

ACT 181

H.B. NO. 2372

A Bill for an Act Relating to Time Share Plans.

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

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

“§514E- Limited permit. (a) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer

or sale, in this state, of an additional interest in a time share plan to an existing purchaser in the same time share plan; provided that:

- (1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration was originally approved or amended within seven years from the date of the offer or disposition, and the registration has not been terminated or withdrawn;
 - (2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) above through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;
 - (3) In satisfaction of the disclosure requirements of section 514E-9, the purchaser is provided the time share disclosure documents the purchaser would have received if the purchase had occurred in the state or jurisdiction where the purchaser initially purchased the time share interest;
 - (4) The contract for purchase signed by the purchaser includes a notice that is the same as or similar to the rescission notice required pursuant to section 514E-9(a)(7); provided that the rescission period shall be at least seven days;
 - (5) All funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account in the state. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the state under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this state;
 - (6) The contract for purchase shall contain the following statement in conspicuous type:
 “THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE XXX (DEVELOPER OR AFFILIATE’S NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE)(AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THE TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES.”; and
 - (7) The offer complies with the provisions of sections 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13), and 514E-11.1.
- (b) Except as provided in subsection (a), the offer or sale of an additional interest in a time share plan by a developer in accordance with subsection (a) shall not otherwise be subject to any other provisions of this chapter.
- (c) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer or sale by the developer, in this state, of a time share interest in a time share plan located outside of this state, but

within the United States, to an individual who currently owns a time share interest that was purchased from that developer, or from an affiliated entity of that developer; provided that:

- (1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration of the developer or an affiliated entity of the developer was originally approved or amended within seven years from the date of the offer or disposition and which registration has not been terminated or withdrawn;
- (2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) above through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;
- (3) The developer shall provide the purchaser with all time share disclosure documents required to be provided to purchasers as if the offer occurred in the state where the time share plan is located;
- (4) The contract for purchase shall include a notice that is the same as or similar to the rescission notice required pursuant to section 514E-9(a)(7); provided that the rescission period shall be at least seven days;
- (5) In satisfaction of section 514E-16, all funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account in the state. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the state under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this state;
- (6) The developer shall provide the purchaser, in writing, either in the disclosure documents or otherwise, all of the following:
 - (A) A description of the type of time share plan offered, including the duration and operation of the time share plan;
 - (B) A description of the existing or proposed accommodations and amenities in the time share plan;
 - (C) A description of the method and timing for performing maintenance on the accommodations;
 - (D) If applicable, copies of the declaration, association articles of incorporation, association bylaws, and association rules and regulations; and
 - (E) The current annual budget for the time share plan;
- (7) The time share plan being offered is registered in the state where the time share plan is located; or in the event registration of the time share plan is not required in the state where the time share plan is located, the time share plan being offered is in compliance with the applicable laws of that state; and
- (8) The contract for purchase shall contain the following statement in conspicuous type:

“THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN A TIME SHARE PLAN THAT YOU PURCHASED FROM XXX (DEVELOPER OR AFFILIATE’S NAME), AND XXX HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THAT TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES. THE TIME SHARE INTEREST YOU ARE PURCHASING REQUIRES CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER FOR YOU TO USE YOUR INTEREST. THESE PROCEDURES MAY BE DIFFERENT FROM THOSE FOLLOWED IN OTHER TIME SHARE PLANS. YOU SHOULD READ AND UNDERSTAND THESE PROCEDURES PRIOR TO PURCHASING.”

(d) The offer or sale of an interest in a time share plan by a developer in accordance with subsection (c) above shall be exempt from the requirements of sections 514E-3, 514E-4, 514E-5, 514E-6, 514E-7, 514E-10.5, and 514E-14; the disclosure statement requirements of sections 514E-9 and 514E-11(1); and the registration requirements of section 514E-10.

(e) A developer offering a time share plan under this section shall file an application on a form as set forth in subsection (g), along with payment of a one-time fee of \$1,000 per time share plan. Within ten days from receipt by the director of a completed application and fee, the director shall issue a limited permit to the developer reflecting that the filing has been accepted, and that the offering of the time share plan is permitted in accordance with the provisions of this section.

(f) If at any time the director determines that any requirement of this section has not been complied with, the developer shall be subject to any remedies set forth in section 514E-12.

(g) The application as described under subsection (e) shall be signed by an officer or principal of the developer, and shall contain the following information:

- (1) The name and principal address of the developer;
- (2) The name and address of the time share plan being offered;
- (3) The name and address of the managing entity of the time share plan;
- (4) The form of business entity of the developer; and
- (5) The name, address, and telephone number of the officer or principal signing the notice on behalf of the developer.

(h) A limited permit issued under this section shall be renewed by December 31 of each year. The developer shall submit a renewal application on a form prescribed by the director along with the renewal fee of \$50. The renewal application shall be deemed accepted upon receipt by the director of the renewal application and fee.

(i) For purposes of this section:

“Affiliated entity” means a person or other entity that, directly or indirectly through one or more intermediaries, is controlled by or under common control with the developer.

“Control,” “controlled by,” or “under common control with” means the possession of the power to direct or cause the direction of the management and policies of another person or entity, other than by commercial contract for goods or services. Control shall be presumed to exist if the developer has an ownership interest of at least fifty per cent in the other person or entity, or the developer has the same parent corporation as the other entity.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.¹

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

(Approved June 16, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.