

**ACT 228**

**H.B. NO. 2019**

A Bill for an Act Relating to Time Share.

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

**SECTION 1.** The legislature finds that under chapter 514E, Hawaii Revised Statutes, prospective purchasers of time share interests must be provided a copy of a disclosure statement. When this chapter was originally enacted, receipt of paper documents was common practice. However, recent years have witnessed the rise of electronic commerce and the widespread distribution of information through electronic means. Many consumers and purchasers now prefer an option of receiving important documents electronically.

The legislature further finds that time share registrations are required to be renewed every other year. Developers are currently required to disclose the number of time share units and the number of time share interests in each unit during the renewal process. However, although some time share plans continue

to divide time share units into time share interests, the modern trend is for time share plans to use a points system.

The legislature additionally finds that developers of time shares are also required to provide title reports in connection with renewal registrations. Some non-deeded time share plans may include property in dozens or more locations, and furnishing title reports on each unit in a time share plan is burdensome and expensive. Furthermore, there are already existing lien protections for non-deeded time share plans; these are designed so that the encumbrances recorded after the blanket lien protections are established will not impair the rights of time share purchasers.

The legislature also finds that developers are required to file a financial statement in connection with renewal registration. Many developers are subsidiaries of publicly traded companies, and preparation of financial statements for the subsidiaries has proven burdensome for developers while providing little to no perceived benefit to consumers.

The purpose of this Act is to:

- (1) Permit prospective purchasers of time share interests to receive printed or electronic copies of the disclosure statement on the time share plan; and
- (2) Amend the renewal process for time share registrations by:
  - (A) Permitting the developer to disclose either the total number of time share interests registered for sale in each unit or the total number of points registered for sale in each property;
  - (B) Eliminating the requirement that developers provide title insurance and reports; and
  - (C) Eliminating the requirement that developers file a financial statement.

SECTION 2. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514E- Disclosure statement; prospective purchasers.** The purchaser of a time share interest shall be provided a copy of the disclosure statement filed with and accepted by the director concurrently with the execution of a sales contract. The disclosure statement shall be provided in printed form unless the purchaser indicates in a separate writing the purchaser’s election to receive the disclosure statement through means of a computer disc, electronic mail, download from an internet site, thumb drive, any other media that may require the use of a device or a machine to be viewed or heard, or by any other means contemplated by chapter 489E. The separate writing shall include, above the signature line in bold type and capital letters, the following statement: **“ANY PURCHASER HAS UNDER THE LAW A SEVEN-DAY RIGHT OF RESCISSION OF ANY TIME SHARING SALES CONTRACT. PURCHASERS SHOULD READ THE DISCLOSURE STATEMENT BEFORE THE SEVEN-DAY RIGHT OF RESCISSION PERIOD EXPIRES.”**”

SECTION 3. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

**“§514E-10 Registration required; developer, acquisition agent, plan manager, and exchange agent[-]; registration renewal.** (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. The director shall not accept a developer's time share plan if the developer does not possess a history of honesty, truthfulness, financial integrity, and fair dealing.

(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 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; provided that an acquisition agent licensed under chapter 467 as a real estate broker shall not be required to register under this chapter. 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 the acquisition agent is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any violation by the acquisition agent of any solicitation ordinance or other regulation governing the use of the premise or premises in which the time share plan is promoted; provided that the acquisition agent shall be separately bonded for each time share plan for which it is providing prospective purchases.

(c) 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 that it is managing, its principal office address, telephone number, and responsible managing employee. The plan manager shall furnish evidence that 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 the plan manager shall be separately bonded for each time share plan under the management of the plan manager.

(d) 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 for which it is offering exchange services, its principal office address and telephone number, and designate its responsible managing employee.

(e) Any plan manager or developer registration required in this section shall be renewed by December 31 of each even-numbered year, and any acquisition agent or exchange agent registration required in this section shall be renewed on December 31 of each odd-numbered year; provided that this subsection 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 to promptly file amendments or supplements to the disclosure statement, and to promptly supply the amendments or supplements to purchasers of time share interests.

(f) An application for renewal of a developer registration shall be on a form prescribed by the director and shall include:

- (1) A current disclosure statement that meets the requirements of section 514E-9 and section 16-106-3, Hawaii Administrative Rules, if not already on file;
- (2) A statement that is certified by the developer to be true and correct in all respects and that identifies, as appropriate:
  - (A) The time share units in the time share plan registered pursuant to this chapter; the total number of time share interests registered for sale in each unit pursuant to this chapter; and the total number of time share interests that have not yet been sold

as of the date specified in the developer's certification, which date shall not be more than sixty days prior to the date of the developer's certification; or

(B) The property in the time share plan registered pursuant to this chapter; the total number of points registered for sale in each property pursuant to this chapter; and the total number of points in the time share plan that have not yet been sold as of the date specified in the developer's certification, which date shall not be more than sixty days prior to the date of the developer's certification;

(3) If the developer is a corporation, partnership, joint venture, limited liability company, or limited liability partnership, an original certificate of good standing issued by the business registration division of the department of commerce and consumer affairs not more than forty-five days before the date of submission of the renewal application; and

(4) The biennial renewal fee.

(g) Developers shall not be required to include the following in an application for renewal of a developer registration of a time share plan:

(1) A financial statement of the developer; or

(2) A policy of title insurance, a preliminary title report, abstract of title, or certificate of title on the units or time share interests in the time share plan.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved July 7, 2014.)

**Note**

1. Edited pursuant to HRS §23G-16.5.