

JAN 24 2013

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# A BILL FOR AN ACT

RELATING TO TIME SHARES.

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

1           SECTION 1. Section 514E-9, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

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

5           (1) The name and address of the developer and of the time  
6 share units;

7           (2) The name and address of the plan manager, if any, and  
8 a description of the plan manager's responsibilities  
9 and authority;

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

13          (4) If the time share plan is located in a condominium  
14 property regime, a description of the project and any  
15 pertinent provisions of the project instruments;

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



- 1           (6) Whether the time share plan is a time share ownership  
2           plan or a time share use plan, along with a  
3           description of the rights and responsibilities under  
4           said plan;
- 5           (7) A statement that there is a seven-calendar-day period  
6           of mutual rescission;
- 7           (8) A statement that pursuant to section 514E-11.3, every  
8           sale or transfer, made in violation of this chapter is  
9           voidable at the election of the purchaser;
- 10          (9) Notice of any liens, title defects or encumbrances on  
11          or affecting the title to the units or plan;
- 12          (10) Notice of any pending or anticipated suits that are  
13          material to the time share units or plan, of which the  
14          developer has, or should have, knowledge;
- 15          (11) The total financial obligation of the purchaser, which  
16          shall ~~[include]~~ consist of:
  - 17                (A) A statement that the purchaser is obligated to  
18                pay the initial price stated in the purchaser's  
19                purchase agreement; and
  - 20                (B) A list or description of any additional charges  
21                to which the purchaser may be subject;



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

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

7 SECTION 2. Section 514E-11, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§514E-11 **Prohibited practices.** It is a violation of this  
10 chapter for any sales agent or acquisition agent of time share  
11 units or plans to:

12 (1) Fail to comply with the disclosure requirements set  
13 forth in section 514E-9 or any rule adopted pursuant  
14 thereto;

15 (2) Use any promotional device, including but not limited  
16 to entertainment, prizes, gifts, food and drinks,  
17 games, transportation, luaus, ocean recreational  
18 activities, land recreational activities, aerial  
19 recreational activities, or tours, or other  
20 inducements, or make any offer thereof, without fully  
21 disclosing orally and as provided in paragraph (3)  
22 that the device is being used or offered for the



1           purpose of soliciting sales of time share units or  
2           interests;

3           (3) Offer a prospective purchaser a prize or gift as part  
4           of any time share advertising or sales promotion plan,  
5           if in order to claim the prize, the prospective  
6           purchaser must attend and complete a sales  
7           presentation, unless written disclosure is furnished  
8           to the prospective purchaser at the time the  
9           prospective purchaser is notified of the prize or  
10          gift; provided that the written disclosure is written  
11          or printed in a size equal to at least ten-point bold  
12          type and contains all of the following:

13          (A) A full description of the exact prize or gift won  
14          by the prospective purchaser including its cash  
15          value;

16          (B) All material terms and conditions attached to the  
17          prize or gift;

18          (C) A statement that the consumer must attend and  
19          complete a sales presentation; and

20          (D) An identification of the time share project to be  
21          offered for sale, including type of ownership and



- 1 price ranges of the time share interests in that  
2 project;
- 3 (4) Misrepresent or deceptively represent any material  
4 fact concerning the time share plan or time share  
5 unit;
- 6 (5) Make any representation that a time share interest is  
7 an investment, including but not limited to the value  
8 of the interest at resale;
- 9 (6) Fail to honor and comply with all provisions of a  
10 contract or reservation agreement with the purchaser;
- 11 (7) Include, in any contract or reservation agreement,  
12 provisions purporting to waive any right or benefit  
13 provided for purchasers pursuant to this chapter;
- 14 (8) Receive from any prospective purchaser any money,  
15 property (including but not limited to a credit card),  
16 or other valuable consideration prior to signing a  
17 contract or reservation agreement for the purchase of  
18 a time share plan or unit; provided that this  
19 paragraph shall not apply to sums paid by a purchaser  
20 or prospective purchaser for a tourist activity or for  
21 any other product or service offered to induce  
22 attendance at a time share sales presentation;



- 1           (9) Make any agreement or contract with a purchaser before  
2           delivering, furnishing, or tendering to that  
3           prospective purchaser any promised promotional device  
4           or other instrument; provided that nothing herein or  
5           in the rules adopted by the director shall require  
6           that any promotional device or instrument be  
7           delivered, furnished, or tendered to the prospective  
8           purchaser prior to making a sales presentation;
- 9           (10) Distribute any promotional or disclosure material  
10           separately if the material was filed in a consolidated  
11           form;
- 12           (11) Use any unregistered time share booth, or fail to  
13           display at all times a conspicuous, clear, and  
14           unobstructed sign of a permanent nature:
- 15           (A) That contains the words "time share" or "time  
16           sharing" in letters at least three inches tall  
17           and in a color that distinctively contrasts with  
18           the background on which the words appear;
- 19           (B) With minimum dimensions of nine inches by twenty-  
20           four inches, excluding any frame;



1 (C) Posted on or in the booth in an upright position,  
2 perpendicular to the ground, and in a location  
3 that is easily visible to passersby; and

4 (D) Consistent with such rules as the director may  
5 adopt pursuant to this chapter and consistent  
6 also with county ordinances.

7 No person shall post anything upon or adjacent to the  
8 sign, or include anything in the sign, which indicates  
9 that the booth is not being used for time share  
10 solicitation purposes. As used in this paragraph,  
11 "sign of a permanent nature" specifically excludes  
12 banners, grease boards, marker boards, handwritten  
13 signs, or signs constructed of temporary materials  
14 such as paper, poster board, or cardboard. The  
15 signage requirements of this paragraph shall not apply  
16 to a booth located within a project subject to a time  
17 share plan; or

18 (12) Misrepresent the amount of fees to be charged,  
19 including management fees, or the structure for future  
20 fee increase [~~or~~

21 ~~(13) Sell, offer for sale, or advertise for sale, by any~~  
22 ~~person, partnership, firm, corporation, joint stock~~



1           ~~company, or other association engaged in marketing~~  
2           ~~time share plans within the State, any tourist~~  
3           ~~activity, including but not limited to land, aerial,~~  
4           ~~or water recreational activities, at less than the~~  
5           ~~actual cost of the activity paid for by the licensee~~  
6           ~~thereof to such vendor or give, offer to give, or~~  
7           ~~advertise with the intent to give away any such~~  
8           ~~tourist activity with the purpose or effect of~~  
9           ~~inducing the prospective purchaser to purchase a time~~  
10          ~~share plan or to attend a time share marketing event].~~

11 Any violation of this section shall also constitute an unlawful  
12 or deceptive practice within the meaning of section 480-2;  
13 provided that in addition violations of section 514E-31 or of  
14 paragraph (11) shall result in a fine of not less than \$50 for  
15 each separate offense for a maximum aggregate amount of \$500."

16           SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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

19

INTRODUCED BY: *John Merendino*  
By Request





**Report Title:**

Time Shares; Disclosures; Prohibited Activities

**Description:**

Requires a time share plan's disclosure of the financial obligation of the purchaser to consist of: (1) A statement that the purchaser is obligated to pay the initial price in the purchase agreement; and (2) A list or description of any additional charges. Clarifies that a sales or acquisition agent is not required to provide any promotional device or instrument to a prospective purchaser prior to making a sales presentation. Repeals the prohibition on selling, offering to sell, advertising for sale, or otherwise offering to give away any tourist activity with the purpose of inducing a person to purchase a time share plan or to attend a time share marketing event.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

