
A BILL FOR AN ACT

RELATING TO TIME SHARING PLANS.

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

1 SECTION 1. Section 514E-9, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Any offering of a time sharing plan to the public
4 shall disclose:

5 (1) The name and address of the developer and of the time
6 share units;

7 (2) The name and address of the plan manager, if any, and
8 a description of the plan manager's responsibilities
9 and authority;

10 (3) A list of the primary plan documents and supplementary
11 plan documents.

12 For purposes of this paragraph:

13 "Primary plan documents" means the constituent
14 documents of the time share plan, including any time
15 share declaration; any trust agreement; the articles
16 of incorporation and bylaws of the association, if the
17 association is a corporation, or the operating



1 agreement or similar organizational document, if the
2 association is a limited liability company or other
3 entity; the rules for reserving the use of the time
4 share units; and the rules and regulations governing
5 the occupancy of the time share units. "Primary plan
6 documents" does not include the supplementary plan
7 documents.

8 "Supplementary plan documents" means any
9 declaration of annexation, active property
10 declaration, notice of access, notice of conveyance,
11 notice of activation, deed conveying property to the
12 trustee of a time share plan or to the association,
13 and other instruments submitting or committing
14 property to the time share plan or removing property
15 from the time share plan. To the extent that any such
16 documents modify the terms and provisions of the time
17 share plan as established in the existing primary plan
18 documents, for example, by establishing a new class or
19 category of time share interest having rights that
20 differ from existing time share interests in the time
21 share plan, such documents shall constitute primary



1 plan documents and shall not constitute supplementary
2 plan documents;

3 ~~[(3)]~~ (4) A description of the time share units, including
4 the developer's schedule for completion of all
5 buildings, units, and amenities and dates of
6 availability;

7 ~~[(4)]~~ (5) If the time share plan is located in a
8 condominium property regime, a description of the
9 project and, if the purchaser will own an undivided
10 interest in a fee simple or leasehold condominium unit
11 in the condominium project, a brief description of any
12 pertinent provisions of the project instruments;

13 ~~[(5)]~~ (6) Any restraints on the transfer of the buyer's
14 time share interest in the time share units or plan;

15 ~~[(6)]~~ (7) Whether the time share plan is a time share
16 ownership plan or a time share use plan, along with a
17 description of the rights and responsibilities under
18 said plan;

19 ~~[(7)]~~ (8) A statement that there is a seven-calendar-day
20 period of mutual rescission;



1 ~~[(8)]~~ (9) A statement that pursuant to section 514E-11.3,
2 every sale or transfer, made in violation of this
3 chapter is voidable at the election of the purchaser;
4 ~~[(9)]~~ (10) Notice of any material liens, title defects, or
5 encumbrances on or affecting the title to the units or
6 plan~~[+]~~ and any other lien, title defect, or
7 encumbrance impacting a purchaser's utilization of the
8 property, as the director may require. For all other
9 liens, title defects, and encumbrances, in lieu of
10 listing these in the disclosure statement, a reference
11 may be made to a website by way of link or otherwise,
12 wherein these items may be listed and thereby
13 disclosed, and be available for review along with a
14 statement that the developer has determined that these
15 liens, title defects, and encumbrances are not
16 expected to directly, substantially, and adversely
17 impact utilization of the property by a purchaser;
18 ~~[(10)]~~ (11) Notice of any pending or anticipated suits that
19 are material to the time share units or plan, of which
20 the developer has, or should have, knowledge;



1 interest in a time share plan to an existing purchaser in the
2 same time share plan; provided that:

3 (1) The developer or an affiliated entity of the developer
4 has a time share plan currently registered with the
5 director; provided that the registration was
6 originally approved or amended within seven years from
7 the date of the offer or disposition, and the
8 registration has not been terminated or withdrawn;

9 (2) The developer has not, during the two-year period
10 preceding the time of the offer, had a time share
11 registration suspended, restricted, or revoked in any
12 state or been convicted of an offense involving fraud
13 or dishonesty. In the event the developer satisfies
14 the requirement of paragraph (1) [~~above~~] through an
15 affiliated entity, the developer has not, during the
16 twenty-year period preceding the time of the offer,
17 had a time share registration suspended, restricted,
18 or revoked in any state or been convicted of an
19 offense involving fraud or dishonesty;

20 (3) In satisfaction of the disclosure requirements of
21 section 514E-9, the purchaser is provided the time



1 share disclosure documents the purchaser would have
2 received if the purchase had occurred in the state or
3 jurisdiction where the purchaser initially purchased
4 the time share interest;

5 (4) The contract for purchase signed by the purchaser
6 includes a notice that is the same as or similar to
7 the rescission notice required pursuant to section
8 ~~[514E-9(a)-(7);]~~ 514E-9(a)(8); provided that the
9 rescission period shall be at least seven days;

10 (5) All funds and any negotiable instruments received
11 during the seven-day rescission period shall be placed
12 in an escrow account in the State. The escrow agent
13 shall be a bank, savings and loan association, or
14 trust company authorized to do business in the State
15 under an escrow arrangement or a corporation licensed
16 as an escrow depository under chapter 449. The funds
17 or negotiable instruments may be released from escrow;
18 provided that the release is in accordance with
19 section 514E-17 or 514E-18. Any escrow account
20 established for any out-of-state time share plan
21 offered under this subsection may be maintained in the



1 state where the time share plan is located after the
2 seven-day rescission period has expired; provided that
3 the escrow agent submits to personal jurisdiction in
4 this State;

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

7 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR
8 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY
9 OWN AN INTEREST IN THIS TIME SHARE PLAN AND
10 BECAUSE _____ (DEVELOPER OR
11 AFFILIATE'S NAME) HAS A TIME SHARE PLAN CURRENTLY
12 REGISTERED WITH THE STATE OF HAWAII (INCLUDE
13 REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN
14 AFFILIATED ENTITY OF THE SELLER AS THE TERM IS DEFINED
15 IN CHAPTER 514E, HAWAII REVISED STATUTES."; and

16 (7) The offer complies with the provisions of sections
17 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13),
18 and 514E-11.1."

19 2. By amending subsection (c) to read:

20 "(c) Notwithstanding any other provision of this chapter,
21 the director may issue a limited permit to a developer



1 permitting the offer or sale by the developer, in this State, of
2 a time share interest in a time share plan located outside of
3 this State, but within the United States, to an individual who
4 currently owns a time share interest that was purchased from
5 that developer, or from an affiliated entity of that developer;
6 provided that:

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

14 (2) The developer has not, during the two-year period
15 preceding the time of the offer, had a time share
16 registration suspended, restricted, or revoked in any
17 state or been convicted of an offense involving fraud
18 or dishonesty. In the event the developer satisfies
19 the requirement of paragraph (1) [~~above~~] through an
20 affiliated entity, the developer has not, during the
21 twenty-year period preceding the time of the offer,



- 1 had a time share registration suspended, restricted,
2 or revoked in any state or been convicted of an
3 offense involving fraud or dishonesty;
- 4 (3) The developer shall provide the purchaser with all
5 time share disclosure documents required to be
6 provided to purchasers as if the offer occurred in the
7 state where the time share plan is located;
- 8 (4) The contract for purchase shall include a notice that
9 is the same as or similar to the rescission notice
10 required pursuant to section [~~514E-9(a)(7);~~] 514E-
11 9(a)(8); provided that the rescission period shall be
12 at least seven days;
- 13 (5) In satisfaction of section 514E-16, all funds and any
14 negotiable instruments received during the seven-day
15 rescission period shall be placed in an escrow account
16 in the State. The escrow agent shall be a bank,
17 savings and loan association, or trust company
18 authorized to do business in the State under an escrow
19 arrangement or a corporation licensed as an escrow
20 depository under chapter 449. The funds or negotiable
21 instruments may be released from escrow; provided that



1 the release is in accordance with section 514E-17 or
2 514E-18. Any escrow account established for any out-
3 of-state time share plan offered under this subsection
4 may be maintained in the state where the time share
5 plan is located after the seven-day rescission period
6 has expired; provided that the escrow agent submits to
7 personal jurisdiction in this State;

8 (6) The developer shall provide the purchaser, in writing,
9 either in the disclosure documents or otherwise, all
10 of the following:

11 (A) A description of the type of time share plan
12 offered, including the duration and operation of
13 the time share plan;

14 (B) A description of the existing or proposed
15 accommodations and amenities in the time share
16 plan;

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

19 (D) If applicable, copies of the declaration,
20 association articles of incorporation,



1 association bylaws, and association rules and
2 regulations; and

3 (E) The current annual budget for the time share
4 plan;

5 (7) The time share plan being offered is registered in the
6 state where the time share plan is located; or in the
7 event registration of the time share plan is not
8 required in the state where the time share plan is
9 located, the time share plan being offered is in
10 compliance with the applicable laws of that state; and

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

13 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR
14 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY
15 OWN AN INTEREST IN A TIME SHARE PLAN THAT YOU
16 PURCHASED FROM _____ (DEVELOPER OR
17 AFFILIATE'S NAME), AND _____ HAS A
18 TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF
19 HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE)
20 (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS
21 THAT TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED



1 STATUTES. THE TIME SHARE INTEREST YOU ARE PURCHASING
2 REQUIRES CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER
3 FOR YOU TO USE YOUR INTEREST. THESE PROCEDURES MAY BE
4 DIFFERENT FROM THOSE FOLLOWED IN OTHER TIME SHARE
5 PLANS. YOU SHOULD READ AND UNDERSTAND THESE
6 PROCEDURES PRIOR TO PURCHASING."

7 SECTION 3. Section 514E-10.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§514E-10.5 Consultant review of developer filing.** The
10 director may contract with private consultants in connection
11 with the review of the filing required of time share developers
12 pursuant to section 514E-10(a) and [†](e)[†]. The cost of
13 contracting private consultants shall be borne by the developer;
14 provided that the consultant review required under this section
15 shall not affect the scope of the review under section 514E-27
16 that the director may request for filings that encompass
17 alternative arrangements for purchaser protection. The
18 consultant shall be asked to thoroughly review the filing for
19 the purpose of examining its compliance with the requirements of
20 this chapter and any rule adopted by the director, including the
21 documentation and other provided materials[-]; provided that in



1 lieu of reviewing copies of all encumbrances on title, the
2 consultant may accept a certification from the developer that
3 the developer has reviewed all encumbrances on title and has
4 determined that the time share interest being sold is free and
5 clear of blanket liens or other material encumbrances that may
6 directly, substantially, and adversely impact utilization of the
7 property by a purchaser, or if that is not the case, identifying
8 the blanket liens or other material encumbrances and either
9 specifying how those encumbrances will be addressed or what the
10 impact of such encumbrances may be to the purchaser. Upon
11 completing the review, the consultant shall provide a written
12 analysis of the filing and an opinion of the nature and extent
13 to which it complies with this chapter and adopted rules. The
14 director may adopt rules pursuant to chapter 91 to further
15 delineate the duties of the consultant in undertaking the review
16 and analysis required pursuant to this section."

17 SECTION 4. Section 514E-13, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "~~{}~~§514E-13~~{}~~ **Authority of director.** (a) The director
20 and the several counties may adopt rules and forms, pursuant to
21 chapter 91, to effectuate the purpose of this chapter and to



1 implement its provisions. The director shall submit an annual
2 report to the legislature.

3 (b) The director shall include in the annual report the
4 frequency and circumstances under which a developer's
5 certification was accepted, pursuant to section 514E-10.5, or
6 when it was determined that further review was necessary and the
7 justifications for such further review."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on June 30, 3000.



Report Title:

Time Share Plans; Primary and Secondary Plan Documents; Liens; Disclosure

Description:

Specifies that primary and secondary plan documents be listed in the public disclosure statement of a time share plan. Clarifies when the disclosure of pertinent provisions of condominium project instruments must occur. Clarifies the manner in which the required disclosure of liens, title defects, or encumbrances on the titles of units may be made. Provides that a consultant's review of encumbrances may be waived upon the certification from the developer that the time share interest is free and clear of blanket liens or that identifies all blanket liens. Requires the director of commerce and consumer affairs to include in the annual time share plan report to the legislature information regarding developers' certifications. Effective 6/30/3000. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

