

JAN 16 2014

A BILL FOR AN ACT

RELATING TO TIME SHARE.

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

1 SECTION 1. The legislature finds that existing time share
2 law requires buyers' funds to be placed in escrow and disbursed
3 from escrow to help the developer pay the costs of construction
4 and development of time share projects. A buyer's funds may
5 also be disbursed prior to the closing and deeding of the
6 property to the buyer.

7 The legislature further finds that it is common to include
8 a subordination clause in contracts for the sale of time share
9 interests in a project that has yet to be constructed. In the
10 subordination clause, the buyers subordinate their rights in the
11 project to the lien of the construction lender. As a result, if
12 the developer defaults under the construction loan, the lender
13 may foreclose and acquire title to the project free of any
14 claims of the buyers. This would be true regardless of whether
15 the buyers' funds were used to pay the costs of construction and
16 development.

17 The legislature additionally finds that some other states
18 have adopted laws permitting a timeshare developer to use



1 buyers' deposits upon posting a bond, thus assuring that the
2 buyers' deposits will be refunded if construction of the project
3 is not completed or the buyers otherwise becomes entitled to a
4 refund. Timeshare developers prefer this approach, and this
5 approach also benefits buyers by providing buyers a remedy in
6 the event that the developer fails to complete construction or
7 defaults under its construction loan.

8 The purpose of this Act is to allow disbursement of
9 purchasers' funds to a developer; provided that the developer
10 first posts a bond, letter of credit, or other financial
11 assurance.

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

15 **"§514E- Release of purchaser's funds pursuant to bond,**
16 **letter of credit, or other financial assurance. (a)**

17 Notwithstanding the requirements of sections 514E-16 and
18 514E-17, the developer of a time share plan shall be entitled to
19 the release of a purchaser's funds from escrow after the
20 expiration of the purchaser's seven-day cancellation period
21 under section 514E-8, if the following conditions have been met:



1 (1) The developer has deposited with the director and the
2 escrow agent either: a surety bond, escrow bond, or
3 irrevocable letter of credit; or any other financial
4 assurance acceptable to the director. Any such surety
5 bond or escrow bond shall be issued by a bonding
6 company that is not affiliated with the developer; and

7 (2) After the purchaser's funds are released to the
8 developer, the amount of the bond, letter of credit,
9 or other financial assurance will equal or exceed the
10 amount that would otherwise be held in escrow.

11 (b) If the accommodations of the time share plan are
12 located outside of the State, a bond, letter of credit, or other
13 financial assurance that has been deposited with or accepted by
14 the jurisdiction in which the accommodations are located shall
15 satisfy the requirements of subsection (a).

16 If the time share plan includes accommodations in more than
17 one jurisdiction and if all of the accommodations are located
18 outside of the State, a bond, letter of credit, or other
19 financial assurance that has been deposited with or accepted by
20 any such jurisdiction in the United States, or any foreign
21 jurisdiction acceptable to the director, shall satisfy the
22 requirements of subsection (a).



1 (c) When the developer is required by section 514E-16 to
2 deposit with the escrow agent the purchaser's funds, negotiable
3 instruments, and purchase money contracts, the developer shall
4 also deposit with the escrow agent a copy of each purchaser's
5 purchase agreement."

6 SECTION 3. New statutory material is underscored.

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

8

INTRODUCED BY:

Randy H. Bell

By Request



S.B. NO. 2232

Report Title:

Time Share; Developer; Purchasers; Bond; Letter of Credit

Description:

Allows disbursement of purchasers' funds to a developer; provided that the developer first posts a bond, letter of credit, or other financial assurance.

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