

## Chapter 514B, Developer's Annual Report—Avoiding Common Errors

The Hawaii Real Estate Commission ("Commission") oversees the application and review process for the registration of condominiums for initial sale. Part of this process requires developers to file a Developer's Annual Report which is an annual reminder to both the Commission and developer of any changes. The Commission has produced this quick guide to assist developers and their agents in avoiding common mistakes in filling out a Developer's Annual Report.

### Frequently Asked Questions:

#### **What is a developer's annual report and why do developers have to submit it?**

§514B-58, Hawaii Revised Statutes, mandates that developers file a developer's annual report until all units in the project undergo a bonafide sale. The report serves as a reminder to the developer to update the developer's public report for any material and pertinent changes.

At the time of sale, developers may have forgotten about non-visible changes to the property, such as modifications to easement rights, view plane building restrictions, or bylaws governing commercial and pet practices, which may materially impact the value and usage of a unit to a buyer. The developer's annual report serves to remind developers to promptly update their developer's public reports as those changes occur. These continuous updates help to protect the developer from accusations of fraud and omission in a later sale by providing an up-to-date and standardized disclosure document to buyers.

#### **What are the current fees?**

The current fee for the developer's annual report is \$50, payable by check.

#### **When do I submit my developer's annual report?**

A developer's annual report is due thirty days prior to the anniversary of the most recent developer's public report, amended report, or amendment.

#### **Do I fill out one form per unit? Do I pay for each unit?**

The developer's annual report covers all unsold units within the registration. Only file one report per registration per year and include one check of \$50 that covers the entire registration.

#### **Where do I submit my developer's annual report?**

Mail to Hawaii Real Estate Commission, 335 Merchant Street, Room 333, Honolulu, Hawaii 96813.

#### **Do the changes I report on the annual report update my developer's public report?**

No. Any changes to the developer's public report must be done through a required amended or amendment, which have their own separate processes and forms. Therefore, do not attach the updated documents or the changed pages to the developer's public report.

#### **If I submit an amended or amendment prior to the 30 days anniversary do I still have to file an annual report?**

No. The amended or amendment will satisfy the annual report requirements for that year.

## Frequently Asked Questions Continued:

### **Do I report selling a unit as a change?**

No. Selling a unit is not reported as a change until all units are sold. Developers may report individual unit sales, but it is not required, nor do such sales by themselves require the filing of an amendment or an amended report.

### **I sold all the units, what do I do now?**

Check the box “Initial sales of all units have been completed.” This will be your final annual report as once all initial developer sales of all units have been completed, the developer has no further reporting obligations.

### **I sold some units and the new owners made changes. Do I report those?**

A developer is not responsible for the changes made to units that have been sold, unless those changes impact the unsold units and/or the common elements.

### **I missed a few years of annual reports. What do I do?**

Submit one annual report for the current year that incorporates all of the changes, if any. **Do not submit a report for each year you missed.** Include the payments for the missed years in your current check and provide a letter noting the included late amounts. Being delinquent on filing developer’s annual reports does not prohibit a legal sale by the developer.

## DEVELOPER'S ANNUAL REPORT

Condominium Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

Registration Number: \_\_\_\_\_ Date: \_\_\_\_\_

HRS §514B-58 requires the Developer to annually file a report to update the material contained in the latest Developer's Public Report and any amendments thereto ("Report") at least thirty days prior to the anniversary date of the Report's effective date. If there is no change to the Report, the Developer shall so state. *Submit a non-refundable filing fee of fifty dollars (\$50) with this report to Real Estate Commission, 335 Merchant Street, Room 333, Honolulu, HI 96813. Make check payable to Commerce and Consumer Affairs.*

The filing of the Annual Report does **not** relieve the Developer, its successor, or assign of the obligation to file amendments to the latest Report, pursuant to HRS §514B-56, or to report any material or pertinent changes regarding the information contained in or omitted from the latest Report.

**Developer states that:** (check one box only)

- ☐ Initial sales of all units have been completed. Developer is not required to file any subsequent annual report; **or**
- ☐ There are no changes to the latest Report, **or**
- ☐ There are updates to the latest Report and any amendments thereto. The updates are listed below. Also, if the update is a pertinent or a material change, the Developer has included or will include the update in an amended Report or in an amendment to the Report, and has submitted or will be submitting to the Commission a draft of an amended Report or an amendment to the Report in accordance with all applicable laws.

**Updates to the latest Developer's Public Report:** List the updates to the latest Report and any amendments thereto (include the update's title and description, and refer to the page or exhibit in the Report where the update can be found).

- ☐ If additional space is needed, check this box and continue list on back of this page or attach separate sheets.

**Developer also states that:** (check and complete all applicable)

- ☐ In accordance with section 514B-92, HRS or section 514B-93, HRS, purchasers' funds, deposits or payments made under a sales contract are being used to pay for project construction costs, and in the case of a conversion for repairs;
- ☐ Construction of the project is complete and the date of completion is \_\_\_\_\_; **or**
- ☐ Construction is continuing and the required completion or performance bond issued by a surety licensed in the state in an amount equal to one hundred per cent of the cost of construction as previously submitted to the Commission and any subsequent determined additional or supplemental cost to complete construction remains in full force and effect; **or**
- ☐ Construction is continuing and the required completion or performance bond issued by a material house in the state in an amount equal to one hundred per cent of the cost of construction as previously submitted to the Commission and any subsequent determined additional or supplemental cost to complete construction remains in full force and effect; **or**

Revised 7/6/2012

Select the relevant changes to the information in the developer's public report, if any.

List the changes to the report, but do not submit the updated pages of the developer's public report or the updated supporting documents.\*

Periodically check the Real Estate Branch's website to ensure you're on the most recent form. Older forms will be rejected. 7/6/2012 is the current form.

\* If there are pertinent and/or material changes, those changes must be additionally reported on an amendment or amended developer's public report.

- ☐ Construction is continuing and the required irrevocable letter of credit issued by a federally insured financial institution or other substantially similar instrument or security approved by the Commission in an amount equal to one hundred per cent of the cost of construction as previously submitted to the Commission and any subsequent determined additional or supplemental cost to complete construction remains in full force and effect.

**The Developer declares, subject to the penalties set forth in HRS §514B-69, that this Project continues to conform to all zoning, building ordinances, codes, and permitting requirements for the county in which the Project is located, pursuant to HRS §§514B-5 and 32(a)(13).**

The Developer certifies that all the information contained in this Annual Report and the latest Developer's Public Report, and all documents furnished by the Developer to Project purchasers and prospective purchasers have been reviewed by the Developer and are correct and complete to the best of the Developer's knowledge, information, and belief.

\_\_\_\_\_  
Printed Name of Developer

By: \_\_\_\_\_  
Duly Authorized Signatory\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title of Person Signing Above

**\*Must be by an officer signed for a corporation; by a general partner for a partnership or limited liability partnership; by the manager or an authorized member for a limited liability company; and by the individual for the individual.**

*This form is available to individuals with special needs by calling the Senior Condominium Specialist at (808) 586-2643.*

If there are multiple developers, have each developer sign their own form, or attach a multiple signature page. Do not modify the form.