

## ACT 372

S.B. NO. 1901

A Bill for an Act Relating to Time Share.

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

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

**“§514E- Classes of time share interests.** (a) A time share plan may establish classes of time share interests defined by characteristics as the developer shall determine, including but not limited to season, unit size, location, view, or otherwise.

(b) If one or more of the time share units will not be available for the entire duration of the time share plan then, in addition to other characteristics as the developer shall determine, the time share interests shall be classified by duration.

**§514E- One-to-one use-right to use-night requirement.** (a) A developer shall not offer or dispose of a time share unit or a time share interest unless the one-to-one use-right to use-night requirement is currently satisfied and will continue to be satisfied for the duration of the time share plan.

(b) The time share instruments shall contain provisions assuring satisfaction of the one-to-one use-right to use-night requirement for the duration of the time share plan except during temporary periods of noncompliance due to casualty or condemnation.

(c) The following criteria shall be considered in determining whether the one-to-one use-right to use-night requirement is satisfied:

- (1) If the time share plan has more than one class of time share interest, then the requirement must be satisfied within each class;
- (2) Only use nights available and protected from blanket liens for the duration of the time share plan shall be counted; provided that if time share interests are classified by duration, then as to each class, only use nights available and protected from blanket liens for the entire duration of that class shall be counted;

- (3) A use night counted to satisfy the requirement for one class may not also be counted to satisfy the requirement for a competing class;
- (4) No individual time share unit may be counted as providing more than three hundred sixty-five use nights per calendar year (or more than three hundred sixty-six use nights per leap year);
- (5) The use rights of each owner shall be counted without regard to whether the owner's use rights have been suspended for failure to pay assessments or otherwise. Use rights attributable to unsold time share interests shall be counted;
- (6) Use rights of nonowners shall be counted. Use rights of the developer and its affiliates in excess of those attributable to unsold time share interests shall be counted;
- (7) Use rights reserved by the association or plan manager for the purpose of performing maintenance and repairs to a time share unit shall not be considered;
- (8) Use rights borrowed from a subsequent year or carried over from a prior year shall not be considered; provided that such practice is not established for the purpose of evading the requirements of this section; and provided further that any such acceleration or deferral of use rights is appropriately balanced and restricted; and
- (9) The director may adopt rules identifying additional criteria to be used to calculate whether the one-to-one use-right to use-night requirement is satisfied.

(d) This section shall not be deemed to prohibit the time share instruments from including provisions permitting rental by the association or the developer, or reservation and use by owners, of use nights which remain unreserved as of sixty or fewer days in advance of the use night. Any such use rights shall not be considered in determining whether the one-to-one use-right to use-night requirement is satisfied.”

SECTION 2. Section 514E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““One-to-one use-right to use-night requirement” means that the sum of the nights which owners are entitled to use in a given year shall not exceed the number of nights available for use by those owners during that year.”

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity thereof shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application. To that end, the provisions of this Act are severable.

SECTION 4. This Act shall apply to all time share plan applications for registration which are filed on or after the effective date of this Act.

The requirements of this Act shall not apply to time share plans which were registered, or as to which an application for registration was filed, prior to the effective date of this Act; provided that if additional time share units are included in the time share plan after the effective date of this Act, then the requirements of this Act shall apply to such time share plan.

SECTION 5. New statutory material is underscored.<sup>1</sup>

**SECTION 6.** This Act shall take effect on July 1, 1997.

(Approved July 3, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.