

ACT 114

S.B. NO. 182

A Bill for an Act Relating to Time Sharing.

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

SECTION 1. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

**“§514E-10 Registration required; developer, acquisition agent, sales agent, plan manager and exchange agent. (a)** A developer shall not offer or dispose of a time share unit or a time share interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the time share plan to be offered by the developer is accepted by the director for registration under this chapter.

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall register under this chapter by filing 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 file 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;] the acquisition agent is bonded as required by rules adopted by the director pursuant to chapter 91 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 the time share plan is promoted; provided that this bonding requirement shall be separately applicable to each time share plan for which the acquisition agent is providing prospective purchases; 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 register under this chapter by filing 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 the escrow account required under section 514E-16 for the deposit and collection of purchasers' funds. 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 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 register under this chapter by filing 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.] the plan manager is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any default of the plan manager and any of its employees of their duties and responsibilities; provided that this bonding requirement shall be separately applicable to each time share plan under the management of the plan manager.

(e) An exchange agent (including the developer if it is also an exchange agent) shall register under this chapter by filing with the director a statement setting forth the time sharing 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 or plan manager is 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)] (f) Any registration 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 register 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 2. Section 514E-8, Hawaii Revised Statutes, is amended to read as follows:

**"§514E-8 Mutual right to cancel.** Within [five] seven calendar days after the execution of the contract to purchase an interest in a time share plan, or within [five] seven calendar days after the purchaser's receipt of a disclosure

statement required by this chapter, whichever occurs later, either party may cancel the contract without penalty[.] by mailing or delivering a notice of cancellation to the other party at an address specified on the contract. The notice of cancellation shall be effective upon mailing or delivery to the other party at the address specified on the contract."

SECTION 3. Section 514E-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§514E-9 Disclosure statement.**<sup>1</sup> (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] seven calendar day period of mutual rescission;
- (8) A statement that pursuant to section 514E-11.3, 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 4. Section 514E-11.1, Hawaii Revised Statutes, is amended to read as follows:

**"§514E-11.1 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 of time share units or plans 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) Offer a prospective purchaser a prize or gift, in writing, as part of any time share advertising or sales promotion plan, if in order to claim the prize or gift, the prospective purchaser must attend a sales presentation unless the written disclosure described in section 514E-11(3) is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type;
- (3) Fail to inform each purchaser orally and in writing, at the time he signs the contract of his [five] seven-day right to cancel or void the contract to purchase a time share interest in a time share plan or unit;
- (4) 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;
- (5) Include in any contract or document provisions purporting to waive any right or benefit to which the purchaser is entitled under this chapter;
- (6) 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;
- (7) 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] seven-day right of rescission of any time sharing sales contract";
- (8) Misrepresent the amount of time or period of time the time share unit will be available to any purchaser;
- (9) Misrepresent or deceptively represent the location or locations of the offered time share unit;
- (10) Misrepresent the size, nature, extent, qualities, or characteristics of the offered time share units;
- (11) Misrepresent the nature or extent of any services incident to the time share unit;
- (12) 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
- (13) Fail to orally disclose during the initial oral 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."

SECTION 5. Section 514E-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“§514E-16 Deposit of purchaser’s funds, notes, and contracts into escrow.”**<sup>1</sup> (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] seven-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.”

SECTION 6. Section 514E-18, Hawaii Revised Statutes, is amended 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 provisions<sup>1</sup> 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] seven-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] seven-day cancellation period was received from the purchaser whose funds are being released; and
  - (B) No cancellation notice was otherwise received during the [five] seven-day cancellation period from the purchaser whose funds are being released.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

#### Note

1. So in original.