



IMANAKA KUDO & FUJIMOTO

HAWAII CONDO FAX

A Faxletter on Condominium Development Issues in Hawaii

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HAWAII'S CONDOMINIUM RECODIFICATION: HIGHLIGHTS OF IMPORTANT CHANGES

Hawaii's condominium law recodification is now Act 164, with an effective date of July 1, 2005. Certain sections have been "reserved" for further study and work, including the development and sales portions of the new law.

Improvements to definitional, development and sales provisions: These certain provisions of the newly passed Act 164 ("Act") have been reserved, pending further discussion by policymakers. As such, it is anticipated that more work will be done prior to next legislative session to refine these provisions. Summarized below are some of the more salient provisions that are anticipated to be enacted:

- Any "pertinent change" to information contained within the public report does not necessarily constitute a material change that may trigger rescission rights.
- Permits non-physical or spatial portions of the project to be identified as units (i.e., parking stall units).
- The certification by the design professional need only state that the map depicts a layout, location boundaries dimensions and numbers of the units "substantially" as built, rather than exactly as built.
- Approval requirements for amendments to the constituent documents were changed to conform to secondary financing market requirements.
- If "visible commencement of operations" occurs prior to the creation of the condominium then, upon creation of the condominium, liens arising from such work may only attach to the units, but not to the common elements.
- Developers will only need to file one public report. "Pertinent changes" may be captured through amendments reflecting the changes. Developers will also not be required to suspend sales pending approval of any amendments, subject to certain conditions. The public reports will remain in effect until all units in the project are sold.
- The developer may solicit prospective purchasers and enter into non-binding reservation agreements without registration, subject to certain limitations.
- Sales contracts entered into prior to completion of construction must contain an agreement on the part of the developer that completion must occur before a set deadline, which must be referenced in the public report, otherwise buyers may cancel the sale.
- If buyers' funds held in escrow are to be used to pay for certain project costs prior to completion or prior to closing, certain requirements must be met, including the submission of items verifying construction will occur as contemplated by the developer and a statutory notice to buyers in the public report.

Improvements to management provisions: These provisions are contained in the Act and as such most of them will become effective July 1, 2005 (unless the effective date is extended by the Legislature).

- Part VI Registration and Administration of Condominiums was reorganized into subparts, and provisions were consolidated to minimize the statutory requirements for condominium governing documents.

- Entirely nonresidential condominiums and small condominiums may be exempted from Part VI, except for requirements relating to managing agents.
- Owner participation was also enhanced through expressly allowing e-mail notice of AOA meetings (at the unit owner's option) and mail-in and e-mail voting by directed proxy. The "for quorum purposes only" box (which has caused the unnecessary disqualification of proxies and stymied the conduct of AOA business) is now required only for standard proxy forms issued by AOAs.
- Boards (and AOAs, if provided in the declaration or bylaws) are allowed to meet by telephone conference call and video-conferencing.
- Boards may now convene in executive session for attorney-client privileged matters or while negotiating contracts, leases, and other commercial transactions or litigation.
- The new insurance provisions allow the AOA to bill responsible parties for deductibles and to require unit owners to carry insurance covering their personal liability.
- AOAs can now to maintain and repair "high risk components" (e.g., washing machine hoses, water heaters) before they fail, which should help with insurance premiums.
- There is now a Good Samaritan provision that limits the liability of an AOA in requesting a functional assessment and recommendations for services for any elderly unit owner who may pose a harm to self or others.
- Circuit courts may now excuse an AOAs compliance with obsolete provisions in governing documents that unreasonably interfere with its ability to manage its property.
- Any party may request mediation. Also, parties must file for *trial de novo* within thirty days of written demand. Otherwise such right will be precluded.
- The Legislature established a two-year "condo court" pilot project and study for improving alternative dispute resolution mechanisms.

More detailed information on the condominium recodification will be presented at the following seminars: Hawaii's Condominium Recodification, October 14, 2004; Condominium Law in Hawaii, January 11, 2005; and Legal Aspects of Condominium Development in Hawaii and Homeowner's Associations in Hawaii, January 12, 2005. Presentations on the recodification will be made by Mitchell A. Imanaka, Esq., Chair of the Condominium Review Committee, State of Hawaii Real Estate Commission. For more information, please call (808) 521-9500.

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