- (6) A statement that the subdivider has not, or if a corporation, its officers, directors, and principals, or if a partnership, the general partners have not been convicted of a crime involving land dispositions or any aspect of land sales business in the United States or foreign country within the past ten years or has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;
 - (7) A letter of preliminary or final subdivision approval, or both, from the county or other appropriate jurisdictions;
 - (8) For application for preliminary order of exemption, an executed copy of the escrow agreement between the developer and a bank, savings and loan association, trust company authorized to do business in Hawaii under an escrow arrangement, or a corporation licensed as an escrow depository under chapter 449, HRS, and a copy of a receipt for a written notice of a purchaser's right to rescind a contract within seven days after signing a contract, without penalty to the purchaser; and
 - (9) The name, address, and phone number of the subdivider's representative or real estate agent in Hawaii.
- (b) The application shall be submitted with a payment of the appropriate exemption fee and inspection expenses. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §§484-10, 484-7)

§16-104-12 Notice of section 484-3, HRS, exemption. (a) All notices of section 484-3, HRS, exemption shall contain the following documents and information:

- (1) The subdivider's name, address, and phone number;
 - (2) The name and location of the subdivision; and
 - (3) A statement and explanation of the specific exemption being applied for, pursuant to section 484-3, HRS, with appropriate documents, including but not limited to, a legal description of the subdivided lots, together with a map showing the division proposed or made, and a letter of subdivision approval from the county or other jurisdiction which requires subdivision approval.
- (b) All notices of section 484-3, HRS, exemption shall be filed with the director at least seven days prior to the commencement of sales. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-10)

§16-104-13 Notice of filing. (a) A notice of filing shall be issued by the director:

- (1) Upon receipt of an application for registration or section 484-10(g), HRS, exemption in proper form with all required documents and information requested; and
 - (2) When the applicant has paid to the director the proper registration or section 484-10(g), HRS, exemption fee and advanced the inspection expenses set forth in section 484-20, HRS.
- (b) Upon issuance of a notice of filing, the director shall initiate an examination to determine that the requirements of section 484-7, HRS, have been met. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-7)

SUBCHAPTER 3

ADVERTISEMENTS

§16-104-19 Advertisement materials. (a) The advertising material and the general promotional plan shall not be false or misleading and shall afford full and fair disclosure.

(b) No advertisements, promotional brochures, circulars, pamphlets, handouts, or other materials shall be published or used by the developer or real estate agents unless a copy has been previously filed with the director at least seven days prior to its publication or use.

(c) No radio or television advertisements or any standard verbal presentation shall be used by the developer or real estate agents unless copies of verbatim scripts have been previously filed with the director at least seven days prior to its use.

(d) Any audio-visual material used in connection with a sales presentation of a subdivision shall be produced for examination upon the director's request.

(e) Whenever a statement is made to the effect that the subdivision is registered with the department of commerce and consumer affairs, the following statement shall also be included:

"REGISTRATION DOES NOT MEAN APPROVAL OR
DISAPPROVAL OF THE SUBDIVISION."

[Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §§484-5(a)(13), 484-7)

SUBCHAPTER 4

PUBLIC OFFERING STATEMENT

§16-104-25 Format. (a) The proposed public offering statement submitted to the director shall include the following information:

- (1) Name and address of subdivider;
- (2) Description of land, which includes the location, number of lots, area of the lots, size of lots, total area of subdivision, and tax map key number;
- (3) Ownership of land;
- (4) Type of interest to be conveyed to purchaser;
- (5) Type of instrument to be used for conveyance;
- (6) Existing zoning regulations, including land use classification and general plan;
- (7) Use for which the property is offered;
- (8) Encumbrances, easements, liens, restrictions;
- (9) Current real property taxes, special taxes or assessments;
- (10) Description of roads, existing and proposed;
- (11) Description of water supply, existing and proposed;
- (12) Elevation of the land;
- (13) Soil conditions - drainage;
- (14) Availability of sewage disposal facilities, including estimated cost to bring service to lot;
- (15) Exposures to natural hazards; e.g., earthquakes, floods, tidal waves, volcano, forest fires, slides, etc.;
- (16) Date of completion and responsibility for construction and maintenance of existing and proposed improvements;
- (17) Electricity, telephone and gas, including estimated cost to bring service to lot;
- (18) Type of mail service;
- (19) Fire and police protection;
- (20) Public transportation;
- (21) Schools;
- (22) Shopping facilities;
- (23) Hospitals or medical facilities;
- (24) Terms and provisions of sale;
- (25) Existing or proposed association of lot owners that purchasers shall be required to join;
- (26) Name and address of company contracted for escrow or trust agreement;

- (27) Description of a road maintenance fund, if applicable;
- (28) Representative or real estate agent in Hawaii; and
- (29) Name and address of agency to receive service (out-of-state applicants only).

(b) No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement.

(c) Notwithstanding subsection (b), the following statements shall appear on all public offering statements and be capitalized and underscored:

"THIS SUBDIVISION HAS BEEN REGISTERED WITH THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS, STATE OF HAWAII, ON (DATE). REGISTRATION DOES NOT INDICATE APPROVAL OR DISAPPROVAL OF THE SUBDIVISION.

THIS PUBLIC OFFERING STATEMENT MUST BE GIVEN TO EACH PURCHASER AT THE TIME OF SALE AND A RECEIPT THEREOF MUST BE TAKEN. PURCHASER MUST ALSO BE GIVEN AMPLE OPPORTUNITY TO READ THE STATEMENT. SALE OF SUBDIVISION IN HAWAII IS GOVERNED BY CHAPTER 484, HAWAII REVISED STATUTES."

[Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-6)

§16-104-26 Issuance to purchasers and prospective purchasers. (a) Copies of the current public offering statement shall be delivered to purchasers and prospective purchasers.

(b) Delivery of the public offering statement shall be evidenced by a signed receipt by the purchaser or prospective purchaser.

(1) The receipt for public offering statement shall contain the following information:

- (A) The Hawaii registration number;
- (B) The name of the subdivision;
- (C) The name of the subdivider or agent;
- (D) The number of parcel or parcels purchased; and
- (E) The signature of the purchaser or purchasers;

(2) All receipts shall be kept by the subdivider or agent for a period of not less than three years from the date the receipt was taken and be

open for inspection by the director or the director's authorized representative.

(c) If the director requires the subdivider to amend the public offering statement prior to entering a final order, a copy of the amended public offering statement shall be delivered to the purchaser, and at the same time the purchaser shall be notified of the purchaser's right of refund and cancellation of the sales contract within a seven-day period. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-6)

SUBCHAPTER 5

ESCROW AGREEMENT

§16-104-32 Executed copy of escrow agreement. An executed copy of the escrow agreement between the subdivider and a bank, savings and loan association, trust company, or escrow company shall be filed with an application for registration and preliminary exemption pursuant to section 484-10(g), HRS. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §§484-5, 484-7, 484-8.5)

§16-104-33 Escrow terms. (a) All funds and instruments received from purchasers or prospective purchasers shall be held by the escrow agent in accordance with chapter 484, HRS, and this chapter.

(b) The agreement shall comply with the requirements of chapter 484, HRS, and this chapter. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-5)

§16-104-34 Escrow arrangement. (a) Purchasers' monies shall be deposited with the escrow agent; provided that the subdivider or its agents may hold the monies, until the expiration of the seven-day rescission period or any longer purchaser cancellation period provided in the sales contract, if the payment made by the purchaser is in the form of a check payable to the escrow agent, and no cash shall be accepted.

(b) Purchasers' monies received by an escrow agent shall be deposited in a trust fund with a bank, savings and loan association, or trust company authorized to do business under an escrow arrangement.

(c) The subdivider shall establish a mechanism by which the purchaser shall receive and sign a receipt for a written notice of a seven-day period rescission right pursuant to section 484-8.7 or 484-8.6(b) or (c), HRS, and the receipt deposited with the escrow agent.

(d) Upon notification of a purchaser's exercise of rescission right, the escrow agent shall immediately refund any monies paid by the purchaser and the purchaser shall be released from the purchaser's obligations under the sales contracts.

(e) The escrow agent shall not disburse purchasers' monies to the subdivider until the director enters a final order registering the subdivision or exempting the subdivision pursuant to section 484-10(g), HRS, and the director determines that the requirements of sections 484-8.7, 484-8.6(b) and (c), HRS, have been met. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §§484-7, 484-8.5)

SUBCHAPTER 6

ANNUAL REPORT

§16-104-40 Form and instructions. (a) The subdivider shall file with the director an annual report prepared in accordance with and containing the information called for in the annual report form provided by the director, or any instructions which may be required by the director with respect to filing.

(b) The annual report shall specify, in detail, material changes in information contained in the original application for registration, and shall also include information such as the number of parcels sold, the number of agreement of sale or deeds delivered, and the number of parcels remaining unsold. A current financial statement of the subdivider shall also be attached to the report. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-9)

§16-104-41 Final report. All subdividers are required to file a final report to advise the director when the last parcel in the subdivision has been sold. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-9)

SUBCHAPTER 7

ROAD MAINTENANCE FUND

§16-104-47 Creation of road maintenance funds. (a) The application for registration and the public offering statement shall include a complete description of any fund which is created to provide for the maintenance of roads within the subdivision. This description shall include the following information:

- (1) A description of the method by which decisions are made about the use of such funds, including what voting rights each property owner has, whether a property owner must join a community association or similar organization in order to vote, whether there are any other conditions which must be met prior to exercising the right to vote, and how much each owner must pay to the fund and how often; and
 - (2) A description of how the funds will be managed and by whom, where the funds will be deposited and whether the funds will be federally insured in that depository, whether interest will be earned on deposit and what kind of reports on the funds will be made to property owners.
- (b) The disclosures concerning road maintenance funds, if applicable, shall be separately stated and identified in language clear to owners and prospective owners. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-10)

SUBCHAPTER 8

PRACTICE AND PROCEDURES

§16-104-53 Administrative practice and procedure. The rules of practice and procedure shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff 8/8/87] (Auth: HRS §§91-2, 484-10) (Imp: HRS §§91-2, 484-10)

§16-104-54 Rejection of application; hearing. Any subdivider whose application for registration or exemption pursuant to section 484-10(g), HRS, has been rejected by the director, shall be entitled to a hearing upon filing if the subdivider files a petition for reconsideration within twenty days of the order of rejection. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-8(c))

§16-104-55 Proceedings upon petition for reconsideration. If a petition for reconsideration is filed within the time prescribed, the director shall order a hearing upon notice, which shall be conducted in accordance with the provisions of chapter 16-201, relating to contested cases. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-8(c))

§16-104-56 Proceedings for cease and desist orders, and revocation. If, after investigation, the director determines possible violations of chapter 484, HRS, or this chapter, the director shall order a hearing upon notice, which shall be conducted in accordance with the provisions of chapter 16-201, relating to contested cases. [Eff 8/8/87] (Auth: HRS §484-10) (Imp: HRS §484-10)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-104
Hawaii Administrative Rules

May 27, 1987

SUMMARY

Chapter 16-104, Hawaii Administrative Rules, entitled "Uniform Land Sales Practices" is adopted.