

Condominium Project Registration Reminders

Real Estate Commission Memorandum 2015-1 (1/15/15)

The information provided here is intended to provide developers including where applicable their attorneys and agents as well as interested others with supplemental information in the form of reminders about the condominium project registration process*.

- Pages 1 and 1a of the Developer's Public Report has been revised as of the date on the form, please use the current form which can be downloaded from the REC website at http://cca.hawaii.gov/reb/condo_ed/ and clicking on "Forms" (Revisions approved at Commission's December 14, 2014 Meeting);
- Where applicable please bring to the prospective purchaser's attention early in the Developer's Public Report on page 1a any of the information and matters listed on the attached "Exhibit A **(Non Exhaustive Listing)**". Page 1a of the Developer's Public Report provide some guidelines for the inclusion of the information and disclosures as well as a REC statement about the effect of the information's inclusion on page 1a "Special Attention—Significant Matters."

**** The provided information is unofficial, informal, and non-binding on the Real Estate Commission and is being provided pursuant to §16-201-92, Hawaii Administrative Rules.***

Exhibit A

January 15, 2015

(Non Exhaustive Listing)

I. Status of Condominium Project

- Condominium has not yet been created; declaration, bylaws, condominium map have been signed or executed by the developer but have not been recorded in the Bureau of Conveyance. Include a statement as to a date certain or a time period after a date certain as to when such documents shall be recorded and the condominium created;
- Whether developer holds the fee or leasehold interest in the property or has a right to acquire the same; including the conditions and terms of, and time table for acquiring the fee;
- Condominium project construction or creation is dependent on a pending county zoning, building codes, ordinances, permitting, changes; or county, state, or federal administrative approval, for example, Hawaii Community Development Authority (HCDA). Include any conditions or approvals. If units are being built pursuant to the owner-builder exemption and are not being offered for sale or lease until one year after the completion of construction or improvement, or for such other time period as provided in chapter 444, HRS, including an exemption from the one year because of unforeseen hardship. In lieu, the developer may include a signed copy of the county agency's disclosure form made pursuant to chapter 444, HRS;

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Exhibit A

January 15, 2015

(Non Exhaustive Listing)

- Construction of the project in phases and merger plans if any together with an explanation:
 - (a) That the condominium property regime is being offered for sale in phases, the number of phases contemplated and the number of phases obligated to be built, the administration of each phase, and the separate condominium project registration numbers of any constructed phase;
 - (b) Of the impact on the administration of the condominium project and association and on a unit owner's real property interest; and
 - (c) The permitted use for each phase;

II. **Condominium is located within or subject to a master planned community.**

Condominium is located within or subject to a master planned community or other type of community and that a unit owner is also subject to and shall also comply with the covenants, conditions, and restrictions of the planned community or other type of community. At minimum the rights and duties imposed on the condominium project and unit owners because of membership in the master entity shall be described including but not limited to any limitations on unit owner's voting rights, unit owner's membership fees if any, assessments to be imposed on unit owners for upkeep and maintenance of the master entity; master restrictions on use of the lands and improvements, and any design guidelines;

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Exhibit A
January 15, 2015
(Non Exhaustive Listing)

III. Purchasers' Agreement To Waive Certain Rights When Buying A Unit

- Waivers, disclaimers, or limitations of any rights or claims a prospective purchaser must agree to as a condition, term, or covenant to purchasing a unit;

IV. Developer's Disclaimers

- Disclaimers, limitations of any liability, damages, claims that a developer may be offering to a prospective purchaser;

V. Disclosures Relating Only To A Specific Condominium Project

- Current or pending lawsuits, administrative proceedings, or other quasi-judicial proceedings in which the developer or condominium property regime are the subjects of;
- Burial or "Iwi" issues;
- Adverse environmental conditions;
- Availability of water, other utility connections and other related services, including whether the availability is/would be privately or publicly provided and by whom;
- View planes and related restrictions;
- Units designated as spatial units and the structures and uses of any replacements as permitted by all applicable state and county land use laws;
- Encroachments and easements impacting the use of the unit or project;

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Exhibit A

January 15, 2015

(Non Exhaustive Listing)

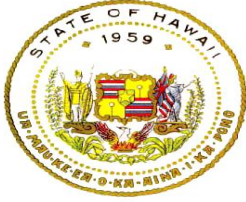
- Building restrictions on rebuilding non-conforming structures;
- Any encumbrances and covenants restricting a purchaser's or prospective purchasers use and enjoyment of the unit and amenities; and
- Any license, and trademark use agreements;

VI. **Disclosure of any other fact and information.** Disclosure of any other fact and information *deemed by the developer* to be material, pertinent, or warrant inclusion under the "Special Attention" provision of the developer's public report form;

VII. **A list of any outstanding notices of uncured violations of building code.** A list of any outstanding notices of uncured violations of building code or other county regulations, together with the cost of curing these violations shall include a certain date including a certain date following a period of time after the sales contract becomes binding in compliance with section 514B-5, HRS;

VIII. **Other applicable special or significant disclosures.** Other applicable special or significant disclosures as the developer deems necessary or required by the commission.

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Condominium Project Registration Reminders

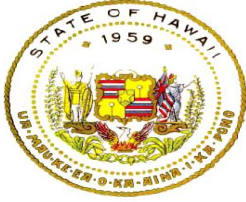
Real Estate Branch Memorandum 2014-2 (04/30/14)

The information provided here is intended to provide developers, including where applicable, their attorneys and agents, as well as interested others with supplemental information in the form of reminders about the condominium project registration process.*

- **The Real Estate Commission at its regular monthly meeting on April 25, 2014 voted to:**
 - Withdraw Condominium Project Registration Reminders 2014-1 dated 3/6/14, issued by staff, pursuant to §16-201-92, Hawaii Administrative Rules; and
 - Allow staff to continue to work with the assigned condominium consultant on a case by case basis. See attached 2014-1 3/16/14 withdrawn memorandum.

- **Act 49 (SLH 2014) - SB 2078 SD1** was approved by the Governor April 23, 2014 as Act 49 (SLH 2014). Act 49 (SLH 2014) clarifies the applicability of section 205-4.6, HRS, relating to private restrictions on agricultural uses and activities, to condominium projects on lands classified as agricultural. See Act 49 at:
 - http://www.capitol.hawaii.gov/session2014/bills/SB2078_SD1_.pdf.

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Condominium Project Registration

Reminders

Real Estate Commission Memorandum 2014-1 (03/06/14)

The information provided here is intended to provide developers including where applicable their attorneys and agents as well as interested others with supplemental information in the form of reminders about the condominium project registration process.

□ **§514B-34, HRS, Condominium map; certification of architect, engineer, or surveyor.**

Provide certifications or statements by licensed architects, engineers, or surveyors, submitted with the condominium map in accordance with §514B-34, HRS, that fall within the scope of their professional license. A condominium map which bears a statement or certification of a licensed architect, engineer, or surveyor, for services that do not fall within the scope of their professional license, does not satisfy the statutory requirements of §514B-34, HRS. A statement and/or certification of the condominium map by a licensed architect, engineer, or surveyor is limited to the scope of their license pursuant to §464-1, HRS.

□ **§514B-5, HRS, Conformance with county land use laws.** Developers are reminded that for condominium property regimes on lands classified as agricultural, conformance with county zoning and development ordinances and chapter 205 is required. §205-4.6, HRS, provides in part, that private restrictions that limit or prohibit agricultural use or activity on lands classified as agricultural are prohibited and shall be voidable.

Include, for a condominium project in a district classified as agricultural pursuant to chapter 205, a statement or disclosure that there are no private agreements/restrictions limiting or prohibiting agricultural uses and activities in compliance with §205-4.6, HRS. Private agreements include those contained in the condominium declaration, map, bylaws, and other documents executed and submitted in accordance with chapter 514A or 514B.

□ **Special Attention Section of the Developer's Public Report.** Include a brief summary or description of special or significant matters which should be brought to the purchaser's attention. General broad statements referring to particular exhibits or pages should be accompanied by a brief description or summary of the specific matter(s).

□ **§514B-92, HRS Use of purchaser deposits to pay project costs. §514B-93, HRS Early conveyance to pay project costs.**

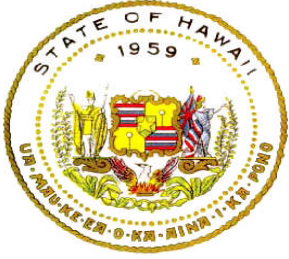
Developers are reminded that when pursuant to §514B-92, HRS, or §514B-93, HRS, they submit a proposed amendment or amended developer's public report in connection with the use of purchaser's deposits for payment of projects cost to complete the project or purchaser's payments under the sales contract for project costs; developers must among other requirements of §514B-92, HRS, and §514B-93, HRS, submit **evidence satisfactory** to the Commission of the **availability of sufficient funds** to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds.

Evidence of the **availability of sufficient funds** to pay all costs required to be paid in order to complete the project include but is not limited to written documentation confirming the availability of funds as follows:

- Purchaser's funds – signed letter from a Hawaii licensed escrow company indicating the total amount of purchaser's funds held in escrow;
- Equity funds - documentation indicating what specific items/funds make up the "equity," how much, location of the equity, whether the equity is encumbered/collateral for other purposes;
- Interim or permanent loan commitments - documentation with specific provisions **clarifying** that if the lender retains a security interest in all purchaser's deposits or purchaser's payments under a sales contract, as a security for the repayment of the loan that irrespective of the lender's security interest, the deposits or payments can be used pursuant to §514B-92, HRS, and §514B-93, HRS, to pay for all costs in order to complete the project, including lease payments, real property taxes, construction costs, architectural, engineering and legal fees, and financing costs. Such a "use exception" to the lender's security interest shall be clearly stated, documented, acknowledged by the lender, developer, and escrow and submitted to the Real Estate Commission.

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WITHDRAWN



Condominium Project Registration Application Reminders

Real Estate Commission Memorandum 2013-1 (01/14/13)

The information provided here is intended to provide developers including where applicable their attorneys and agents as well as interested others with supplemental information in the form of reminders about the condominium project registration process.*

Commission Approved Registration Forms Including Developer's Public Report.

Use "Commission Approved Forms" **in its entirety** for drafting the developer prepared public report. Include any additional disclosures and information on separate additional pages and label the added pages, for example, "1 a, 1 b" and for example "paragraph 1.1 or 5.1 continued" on a separate attached page.

Leave pagination and boxes of printed set information as is -- do not relocate the boxes of printed information on additional pages. Just attach the additional separate page or pages.

Compliance with this reminder increases the likelihood that the condominium project registration application and developer's prepared public report will not be returned to the developer for redrafting.

Cost To Cure County Violations. Provide/include in conversion situations, pursuant to §514B-84, HRS, estimated costs to cure violations. Complete and provide the estimated costs to cure the violations in the last box of paragraph 1.15 pg. 7 of the "Developer's Public Report" form "Estimated cost of curing any violations described above."

Architect Or Engineer's Report. Include in any submitted architect or engineer's report as described in §514B-84 (a) (1) (A), HRS, specific statements describing the present conditions of those components and installations. General broad statements about the conditions must be supplemented by specific statements.

Condominium Project Registration Questionnaire. Include information about the existence and current status of any or all of the following:

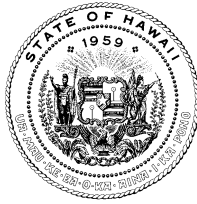
- Dedications, agriculture, etc;
- Roll Back taxes;
- Real property taxes of master parcel;
- Real property taxes of unit;
- Uncured county violations and estimated costs to cure.

Where applicable, disclose and include the above information in the developer's prepared public report. Although the questionnaire form is currently being revised, the developer is still obligated to disclose such information in the Developer's Public Report.

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July 23, 2012

MEMORANDUM

TO: Condominium Developers, Their Attorneys, and Interested Others
FROM: Real Estate Commission
SUBJECT: Change in Compensation Paid to Private Consultants Effective July 1, 2012

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The condominium law allows the Director of Commerce and Consumer Affairs to contract with private consultants for the review of documents and information submitted to the Real Estate Commission in connection with the registration of condominium projects and issuance of effective dates for developers' prepared public reports. (§514A-38, §514B-64, HRS).

In recent years, the Commission has seen an expansion in the amount of documents and information developers submit as part of the developers' condominium project registration applications. A recent study and review of the amount of time consultants spend reviewing the submitted documents and information over the past years warrant a realistic realignment and change in compensation paid by developers to these private consultants.

Effective **July 1, 2012**, towards these ends, in addition to the current \$1,000 consultant review fee paid by developers, the agreed compensation paid by developers to the private consultants now includes:

For any ***subsequent review** of additional and or supplemental documents and or information, which a developer is required to submit to complete the registration application, complex updates and/or changes to the registration application involving more than two (2) material changes and any subsequent review of developer's rewrites of the developer's public report, an additional hourly amount of ONE HUNDRED FIFTY DOLLARS (\$150) not to exceed a total of **ONE THOUSAND TWO HUNDRED AND NO DOLLARS** (\$1,200) plus any approved expenses incurred in connection with the subsequent review.

Any additional hourly amounts recommended by a consultant shall be approved by the Real Estate Commission.

This memorandum continues on the back of this page.

Additionally, the developer must submit payment of the recommended and approved amount to the Real Estate Commission prior to the consultant resuming with the review of a developer's registration application (developer shall be notified of the additional amount).

Summary of fees is provided below:

REPORT TYPE	CONSULTANT FEE AMOUNT
Initial review	\$1,000
<i>*(Subsequent review including review of any developer rewrites)</i>	\$150 per hour not to exceed \$1,200 + approved expenses incurred with review
Amendments or Supplementary	
• Non-complex	\$150
• Updates/changes (non-substantive)	\$100
• <i>*(Subsequent review including review of any developer rewrites)</i>	\$150 per hour not to exceed \$1,200+ approved expenses incurred with review
Amended or Full Supplementary (complex changes)	\$1000
<i>*(Subsequent review including review of any developer rewrites)</i>	\$150 per hour not to exceed \$1,200+ approved expenses incurred with review

- **Non-complex** – *pertinent changes and/or changes involving up to two (2) material changes. Commission retains the right to require reporting the changes in a full Supplementary or Amended Developer's Public Report*
- **Updates/changes** – *(e.g.) names of "persons connected to the (condominium) project" and other non-substantive stylistic updates and/or changes*
- **Complex** – *more than two (2) material changes*

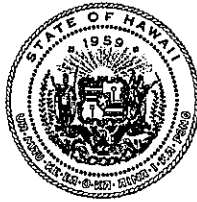
"Abandoned" registration application - fees as specified above for services rendered by the consultant where the Commission has deemed a registration application abandoned in accordance with §514B-52, HRS, or §436B-9, HRS.

Standard fees will remain at:

- | | | |
|----|---|-------|
| 1. | Application fee | \$250 |
| 2. | Supplementary public report (§514A, HRS reports) | \$75 |
| 3. | Amendments (§514B, HRS reports) | \$75 |
| 4. | Public report extension (§514A, HRS reports) | \$50 |
| 5. | Two apartment no expiration; exception (§514A, HRS reports) | \$100 |
| 6. | Extending expiration | \$50 |
| 7. | Annual report (§514B, HRS) | \$50 |
| 8. | Developer fee per apartment | \$5 |

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MEMORANDUM – 2009 - 1

TO: Interested Developers, Attorneys, Others

FROM: Real Estate Commission

SUBJECT: Clarification of Spatial Units Memorandum originally dated April 26, 2007 and Redistributed February 20, 2009 by Commission Staff

DATE: March 23, 2009

The Real Estate Commission's (Commission) Condominium Review Committee at its March 11, 2009 regular monthly meeting clarified a February 20, 2009 memorandum regarding "Spatial Units" issued by Commission staff as follows:

- Commission is accepting for review copies of executed declaration, bylaws, and condominium maps with "spatial units" described as set forth in its informal non-binding interpretation issued at its December 15, 2006 Condominium Review Committee meeting. See copy of page 4 of the December 15, 2006 minutes attached.
- The developer may elect to describe the spatial units in any manner that complies with HRS Chapter 514B. The description of the spatial units is not limited to "fictional tool shed" substitution/replacements which comply with HRS Chapter 514B.
- Developers using spatial units should make appropriate disclosures so that prospective buyers are informed of what structures or improvements will or might be constructed within the spatial units.

Further guidance on the description of "spatial units" and any related disclosures will be part of efforts to prepare administrative rules to supplement HRS Chapter 514B.

Enclosure: Page 4 of the December 15, 2006 Real Estate Commission meeting minutes

Author/Owner/Provider: The Seminar Group; Course Category: Real Estate Law; Clock Hours: 6 – Upon a motion by Commissioner Abrams, seconded by Commissioner Gendrano, it was voted on and unanimously carried to approve “Hawaii Land Use Law” as a six-hour continuing education elective course under the category – Real Estate Law.

Test Development – Upon a motion by Commissioner Abrams, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to approve the real estate salesperson’s and broker’s content outline.

Condominium Review Committee

Upon a motion by Commissioner Chee, seconded by Commissioner Loudermilk, it was moved to accept the amended report of the December 6, 2006 Condominium Review Committee as follows:



1. Minutes of November 8, 2006 Meeting – **Accept**
2. CPR Registration and Developer’s Public Reports – CPR Project – Informal Non Binding Interpretation Request “Spatial Units/Airspace Condominium” 66-419 Paalaa Road, DeFreitas, Developer; Jeffrey S. Grad, Esq., attorney for developer; §§514B-3 definitions “condominium,” “unit,” 514B-32(a)(7), 514B-32(13), 514B-33(a)(3), 514B-5 and 514B-32(a)(13), 514B-51, 514B-54, HRS – **Recommend approval** to issue an informal non-binding interpretation that “spatial units” shall be described in accordance with the following statutes:
 - §514B – 3, HRS “Unit”
 - designated for separate ownership or occupancy;
 - boundaries indicated in accordance with §514B-35;
 - has access to a public road or to a common element leading to a public road;
 - §514B-32(a)(7), HRS
 - indicate a location
 - have dimensions – horizontal and vertical boundaries
 - include spatial coordinates – a beginning and an end point;
 - §514B-32(a)(13), HRS
 - spatial unit must comply with county requirements – spatial coordinates and dimensions must comply with all zoning and building ordinance and codes, and all other permitting requirement pursuant to section 514B-5, HRS;
 - dimensions of the spatial unit should not exceed the dimensions, heights, set backs, and other requirements mandated by the county;

and further **recommend approval** that developers include in the developer’s public report appropriate disclosures of applicable county requirements.
3. Program of Work, FY07
 - a. Condominium Recodification and Education – Proposed Chapter 514B,HRS, amendments – **Recommend approval** to support in principle, legislation as proposed in the December 6, 2006 CRC