
A BILL FOR AN ACT

RELATING TO TIME SHARING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that many time share
2 developers offer short-term products that allow prospective time
3 share buyers to explore the time share experience on a trial
4 basis. The legislature finds that some other states have
5 adopted laws providing a seven-day right of cancellation to
6 short-term product buyers.

7 The legislature further finds that existing time share law
8 requires buyers' funds to be placed in escrow and permits
9 buyers' funds to be disbursed from escrow to help the developer
10 pay the costs of construction and development of time share
11 projects. A buyer's funds may be disbursed for such purposes
12 prior to the closing and deeding of the property to the buyer.

13 The legislature additionally finds that it is common to
14 include a subordination clause in contracts for the sale of time
15 share interests in a project that has yet to be constructed. In
16 the subordination clause, the buyers subordinate their rights in
17 the project to the lien of the construction lender. As a
18 result, if the developer defaults under the construction loan,



1 the lender may foreclose and acquire title to the project free
2 of any claims of the buyers. This would be true regardless of
3 whether the buyers' funds were used to pay the costs of
4 construction and development.

5 The legislature also finds that some other states have
6 adopted laws permitting a timeshare developer to use buyers'
7 deposits upon posting a bond, thus assuring that the buyers'
8 deposits will be refunded if construction of the project is not
9 completed or the buyers otherwise become entitled to a refund.
10 Timeshare developers prefer this approach, and this approach
11 also benefits buyers by providing buyers a remedy in the event
12 that the developer fails to complete construction or defaults
13 under its construction loan.

14 The purpose of this Act is to:

- 15 (1) Provide cancellation rights to persons who contract to
16 buy a short-term product in Hawaii; and
- 17 (2) Allow disbursement of purchasers' funds to a
18 developer; provided that the developer first posts a
19 bond or letter of credit.



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

4 "§514E-A Short-term product; right to cancel. (a) A
5 person who has entered into a contract to purchase a short-term
6 product shall have the right to cancel the contract until
7 midnight of the seventh calendar day after the date that the
8 short-term product buyer first signs the contract, or the
9 expiration of any longer cancellation period expressly provided
10 in the contract. A short-term product buyer who exercises the
11 right to cancel under this section shall be entitled to a refund
12 of one hundred per cent of the consideration paid under the
13 contract, without deduction. Any provision in the contract that
14 is intended to waive the short-term product buyer's right of
15 cancellation shall be void and unenforceable.

16 (b) A short-term product seller shall disclose the
17 following in conspicuous type, in the contract or otherwise, to
18 all short-term product buyers:

19 (1) If the short-term product buyer is required to request
20 a reservation in order to use the accommodations:



- 1 (A) That reservations for accommodations under the
2 contract are subject to availability;
- 3 (B) That there is no guarantee that a short-term
4 product buyer will be able to obtain specific
5 accommodations during a specific time period; and
- 6 (C) That the earlier the short-term product buyer
7 requests a reservation, the greater the
8 opportunity to receive a confirmed reservation;
9 and
- 10 (2) Specific blackout dates if the short-term product is
11 subject to blackout dates; and
- 12 (3) That the short-term product buyer shall pay transient
13 accommodations tax for the occupancy of accommodations
14 in Hawaii. This paragraph shall apply only if the
15 short-term product buyer is required to pay transient
16 accommodations tax in addition to the purchase price
17 of the short-term product.
- 18 (c) The contract to purchase a short-term product under
19 this section shall include the date of the contract and contain
20 the following disclosure in conspicuous type on the same page as
21 the short-term product buyer's signature:



1 "YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT AT ANY TIME
2 PRIOR TO MIDNIGHT OF THE SEVENTH CALENDAR DAY AFTER THE
3 DATE THAT YOU SIGN THIS CONTRACT. You may exercise your
4 right to cancel by sending the seller a written notice that
5 you are canceling your contract either by faxing it to
6 (insert facsimile number) or by depositing it into the
7 United States mail, first class postage prepaid, addressed
8 as follows: (insert specific contact information). If you
9 properly cancel this contract, you are entitled to receive
10 a full refund of the amount paid by you pursuant to this
11 contract.

12 If you buy a time share interest, you will have any right
13 to cancel your contract to purchase a time share interest
14 provided by the law governing the sale of the time share
15 interest. However, if you cancel your contract to purchase
16 a time share interest, you will not be entitled to a refund
17 of any amounts paid by you pursuant to this contract or the
18 seller may specify an alternate refund policy under these
19 circumstances."

20 The preceding disclosure shall not be required to be repeated on
21 any addendum to the contract.



1 (d) A short-term product buyer may exercise the right to
2 cancel by giving written notice to the short-term product seller
3 in the manner described in subsection (c). A short-term product
4 seller shall cause any deposit given by a short-term product
5 buyer who has exercised the right to cancel pursuant to
6 subsection (a) to be mailed or otherwise delivered to the short-
7 term product buyer not later than the last to occur of:

8 (1) Fifteen business days following receipt of the short-
9 term product buyer's written notice of cancellation;

10 or

11 (2) Fifteen business days following the date upon which
12 any deposit becomes good and immediately available
13 funds.

14 (e) If a short-term product buyer enters into a contract
15 to purchase a time share interest and all or any portion of the
16 amount paid by the short-term product buyer for a short-term
17 product shall be applied to or credited against the price of a
18 time share interest then neither the developer nor any other
19 party, including but not limited to the short-term product
20 seller, shall be required to deposit in an escrow account,
21 pursuant to section 514E-16, any amounts received by the short-



1 term product seller under the contract to purchase the short-
2 term product.

3 **§514E-B Release of purchaser's funds pursuant to bond or**
4 **letter of credit.** (a) Notwithstanding the requirements of
5 sections 514E-16 and 514E-17 or chapters 514A and 514B, the
6 developer of a time share plan may be entitled to the release,
7 prior to closing, and after the expiration of the purchaser's
8 seven-day cancellation period under section 514E-8, of ninety
9 per cent of a time share purchaser's funds from escrow to be
10 used for costs associated with time share development in this
11 State; provided that the following conditions have been met:

- 12 (1) The developer has deposited with the director and the
13 escrow agent either a surety bond or letter of credit;
14 (2) The developer has not chosen to protect the purchaser
15 from blanket liens using a lien payment trust or
16 alternative arrangements that require the purchaser's
17 funds to be disbursed from escrow directly to someone
18 other than the developer upon closing; and
19 (3) After the purchaser's funds are released to the
20 developer, the amount of the bond or letter of credit,
21 when added to the amount of the purchaser's funds



1 remaining in escrow, will in the aggregate equal or
2 exceed the amount of purchaser's funds that would
3 otherwise be held in escrow.

4 (b) A surety bond filed with the director pursuant to
5 subsection (a) shall be issued by a bonding company that is
6 authorized to do business in the State and is not affiliated
7 with the developer.

8 (c) A surety bond filed with the director pursuant to
9 subsection (a) shall provide that where the developer has failed
10 to refund deposits as required by this chapter or agreements
11 with purchasers or has failed to transfer deposits into the
12 escrow agent's escrow account when required under the escrow
13 agreement, either the director or the escrow agent may declare
14 the bond in default and the surety shall be required to refund
15 deposits that are due and payable to purchasers of time share
16 interests, or transfer deposits that are to be transferred into
17 the escrow account as required, within thirty days by the surety
18 as a debt to the director or escrow agent.

19 (d) If a developer fails to refund a purchaser's funds
20 pursuant to this chapter, including a refund due pursuant to
21 section 514E-8, 514E-11, 514E-11.1, 514E-11.3, or 514E-17, then



1 within thirty days after receipt of a demand by the State or the
2 escrow agent, the surety shall deposit with the escrow agent
3 funds sufficient to pay any refunds due and payable to
4 purchasers that the developer has failed to pay. If the surety
5 disputes:

- 6 (1) Whether the developer has failed to refund a
7 purchaser's funds as required by this chapter;
8 (2) The amount of the refunds due and payable to
9 purchasers; or
10 (3) Whether the surety is otherwise obligated to make
11 payment under the bond or the extent to which a
12 payment under the bond shall be made;

13 the surety may, concurrently with the deposit of the funds with
14 the escrow agent, demand that the escrow agent commence an
15 action for interpleader and deposit the disputed bond proceeds
16 with the circuit court. In the event that the surety demands an
17 interpleader action, the disputed proceeds of the bond shall not
18 be disbursed to any person other than the court or as directed
19 by order of the court.

20 (e) A letter of credit filed with the director pursuant to
21 subsection (a) shall be:



- 1 (1) Irrevocable; provided that the letter of credit may be
2 amended or canceled with the approval of the director;
3 provided further that the director shall not
4 unreasonably withhold or delay approval;
- 5 (2) Payable at sight upon presentation by the State or the
6 escrow agent; and
- 7 (3) Issued by a financial institution acceptable to the
8 director or by a federally insured bank or savings and
9 loan association.
- 10 (f) The developer shall deposit with the escrow agent a
11 copy of each purchaser's purchase agreement at the time when the
12 developer is required by section 514E-16 to deposit the
13 purchaser's funds, negotiable instruments, and purchase money
14 contracts into escrow.
- 15 (g) Upon the closing of the escrow for the sale of a time
16 share interest, the remainder of the purchaser's funds held in
17 escrow pursuant to subsection (a), if any, shall be disbursed in
18 accordance with section 514E-18.
- 19 (h) If a purchaser is entitled to receive a refund of the
20 purchaser's deposits pursuant to this chapter, the amount of
21 such refund shall not be reduced to pay the cost of any surety



1 bond or letter of credit that the developer has deposited with
2 the director and the escrow agent pursuant to subsection (a).

3 (i) If the escrow agreement permits the release of
4 purchasers' funds pursuant to subsection (a), the disclosure
5 statement required by section 514E-9 shall contain the following
6 disclosure:

7 **"Important Notice Regarding Your Deposits:** Deposits that
8 you make under your sales contract for the purchase of a
9 time share interest may be disbursed before closing of your
10 purchase and may be used for any costs associated with time
11 share development in this State. Disbursed funds are not
12 required to be used to pay for costs of construction and
13 development of your time share units or your time share
14 plan. The escrow agent cannot disburse your deposits
15 unless the developer has deposited with the escrow agent
16 either a surety bond or letter of credit. These provide
17 for the deposit of funds into the escrow account if the
18 developer fails to deposit any funds required to pay any
19 refund that the developer is required to make to you under
20 the Hawaii Time Share Act pursuant to Chapter 514E, Hawaii
21 Revised Statutes. IF THE SURETY BOND OR LETTER OF CREDIT



1 IS NOT HONORED, THERE IS A RISK THAT YOUR DEPOSITS WILL NOT
2 BE REFUNDED TO YOU. You should carefully consider this
3 risk in deciding whether to proceed with your purchase."

4 **§514E-C Closing deadline.** A sales contract for the sale
5 of a time share interest shall specify a deadline by which the
6 closing of the sale must occur. The closing deadline may be a
7 specific date or the expiration of a period of time after the
8 sales contract is signed or becomes binding. The closing
9 deadline shall not exceed twenty-four months from the date that
10 the sales contract is signed unless a longer period is approved
11 by the director. The purchaser may cancel the sales contract at
12 any time after the specified closing deadline, if the closing
13 does not occur on or before the closing deadline. A purchaser
14 may exercise the right to cancel pursuant to this section by
15 mailing or delivering a written notice to the developer that the
16 purchaser is canceling the contract. The written notice shall
17 be sent to the developer at the address specified on the
18 contract, or at such other address as the developer may
19 designate by written notice to the purchaser in accordance with
20 the notice provisions of the sales contract. The developer may
21 designate by written notice to the purchaser in accordance with



1 the notice provisions of the sales contract. The developer
2 shall send written notice to the purchaser of any change in the
3 developer's address, and the purchaser shall send written notice
4 to the developer of any change in the purchaser's address, each
5 in accordance with the notice provisions of the sales contract."

6 SECTION 3. Section 514E-1, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By adding five new definitions to be appropriately
9 inserted and to read:

10 "Accommodation" means any apartment, condominium or
11 cooperative unit, cabin, lodge, hotel or motel room, or other
12 real or personal property suitable and intended to provide
13 overnight lodgings for one or more individuals.

14 "Conspicuous type" means type in upper and lower case
15 letters, two point sizes larger than the nearest nonconspicuous
16 type, exclusive of headings, on the page on which it appears and
17 in no less than ten-point type.

18 "Short-term product" means a contract that provides the
19 buyer a one-time allotment of use nights or points that in
20 either case shall be used within a period not to exceed three
21 years and that includes an agreement that all or a portion of



1 the consideration paid by a person for the short-term product
2 shall be applied to or credited against the price of a future
3 purchase of a time share interest or that the cost of a future
4 purchase of a time share interest shall be fixed or locked in at
5 a specified price. A short-term product shall not constitute a
6 time share interest.

7 "Short-term product buyer" means an individual who has
8 entered into a contract to purchase a short-term product.

9 "Short-term product seller" means the developer of a short-
10 term product."

11 2. By amending the definition of "notice of time share
12 plan" to read:

13 "Notice of time share plan" means an instrument executed
14 by the holder of the legal and equitable title to the fee or
15 long-term leasehold interest in a time share unit, and which
16 provides notice of the existence of the time share plan and of
17 rights of owners. [~~The notice of time share plan must identify~~
18 ~~the use period for each time share interest and the name of the~~
19 ~~initial purchaser thereof.] If the time share unit is located
20 outside the State, the notice shall be contained in a
21 declaration of covenants, conditions, and restrictions which~~



1 provide that the notice shall, as a matter of covenant, have the
2 effects described in section 514E-21. The declaration of
3 covenants, conditions, and restrictions must be prepared so as
4 to (i) constitute a covenant running with and an equitable
5 servitude upon the time share units for the duration of the time
6 share plan, and (ii) have the effects described in section
7 514E-21."

8 SECTION 4. Section 514E-10.2, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Notwithstanding any other provision of this chapter,
11 the director may issue a limited permit to a developer
12 permitting the offer or sale, in this State, of an additional
13 interest in a time share plan to an existing purchaser in the
14 same time share plan; provided that:

15 (1) The developer or an affiliated entity of the developer
16 has a time share plan currently registered with the
17 director; provided that the registration was
18 originally approved or amended within seven years from
19 the date of the offer or disposition, and the
20 registration has not been terminated or withdrawn;



- 1 (2) The developer has not, during the two-year period
2 preceding the time of the offer, had a time share
3 registration suspended, restricted, or revoked in any
4 state or been convicted of an offense involving fraud
5 or dishonesty. In the event the developer satisfies
6 the requirement of paragraph (1) above through an
7 affiliated entity, the developer has not, during the
8 twenty-year period preceding the time of the offer,
9 had a time share registration suspended, restricted,
10 or revoked in any state or been convicted of an
11 offense involving fraud or dishonesty;
- 12 (3) In satisfaction of the disclosure requirements of
13 section 514E-9, the purchaser is provided the time
14 share disclosure documents the purchaser would have
15 received if the purchase had occurred in the state or
16 jurisdiction where the purchaser initially purchased
17 the time share interest;
- 18 (4) The contract for purchase signed by the purchaser
19 includes a notice that is the same as or similar to
20 the rescission notice required pursuant to section



1 514E-9(a)(7); provided that the rescission period
2 shall be at least seven days;
3 (5) All funds and any negotiable instruments received
4 during the seven-day rescission period shall be placed
5 in an escrow account in the State. The escrow agent
6 shall be a bank, savings and loan association, or
7 trust company authorized to do business in the State
8 under an escrow arrangement or a corporation licensed
9 as an escrow depository under chapter 449. The funds
10 or negotiable instruments may be released from escrow;
11 provided that the release is in accordance with
12 section 514E-17, ~~[or]~~ 514E-18~~[-]~~, or 514E-B. Any
13 escrow account established for any out-of-state time
14 share plan offered under this subsection may be
15 maintained in the state where the time share plan is
16 located after the seven-day rescission period has
17 expired; provided that the escrow agent submits to
18 personal jurisdiction in this State;
19 (6) The contract for purchase shall contain the following
20 statement in conspicuous type:



1 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR
 2 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY
 3 OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE
 4 _____ (DEVELOPER OR AFFILIATE'S
 5 NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH
 6 THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF
 7 APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE
 8 SELLER AS THE TERM IS DEFINED IN CHAPTER 514E, HAWAII
 9 REVISED STATUTES."; and

10 (7) The offer complies with the provisions of sections
 11 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13),
 12 and 514E-11.1."

13 SECTION 5. Section 514E-16, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 **"§514E-16 Deposit of purchaser's funds, notes, and**
 16 **contracts into escrow.** (a) All funds and any negotiable
 17 instruments and purchase money contracts received before closing
 18 from or on behalf of purchasers or prospective purchasers in
 19 connection with the purchase or reservation, in the State, of
 20 time share interests must be placed in an escrow account.
 21 However, the developer or a sales agent may hold, until the

1 expiration of the seven-day-cancellation period provided by
2 section 514E-8 or any longer purchaser cancellation period
3 provided in the sales contract, a negotiable instrument, or
4 purchase money contract made by a purchaser:

5 (1) For which subsequent holders cannot claim holder in
6 due course status within the meaning of article 3 of
7 chapter 490; or

8 (2) Where the payee is:

9 (A) The escrow agent; or

10 (B) The trustee of a lien payment trust.

11 (b) The escrow agent must be a bank, savings and loan
12 association, or a trust company authorized to do business in the
13 State under an escrow arrangement or a corporation licensed as
14 an escrow depository under chapter 449. [~~However, in connection~~
15 ~~with sales made out of the State for the use of time share units~~
16 ~~located in the State, the escrow agent may be located in and the~~
17 ~~purchasers' funds, negotiable instruments, and purchase money~~
18 ~~contracts may be impounded in the jurisdiction where the sale is~~
19 ~~made, if the law of such jurisdiction requires it. In such~~
20 ~~event, the out of state escrow agent shall be subject to the~~
21 ~~approval of the director.~~]



1 (c) The establishment of such an escrow account shall be
2 evidenced by a written escrow agreement between the developer
3 and the [~~in state or out of state~~] escrow agent. The escrow
4 agreement must provide for the handling of purchaser's funds,
5 negotiable instruments, and purchase money contracts as required
6 by this chapter and must contain any provisions required by
7 rules adopted by the director pursuant to chapter 91.

8 (d) A developer or an affiliate of a developer who
9 provides purchase money financing to a time share purchaser
10 shall deposit into the escrow account established under
11 subsection (a) all loan payments made by the purchaser prior to
12 closing. Such deposit shall be made no later than the last to
13 occur of:

14 (1) Seven business days after receipt of the payment by
15 the developer, an affiliate of the developer, or the
16 developer's or affiliate's servicing agent; or

17 (2) Seven business days following the date upon which any
18 payment made prior to closing becomes good and
19 immediately available funds.



1 Thereafter, the payments may be released from escrow; provided
2 that the release is in accordance with section 514E-17, 514E-18,
3 or 514E-B."

4 SECTION 6. Section 514E-30, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§514E-30 Scope of chapter.** (a) This chapter applies to
7 the offer and sale in Hawaii of time share interests in time
8 share units located in Hawaii. If time share units are located
9 outside of Hawaii, but any offer or sale is made within the
10 State, this chapter, except for sections 514E-3, 514E-4, 514E-5,
11 514E-6, 514E-7, 514E-10(c), and 514E-14, shall apply. As to the
12 offer and sale outside of Hawaii of time share interest in a
13 time share plan which includes time share units located in
14 Hawaii, this chapter, except for sections 514E-2.5, 514E-8,
15 514E-9, 514E-10(b), 514E-11, and 514E-11.1 shall apply.

16 (b) This chapter applies to the offer and sale in Hawaii
17 of short-term products. This chapter does not apply to the
18 offer or sale of short-term products outside of Hawaii,
19 regardless of whether the short-term product buyer shall have
20 the right to use accommodations in Hawaii."



1 SECTION 7. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect on July 1, 2112;
8 provided that:

9 (1) Sections 514E-B and 514E-C, Hawaii Revised Statutes,
10 established by section 2 of this Act, shall be
11 repealed on July 1, 2020; and

12 (2) Sections 4 and 5 of this Act shall be repealed on
13 July 1, 2020, and sections 514E-10.2 and 514E-16,
14 Hawaii Revised Statutes, shall be reenacted in the
15 form in which they read on the day prior to the
16 effective date of this Act.



Report Title:

Time Sharing; Time Share; Short-term Product; Right to Cancel;
Purchasers; Developers; Bond; Letter of Credit

Description:

Provides cancellation rights to persons who contract to buy a short-term product in Hawaii. Allows, until 7/1/2020, disbursement of purchasers' funds to a developer; provided that the developer first posts a bond or letter of credit. Effective 7/1/2112. (SD1)

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