A BILL FOR AN ACT

RELATING TO TIME SHARING 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-1 Ministerial amendments. (a) The developer may submit an amended disclosure statement that updates:

(1) The name (unless the entity or form of entity has also changed), address, or other contact information contained in the disclosure statement;

(2) The budget contained in, or attached as, an exhibit to the disclosure statement, and the amount of the annual or other assessments for the time share interests;

(3) The real property taxes, transient accommodations taxes, transient occupancy taxes, general excise taxes, or any other taxes of any kind or nature applicable to the time share interests, the time share units, or the time share plan; or
(4) The description of any pending or anticipated litigation.

(b) An amended disclosure statement submitted pursuant to:

(1) Subsection (a)(1), (a)(2), or (a)(3) shall set an effective date for the amended disclosure statement, which shall be no sooner than twenty days after the date of submittal, and the amended disclosure statement shall be deemed accepted by the director as of that date unless otherwise agreed to by the developer and the director; and

(2) Subsection (a)(4) shall set an effective date for the amended disclosure statement, which shall be no sooner than forty-five days after the date of submittal, and shall be accompanied by copies of pleadings or other documents supporting the proposed change to the exhibit. Within thirty days after the amended disclosure statement and supporting documentation is submitted, the director shall notify the developer of any changes to the exhibit required by the director. Unless otherwise agreed to by the developer and the director, the amended disclosure statement, with any
changes to the exhibit required by the director, shall
be deemed accepted by the director as of the effective
date shown on the amended disclosure statement."

SECTION 2. Section 514E-1, Hawaii Revised Statutes, is
amended by adding three new definitions to be appropriately
inserted and to read as follows:

"Plan documents" means the primary plan documents and the
supplementary plan documents.

"Primary plan documents" means the constituent documents of
the time share plan, including, but not limited to, any time
share declaration, any trust agreement, the articles of
incorporation and bylaws of the association (if the association
is a corporation) or the operating agreement or similar
organizational document (if the association is a limited
liability company or other entity), the rules for reserving the
use of the time share units, and the rules governing the
occupancy of the time share units. Any plan document that
modifies the terms and provisions of the time share plan (for
example, by establishing a new class or category of time share
interest having rights that differ from existing time share
interests in the time share plan) shall constitute a primary
plan document and shall not constitute a supplementary plan
document.

"Supplementary plan documents" means any instrument that:

(1) Submits or commits property to the time share plan;
(2) Makes property previously submitted to the time share plan available for use by the time share owners;
(3) Removes property from the time share plan; or
(4) Terminates the right of time share owners to use property previously made available for use by the time share owners;

including, but not limited to, any declaration of annexation, declaration of de-annexation, active property declaration, notice of access, notice of conveyance, notice of activation, or any deed conveying property to the trustee of a time share plan or to the time share owners association."

SECTION 3. Section 514E-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any offering of a time sharing plan to the public shall disclose:

(1) The name and address of the developer and of the time share units;
(2) The name and address of the plan manager, if any, and a description of the plan manager's responsibilities and authority;

(3) A description of the time share units, including the developer's schedule for completion of all buildings, units, and amenities and dates of availability;

(4) If the time share plan is located in a condominium property regime, a description of the project and, if the purchaser will be a direct owner of a unit in the condominium, a brief description of any pertinent provisions of the project instruments of the condominium;

(5) Any restraints on the transfer of the buyer's time share interest in the time share units or plan;

(6) Whether the time share plan is a time share ownership plan or a time share use plan, along with a description of the rights and responsibilities under said plan;

(7) A statement that there is a seven-calendar-day period of mutual rescission;
(8) A statement that pursuant to section 514E-11.3, every
sale or transfer, made in violation of this chapter is
voidable at the election of the purchaser;

(9) [Notice] A list of the primary plan documents of the
time share plan and, if the plan is limited to a
single site, notice of any liens, title defects or
encumbrances on or affecting the title to the units or
plan;

(10) [Notice] An exhibit that contains notice of any
pending or anticipated suits that are material to the
time share units or plan, of which the developer has,
or should have, knowledge;

(11) The total financial obligation of the purchaser, which
shall consist of:

(A) A statement that the purchaser is obligated to
pay the initial price stated in the purchaser's
purchase agreement; and

(B) A list or description of any additional charges
to which the purchaser may be subject;

(12) An estimate of the dues, maintenance fees, real
property taxes, and similar periodic expenses, and the
method or formula by which they are derived and
apportioned;

(13) The disclosure statement under subsection (d), if
applicable; and

(14) Other disclosures required by the director, as
provided by rules adopted pursuant to chapter 91."

SECTION 4. 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.

(h) Subject to subsection (i), developers shall not be required to include copies of encumbrances against title to the time share units in:

(1) An application for a developer registration;

(2) An application to amend a developer registration; or

(3) An application for renewal of a developer registration.

(i) The developer shall be required to submit:

(1) Copies of the primary plan documents for the time share plan that is the subject of the application;

(2) Copies of any supplementary plan documents as the director shall request;
(3) If the time share interest will not be conveyed to the purchaser free and clear of blanket liens:

(A) Copies of any recorded blanket liens that will remain on title after the closing of the sale of a time share interest in the time share plan; and

(B) Copies of any recorded non-disturbance agreements or other instruments protecting the time share interests from any recorded blanket liens that will remain on title after the closing of the sale of a time share interest in the time share plan; and

(4) Copies of other recorded encumbrances as the director shall specifically request for the purpose of determining the compliance of the time share plan with the disclosure and blanket lien protection requirements of this chapter."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: ________________

JAN 23 2019
Report Title:
TimeSharing Plans; Developer Applications and Disclosure Statements

Description:
Eliminates the requirement that a time share developer (1) file copies of all encumbrances affecting title to all time share units in a time share plan as part of the registration process; and (2) include in the time share disclosure statement a list all encumbrances affecting title to all time share units in a time share plan. Requires that a time share disclosure statement include a description of the condominium documents only for those time share plans where the time share owners are actually unit owners either in fee or to the extent and for the purposes provided in a recorded unit lease. Permits the developer to make ministerial updates to the disclosure statement on an expedited basis.

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