

JAN 20 2023

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# 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 time share  
13 owners association, and other instruments submitting  
14 or committing property to the time share plan or  
15 removing property from the time share plan. To the  
16 extent that any such documents modify the terms and  
17 provisions of the time share plan as established in  
18 the existing primary plan documents (for example, by  
19 establishing a new class or category of time share  
20 interest having rights that differ from existing time  
21 share interests in the time share plan), such



1           documents shall constitute primary plan documents and  
2           shall not constitute supplementary 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 be a direct owner  
10          of a unit in the condominium project, a brief  
11          description of any pertinent provisions of the project  
12          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~~[+]~~. For all other liens, title defects, and  
7           encumbrances, in lieu of listing these in the  
8           disclosure statement, a reference may be made to a  
9           website by way of link or otherwise, wherein such  
10          items may be listed and thereby disclosed, and be  
11          available for review;

12       ~~[(10)]~~ (11) Notice of any pending or anticipated suits that  
13           are material to the time share units or plan, of which  
14           the developer has, or should have, knowledge;

15       ~~[(11)]~~ (12) The total financial obligation of the purchaser,  
16           which shall consist of:

17           (A) A statement that the purchaser is obligated to  
18               pay the initial price stated in the purchaser's  
19               purchase agreement; and

20           (B) A list or description of any additional charges  
21               to which the purchaser may be subject;



1       ~~[(12)]~~ (13) An estimate of the dues, maintenance fees, real  
2                   property taxes, and similar periodic expenses, and the  
3                   method or formula by which they are derived and  
4                   apportioned;

5       ~~[(13)]~~ (14) The disclosure statement under subsection (d),  
6                   if applicable; and

7       ~~[(14)]~~ (15) Other disclosures required by the director, as  
8                   provided by rules adopted pursuant to chapter 91."

9           SECTION 2. Section 514E-10.2, Hawaii Revised Statutes, is  
10   amended as follows:

11           1. By amending subsection (a) to read:

12           "(a) Notwithstanding any other provision of this chapter,  
13   the director may issue a limited permit to a developer  
14   permitting the offer or sale, in this State, of an additional  
15   interest in a time share plan to an existing purchaser in the  
16   same time share plan; provided that:

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



1           the date of the offer or disposition, and the  
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)   In satisfaction of the disclosure requirements of  
15          section 514E-9, the purchaser is provided the time  
16          share disclosure documents the purchaser would have  
17          received if the purchase had occurred in the state or  
18          jurisdiction where the purchaser initially purchased  
19          the time share interest;  
20       (4)   The contract for purchase signed by the purchaser  
21          includes a notice that is the same as or similar to



1 the rescission notice required pursuant to section  
2 [~~514E-9(a)(7)~~] 514E-9(a)(8); provided that the  
3 rescission period shall be at least seven days;

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

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



1 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR  
2 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY  
3 OWN AN INTEREST IN THIS TIME SHARE PLAN AND  
4 BECAUSE \_\_\_\_\_ (DEVELOPER OR  
5 AFFILIATE'S NAME) HAS A TIME SHARE PLAN CURRENTLY  
6 REGISTERED WITH THE STATE OF HAWAII (INCLUDE  
7 REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN  
8 AFFILIATED ENTITY OF THE SELLER AS THE TERM IS DEFINED  
9 IN CHAPTER 514E, HAWAII REVISED STATUTES."; and

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

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

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





- 1           (1) The developer or an affiliated entity of the developer  
2           has a time share plan currently registered with the  
3           director; provided that the registration of the  
4           developer or an affiliated entity of the developer was  
5           originally approved or amended within seven years from  
6           the date of the offer or disposition and which  
7           registration has not been terminated or withdrawn;
- 8           (2) The developer has not, during the two-year period  
9           preceding the time of the offer, had a time share  
10          registration suspended, restricted, or revoked in any  
11          state or been convicted of an offense involving fraud  
12          or dishonesty. In the event the developer satisfies  
13          the requirement of paragraph (1) above through an  
14          affiliated entity, the developer has not, during the  
15          twenty-year period preceding the time of the offer,  
16          had a time share registration suspended, restricted,  
17          or revoked in any state or been convicted of an  
18          offense involving fraud or dishonesty;
- 19          (3) The developer shall provide the purchaser with all  
20          time share disclosure documents required to be



1 provided to purchasers as if the offer occurred in the  
2 state where the time share plan is located;

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

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



1 has expired; provided that the escrow agent submits to  
2 personal jurisdiction in this State;

3 (6) The developer shall provide the purchaser, in writing,  
4 either in the disclosure documents or otherwise, all  
5 of the following:

6 (A) A description of the type of time share plan  
7 offered, including the duration and operation of  
8 the time share plan;

9 (B) A description of the existing or proposed  
10 accommodations and amenities in the time share  
11 plan;

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

14 (D) If applicable, copies of the declaration,  
15 association articles of incorporation,  
16 association bylaws, and association rules and  
17 regulations; and

18 (E) The current annual budget for the time share  
19 plan;

20 (7) The time share plan being offered is registered in the  
21 state where the time share plan is located; or in the



1 event registration of the time share plan is not  
2 required in the state where the time share plan is  
3 located, the time share plan being offered is in  
4 compliance with the applicable laws of that state; and  
5 (8) 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 A TIME SHARE PLAN THAT YOU  
10 PURCHASED FROM \_\_\_\_\_ (DEVELOPER OR  
11 AFFILIATE'S NAME), AND \_\_\_\_\_ HAS A  
12 TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF  
13 HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE)  
14 (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS  
15 THAT TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED  
16 STATUTES. THE TIME SHARE INTEREST YOU ARE PURCHASING  
17 REQUIRES CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER  
18 FOR YOU TO USE YOUR INTEREST. THESE PROCEDURES MAY BE  
19 DIFFERENT FROM THOSE FOLLOWED IN OTHER TIME SHARE  
20 PLANS. YOU SHOULD READ AND UNDERSTAND THESE  
21 PROCEDURES PRIOR TO PURCHASING."



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

3 **"§514E-10.5 Consultant review of developer filing.** The  
4 director may contract with private consultants in connection  
5 with the review of the filing required of time share developers  
6 pursuant to section 514E-10(a) and [+] (e) [+]. The cost of  
7 contracting private consultants shall be borne by the developer;  
8 provided that the consultant review required under this section  
9 shall not affect the scope of the review under section 514E-27  
10 that the director may request for filings that encompass  
11 alternative arrangements for purchaser protection. The  
12 consultant shall be asked to thoroughly review the filing for  
13 the purpose of examining its compliance with the requirements of  
14 this chapter and any rule adopted by the director, including the  
15 documentation and other provided materials[+]; provided that in  
16 lieu of reviewing copies of all encumbrances on title, the  
17 consultant shall accept a certification from the developer that  
18 the time share interest being sold is free and clear of blanket  
19 liens or other material encumbrances that may materially and  
20 adversely impact utilization of the property by a purchaser, or  
21 if that is not the case, identifying the blanket liens or other



1 material encumbrances and either specifying how those  
2 encumbrances will be addressed or what the impact of such  
3 encumbrances may be to the purchaser. Upon completing the  
4 review, the consultant shall provide a written analysis of the  
5 filing and an opinion of the nature and extent to which it  
6 complies with this chapter and adopted rules. The director may  
7 adopt rules pursuant to chapter 91 to further delineate the  
8 duties of the consultant in undertaking the review and analysis  
9 required pursuant to this section."

10 SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

13

INTRODUCED BY:

Lynn A. Coite



# S.B. NO. 797

**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 the manner in which the required disclosure of liens, title defects, or encumbrances on the titles of units may be made. Provides that a review of encumbrances 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.

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

