

Miscellaneous Matters
(Recodification Public Hearing Discussion Draft)

BRAC's [Real Estate Commission's] Comment

1. **HRS Chapter 514A Part VI (Sales to Owner-Occupants)** has not been included in the recodification.

Part VI was enacted in 1980 to require developers to offer to owner-occupants, at least 50% of a representative sampling of units in a project before offering them to the public. The intent of the law was to prevent speculation by investors at the expense of owner-occupants.

Yet this law only applies to condominiums. Hawaii law does not require owner-occupants to be given any preference in the sale of single-family homes, subdivisions, planned-unit developments or cooperatives.

Also, of the states where condominiums are common, Hawaii appears to be the only state which mandates this preference. The requirement does not appear in the condominium/common interest ownership acts of Florida, California, New York or Virginia, nor in the UCA or the UCIOA.

Since its enactment, the intended benefits of Part VI have been outweighed by resulting problems, and a repeal of Part VI would not adversely affect the consumer protections contained in Chapter 514A.

The requirements of Part VI are complicated, cumbersome and expensive. Developers must publish special owner-occupant advertisements and hold a public lottery or use a chronological system to determine which owner-occupants can purchase which units. Also, since the law does not specify how to contend with certain issues, such as back-up offers, developers end up using their own methods, which may or may not be correct. In addition, the costs for complying with these requirements are passed on to buyers through increased sales prices.

Part VI is ineffective because compliance is virtually impossible to monitor and enforce. There is substantial anecdotal evidence of cheating by investors who pose as owner-occupants. Because the Real Estate Commission does not have sufficient personnel to monitor compliance with the owner-occupant requirements, there is nothing to prevent this cheating from continuing. And although there are civil and criminal penalties for violating these laws, there is no record of any civil or criminal enforcement action having been brought against any developer or buyer. If Part VI cannot be enforced, its purpose is defeated.

2. BRAC/Commission should consider adding the following language:

____: ____-____. **First Right to Purchase.** In the case of a project that includes one or more existing structures being converted to condominium status, the developer shall first offer to sell each unit to the individual(s) occupying the unit on the effective date of the public report, before offering such unit for sale to any other person. This first offer shall commence on the effective date of the public report and shall end _____ (____) days thereafter. During such period, the developer shall give such occupant(s) a sales contract for such unit, at the price and on the terms that the developer will be offering the unit for sale to the public. If such occupant fails to execute the sales contract within such period, then the developer shall be free to sell the unit to any other person.

[Note: **HRS §521-38(2)** would have to be revised to refer to this new section instead of HRS §514A-105.]

3. **HRS Chapter 514A Part VII (Arbitration: Mediation)** is incorporated in Recodification Part V (Management of Condominium) in §§ ____: 5-46 (Mediation) and 5-47 (Arbitration). Much work remains to be done on crafting an alternative dispute resolution mechanism for condominiums that really works.

4. **HRS Chapter 514A Part VIII (Condominium Management Education Fund)** has been incorporated in Recodification Part III (Administration and Registration of Condominiums) under § ____: 3-20, et seq. (Condominium Education Trust Fund).

5. The Commission recommends that, to conduct post-bill passage educational activities, the 2004 proposed recodification legislation should also contain provisions to extend the position and funding authorized by Act 213 (SLH 2000).