

A Bill for an Act Relating to Time Sharing Sales.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 514E, Hawaii Revised Statutes, is amended by adding new sections to be appropriately designated and to read as follows:

“§514E- Power to enjoin. Whenever it shall appear to the director, upon complaint or otherwise, that any person has engaged in, is engaged in, or is about to engage in any act, practice or transaction in violation of this chapter or the rules of the director adopted pursuant thereto, the director may conduct an investigation of the matter. Whenever the director finds that such person has engaged in, is engaged in, or is about to engage in any act, practice or transaction in violation of this chapter or the rules of the director adopted pursuant thereto, the director may, in addition to any other remedies, bring suit in the name and on behalf of the State against such

person and any other person or persons concerned in, or in any way participating in, or about to participate in such act, practice or transaction in violation of this chapter or rules adopted pursuant thereto, to enjoin such person and such other person or persons from continuing such act, practice or transaction, or engaging therein, or doing any act or acts in furtherance thereof or in violation of this chapter or rules adopted pursuant thereto. The remedies under this section are in addition to any other remedies provided by this chapter or by law.

§514E- Remedies; sales voidable; when and by whom. (a) Every sale or transfer made in violation of this chapter shall be voidable at the election of the purchaser. Without limiting any other remedy of the purchaser, the person making the sale or transfer and every director, officer, or agent of or for the seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, transfer, or solicitation, shall be jointly and severally liable to the purchaser in any action at law in any court of competent jurisdiction upon tender of the time share interest sold, or of the contract made, for the full amount paid by the purchaser, with interest at the rate of ten per cent a year from the date of payment by the purchaser, together with all taxable court costs and reasonable attorney's fees, less a pro rata portion of the amount paid representing the portion of any benefits the purchaser actually received or had the right to receive during the time preceding tender.

§514E- Defense to action. In the event a purchaser of a time share interest brings an action for damages under this chapter or under chapter 480, pursuant to section 514E- , it shall be a defense to the action that:

- (1) The seller offered in writing to cancel the sale of the time share interest within fifteen days of receipt of written notification by the purchaser of an alleged violation of this chapter or chapter 480, pursuant to section 514E- ;
- (2) The seller simultaneously with the offer of cancellation offered in writing to refund the full amount paid by the purchaser, together with interest thereon at the rate of ten per cent a year from the date of payment by the purchaser until the date of repayment, less a pro rata portion of the amount paid representing the portion of any benefits the purchaser actually received or had the right to receive during the time preceding cancellation; and
- (3) The purchaser refused or failed to accept the written offer of cancellation and refund within thirty days from the date the purchaser received the seller's written offer of cancellation and refund.

§514E- Statutory or common law remedies. Nothing in this chapter shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the development, sale, exchange, or purchase of a time share interest, or right of the State to punish any person for any violation of law.

§514E- Deceptive trade practices. It shall constitute an unfair or deceptive practice, within the meaning of chapter 480, for any developer, acquisition agent, or sales agent to:

- (1) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, or other inducements without fully disclosing that the device is being used for the purpose of soliciting sales

of time share interests;

- (2) Fail to inform each purchaser orally and in writing, at the time he signs the contract of his five-day right to cancel or void the contract to purchase a time share interest in a time share plan or unit;
- (3) Misrepresent in any manner the purchaser's right to cancel or void any contract to purchase a time share interest in a time share plan or unit;
- (4) Include in any contract or document provisions purporting to waive any right or benefit to which the purchaser is entitled under this chapter;
- (5) Fail or refuse to honor any valid notice of cancellation of the contract by the purchaser, and within fifteen business days after receipt of such notice, fail or refuse to refund all payments made under the contract or sale; or fail or refuse to cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any appropriate action to terminate promptly any mortgage, lien, or other security interest created in connection with the transaction;
- (6) Fail to include on promotional literature and other printed or written material the caption "THIS IS A TIME SHARING SALES PRESENTATION" (in capital letters of 24-point bold type, or type as large as the largest printing or writing elsewhere in the material), under which must be printed (in type of the same size as the caption described above) the following: "Any purchaser has, under the law, a five-day right of rescission of any time sharing sales contract";
- (7) Misrepresent the amount of time or period of time the time share unit will be available to any purchaser;
- (8) Misrepresent or deceptively represent the location or locations of the offered time share unit;
- (9) Misrepresent the size, nature, extent, qualities, or characteristics of the offered time share units;
- (10) Misrepresent the nature or extent of any services incident to the time share unit;
- (11) Misrepresent the conditions under which a purchaser may exchange his occupancy rights to a time share unit in one location for occupancy rights to a time share unit in another location; or
- (12) Fail to orally disclose during the initial contact with a prospective purchaser that any promised entertainment, prizes, gifts, food and drinks, games, or other inducements are being offered for the purpose of soliciting sales of time share interests in time share units or plans.

§514E- Exchange program; general provisions. (a) An exchange agent (including the developer if it is also an exchange agent) shall distribute not less than annually to each purchaser of a time share interest participating in the exchange program materials containing written information which shall include the following:

- (1) The manner in which the program is operated, the identity of the persons operating the program, and the affiliation between the persons operating the program and the developer;
- (2) Whether membership, participation, or both, in the program are voluntary or mandatory;
- (3) The costs or ranges of costs of membership and participation in the

program as of a specified date, not more than one year before the disclosure statement is delivered to the purchaser, and the person to whom those costs are payable;

- (4) Whether and how any of the costs specified in paragraph (3) may be altered, which costs are to be fixed on a case-by-case basis, and the manner in which they are to be fixed in each case;
- (5) A description of the availability of time share units represented to be participating in the exchange program;
- (6) The reservation and confirmation or other procedures to effectuate the exchange of occupancy rights; and
- (7) Other disclosures required by the director as provided by rules adopted pursuant to chapter 91.

(b) A copy of the most current written materials supplied by the exchange agent pursuant to subsection (a) of this section shall be delivered to each purchaser simultaneously with the delivery of the disclosure statement.

(c) If the exchange agent is not the developer, a subsidiary of the developer, controlled by the developer, or affiliate with the developer, then:

- (1) The developer shall have no liability for the publication or distribution by the developer of the most current written materials supplied to the developer by the exchange agent pursuant to this section or the rules adopted by the director; and
- (2) The exchange agent shall have no liability with respect to any violation of this chapter or the rules adopted by the director arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange agent.

§514E- Licensing of sales agents and acquisition agents. Except as provided in section 467-2, no sales agent or acquisition agent shall act or assume to act as a real estate salesman or a real estate broker without a license previously obtained under and in compliance with chapter 467 and the rules and regulations of the real estate commission."

SECTION 2. Section 514E-1, Hawaii Revised Statutes, is amended by amending the definition of "Sales agent" to read as follows:

"(8) "Sales agent" means a person who sells or offers to sell for compensation a time share interest in a time share plan, except a person who acquired a time share interest for the person's own occupancy and later offers it for resale."

SECTION 3. Section 514E-1, Hawaii Revised Statutes, is amended by adding four definitions to be appropriately designated and to read as follows:

() "Exchange agent" means a person who operates an exchange program.

() "Exchange program" means a plan or program in which the owners or holders of time share interests in time share plan may exchange occupancy rights among themselves or with the owners or holders of time share interests in other time share plans or with the owner or holders of units in other projects.

() "Persons" means one or more natural persons, partnerships, joint ventures, corporations, associations, trusts, other entities, or any combination thereof.

() "Time share interest" means any interest in a time share unit or plan which entitles the owner or holder thereof to the use, occupancy or possession of a time

share unit on a periodically recurring basis.”

SECTION 4. Section 514E-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any offering of a time sharing plan to the public shall disclose:

- (1) The name and address of the developer and of the time share units;
- (2) The name and address of the plan manager, if any, and a description of his responsibilities and authority;
- (3) A description of the time share units, including the developer’s schedule for completion of all buildings, units and amenities and dates of availability;
- (4) If the time share plan is located in a horizontal property regime, a description of the project and any pertinent provisions of the project instruments;
- (5) Any restraints on the transfer of the buyer’s time share interest in the time share units or plan;
- (6) Whether the time share plan is a time share ownership plan or a time share use plan, along with a description of the rights and responsibilities under said plan;
- (7) A statement that there is a five calendar day period of mutual rescission;
- (8) A statement that pursuant to section 514E- , every sale or transfer, made in violation of this chapter is voidable at the election of the purchaser;
- (9) Notice of any liens, title defects or encumbrances on or affecting the title to the units or plan;
- (10) Notice of any pending or anticipated suits that are material to the time share units or plan, of which the developer has, or should have, knowledge;
- (11) The total financial obligation of the purchaser, which shall include the initial price and any additional charges to which the purchaser may be subject;
- (12) An estimate of the dues, maintenance fees, real property taxes, and similar periodic expenses, and the method or formula by which they are derived and apportioned; and
- (13) Other disclosures required by the director, as provided by rules adopted pursuant to chapter 91.”

SECTION 5. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

“§514E-10 Filing required; developer, sales agent, acquisition agent, exchange agent, and plan manager. (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.

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall file with the director a statement setting forth the time sharing plan or plans for which it is providing prospective purchasers, its address, the telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the acquisition agent is not a natural person, the name

of the responsible managing employee. All acquisition agents not licensed under chapter 467 shall be approved by the director. The director shall not approve any acquisition agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The acquisition agent shall furnish evidence that (i) a bond or blanket bond of \$10,000 has been placed with a surety company or a cash bond with the director to cover any violations by the acquisition agent of any solicitation ordinances, or other regulations governing the use of the premise or premises in which time sharing plan or plans are promoted; or (ii) that the acquisition agent is currently licensed pursuant to chapter 467 as a real estate salesman or a real estate broker and his activities as such are covered by the real estate recovery fund established pursuant to chapter 467.

(c) A sales agent (including the developer, if it is also the sales agent) shall file with the director a statement setting forth the time sharing plan or plans that it is selling, its address, telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the sales agent is not a natural person, the name of the responsible managing employee and any special escrow accounts set up for the deposit and collection of purchasers' funds. All sales agents not licensed under chapter 467 shall be approved by the director. The director shall not approve any sales agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The sales agent shall furnish evidence that (i) a bond or blanket bond of \$10,000 has been placed with a surety company or file a cash bond with the director to cover any violations by the sales agent; or (ii) that the sales agent is currently licensed pursuant to chapter 467 as a real estate salesman or real estate broker and his activities as such are covered by the real estate recovery fund established pursuant to chapter 467.

(d) A plan manager (including the developer if it is also the plan manager), shall file with the director a statement setting forth the time sharing plan or plans that it is managing, its principal office address, telephone number, and responsible managing employee. The plan manager shall furnish evidence that a blanket bond of \$10,000 has been placed with a surety company or file a cash bond with the director to cover any default of the plan manager and any of its employees of their duties and responsibilities.

(e) An exchange agent (including the developer if it is also an exchange agent) shall file with the director a statement setting forth the time share plan or plans for which it is offering exchange services, its principal office address and telephone number, and designate its responsible managing employee.

(f) If the acquisition agent, sales agent, or plan manager are under the control of, a subsidiary of, or an affiliate of the developer, the bonds or blanket bonds can be consolidated and set in the amount of \$20,000; provided that there is a disclosure of the affiliation.

(g) Any filing required in this section shall be renewed on December 31 of each odd-numbered year; provided that this shall not relieve the person required to file from the obligation to notify the director promptly of any material change in any information submitted to the director nor shall it relieve the developer of its obligation promptly to file amendments or supplements to the disclosure statement and to supply the same to purchasers of time share interests."

SECTION 6. Section 514E-11, Hawaii Revised Statutes, is amended to read

as follows:

“§514E-11 Prohibited practices. It is a violation of this chapter for any sales agent or acquisition agent of time share units or plans to:

- (1) Fail to comply with the disclosure requirements set forth in section 514E-9 or any rule adopted pursuant thereto;
- (2) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, or other inducements, or make any offer thereof, without fully disclosing that the device is being used or offered for the purpose of soliciting sales of time share units or interests;
- (3) Misrepresent or deceptively represent any material fact concerning the time share plan or time share unit;
- (4) Fail to honor and comply with all provisions of a contract or reservation agreement with the purchaser;
- (5) Include, in any contract or reservation agreement, provisions purporting to waive any right or benefit provided for purchasers pursuant to this chapter;
- (6) Receive from any prospective purchaser any money, property (including but not limited to a credit card), or other valuable consideration prior to signing a contract or reservation agreement for the purchase of a time share plan or unit; or
- (7) Make a sales presentation to a prospective purchaser before delivering, furnishing, or tendering to that prospective purchaser any promised promotional device or other instrument.”

SECTION 7. Section 514E-12, Hawaii Revised Statutes, is amended to read:

“§514E-12 Civil penalty; suspension or revocation of registrations. (a) If the director determines, after notice and a hearing, that any person has violated any provision of this chapter or any rule adopted by the director pursuant to this chapter, or that a person has authorized, directed, ordered, or personally participated in any violation of this chapter or any rule adopted by the director pursuant to this chapter, the director may issue a cease and desist order requiring such person to cease and desist from that conduct. The cease and desist order may also require such person to comply with the provisions of this chapter and the director’s rules and orders and take affirmative action to correct conditions resulting from that conduct or failure to comply.

(b) If the director determines, after notice and a hearing, that any person has failed to comply with a cease and desist order issued by the director or has concealed, diverted, or disposed of any funds or assets of any person in any manner impairing the rights of purchasers of time share interest, then the director:

- (1) May fine such person a sum of not less than \$500 nor more than \$10,000 for each separate offense. Each date of violation shall constitute a separate offense;
- (2) May issue an order suspending or revoking the registration of such person and the right of such person to offer or sell time share interests. For the first offense, the director shall suspend the registration of such person and the right of such person to offer or sell time share interests for a period of thirty days. For the second offense, the director shall revoke permanently

the registration of such person and the right of such person to offer or sell time share interests.”

SECTION 8. Chapter 514E, Hawaii Revised Statutes, is amended by adding to a new section to be appropriately designated to read as follows:

“§514E- Severability. If any provision of this chapter or the application thereof to any person or circumstance, is held invalid, the invalidity thereof shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application. To that end, the provisions of this chapter are severable.”

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

“§514E-2 Status of property. (a) The temporal division of any interest in real property shall not, in and of itself, affect its status as real property.

(b) Whether a time share plan is a time share ownership plan or time share use plan, for purposes of a chapter 467 a time share interest shall constitute “real estate” and the offer or sale thereof shall constitute the offer or sale of an interest in real property.”

SECTION 10. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 11. This Act, except for section 9 of this Act, shall take effect upon its approval. Section 9 of this Act shall take effect on January 1, 1982.

(Approved May 30, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.