



GOV. MSG. NO. 823

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 16, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 16, 2008, the following bill was signed into law:

HB2372 HD2 SD2 CD1

A BILL FOR AN ACT RELATING TO TIME SHARE
PLANS.
(ACT 181)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO TIME SHARE PLANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 514E, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§514E- Limited permit. (a) Notwithstanding any other
5 provision of this chapter, the director may issue a limited
6 permit to a developer permitting the offer or sale, in this
7 state, of an additional interest in a time share plan to an
8 existing purchaser in the same time share plan; provided that:

9 (1) The developer or an affiliated entity of the developer
10 has a time share plan currently registered with the
11 director; provided that the registration was
12 originally approved or amended within seven years from
13 the date of the offer or disposition, and the
14 registration has not been terminated or withdrawn;

15 (2) The developer has not, during the two-year period
16 preceding the time of the offer, had a time share
17 registration suspended, restricted, or revoked in any
18 state or been convicted of an offense involving fraud



1 or dishonesty. In the event the developer satisfies
2 the requirement of paragraph (1) above through an
3 affiliated entity, the developer has not, during the
4 twenty-year period preceding the time of the offer,
5 had a time share registration suspended, restricted,
6 or revoked in any state or been convicted of an
7 offense involving fraud or dishonesty;

8 (3) In satisfaction of the disclosure requirements of
9 section 514E-9, the purchaser is provided the time
10 share disclosure documents the purchaser would have
11 received if the purchase had occurred in the state or
12 jurisdiction where the purchaser initially purchased
13 the time share interest;

14 (4) The contract for purchase signed by the purchaser
15 includes a notice that is the same as or similar to
16 the rescission notice required pursuant to section
17 514E-9(a) (7); provided that the rescission period
18 shall be at least seven days;

19 (5) All funds and any negotiable instruments received
20 during the seven-day rescission period shall be placed
21 in an escrow account in the state. The escrow agent
22 shall be a bank, savings and loan association, or



1 trust company authorized to do business in the state
 2 under an escrow arrangement or a corporation licensed
 3 as an escrow depository under chapter 449. The funds
 4 or negotiable instruments may be released from escrow;
 5 provided that the release is in accordance with
 6 section 514E-17 or 514E-18. Any escrow account
 7 established for any out-of-state time share plan
 8 offered under this subsection may be maintained in the
 9 state where the time share plan is located after the
 10 seven-day rescission period has expired; provided that
 11 the escrow agent submits to personal jurisdiction in
 12 this state;

13 (6) The contract for purchase shall contain the following
 14 statement in conspicuous type:

15 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR
 16 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY
 17 OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE
 18 XXX (DEVELOPER OR AFFILIATE'S NAME) HAS A TIME SHARE
 19 PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII
 20 (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE)
 21 IS AN AFFILIATED ENTITY OF THE SELLER AS THE TERM IS



1 DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES.";

2 and

3 (7) The offer complies with the provisions of sections
4 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13),
5 and 514E-11.1.

6 (b) Except as provided in subsection (a), the offer or
7 sale of an additional interest in a time share plan by a
8 developer in accordance with subsection (a) shall not otherwise
9 be subject to any other provisions of this chapter.

10 (c) Notwithstanding any other provision of this chapter,
11 the director may issue a limited permit to a developer
12 permitting the offer or sale by the developer, in this state, of
13 a time share interest in a time share plan located outside of
14 this state, but within the United States, to an individual who
15 currently owns a time share interest that was purchased from
16 that developer, or from an affiliated entity of that developer;
17 provided that:

18 (1) The developer or an affiliated entity of the developer
19 has a time share plan currently registered with the
20 director; provided that the registration of the
21 developer or an affiliated entity of the developer was
22 originally approved or amended within seven years from



- 1 the date of the offer or disposition and which
2 registration has not been terminated or withdrawn;
- 3 (2) The developer has not, during the two-year period
4 preceding the time of the offer, had a time share
5 registration suspended, restricted, or revoked in any
6 state or been convicted of an offense involving fraud
7 or dishonesty. In the event the developer satisfies
8 the requirement of paragraph (1) above through an
9 affiliated entity, the developer has not, during the
10 twenty-year period preceding the time of the offer,
11 had a time share registration suspended, restricted,
12 or revoked in any state or been convicted of an
13 offense involving fraud or dishonesty;
- 14 (3) The developer shall provide the purchaser with all
15 time share disclosure documents required to be
16 provided to purchasers as if the offer occurred in the
17 state where the time share plan is located;
- 18 (4) The contract for purchase shall include a notice that
19 is the same as or similar to the rescission notice
20 required pursuant to section 514E-9(a)(7); provided
21 that the rescission period shall be at least seven
22 days;



1 (5) In satisfaction of section 514E-16, all funds and any
2 negotiable instruments received during the seven-day
3 rescission period shall be placed in an escrow account
4 in the state. The escrow agent shall be a bank,
5 savings and loan association, or trust company
6 authorized to do business in the state under an escrow
7 arrangement or a corporation licensed as an escrow
8 depository under chapter 449. The funds or negotiable
9 instruments may be released from escrow; provided that
10 the release is in accordance with section 514E-17 or
11 514E-18. Any escrow account established for any out-
12 of-state time share plan offered under this subsection
13 may be maintained in the state where the time share
14 plan is located after the seven-day rescission period
15 has expired; provided that the escrow agent submits to
16 personal jurisdiction in this state;
17 (6) The developer shall provide the purchaser, in writing,
18 either in the disclosure documents or otherwise, all
19 of the following:
20 (A) A description of the type of time share plan
21 offered, including the duration and operation of
22 the time share plan;



1 (B) A description of the existing or proposed
2 accommodations and amenities in the time share
3 plan;

4 (C) A description of the method and timing for
5 performing maintenance on the accommodations;

6 (D) If applicable, copies of the declaration,
7 association articles of incorporation,
8 association bylaws, and association rules and
9 regulations; and

10 (E) The current annual budget for the time share
11 plan;

12 (7) The time share plan being offered is registered in the
13 state where the time share plan is located; or in the
14 event registration of the time share plan is not
15 required in the state where the time share plan is
16 located, the time share plan being offered is in
17 compliance with the applicable laws of that state; and

18 (8) The contract for purchase shall contain the following
19 statement in conspicuous type:

20 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR
21 APPROVED BY THE STATE OF HAWAII BECAUSE YOU
22 ALREADY OWN AN INTEREST IN A TIME SHARE PLAN THAT



1 YOU PURCHASED FROM XXX (DEVELOPER OR AFFILIATE'S
2 NAME), AND XXX HAS A TIME SHARE PLAN CURRENTLY
3 REGISTERED WITH THE STATE OF HAWAII (INCLUDE
4 REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS
5 AN AFFILIATED ENTITY OF THE SELLER AS THAT TERM
6 IS DEFINED IN CHAPTER 514E, HAWAII REVISED
7 STATUTES. THE TIME SHARE INTEREST YOU ARE
8 PURCHASING REQUIRES CERTAIN PROCEDURES TO BE
9 FOLLOWED IN ORDER FOR YOU TO USE YOUR INTEREST.
10 THESE PROCEDURES MAY BE DIFFERENT FROM THOSE
11 FOLLOWED IN OTHER TIME SHARE PLANS. YOU SHOULD
12 READ AND UNDERSTAND THESE PROCEDURES PRIOR TO
13 PURCHASING."

14 (d) The offer or sale of an interest in a time share plan
15 by a developer in accordance with subsection (c) above shall be
16 exempt from the requirements of sections 514E-3, 514E-4, 514E-5,
17 514E-6, 514E-7, 514E-10.5, and 514E-14; the disclosure statement
18 requirements of sections 514E-9 and 514E-11(1); and the
19 registration requirements of section 514E-10.

20 (e) A developer offering a time share plan under this
21 section shall file an application on a form as set forth in
22 subsection (g), along with payment of a one-time fee of \$1,000



1 per time share plan. Within ten days from receipt by the
2 director of a completed application and fee, the director shall
3 issue a limited permit to the developer reflecting that the
4 filing has been accepted, and that the offering of the time
5 share plan is permitted in accordance with the provisions of
6 this section.

7 (f) If at any time the director determines that any
8 requirement of this section has not been complied with, the
9 developer shall be subject to any remedies set forth in section
10 514E-12.

11 (g) The application as described under subsection (e)
12 shall be signed by an officer or principal of the developer, and
13 shall contain the following information:

- 14 (1) The name and principal address of the developer;
15 (2) The name and address of the time share plan being
16 offered;
17 (3) The name and address of the managing entity of the
18 time share plan;
19 (4) The form of business entity of the developer; and
20 (5) The name, address, and telephone number of the officer
21 or principal signing the notice on behalf of the
22 developer.



1 (h) A limited permit issued under this section shall be
2 renewed by December 31 of each year. The developer shall submit
3 a renewal application on a form prescribed by the director along
4 with the renewal fee of \$50. The renewal application shall be
5 deemed accepted upon receipt by the director of the renewal
6 application and fee.

7 (i) For purposes of this section:

8 "Affiliated entity" means a person or other entity that,
9 directly or indirectly through one or more intermediaries, is
10 controlled by or under common control with the developer.

11 "Control," "controlled by," or "under common control with"
12 means the possession of the power to direct or cause the
13 direction of the management and policies of another person or
14 entity, other than by commercial contract for goods or services.
15 Control shall be presumed to exist if the developer has an
16 ownership interest of at least fifty per cent in the other
17 person or entity, or the developer has the same parent
18 corporation as the other entity."

19 SECTION 2. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before its effective date.



- 1 SECTION 3. New statutory material is underscored.
- 2 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 16 day of JUN , 2008



GOVERNOR OF THE STATE OF HAWAII

