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

20 The legislature also finds that existing law allows  
21 developers to protect buyers from blanket liens that may arise



1 in the future by recording a notice of time share plan. When a  
2 notice of time share plan is recorded, the rights of the time  
3 share owners to use the property are, by statute, protected from  
4 claims against the developer and anyone else who signed the  
5 notice of time share plan.

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

16 If the time share plan uses a title holding trust or notice  
17 of time share plan, or if alternative arrangements require the  
18 recordation of documents, to protect buyers from future blanket  
19 liens, the title report should also show that title has been  
20 conveyed to the trustee, the notice of time share plan has been  
21 recorded, or the required documents have been recorded,



1 respectively. If it does not, then upon conveyance to the  
2 trustee or recordation of the time share property, the developer  
3 should be required to submit an update to the title report  
4 showing title vested in the trustee or showing the recordation  
5 of the required documents before the registration is accepted.  
6 After the developer has submitted such a title report, however,  
7 there is no need to submit additional title reports since the  
8 blanket lien protections are fully in place.

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

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

18 (2) For time share plans that use a notice of time share  
19 plan to protect buyers from future blanket liens,  
20 requiring the developer to submit a title report  
21 showing that the notice of time share plan has been



1 recorded on title to the time share property, but not  
2 requiring the developer thereafter to submit  
3 additional title reports on that time share property;  
4 and

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

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

15 "**§514E-10 Registration required; developer, acquisition**  
16 **agent, plan manager, and exchange agent; registration**  
17 **renewal[-]; title report; title holding trusts.** (a) A

18 developer shall not offer or dispose of a time share unit or a  
19 time share interest unless the disclosure statement required by  
20 section 514E-9 is filed with the director pursuant to the time  
21 specified in this chapter, or the development is exempt from



1 filing, and the time share plan to be offered by the developer  
2 is accepted by the director for registration under this chapter.  
3 The director shall not accept a developer's time share plan if  
4 the developer does not possess a history of honesty,  
5 truthfulness, financial integrity, and fair dealing.

6 (b) An acquisition agent (including the developer if it is  
7 also the acquisition agent) shall register under this chapter by  
8 filing with the director a statement setting forth the time  
9 sharing plan for which it is providing prospective purchasers,  
10 its address, the telephone number, other information required by  
11 the director as provided by rules adopted pursuant to chapter  
12 91, and, if the acquisition agent is not a natural person, the  
13 name of the responsible managing employee; provided that an  
14 acquisition agent licensed under chapter 467 as a real estate  
15 broker shall not be required to register under this chapter.

16 All acquisition agents not licensed under chapter 467 shall be  
17 approved by the director. The director shall not approve any  
18 acquisition agent who is not of good character and who does not  
19 possess a reputation for honesty, truthfulness, and fair  
20 dealing. The acquisition agent shall furnish evidence that the  
21 acquisition agent is bonded as required by rules adopted by the



1 director pursuant to chapter 91 to cover any violation by the  
2 acquisition agent of any solicitation ordinance or other  
3 regulation governing the use of the premise or premises in which  
4 the time share plan is promoted; provided that the acquisition  
5 agent shall be separately bonded for each time share plan for  
6 which it is providing prospective purchases.

7 (c) A plan manager (including the developer if it is also  
8 the plan manager) shall register under this chapter by filing  
9 with the director a statement setting forth the time sharing  
10 plan that it is managing, its principal office address,  
11 telephone number, and responsible managing employee. The plan  
12 manager shall furnish evidence that the plan manager is bonded  
13 as required by rules adopted by the director pursuant to chapter  
14 91 to cover any default of the plan manager and any of its  
15 employees of their duties and responsibilities; provided that  
16 the plan manager shall be separately bonded for each time share  
17 plan under the management of the plan manager.

18 (d) An exchange agent (including the developer if it is  
19 also an exchange agent) shall register under this chapter by  
20 filing with the director a statement setting forth the time  
21 sharing plan for which it is offering exchange services, its



1 principal office address and telephone number, and designate its  
2 responsible managing employee.

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

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

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



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

4 (A) The time share units in the time share plan  
5 registered pursuant to this chapter; the total  
6 number of time share interests registered for  
7 sale in each unit pursuant to this chapter; and  
8 the total number of time share interests that  
9 have not yet been sold as of the date specified  
10 in the developer's certification, which date  
11 shall not be more than sixty days prior to the  
12 date of the developer's certification; or

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



1 (3) If the developer is a corporation, partnership, joint  
2 venture, limited liability company, or limited  
3 liability partnership, an original certificate of good  
4 standing issued by the business registration division  
5 of the department of commerce and consumer affairs not  
6 more than forty-five days before the date of  
7 submission of the renewal application; and

8 (4) The biennial renewal fee.

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

12 (1) A financial statement of the developer; or

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

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

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



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

5           (B) Showing the recordation of any documents required  
6           to be recorded for the purpose of protecting the  
7           rights of purchasers to use the time share  
8           property from blanket liens that will remain on  
9           title subsequent to the closing; and

10          (2) The developer shall not thereafter be required to  
11          submit additional title reports on property covered by  
12          a title report that meets the requirements of  
13          paragraph (1).

14          (i) To the extent that a time share plan utilizes a notice  
15          of time share plan to protect the rights of purchasers to use  
16          the time share property from blanket liens that may arise  
17          subsequent to the closing of the sale of a time share interest:

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

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



1           (B) Showing the recordation of any documents required  
2           to be recorded for the purpose of protecting the  
3           rights of purchasers 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          (j) To the extent that a time share plan utilizes  
11 alternative arrangements to protect the rights of purchasers to  
12 use the time share property from blanket liens:  
13          (1) The developer shall submit a title report showing the  
14          recordation of all documents that, as part of the  
15          alternative arrangements accepted by the director, are  
16          required to be recorded for the purpose of protecting  
17          the rights of purchasers to use the time share  
18          property from blanket liens; and  
19          (2) The developer shall not thereafter be required to  
20          submit additional title reports on property covered by



1           a title report that meets the requirements of  
2           paragraph (1)."

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

5           SECTION 4. This Act shall take effect on June 30, 3000.



**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 is 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. Effective 6/30/3000. (HD1)

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