

JAN 23 2015

A BILL FOR AN ACT

RELATING TO TIME SHARING.

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

1 SECTION 1. The legislature finds that many time share
2 developers offer short-term products that allow prospective time
3 share buyers to explore the time share experience on a trial
4 basis. The legislature finds that some other states have
5 adopted laws providing a seven-day right of cancellation to
6 short-term product buyers.

7 The legislature further finds that existing time share law
8 requires buyers' funds to be placed in escrow and disbursed from
9 escrow to help the developer pay the costs of construction and
10 development of time share projects. A buyer's funds may also be
11 disbursed prior to the closing and deeding of the property to
12 the buyer.

13 The legislature additionally finds that it is common to
14 include a subordination clause in contracts for the sale of time
15 share interests in a project that has yet to be constructed. In
16 the subordination clause, the buyers subordinate their rights in
17 the project to the lien of the construction lender. As a



1 result, if the developer defaults under the construction loan,
2 the lender may foreclose and acquire title to the project free
3 of any claims of the buyers. This would be true regardless of
4 whether the buyers' funds were used to pay the costs of
5 construction and development.

6 The legislature also finds that some other states have
7 adopted laws permitting a timeshare developer to use buyers'
8 deposits upon posting a bond, thus assuring that the buyers'
9 deposits will be refunded if construction of the project is not
10 completed or the buyers otherwise becomes entitled to a refund.
11 Timeshare developers prefer this approach, and this approach
12 also benefits buyers by providing buyers a remedy in the event
13 that the developer fails to complete construction or defaults
14 under its construction loan.

15 The purpose of this Act is to:

- 16 (1) Provide cancellation rights to persons who contract to
17 buy a short-term product in Hawaii; and
18 (2) Allow disbursement of purchasers' funds to a
19 developer; provided that the developer first posts a
20 bond, letter of credit, or other financial assurance.



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

4 "§514E-A Short-term product; right to cancel. (a) A
5 person who has entered into a contract to purchase a short-term
6 product shall have the right to cancel the contract until
7 midnight of the seventh calendar day, or a later time as
8 provided in the contract, after the date that the short-term
9 product buyer first signs the contract. A short-term product
10 buyer who exercises the right to cancel under this section shall
11 be entitled to a refund of 100 per cent of the consideration
12 paid under the contract, without deduction. Any provision in
13 the contract that is intended to waive the short-term product
14 buyer's right of cancellation shall be void and unenforceable.

15 (b) A short-term product seller shall disclose the
16 following in conspicuous type, in the contract or otherwise, to
17 all short-term product buyers:

18 (1) If the short-term product buyer is required to request
19 a reservation in order to use the accommodations:

20 (A) That reservations for accommodations under the
21 contract are subject to availability;



1 (B) That there is no guarantee that a short-term
2 product buyer will be able to obtain specific
3 accommodations during a specific time period; and

4 (C) That the earlier the short-term product buyer
5 requests a reservation, the greater the
6 opportunity to receive a confirmed reservation;
7 and

8 (2) If the short-term product is subject to blackout
9 dates:

10 (A) That reservations are subject to blackout dates;
11 and

12 (B) That if there are blackout dates, the short-term
13 product seller shall provide a list or calendar
14 for the current year or the coming year
15 identifying specific blackout dates; provided
16 that the list or calendar provided under this
17 subparagraph shall not be required to be in
18 conspicuous type.

19 (c) The contract to purchase a short-term product under
20 this section shall include the date of the contract and contain



1 the following disclosure in conspicuous type immediately above
2 the space provided for the short-term product buyer's signature:

3 "You have the right to cancel this contract at any time
4 prior to midnight of the seventh (or later) calendar day
5 after the date that you sign this contract. You may
6 exercise your right to cancel by sending a facsimile, or by
7 deposit, first-class postage prepaid, into the United
8 States mail to the following address: (specific contact
9 information). If you properly cancel this contract, you
10 are entitled to receive a full refund of the amount paid by
11 you pursuant to this contract.

12 If you buy a time share interest, you will have any right
13 to cancel your contract to purchase a time share interest
14 provided by the law governing the sale of the time share
15 interest. However, if you cancel your contract to purchase
16 a time share interest, you will not be entitled to a refund
17 of any amounts paid by you pursuant to this contract (or
18 specify an alternate refund policy under these
19 circumstances)."

20 (d) A short-term product buyer may exercise the right to
21 cancel by giving written notice to the short-term product seller



pursuant to subsection (c), using a standardized form provided
by the short-term product seller. A short-term product seller
shall mail or otherwise deliver any deposit given by a short-
term product buyer who has exercised the right to cancel
pursuant to subsection (a) no later than: fifteen business days
following receipt of the short-term product buyer's written
notice of cancellation; or fifteen business days following the
date upon which any deposit becomes good and immediately
available funds, whichever is later.

(e) If a short-term product buyer enters into a contract
to purchase a time share interest and all or any portion of the
amount paid by the short-term product buyer for a short-term
product will be applied to or credited against the price of a
time share interest then neither the developer nor any other
party, including but not limited to the short-term product
seller, shall be required to deposit in an escrow account,
pursuant to section 514E-16, any amounts received by the short-
term product seller under the contract to purchase the short-
term product.

(f) An action for violation of this section shall be
brought: no later than four years after the date that the



1 short-term product buyer first signs the contract to purchase a
2 short-term product; or no later than one year after the term of
3 the short-term product ends, whichever is earlier.

4 (g) Short-term products offered by the developer or an
5 affiliate of the developer of a time share plan registered
6 pursuant to this chapter shall not constitute travel services
7 for purposes of chapter 468L. The offer or sale of short-term
8 products by the developer or an affiliate of the developer of a
9 time share plan registered pursuant to this chapter, or by an
10 employee or agent of the developer or affiliate, shall not be
11 subject to chapter 468L.

12 §514E-B Release of purchaser's funds pursuant to bond,
13 letter of credit, or other financial assurance. (a)
14 Notwithstanding the requirements of sections 514E-16 and 514E-17
15 or chapters 514A and 514B, the developer of a time share plan
16 shall be entitled to the release, prior to closing, of 90 per
17 cent of a time share purchaser's funds from escrow after the
18 expiration of the purchaser's seven-day cancellation period
19 under section 514E-8, if the following conditions have been met:

20 (1) The developer has deposited with the director and the
21 escrow agent either: a surety bond or letter of



1 credit; or any other financial assurance acceptable
2 to, and accepted by, the director;

3 (2) The developer has not chosen to protect the purchaser
4 from blanket liens using a lien payment trust or
5 alternative arrangements that require the purchaser's
6 funds to be disbursed from escrow directly to someone
7 other than the developer upon closing; and

8 (3) After the purchaser's funds are released to the
9 developer, the amount of the bond, letter of credit,
10 or other financial assurance, when added to the amount
11 of the purchaser's funds remaining in escrow, will in
12 the aggregate equal or exceed the amount of
13 purchaser's funds that would otherwise be held in
14 escrow.

15 (b) A surety bond filed with the director pursuant to
16 subsection (a) shall be issued by a bonding company that: is
17 authorized to issue bonds in the State; is not affiliated with
18 the developer; and has a financial rating acceptable to the
19 director; provided that a bonding company that has a current
20 rating for debt securities no lower than the third highest grade
21 conferred by at least two of the national reporting services



1 regularly evaluating insurance companies shall be acceptable to
2 the director.

3 (c) If a developer fails to refund a purchaser's funds
4 pursuant to this chapter, then within ninety days after receipt
5 of a demand by the State or the escrow agent, the surety shall
6 deposit with the escrow agent funds sufficient to pay any
7 refunds due and payable to purchasers that the developer has
8 failed to pay. If the surety disputes: whether the developer
9 has failed to refund a purchaser's funds as required by this
10 chapter; the amount of the refunds due and payable to
11 purchasers; or whether the surety is otherwise obligated to make
12 payment under the bond or the extent to which a payment under
13 the bond shall be made, the surety may, concurrently with the
14 deposit of the funds with the escrow agent, demand that the
15 escrow agent commence an action for interpleader and deposit the
16 disputed bond proceeds with the circuit court; provided that the
17 proceeds of the bond shall not be disbursed to any person other
18 than the court or as directed by order of the court.

19 (d) A letter of credit filed with the director pursuant to
20 subsection (a) shall be:



1 (1) Irrevocable; provided that the letter of credit may be
2 amended or canceled with the approval of the director;
3 provided further that the director shall not
4 unreasonably withhold or delay approval;

5 (2) Payable at sight upon presentation by the State or the
6 escrow agent; and

7 (3) Issued by a financial institution acceptable to the
8 director or by a federally insured bank or savings and
9 loan association.

10 (e) If the accommodations of the time share plan are
11 located outside of the State, a bond, letter of credit, or other
12 financial assurance that has been deposited with or accepted by
13 the jurisdiction in which the accommodations are located shall
14 satisfy the requirements of subsection (a) (1); provided that
15 subsections (b) and (c) shall not apply. If the time share plan
16 includes accommodations in more than one jurisdiction and all
17 the accommodations are located outside of the State, a bond,
18 letter of credit, or other financial assurance that has been
19 deposited with or accepted by any foreign jurisdiction
20 acceptable to the director, or by any such jurisdiction in the



1 United States, shall satisfy the requirements of subsection
2 (a) (1).

3 (f) The developer shall deposit with the escrow agent a
4 copy of each purchaser's purchase agreement at the time when the
5 developer is required by section 514E-16 to deposit the
6 purchaser's funds, negotiable instruments, and purchase money
7 contracts.

8 (g) Upon the closing of the escrow for the sale of a time
9 share interest, the remainder of the purchaser's funds held in
10 escrow pursuant to subsection (a) shall be disbursed in
11 accordance with section 514E-18."

12 SECTION 3. Section 514E-1, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By adding five new definitions to be appropriately
15 inserted and to read:

16 "Accommodation" means any apartment, condominium or
17 cooperative unit, cabin, lodge, hotel or motel room, or other
18 real or personal property suitable and intended to provide
19 overnight lodgings for one or more individuals.

20 "Conspicuous type" means type in upper and lower case
21 letters, two point sizes larger than the nearest nonconspicuous



1 type, exclusive of headings, on the page on which it appears and
2 in no less than ten-point type.

3 "Short-term product" means the right to use accommodations
4 on a one-time or recurring basis for a period not to exceed
5 thirty days per stay and for a term of three years or less,
6 inclusive of any extensions or renewals or options to extend or
7 renew, and that includes an agreement that all or a portion of
8 the consideration paid by a person for the short-term product
9 will be applied to or credited against the price of a future
10 purchase of a time share interest or that the cost of a future
11 purchase of a time share interest will be fixed or locked in at
12 a specified price. A short-term product shall not constitute a
13 time share interest.

14 "Short-term product buyer" means an individual who has
15 entered into a contract to purchase a short-term product.

16 "Short-term product seller" means the developer of a short-
17 term product."

18 2. By amending the definition of "notice of time share
19 plan" to read:

20 "Notice of time share plan" means an instrument executed
21 by the holder of the legal and equitable title to the fee or



1 long-term leasehold interest in a time share unit, and which
2 provides notice of the existence of the time share plan and of
3 rights of owners. ~~[The notice of time share plan must identify~~
4 ~~the use period for each time share interest and the name of the~~
5 ~~initial purchaser thereof.]~~ If the time share unit is located
6 outside the State, the notice shall be contained in a
7 declaration of covenants, conditions, and restrictions which
8 provide that the notice shall, as a matter of covenant, have the
9 effects described in section 514E-21. The declaration of
10 covenants, conditions, and restrictions must be prepared so as
11 to (i) constitute a covenant running with and an equitable
12 servitude upon the time share units for the duration of the time
13 share plan, and (ii) have the effects described in section 514E-
14 21."

15 SECTION 4. Section 514E-16, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§514E-16 Deposit of purchaser's funds, notes, and**
18 **contracts into escrow.** (a) All funds and any negotiable
19 instruments and purchase money contracts received before closing
20 from or on behalf of purchasers or prospective purchasers in
21 connection with the purchase or reservation of time share



1 interests must be placed in an escrow account. However, the
2 developer or a sales agent may hold, until the expiration of the
3 seven-day-cancellation period provided by section 514E-8 or any
4 longer purchaser cancellation period provided in the sales
5 contract, a negotiable instrument, or purchase money contract
6 made by a purchaser:

7 (1) For which subsequent holders cannot claim holder in
8 due course status within the meaning of article 3 of
9 chapter 490; or

10 (2) Where the payee is:

11 (A) The escrow agent; or

12 (B) The trustee of a lien payment trust.

13 (b) The escrow agent must be a bank, savings and loan
14 association, or a trust company authorized to do business in the
15 State under an escrow arrangement or a corporation licensed as
16 an escrow depository under chapter 449. However, in connection
17 with sales made out of the State for the use of time share units
18 located in the State, the escrow agent may be located in and the
19 purchasers' funds, negotiable instruments, and purchase money
20 contracts may be impounded in the jurisdiction where the sale is
21 made, if the law of such jurisdiction requires it. In such



1 event, the out-of-state escrow agent shall be subject to the
2 approval of the director.

3 (c) The establishment of such an escrow account shall be
4 evidenced by a written escrow agreement between the developer
5 and the in-state or out-of-state escrow agent. The escrow
6 agreement must provide for the handling of purchaser's funds,
7 negotiable instruments, and purchase money contracts as required
8 by this chapter and must contain any provisions required by
9 rules adopted by the director pursuant to chapter 91.

10 (d) A developer or an affiliate of a developer who
11 provides purchase money financing to a time share purchaser
12 shall transfer payments made by the purchaser prior to closing
13 to the escrow agent for deposit into the escrow account
14 established under subsection (a): within seven business days
15 after receipt of the payments by the developer, an affiliate of
16 the developer, or the developer's or affiliate's servicing
17 agent; or within seven business days following the date upon
18 which any payment made prior to closing becomes good and
19 immediately available funds, whichever is later. Thereafter,
20 the payments may be released from escrow; provided that the



1 release is in accordance with section 514E-17, 514E-18, or
2 514E-B."

3 SECTION 5. Section 514E-30, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§514E-30 Scope of chapter. (a) This chapter applies to
6 the offer and sale in Hawaii of time share interests in time
7 share units located in Hawaii. If time share units are located
8 outside of Hawaii, but any offer or sale is made within the
9 State, this chapter, except for sections 514E-3, 514E-4, 514E-5,
10 514E-6, 514E-7, 514E-10(c), and 514E-14, shall apply. As to the
11 offer and sale outside of Hawaii of time share interest in a
12 time share plan which includes time share units located in
13 Hawaii, this chapter, except for sections 514E-2.5, 514E-8,
14 514E-9, 514E-10(b), 514E-11, and 514E-11.1 shall apply.

15 (b) This chapter applies to the offer and sale in Hawaii
16 of short-term products. This chapter does not apply to the
17 offer or sale of short-term products outside of Hawaii,
18 regardless of whether the short-term product buyer shall have
19 the right to use accommodations in Hawaii."

20 SECTION 6. In codifying the new sections added by section
21 2 of this Act, the revisor of statutes shall substitute



S.B. NO. 754

1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on July 1, 2015.

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S.B. NO. 754

Report Title:

Time Sharing; Time Share; Short-term Product; Right to Cancel;
Purchasers; Developers; Bond; Letter of Credit

Description:

Provides cancellation rights to persons who contract to buy a short-term product in Hawaii. Allows disbursement of purchasers' funds to a developer; provided that the developer first posts a bond, letter of credit, or other financial assurance.

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