

JAN 20 2023

A BILL FOR AN ACT

RELATING TO TIME SHARING PLANS.

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

1 SECTION 1. The legislature finds that the sale of a time
2 share interest may only close if the buyers are protected from
3 the foreclosure of blanket liens, such as mortgages, existing at
4 the time of the closing or which may be placed on the property
5 after the closing. For example, if a time share unit is subject
6 to a mortgage at the time of the closing and the developer fails
7 to pay the mortgage, the lender may then foreclose and
8 extinguish the rights of the time share owners to use the time
9 share unit. Existing law requires that the use rights of buyers
10 be protected from existing blanket liens such as this.

11 The rights of buyers must also be protected from blanket
12 liens that may arise in the future. For example, consider a
13 situation where the buyer and developer enter into a contract
14 providing that the developer will retain title to a hotel but
15 that the buyer may use a room each year for the next forty
16 years. Even if the property is free of any mortgage at the time
17 of the sale, the developer could mortgage the property in the



1 future. If the developer does not pay the mortgage, the lender
2 could foreclose and extinguish the rights of the time share
3 owners to use the time share unit. Existing law provides that
4 an escrow may close only if the buyers are protected from both
5 present and future blanket liens using one of the statutorily
6 approved methods.

7 The legislature further finds that in many time share
8 plans, title to the time share units is conveyed into a title
9 holding trust. Under such trusts, a trustee holds title for the
10 benefit of the owners or the association of time share owners,
11 or both. Among other things, a title holding trust is intended
12 to protect the right of the time share buyer to use the time
13 share unit from blanket liens that may arise after the buyer's
14 purchase. To accomplish this, the trust instrument typically
15 restricts the ability of the trustee to submit the time share
16 units to new blanket liens.

17 Developers must submit a title report or other evidence of
18 title as part of the application for registration of a time
19 share plan. The title report will identify any existing blanket
20 liens.



1 If the time share plan uses a title holding trust to
2 protect buyers from future blanket liens, the title report
3 should also show that title has been conveyed to the trustee.
4 If it does not, then upon conveyance of the time share property
5 to the trustee, the developer should be required to submit an
6 update to title report showing title vested in the trustee
7 before the registration is accepted. After the developer has
8 submitted such a title report, however, there is no need to
9 submit additional title reports since the blanket lien
10 protections are fully in place.

11 The legislature also finds that existing law allows
12 developers to protect buyers from blanket liens that may arise
13 in the future by recording a notice of time share plan. When a
14 notice of time share plan is recorded, the rights of the time
15 share owners to use the property are, by statute, protected from
16 claims against the developer and anyone else who signed the
17 notice of time share plan.

18 If the time share plan uses a notice of time share plan to
19 protect buyers from future blanket liens, the title report
20 should show that the notice of time share plan has been
21 recorded. If it does not, then upon recordation of the notice



1 of time share plan, the developer should be required to submit
2 an update to title report showing such recordation before the
3 registration is accepted. After the developer has submitted
4 such a title report, however, there is no need to submit
5 additional title reports on the property subject to the notice
6 of time share plan since the blanket lien protections are fully
7 in place.

8 The legislature further finds that many modern time share
9 plans include time share units from other states or even other
10 countries. In recognition of the impossibility or
11 impracticability of a proposed time share plan satisfying some
12 of the requirements of the previously discussed methods because
13 of factors over which the developer has little or no control,
14 the director may accept alternative arrangements for the
15 protection of the use rights of purchasers.

16 Some alternative arrangements may require that various
17 documents be recorded in the State or in the recording systems
18 of other jurisdictions. If the alternative arrangements require
19 the recordation of documents to protect buyers from blanket
20 liens, the title report should reflect the recordation of such
21 documents. If it does not, then upon recordation of the



1 documents, the developer should be required to submit an update
2 to title report showing such recordation before the registration
3 is accepted. After the developer has submitted such a title
4 report, however, there is no need to submit additional title
5 reports on such property since the blanket lien protections are
6 fully in place.

7 The purpose of this Act is to bolster the protections
8 provided for buyers of time share units by:

9 (1) For time share plans that use a title holding trust to
10 protect buyers from future blanket liens, requiring
11 the developer to submit a title report showing that
12 title to the time share property is vested in the
13 trustee, but it is not thereafter necessary to submit
14 additional title reports on that time share property;

15 (2) For time share plans that use a notice of time share
16 plan to protect buyers from future blanket liens,
17 requiring the developer to submit a title report
18 showing that the notice of time share plan has been
19 recorded on title to the time share property, but it
20 is not thereafter necessary to submit additional title
21 reports on that time share property; and



(3) For time share plans that use recorded documents as part of alternative arrangements intended to protect buyers from future blanket liens, requiring the developer to submit a title report showing the recordation of all documents required to be recorded as part of the alternative arrangements, but it is not thereafter necessary to submit additional title reports on that time share property.

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

"§514E-10 Registration required; developer, acquisition agent, plan manager, and exchange agent; registration renewal.

(a) A developer shall not offer or dispose of a time share unit or a time share interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the time share plan to be offered by the developer is accepted by the director for registration under this chapter. The director shall not accept a developer's time share plan if the developer does not possess a history of honesty, truthfulness, financial integrity, and fair dealing.



1 (b) An acquisition agent (including the developer if it is
2 also the acquisition agent) shall register under this chapter by
3 filing with the director a statement setting forth the time
4 sharing plan for which it is providing prospective purchasers,
5 its address, the telephone number, other information required by
6 the director as provided by rules adopted pursuant to chapter
7 91, and, if the acquisition agent is not a natural person, the
8 name of the responsible managing employee; provided that an
9 acquisition agent licensed under chapter 467 as a real estate
10 broker shall not be required to register under this chapter.
11 All acquisition agents not licensed under chapter 467 shall be
12 approved by the director. The director shall not approve any
13 acquisition agent who is not of good character and who does not
14 possess a reputation for honesty, truthfulness, and fair
15 dealing. The acquisition agent shall furnish evidence that the
16 acquisition agent is bonded as required by rules adopted by the
17 director pursuant to chapter 91 to cover any violation by the
18 acquisition agent of any solicitation ordinance or other
19 regulation governing the use of the premise or premises in which
20 the time share plan is promoted; provided that the acquisition



1 agent shall be separately bonded for each time share plan for
2 which it is providing prospective purchases.

3 (c) A plan manager (including the developer if it is also
4 the plan manager) shall register under this chapter by filing
5 with the director a statement setting forth the time sharing
6 plan that it is managing, its principal office address,
7 telephone number, and responsible managing employee. The plan
8 manager shall furnish evidence that the plan manager is bonded
9 as required by rules adopted by the director pursuant to chapter
10 91 to cover any default of the plan manager and any of its
11 employees of their duties and responsibilities; provided that
12 the plan manager shall be separately bonded for each time share
13 plan under the management of the plan manager.

14 (d) An exchange agent (including the developer if it is
15 also an exchange agent) shall register under this chapter by
16 filing with the director a statement setting forth the time
17 sharing plan for which it is offering exchange services, its
18 principal office address and telephone number, and designate its
19 responsible managing employee.

20 (e) Any plan manager or developer registration required in
21 this section shall be renewed by December 31 of each even-



1 numbered year, and any acquisition agent or exchange agent
2 registration required in this section shall be renewed on
3 December 31 of each odd-numbered year; provided that this
4 subsection shall not relieve the person required to register
5 from the obligation to notify the director promptly of any
6 material change in any information submitted to the director,
7 nor shall it relieve the developer of its obligation to promptly
8 file amendments or supplements to the disclosure statement, and
9 to promptly supply the amendments or supplements to purchasers
10 of time share interests.

11 (f) An application for renewal of a developer registration
12 shall be on a form prescribed by the director and shall include:

13 (1) A current disclosure statement that meets the
14 requirements of section 514E-9 and section 16-106-3,
15 Hawaii Administrative Rules, if not already on file;

16 (2) A statement that is certified by the developer to be
17 true and correct in all respects and that identifies,
18 as appropriate:

19 (A) The time share units in the time share plan
20 registered pursuant to this chapter; the total
21 number of time share interests registered for



1 sale in each unit pursuant to this chapter; and
2 the total number of time share interests that
3 have not yet been sold as of the date specified
4 in the developer's certification, which date
5 shall not be more than sixty days prior to the
6 date of the developer's certification; or

7 (B) The property in the time share plan registered
8 pursuant to this chapter; the total number of
9 points registered for sale in each property
10 pursuant to this chapter; and the total number of
11 points in the time share plan that have not yet
12 been sold as of the date specified in the
13 developer's certification, which date shall not
14 be more than sixty days prior to the date of the
15 developer's certification;

16 (3) If the developer is a corporation, partnership, joint
17 venture, limited liability company, or limited
18 liability partnership, an original certificate of good
19 standing issued by the business registration division
20 of the department of commerce and consumer affairs not



more than forty-five days before the date of
submission of the renewal application; and

(4) The biennial renewal fee.

(g) Developers shall not be required to include the
following in an application for renewal of a developer
registration of a time share plan:

(1) A financial statement of the developer; or

(2) A policy of title insurance, a preliminary title
report, abstract of title, or certificate of title on
the units or time share interests in the time share
plan.

(h) To the extent that a time share plan utilizes a title
holding trust to protect the rights of purchasers to use the
time share property from blanket liens that may arise subsequent
to the closing of the sale of a time share interest:

(1) The developer shall submit a title report:

(A) Showing that title to the time share units or
time share interest to be protected by a title
holding trust has been conveyed to the trustee;
and



1 (B) Showing the recordation of any documents required
2 to be recorded for the purpose of protecting the
3 rights of purchases to use the time share
4 property from blanket liens that will remain on
5 title subsequent to the closing; and

6 (2) The developer shall not thereafter be required to
7 submit additional title reports on property covered by
8 a title report that meets the requirements of
9 paragraph (1).

10 (i) To the extent that a time share plan utilizes a notice
11 of time share plan to protect the rights of purchasers to use
12 the time share property from blanket liens that may arise
13 subsequent to the closing of the sale of a time share interest:

14 (1) The developer shall submit a title report:

15 (A) Showing that a notice of time share plan has been
16 recorded on title to the time share units or time
17 share interests to be so protected; and

18 (B) Showing the recordation of any documents required
19 to be recorded for the purpose of protecting the
20 rights of purchasers to use the time share



1 property from blanket liens that will remain on
2 title subsequent to the closing; and

3 (2) The developer shall not thereafter be required to
4 submit additional title reports on property covered by
5 a title report that meets the requirements of
6 paragraph (1).

7 (j) To the extent that a time share plan utilizes
8 alternative arrangements to protect the rights of purchasers to
9 use the time share property from blanket liens:

10 (1) The developer shall submit a title report showing the
11 recordation of all documents that, as part of the
12 alternative arrangements accepted by the director, are
13 required to be recorded for the purpose of protecting
14 the rights of purchasers to use the time share
15 property from blanket liens; and

16 (2) The developer shall not thereafter be required to
17 submit additional title reports on property covered by
18 a title report that meets the requirements of
19 subsection (1)."

20 SECTION 3. New statutory material is underscored.

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



S.B. NO. 799

1

INTRODUCED BY:

Lyn D. Crite



S.B. NO. 799

Report Title:

Time Share Plans; Title Reports; Blanket Liens

Description:

For time share plans that use title-holding trusts, requires the developer to submit a title report evidencing that the title vested in the trustee. For time share plans that use a notice of time share plan, requires the recordation of the notice and its submission. For time share plans that use alternative arrangements, requires the recordation of any alternative arrangement documents.

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

