

ACT 81

H.B. NO. 835

A Bill for an Act Relating to Time Sharing Plans.

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

SECTION 1. 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, transportation, luaus, ocean recreational activities, land recreational activities, aerial recreational activities, or tours, or other inducements, or make any offer thereof, without fully disclosing orally and as provided in paragraph (3) that the device is being used or offered for the purpose of soliciting sales of time share units or interests;
- (3) Offer a prospective purchaser a prize or gift as part of any time share advertising or sales promotion plan, if in order to claim the prize, the prospective purchaser must attend and complete a sales presentation, unless written disclosure 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 and contains all of the following:
  - (A) A full description of the exact prize or gift won by the prospective purchaser including its cash value;
  - (B) All material terms and conditions attached to the prize or gift;

- (C) A statement that the consumer must attend and complete a sales presentation; and
- (D) An identification of the time share project to be offered for sale, including type of ownership[, exchange privileges, limitations,] and price ranges of the time share interests in that project;
- (4) Misrepresent or deceptively represent any material fact concerning the time share plan or time share unit;
- (5) Make any representation that a time share interest is an investment, including but not limited to the value of the interest at resale;
- (6) Fail to honor and comply with all provisions of a contract or reservation agreement with the purchaser;
- (7) Include, in any contract or reservation agreement, provisions purporting to waive any right or benefit provided for purchasers pursuant to this chapter;
- (8) 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; provided that this paragraph shall not apply to sums paid by a purchaser or prospective purchaser for a tourist activity or for any other product or service offered to induce attendance at a time share sales presentation;
- (9) Make any agreement or contract with a purchaser before delivering, furnishing, or tendering to that prospective purchaser any promised promotional device or other instrument;
- (10) Distribute any promotional or disclosure material separately if the material was filed in a consolidated form;
- (11) Use any unregistered time share booth, or fail to display at all times a conspicuous, clear, and unobstructed sign of a permanent nature:
- (A) ~~[Containing no artwork or text except:~~
- (i) ~~The name of the time share plan or plans with which the booth is affiliated, which must be printed in capital, block-style letters at least one inch tall using bold black lettering against a white background; and~~
- (ii) ~~At least one inch beneath the name of the time share plan or plans, the words "TIME SHARE", which must be printed in capital, block-style letters at least three and one half inches tall using bold black lettering against a white background;]~~
- That contains the words "time share" or "time sharing" in letters at least three inches tall and in a color that distinctively contrasts with the background on which the words appear;
- (B) With minimum dimensions of nine inches by twenty-four inches, excluding any frame;
- (C) ~~[Permanently affixed to each side of the booth facing the public,]~~ Posted on or in the booth in an upright position, perpendicular to the ground, and in a location that is easily visible to passersby; and
- (D) Consistent with such rules as the director may adopt pursuant to this chapter and consistent also with county ordinances.

No person shall post anything upon or adjacent to the sign, or include anything in the sign, which indicates that the booth is not being used for time share solicitation purposes. As used in this paragraph, "sign of a permanent nature" specifically excludes banners, grease boards, marker boards, handwritten signs, or signs constructed of temporary

materials such as paper, poster board, or cardboard[;]. The signage requirements of this paragraph shall not apply to a booth located within a project subject to a time share plan;

- (12) Misrepresent the amount of fees to be charged, including management fees, or the structure for future fee increase; or
- (13) Sell, offer for sale, or advertise for sale, by any person, partnership, firm, corporation, joint stock company, or other association engaged in marketing time share plans within the State, any tourist activity, including but not limited to land, aerial, or water recreational activities, at less than the actual cost of the activity paid for by the licensee thereof to such vendor or give, offer to give, or advertise with the intent to give away any such tourist activity with the purpose or effect of inducing the prospective purchaser to purchase a time share plan or to attend a time share marketing event.

Any violation of this section shall also constitute an unlawful or deceptive practice within the meaning of section 480-2; provided that in addition violations of section 514E-31 or of paragraph (11) shall result in a fine of not less than \$50 for each separate offense for a maximum aggregate amount of \$500.”

SECTION 2. 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 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 the purchaser signs the contract, of the purchaser’s 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~~ purchaser 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 above the signature line of any sales contract or, if no sales contract is used, above the signature line of any agreement with

the purchaser, in conspicuous bold type and capital letters, the following: “Any purchaser has, under the law, a 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 the purchaser’s occupancy rights to a time share unit in one location for occupancy rights to a time share unit in another location;
- (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; or
- (14) Fail to include in promotional literature and other printed or written material a disclosure that the product or activity involves time share. The director may by rule prescribe the nature of the disclosure. This paragraph shall not apply to a sign or banner, except as provided in section 514E-11(11).”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 27, 2005.)