

ACT 186

H.B. NO. 3078-82

A Bill for an Act Relating to Time Sharing.

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

SECTION 1. The following index is provided to assist the readers hereof in finding the relevant portions of this Act:

Section 2.	(§514E-2.5)	Licensing of Sales Agents and Acquisition Agents.
Section 3.	(§514E-16)	Deposit of Purchaser's Funds, Notes and Contracts in Escrow.
Section 4.	(§514E-17)	Release of Purchaser's Funds, Notes and Contracts From Escrow Without A Closing.
Section 5.	(§514E-18)	Release of Purchaser's Funds, Notes and Contracts Upon Closing.
Section 6.		Definitions: "Blanket Lien" "Non-Disturbance Agreement" "Notice of Time Share Plan" "Purchase Money Lien" "Purchase Money Contract" "Record" "Negotiable Instrument" "Purchaser" "Owner" "Association"
Section 7.	(§514E-19)	Protection of Purchasers From Blanket Liens.
Section 8.	(§514E-20)	Effect of Recording a Nondisturbance Agreement.
Section 9.	(§514E-21)	Effect of Recording A Notice of Time Share Plan.

Section 10.	(§514E-22)	General Requirements for Trusts
Section 11.	(§514E-23)	Requirements for Trustees
Section 12.	(§514E-24)	Additional Requirements for Lien Payment Trusts.
Section 13.	(§514E-25)	Lien Payment Deposit
Section 14.	(§514E-26)	Termination of A Trust
Section 15.	(§514E-27)	Alternative Arrangements for Purchaser Protections.
Section 16.	(§514E-28)	Requirements for Surety Bonds and Letters of Credit.
Section 17.	(§514E-29)	Association.
Section 18.	(§514E-30)	Scope of This Act.
Section 19.		Material Repealed.
Section 20.		Effective Date.

SECTION 2. Section 514E-2.5, Hawaii Revised Statutes, is amended to read:

**“§514E-2.5 Licensing of sales agents and acquisition agents.** (a) 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. No sales agent or acquisition agent shall solicit or encourage others to attend a time share sales presentation or to contact a time share sales agent or developer except as otherwise provided for by rules adopted by the director pursuant to chapter 91 without a license previously obtained under and in compliance with chapter 467 and the rules and regulations of the real estate commission.

(b) The director shall adopt rules and regulations limiting the activities of and governing sales agents and acquisition agents, whether or not such persons are also licensed under chapter 467. Such regulations:

- (1) May authorize an acquisition agent who is not licensed under chapter 467 to invite others to attend a time share sales presentation or an entertainment function offered in connection therewith so long as such invitation is made from a principal place of business, branch office, site office or booth operated in accordance with state and county laws by a person licensed under chapter 467 as a real estate broker;
- (2) May authorize an acquisition agent who is not licensed under chapter 467 to extend invitations from a booth without requiring the physical presence of a person licensed under chapter 467, provided that the acquisition agent remains in the booth at all times;
- (3) Shall provide that any acquisition agent not licensed under chapter 467

shall be employed, either directly or as an independent contractor, by a sales agent or acquisition agent who in either case is licensed as a real estate broker under chapter 467;

- (4) Shall provide that a real estate broker who employs, either directly or as an independent contractor, an acquisition agent who is not licensed under chapter 467 shall be responsible for the acts of such acquisition agent;
- (5) Shall establish rules and conditions strictly regulating and, if legally permissible prohibiting telephone solicitation of guests in hotels; and
- (6) Shall establish such other rules as the director deems to be in the public interest.

(c) If the director determines after notice and a hearing, that an acquisition agent or sales agent has violated any provision of this chapter or any rule or regulation adopted by the director pursuant to this chapter, the director may suspend or revoke the license of such person as a real estate broker, real estate salesman, acquisition agent, or sales agent."

SECTION 3. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**"§514E-16 Deposit of purchaser's funds, notes, and contracts into escrow.**

(a) All funds and any negotiable instruments and purchase money contracts received before closing from or on behalf of purchasers or prospective purchasers in connection with the purchase or reservation of time share interests must be placed in an escrow account. However, the developer or a sales agent may hold, until the expiration of the five day cancellation period provided by section 514E-8 or any longer purchaser cancellation period provided in the sales contract, a negotiable instrument, or purchase money contract made by a purchaser:

- (1) For which subsequent holders cannot claim holder in due course status within the meaning of article 3 of chapter 490; or
- (2) Where the payee is:
  - (A) The escrow agent; or
  - (B) The trustee of a lien payment trust.

(b) The escrow agent must be a bank, savings and loan association, or a trust company authorized to do business in the State under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. However, in connection with sales made out of the State for the use of time share units located in the State, the escrow agent may be located in and the purchasers' funds, negotiable instruments, and purchase money contracts may be impounded in the jurisdiction where the sale is made, if the law of such jurisdiction requires it. In such event, the out-of-state escrow agent shall be subject to the approval of the director.

(c) The establishment of such an escrow account shall be evidenced by a written escrow agreement between the developer and the in state or out-of-state escrow agent. The escrow agreement must provide for the handling of purchaser's funds, negotiable instruments, and purchase money contracts as required by this chapter and must contain any provisions required by rules adopted by the director pursuant to chapter 91."

SECTION 4. Chapter 514E, Hawaii Revised Statutes, is amended by adding

a new section to be designated and to read as follows:

**“§514E-17 Release of purchaser's funds, notes, and contracts from escrow without a closing.** (a) A purchaser's funds, negotiable instruments, and purchase money contracts may be released from escrow without a closing as follows:

- (1) If a purchaser or developer gives a valid notice of cancellation of the contract pursuant to section 514E-8, all of the purchaser's funds and any negotiable instruments and purchase money contracts made by the purchaser shall be returned to the purchaser within fifteen days after the notice of cancellation is received.
- (2) If a purchaser or developer properly terminates a contract pursuant to its terms, or if a developer or prospective purchaser terminates a reservation agreement, all of the purchaser's funds and any negotiable instruments and purchase money contracts made by the purchaser or prospective purchaser shall be delivered in accordance with the contract or reservation agreement.
- (3) If the purchaser defaults in the performance of his obligations under the contract, all of the purchaser's funds and any negotiable instruments or purchase money contracts made by the purchaser under the contract shall be delivered in accordance with the contract.
- (4) If purchaser's funds are to be used for construction the funds may be disbursed by the escrow agent from time to time to pay for:
  - (A) Construction costs of the buildings and improvements in proportion to the valuation of the work completed by the contractor in accordance with the contract documents, as certified by a registered architect or engineer and approved for payment by the construction lender;
  - (B) Architectural, engineering, and interior design service fees in proportion to the services performed within each phase of services, as approved by the construction lender;
  - (C) The costs of purchasing furnishings and fixtures for the time share units, as approved by the construction lender; and
  - (D) Finance and legal fees, and other incidental expenses of constructing the time share units or developing the time share plan as approved by the construction lender;

provided that no such disbursements shall be made unless the developer first deposits with the director (i) a copy of the executed construction contract, (ii) a copy of executed performance and labor and material payment bonds in an amount which is not less than one hundred per cent of the cost of construction and covering any changes to the contract which do not in the aggregate increase the amount of the construction contract by more than ten per cent, (iii) a verified statement showing all costs involved in completing the project, and (iv) satisfactory evidence acceptable to the director of funds sufficient to cover the total costs of constructing, furnishing, and completing the project from purchaser's funds, equity funds, interim or permanent loan commitments or other sources.”

SECTION 5. Chapter 514E, Hawaii Revised Statutes, is amended by adding

a new section to be designated and to read as follows:

**“§514E-18 Release of purchaser’s funds, notes, and contracts from escrow upon closing.** (a) Upon the closing of the escrow for the sale of a time share interest, the purchaser’s funds and any negotiable instruments and purchase money contracts made by the purchaser shall be delivered by the escrow agent:

- (1) To the trustee of a lien payment trust if a lien payment trust is established pursuant to section 514E-19 to protect purchasers from blanket liens; or
- (2) As provided by any alternative arrangements accepted by the director pursuant to section 514E-27 where such alternative arrangements are used pursuant to section 514E-19 to protect purchasers from blanket liens; or
- (3) To the developer only after the requirements of any other alternative under section 514E-19 for protecting purchasers from blanket liens have been satisfied.

(b) Notwithstanding any other provision of this chapter, the escrow agent may not release the purchaser’s funds, negotiable instruments, and purchase money contracts from the escrow account to or for the benefit of the developer or a sales agent or for construction until:

- (1) The five-day cancellation period under section 514E-8 expires as to the purchaser whose funds are being released; and
- (2) The escrow agent receives a sworn statement from the developer that:
  - (A) No cancellation notice postmarked on a date within the five-day cancellation period was received from the purchaser whose funds are being released; and
  - (B) No cancellation notice was otherwise received during the five-day cancellation period from the purchaser whose funds are being released.”

SECTION 6. Section 514E-1, Hawaii Revised Statutes, is amended by adding the following definitions to be appropriately designated and to read as follows:

“( ) “Blanket lien” means any mortgage, deed of trust, option to purchase, vendor’s lien or interest under a contract or agreement of sale, or any other lien or encumbrance which (i) affects more than one time share interest either directly or by reason of affecting an entire time share unit or the property upon which the time share unit to be used by the purchasers is located, and (ii) secures or evidences the obligation to pay money or to sell or convey the property and which authorizes, permits, or requires the foreclosure and sale or other defeasance of the property affected; provided, however, that for the purpose of this chapter, the following shall not be considered blanket liens;

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority;
- (3) A lien for common expenses under chapter 514A or a lien for similar expenses in favor of a homeowners or community association;
- (4) An apartment lease or condominium conveyance document conveying a single condominium apartment or a lease of a single cooperative apartment; and
- (5) Any lien for costs or trustee’s fees charged by a trustee holding title to

time share units pursuant to a trust created under section 514E-19.

( ) "Nondisturbance agreement" means an instrument by which the holder of a blanket lien agrees that its rights in the property shall be subordinate to the rights of owners. Every nondisturbance agreement shall contain a covenant by the lienholder that the lienholder, its successors, and anyone who acquires the property through the blanket lien shall not use, or cause or permit the property to be used in a manner which prevents the owners from using the time share units in the manner contemplated by the time share plan. The lienholder's agreement not to disturb an owner may require as a continuing condition that the owner perform all obligations and make all payments due under any purchase money contract and, if the time share interest or unit is held as a leasehold, under the lease.

( ) "Notice of time share plan" means an instrument executed by the holder of the legal and equitable title to the fee or long-term leasehold interest in a time share unit, and which provides notice of the existence of the time share plan and of the rights of owners. The notice of the time share plan must identify the use period for each time share interest and the name of the initial purchaser thereof. If the time share unit is located outside the State, the notice shall be contained in a declaration of covenants, conditions, and restrictions which provide that the notice shall, as a matter of covenant, have the effects described in section 514E-21. The declaration of covenants, conditions, and restrictions must be prepared so as to (i) constitute a covenant running with and an equitable servitude upon the time share units for the duration of the time share plan; and (ii) have the effects described in section 514E-21.

( ) "Purchaser money lien" means a lien on a time share interest that is:

- (1) Taken or retained by the developer to secure payment by the purchaser of a time share interest of all or part of its price; or
- (2) Given by a purchaser to a person who provides financing to the purchaser to enable him to buy the time share interest.

The rights of a seller of a time share interest under an agreement of sale shall be considered a purchase money lien for the purpose of this section.

( ) "Purchase money contract" means any note, negotiable instrument, agreement of sale, installment sales contract, or other contract which evidences or embodies a debt arising from a purchase money loan made to a purchaser by the developer or a creditor (i) who is affiliated with the developer by common control, contract, or business arrangement, or (ii) to whom the developer referred the purchaser.

( ) "Record, recorded, etc." means to record in accordance with chapter 502, or to register in accordance with chapter 501.

( ) "Negotiable instrument" means any check, draft, bill of exchange, certificate of deposit, note, and any other document which is an "instrument" within the meaning of article 3 of chapter 490, including instruments subject to said article pursuant to section 490:3-805.

( ) "Purchaser" means any person who has contracted to acquire a time share interest.

( ) "Owner" means any person who owns a time share interest; provided, however, that to the extent and for such purposes as are provided in any agreement of sale, the vendee under such agreement of sale shall be considered the owner of the

time share interest.

( ) "Association" means the time share owners association."

SECTION 7. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**"§514E-19 Protection of purchasers from blanket liens.** (a) An escrow for the sale of a time share interest in a time share ownership plan may close only if the requirements of any one of the following alternatives for protecting the purchaser have been satisfied:

- (1) The time share interest is conveyed to the purchaser free and clear of any blanket liens.
- (2) The time share unit is conveyed to a trustee:
  - (A) Free and clear of any blanket liens under a trust meeting the requirements of section 514E-22 and 23; or
  - (B) Under a lien payment trust meeting the requirements of sections 514E-22, 23, 24, and 25.
- (3) (A) The time share interest is conveyed to the purchaser subject only to blanket liens:
  - (i) Where every person holding an interest in the blanket lien has executed and recorded a nondisturbance agreement; or
  - (ii) For which the director's acceptance of a surety bond or an irrevocable letter of credit meeting the requirements of section 514E-28 has been recorded with respect to that time share unit; and
- (B) If legal or equitable title will be held by anyone other than the purchaser, a notice of time share plan is recorded.
- (4) The requirements of any alternative arrangements accepted by the director have been met.

(b) An escrow for the sale of a time share interest in a time share use plan may close only if the requirements of any one of the following alternatives for protecting purchasers have been satisfied;

- (1) The time share unit is conveyed to a trustee:
  - (A) Free and clear of any blanket liens under a trust meeting the requirements of sections 514E-22 and 23; or
  - (B) Under a lien payment trust meeting the requirements of sections 514E-22, 23, 24, and 25.
- (2) A notice of time share plan is recorded and either:
  - (A) Every person holding an interest in a recorded blanket lien against any time share interests in that time share unit executes and records a nondisturbance agreement; or
  - (B) The director's acceptance of a surety bond or an irrevocable letter of credit meeting the requirements of section 514E-28 is recorded.
- (3) The requirements of any alternative arrangements accepted by the director have been met.

(c) A time share interest in any time share plan which satisfies the escrow and blanket lien protection requirements of this chapter shall not be deemed a risk capital security under chapter 485, and the offer or sale of a time share interest

therein shall not be deemed the offer or sale of a security.”

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

“§514E-20 **Effect of recording a nondisturbance agreement.** When a non-disturbance agreement has been executed by the lienholder and recorded, the lienholder, its successors, and anyone who acquires the property through foreclosure or by a deed, assignment, or other transfer in place of foreclosure, shall take the property subject to the rights of the owners.”

SECTION 9. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

“§514E-21 **Effect of recording a notice of time share plan.** When a notice of time share plan is recorded, claims by creditors of the developer and claims upon, or by successors to, the interest of the title holder who executed the notice of time share plan, shall be subordinate to the interest of owners whose purchase of time share interests in the time share plan is closed after the notice of time share plan is recorded. The recording of a notice of time share plan shall not affect:

- (1) The rights or lien of a lienholder whose lien was recorded prior to the notice of time share plan;
- (2) The rights of the holder of an option recorded before the notice of time share plan;
- (3) The rights or lien of a lienholder having a purchase money lien on a time share interest.”

SECTION 10. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

“§514E-22 **General requirements for trusts.** If time share units are required to be conveyed to a trustee pursuant to section 514E-19, the trust instrument must provide for at least the following:

- (1) Title to the time share units must be transferred to the trustee before the purchaser's funds are disbursed by the escrow agent.
- (2) The trustee shall not convey or transfer the time share units except for any units with respect to which no owner has any further right of occupancy or as permitted in section 514E-26.
- (3) The trustee shall be prohibited from encumbering the time share units unless the director shall consent thereto. Such consent shall be given if the trust shall meet all of the requirements of section 514E-24 or all requirements of one of the alternative provisions in section 514E-19 are then satisfied.
- (4) The association on behalf of the owners must expressly be made a third party beneficiary of the trust.
- (5) Notice of the intention of the trustee to resign must be given to the director at least ninety days before the resignation takes effect.
- (6) No amendment of the trust instrument adversely affecting the interest or rights of owners may be made without the written approval of the association.
- (7) Any other provisions required by the director as provided by rules adopted pursuant to chapter 91.”



SECTION 11. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**“§514E-23 Requirements for trustees.** If time share units are conveyed to a trustee pursuant to section 514E-19, the following requirements shall be met:

- (1) The trustee must be a bank, savings and loan association, or a trust company meeting the requirements of any rules adopted by the director pursuant to chapter 91.
- (2) The trustee must at all times:
  - (A) Maintain fidelity bonds in a form approved by the director in such amounts and providing coverage as required by rules adopted by the director pursuant to chapter 91; and
  - (B) Maintain a policy of errors and omissions insurance in a form approved by the director in such amounts and providing coverage as required by rules adopted by the director pursuant to chapter 91.”

SECTION 12. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**“§514E-24 Additional requirements for lien payment trusts.** (a) If a lien payment trust is established to meet the requirements of section 514E-19, then in addition to the requirements of section 514E-22, the trust instrument shall:

- (1) Require the deposit into trust of a lien payment deposit meeting the requirements of section 514E-25, before closing the sale of the first time share interest;
- (2) Require the deposit into trust before closing the sale of the first time share interest, and the retention for the duration of the trust, of an installment payment reserve consisting of funds in an amount at all times sufficient:
  - (A) To pay the total of three successive monthly installments of debt service on the blanket lien(s); provided if the developer complies with subsection (c) of section 514E-25, the amount paid shall be a prorata share of the amount required above, determined in accordance with subsection 514E-25(c).
    - (i) If installments of debt service are due less frequently than monthly, the funds retained in trust shall be sufficient to pay all installments becoming due within the next succeeding six months, the next installment due.
    - (ii) If the payments of debt service are not payable in equal installments, such additional funds shall be retained in the trust as the director shall determine to be reasonably necessary to assure that the trustee will have sufficient cash to pay any installments under the blanket liens when due.
  - (B) To create a sinking fund to extinguish the debt at its maturity if a blanket lien against the trust property is an interest-only loan, contains a balloon payment provision, or is otherwise not fully amortized under the terms for repayment.
- (3) Authorize the trustee to sell, transfer, hypothecate, encumber, or otherwise dispose of the purchase money contracts or other assets composing the lien payment deposit or any portion thereof, if in the trustee's judg-

ment, such action is necessary in order to enable the trustee to make all payments required to be made under the blanket liens so as to prevent any foreclosure thereof.

- (4) Require the developer to replenish the funds and assets in the trust whenever the lien payment deposit or the funds in the installment payment reserve fail to meet the requirements set forth in this section.
- (5) Provide that the trustee periodically shall disburse funds in the trust as follows: first, to the payment of real property taxes, governmental assessments, and lease rent, if any; second, to the payment of current payments then due on the blanket liens, in their order of priority; third, to any sinking fund established for the payment of blanket liens, including any prepayment penalties and release prices; fourth, to any service charges and costs payable to the trustee and its collection agent, if any, pursuant to the trust instrument; and fifth, to the developer or as directed by the developer.
- (6) Contain any other provisions required by the director as provided by rules adopted pursuant to chapter 91.
- (b) If a lien payment trust is established to meet the requirements of section 514E-19, every purchase money contract must contain the following provision in at least ten point bold face type:

#### NOTICE

**Immediately upon demand by the trustee under the lien payment trust for the time share plan, the holder of this document must promptly deliver to the trustee all payments made by the purchaser after the trustee mails or otherwise sends notice that the funds and other assets in the trust are inadequate to meet the requirements for the lien payment deposit. The holder must continue to send the trustee the purchaser's payments until the lien payment deposit is replenished."**

SECTION 13. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**"§514E-25 Lien payment deposit.** (a) The lien payment deposit shall consist of either (i) nondelinquent purchase money contracts from purchasers of time share interests in the time share plan or (ii) other assets deposited into trust by the developer and approved by the director.

- (b) (1) The purchase money contracts must have an aggregate remaining principal balance of not less than, and any other assets deposited must have a liquidated value of not less than, one hundred ten per cent of the difference between (i) the aggregate remaining principal balance owing under blanket liens against the time share unit or time share interests in it, including any prepayment penalties, release prices, and similar charges, (ii) the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket lien. The developer shall have the burden of establishing to the satisfaction of the director the liquidated value of assets other than purchase money contracts from purchasers in the time share plan.

- (2) If the blanket lien payment deposit consists of purchase money

contracts, the payments required to be made by purchasers under the contracts shall:

- (A) Be due on or before the dates on which payments become due on the blanket liens;
  - (B) If paid when due, be equal to at least one hundred ten per cent of the amount required to be paid on the blanket liens on such date; and
  - (C) Be sufficient to pay, in full, during the term of such contracts (i) all amounts secured by the blanket liens, including prepayment penalties and release prices, if any; and (ii) all service charges payable to the trustee, any collection agent, and any other servicing agent pursuant to the trust instrument.
- (3) If the developer proposes to deposit into trust assets other than purchase money contracts, such assets must be sufficient to pay debt service installments on the blanket lien as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket lien at its maturity.
- (c) (1) In lieu of the requirements of subsection (b), the developer may elect to follow the requirements of paragraphs (2), (3), (4), and (5) of this subsection (c) if the following requirements are met:
- (A) The developer owns or leases under a lease for a term of not less than thirty years all the noncommercial portions of a hotel, condominium, cooperative, or other project;
  - (B) No more than seventy-five per cent of the appraised value of the project is subject to a mortgage or other lien. The appraised value shall be based on the use of the project prior to the creation of the time share plan; and
  - (C) (i) As security for the obligations of the developer to the owners, the developer executes and records a mortgage in favor of the trustee under the lien payment trust or the association, in either case as trustee on behalf of the owners, twenty-five per cent of the appraised value of the project; or  
(ii) The developer conveys or transfers the project to a trust meeting the requirements of sections 514E-22 and 23, and under the terms of the trust instrument the twenty-five per cent of the beneficial interest in the trust is held for the benefit of, or conveyed or transferred to, the association, acting as trustee for the owners, as security for the obligations of the developer to owners.
  - (D) The developer files a verified statement of the program of financing acceptable to the director containing a cash flow analysis showing that the developer has adequate funds to pay the debt service installments on the blanket liens on the project during the sales period and to extinguish the debt secured by the blanket lien at its maturity, whether from sales proceeds, loan commitments, income from operations of the project, or other sources.

- (2) The purchase money contracts must have an aggregate remaining principal balance of not less than, and any other assets deposited must have a liquidated value of not less than, one hundred ten per cent of the difference between (i) a pro rata share of the aggregate remaining principal balance owing under blanket liens against the time share unit or time share interests in it, including any prepayment penalties, release prices and similar charges, (ii) a pro rata share of the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket lien. The developer shall have the burden of establishing to the satisfaction of the director the liquidated value of assets other than purchase money contracts from purchasers in the time share plan.
- (3) If the blanket lien payment deposit consists of purchase money contracts, the payments required to be made by purchasers under the contracts must:
  - (A) Be due on or before the dates on which payments become due on the blanket liens;
  - (B) If paid when due, be equal to at least one hundred ten per cent of a pro rata share of the amount required to be paid on the blanket liens on such date; and
  - (C) Be sufficient to pay, in full, during the term of such contracts (i) a pro rata share of all amounts secured by the blanket liens, including prepayment penalties and release prices, if any; and (ii) all service charges payable to the trustee, any collection agent, and any other servicing agent pursuant to the trust instrument.
- (4) If the developer proposes to deposit into trust assets other than purchase money contracts, such assets must be sufficient to pay a pro rata share of the debt service installments on the blanket lien as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket lien at its maturity.
- (5) For purposes of this subsection (c), the term "pro rata share" means a share proportionate to the ratio that the number of time share units in which the sale of time share interests have been closed bears to the total number of time share units in the project. No more than fifty-one weeks of use annually may be attributed to each time share unit in determining the pro rata share.
- (6) The developer may elect to terminate the use of the provisions of this subsection (c) upon satisfying all of the requirements of either subsection (b) of this section 514E-25 or subsection (c) of section 514E-26.

(d) For purposes of this section, a purchase money contract is deemed delinquent when an installment payment is more than fifty-nine days past due."

SECTION 14. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**"§514E-26 Termination of a trust.** (a) In the case of a time share use plan, the trust for the time share units shall be irrevocable during the time that any owner of a time share interest has a right to the occupancy of a time share unit, except as provided in subsection (c) of this section.

(b) In a time share ownership plan, the trust for a time share unit shall be irrevocable until all blanket liens are extinguished, except as provided in subsection (c) of this section.

(c) The developer may elect to terminate the use of a trust for a time share unit if, at a later date,

- (1) The trustee records a notice of time share plan after the recording of either:
  - (A) Nondisturbance agreements executed by every lienholder who has a blanket lien against the time share unit, or
  - (B) The director's acceptance of a surety bond or irrevocable letter of credit for that unit; or
- (2) The director approves alternative arrangements which permit the termination of the trust."

SECTION 15. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**"§514E-27 Alternative arrangements for purchaser protection.** (a) In recognition of the impossibility or impracticability of a proposed time share plan satisfying some of the requirements of section 514E-19 because of factors over which the developer has little or no control, the director may accept arrangements, other than those prescribed by section 514E-19, which in the judgment of the director will give rights and remedies affording equivalent benefits and protections to time share owners which are at least comparable in scope though not necessarily in nature to those designed to be afforded by said section.

(b) Whenever the director is asked to accept alternative arrangements pursuant to this section, the director may contract with an attorney or attorneys and may contract with any other private consultants which the director or the attorney deems necessary or advisable, in connection with the review of the proposed arrangements for protecting purchasers. Such attorney shall be asked to thoroughly review the time share plan for the purpose of examining the purchaser protections, including the documentation used in connection therewith and the disclosure thereof in the developer's disclosure statement. Upon completing the review, the attorney shall provide a written analysis of the proposal and an opinion as to the nature and extent of the protections which the proposal affords purchasers against blanket liens. The cost of retaining such attorneys and other consultants shall be borne by the developer."

SECTION 16. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**"§514E-28 Requirements for surety bonds and letters of credit.** Any surety bond or irrevocable letter of credit furnished to the director pursuant to section 514E-19 must be in an amount which is not less than one hundred ten per cent of the remaining principal balance of every indebtedness secured by a blanket lien related to the time share unit. Any such bond must be issued by a surety authorized to do

business in the State and having sufficient net worth to be acceptable to the director. Any such letter of credit must be irrevocable and must be drawn upon a bank, savings and loan association, or other financial institution authorized to do business in the State and having a sufficient net worth to be acceptable to the director. The bond or irrevocable letter of credit shall provide for payment (up to the limit of such bond or letter of credit) of all amounts secured by the blanket lien, including costs, expenses, and legal fees of the lienholder, if for any reason the blanket lien is enforced. The beneficiary of any such letter of credit and the obligee of any such bond shall be the director on behalf of the owners. The bond or irrevocable letter of credit may be reduced periodically in proportion to the reduction of the remaining principal balance of the indebtedness secured by the blanket liens. Upon being furnished with a surety bond or irrevocable letter of credit satisfying the foregoing requirements, the developer shall prepare and the director shall execute and acknowledge a document in recordable form accepting such surety bond or irrevocable letter of credit and identifying the time share units to which it applies."

SECTION 17. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

"§514E-29 **Association.** All time share plans shall have an association which shall be a nonprofit corporation. Each owner shall be a member of the association."

SECTION 18. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

"§514E-30 **Scope of this Act.** This chapter applies to the offer and sale in Hawaii of time share interests in time share units located in Hawaii. If time share units are located outside of Hawaii, but any offer or sale is made within the State, this chapter, except for sections 514E-3, 4, 5, 6, 7, and 14, shall apply. As to the offer and sale outside of Hawaii of time share interest in a time share plan which includes time share units located in Hawaii, this chapter, except for sections 514E-2.5, 10(b) and (c), 11, and 11.1 shall apply."

SECTION 19. Statutory material to be repealed is bracketed. New material is underscored. The revisor of statutes may renumber sections and subsections in this Act and in chapter 514E.<sup>1</sup>

SECTION 20. This Act shall take effect on September 1, 1982, as to all time share plans filed on or after that date.

SECTION 21. Time share plans which were registered prior to September 1, 1982 shall comply with this Act not later than January 1, 1983.

(Approved June 9, 1982.)

**Note**

1. Edited pursuant to HRS §23G-16.5.