

ACT 83

H.B. NO. 155

A Bill for an Act Relating to Time Sharing.

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

SECTION 1. Section 454-2, Hawaii Revised Statutes, is amended to read as follows:

“§454-2 Exemptions. This chapter does not apply to the following:

- (1) Banks, trust companies, building and loan associations, pension trusts, credit unions, insurance companies, financial services loan companies, or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State;
- (2) A person making or acquiring a mortgage loan with one's own funds for one's own investment without intent to resell the mortgage loan;
- (3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as an attorney;
- (4) A person licensed as a real estate broker or salesperson in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as a real estate broker or salesperson;
- (5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this paragraph, "loan purchase agreement" means an agreement or arrangement under which a bank, savings and loan, credit union, financial services loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans

or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor; ~~and~~

- (6) Foreign lender as defined in section 207-11[-]; and
- (7) A person licensed under chapter 467 as a real estate broker or salesperson selling time share interests on behalf of a time share plan developer that is licensed as a mortgage broker under this chapter; provided that:
 - (A) The acts or conduct of a developer's authorized representative shall be deemed to be the acts or conduct of the developer for the purposes of section 454-4; and
 - (B) If the person engages in acts or conduct prohibited under section 454-4(a), the acts or conduct shall constitute grounds for disciplinary action under section 467-14."

SECTION 2. Section 514E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Master development" means a real estate development that consists of more than one project, including but not limited to a planned community association subject to chapter 421J with one or more sub-associations.

"Person" includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entities, or any combination thereof."

2. By amending the definitions of "blanket lien", "developer", and "project" to read:

"Blanket lien" means any mortgage, deed of trust, option to purchase, master lease, vendor's lien or interest under a contract or agreement of sale, or any other lien or encumbrance [which] that affects¹ (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] that 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[-]; and that are not yet due and payable;
- (3) A lien for common expenses under chapter 514A or a lien on an individual time share unit for similar expenses in favor of a homeowners or community association;
- (4) An apartment lease or condominium conveyance document conveying or demising 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[-]; provided that the costs or trustee's fees are not yet due and payable.

"Developer" means any person [-, partnership, or corporation which] that creates a time sharing plan or is in the business of selling time share units.

"Developer" does not include:

- (1) A person who has acquired one or more time share interests for the person's own use and occupancy and later offers the time share interest for resale; provided that a rebuttable presumption shall exist that an

owner who has acquired more than twelve time share interests did not acquire them for the owner's own use and occupancy;

- (2) An association not otherwise a developer, that offers for sale, through its plan manager or a third party, time share interests transferred to the association through foreclosure, conveyance in lieu of foreclosure, cancellation for non-payment of assessments, or gratuitous transfer; and
- (3) A licensed real estate broker who owns time share interests in a time share plan and who offers one or more of the time share interests for resale if:
 - (A)² The time share interests are in a registered or previously registered time share plan and were not acquired from a developer who, during the six month period prior to conveying the time share interests to the real estate broker, was actively engaged in offering or selling the time share interests through advertising, promotional, or marketing efforts, whether within or outside the time share project itself, excluding public auctions pursuant to a foreclosure sale;
 - (B) The licensed real estate broker complies with all laws and rules applicable to resale time share interests and resale agents, excluding any registration provision requiring confirmation that the time share interests were purchased for the person's own occupancy;
 - (C) The licensed real estate broker has not used, offered, submitted, or incorporated the time share interests as part of another time share plan that would otherwise be subject to chapter 514E; and
 - (D) The licensed real estate broker owns at any one time not more than twelve time share interests in the particular time share plan.

~~“Project” means [property that is subject to project instruments, including but not limited to condominiums and cooperative housing corporations.];~~

- (1) An individual condominium project;
- (2) Two or more contiguous condominium projects that have been merged and for administrative purposes operate as a single condominium project;
- (3) An individual cooperative housing project;
- (4) An individual subdivision of single-family homes subject to one or more project instruments; or
- (5) An individual subdivision of townhomes subject to one or more project instruments.

“Project” does not include a master development.”

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.)

Notes

1. So in original.
2. Should be underscored.