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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.

11                         For purposes of this paragraph:

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



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

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



1           shall constitute primary plan documents and shall not  
2           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~~+~~ 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 the items may be listed and thereby disclosed,  
13          and be available for review along with a statement  
14          that the developer has determined that these liens,  
15          title defects, and encumbrances are not expected to  
16          directly, substantially, and adversely impact  
17          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       ~~[(11)]~~ (12) The total financial obligation of the purchaser,  
2               ~~[which]~~ that shall consist of:

3               (A) A statement that the purchaser is obligated to  
4               pay the initial price stated in the purchaser's  
5               purchase agreement; and

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

8       ~~[(12)]~~ (13) An estimate of the dues, maintenance fees, real  
9               property taxes, and similar periodic expenses, and the  
10              method or formula by which they are derived and  
11              apportioned;

12       ~~[(13)]~~ (14) The disclosure statement under subsection (d),  
13              if applicable; and

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

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

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

19           "(a) Notwithstanding any other provision of this chapter,  
20       the director may issue a limited permit to a developer  
21       permitting the offer or sale, in this State, of an additional



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~~] the  
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 shall 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 the 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. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

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



**Report Title:**

Time Share Plans; Disclosure Statement; Primary Plan Documents; Supplementary Plan Documents; Material Liens; Title Defects; Encumbrances; Contracted Private Consultant

**Description:**

Specifies that primary plan documents be listed in the public disclosure statement of a time share plan. Specifies when supplementary plan documents are to be considered primary plan documents subject to disclosure. 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 by a contracted private consultant shall be waived upon the certification from the developer that the developer reviewed all encumbrances on title and determined that the time share interest is free and clear of blanket liens or that identifies all blanket liens. 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.*

