
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 buyer's 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



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

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

15 The purpose of this Act is to:

- 16 (1) Provide cancelation rights to persons who contract to
17 buy a short-term time share product in Hawaii; and
18 (2) Allow disbursement of purchasers' funds to a time
19 share developer; provided that the developer first
20 posts a surety 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 cancelation 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 cancelation 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 (2) Specific blackout dates if the short-term product is
10 subject to blackout dates;
- 11 (3) Whether all or any portion of the amount paid by the
12 short-term product buyer for a short-term product will
13 be applied to or credited against the price of a time
14 share interest;
- 15 (4) Whether the cost of a time share interest will be
16 fixed or locked in at a specified price; and
- 17 (5) That the short-term product buyer shall pay transient
18 accommodations tax for the occupancy of accommodations
19 in Hawaii. This paragraph shall apply only if the
20 short-term product buyer is required to pay transient



1 accommodations tax in addition to the purchase price
2 of the short-term product.

3 (c) The contract to purchase a short-term product under
4 this section shall include the date of the contract and contain
5 the following disclosure in conspicuous type on the same page as
6 the short-term product buyer's signature:

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

18 If you buy a time share interest, you will have any right
19 to cancel your contract to purchase a time share interest
20 provided by the law governing the sale of the time share
21 interest. However, if you cancel your contract to purchase



1 a time share interest, you will not be entitled to a refund
2 of any amounts paid by you pursuant to this contract or the
3 seller may specify an alternate refund policy under these
4 circumstances."

5 The preceding disclosure shall not be required to be repeated on
6 any addendum to the contract.

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

14 (1) Fifteen business days following receipt of the short-
15 term product buyer's written notice of cancelation; or

16 (2) Fifteen business days following the date upon which
17 any deposit becomes good and immediately available
18 funds.

19 (e) If a short-term product buyer enters into a contract
20 to purchase a time share interest and all or any portion of the
21 amount paid by the short-term product buyer for a short-term



1 product shall be applied to or credited against the price of a
2 time share interest then neither the developer nor any other
3 party, including but not limited to the short-term product
4 seller, shall be required to deposit in an escrow account,
5 pursuant to section 514E-16, any amounts received by the short-
6 term product seller under the contract to purchase the short-
7 term product.

8 (f) Short-term products shall be sold by a person licensed
9 as a real estate broker or real estate salesperson pursuant to
10 chapter 467.

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

20 (1) The developer has deposited with the director and the
21 escrow agent either a surety bond or letter of credit;



- 1 (2) The developer has not chosen to protect the purchaser
2 from blanket liens using a lien payment trust or
3 alternative arrangements that require the purchaser's
4 funds to be disbursed from escrow directly to someone
5 other than the developer upon closing; and
- 6 (3) After the purchaser's funds are released to the
7 developer, the amount of the bond or letter of credit,
8 when added to the amount of the purchaser's funds
9 remaining in escrow, will in the aggregate equal or
10 exceed the amount of purchaser's funds that would
11 otherwise be held in escrow.
- 12 (b) A surety bond filed with the director pursuant to
13 subsection (a) shall be issued by a bonding company that is
14 authorized to do business in the State, is not affiliated with
15 the developer, and has a financial rating acceptable to
16 director.
- 17 (c) A surety bond filed with the director pursuant to
18 subsection (a) shall provide that where the developer has failed
19 to refund deposits as required by chapter 514E or agreements
20 with purchasers or has failed to transfer deposits into the
21 escrow agent's escrow account when required under the escrow



1 agreement, either the director or the escrow agent may declare
2 the bond in default and the surety shall refund deposits that
3 are due and payable to purchasers of time share interests, or
4 transfer deposits that are to be transferred into the escrow
5 account as required, within thirty days by the surety as a debt
6 to the director or escrow agent.

7 (d) The developer shall submit a surety bond on a form
8 prescribed by the director; provided that the director shall
9 have the discretion to accept a surety bond on any other form
10 submitted that meets the requirements of subsection (c). Within
11 forty-five days after the form of the surety bond is submitted
12 to the director, the director shall issue a letter to the
13 developer either accepting the bond or identifying all
14 deficiencies in the form of the bond in sufficient detail so as
15 to permit the developer to cure each deficiency.

16 (e) If a developer fails to refund a purchaser's funds
17 pursuant to this chapter, including a refund due pursuant to
18 sections 514E-8, 514E-11, 514E-11.1, 514E-11.3, or 514E-17, then
19 within thirty days after receipt of a demand by the State or the
20 escrow agent, the surety shall deposit with the escrow agent
21 funds sufficient to pay any refunds due and payable to



1 purchasers that the developer has failed to pay. If the surety
2 disputes:

3 (1) Whether the developer has failed to refund a
4 purchaser's funds as required by this chapter;

5 (2) The amount of the refunds due and payable to
6 purchasers; or

7 (3) Whether the surety is otherwise obligated to make
8 payment under the bond or the extent to which a
9 payment under the bond shall be made;

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

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

19 (1) Irrevocable; provided that the letter of credit may be
20 amended or canceled with the approval of the director;



1 provided further that the director shall not

2 unreasonably withhold or delay approval;

3 (2) Payable at sight upon presentation by the State or the
4 escrow agent; and

5 (3) Issued by a financial institution acceptable to the
6 director or by a federally insured bank or savings and
7 loan association.

8 (f) The developer shall deposit with the escrow agent a
9 copy of each purchaser's purchase agreement at the time when the
10 developer is required by section 514E-16 to deposit the
11 purchaser's funds, negotiable instruments, and purchase money
12 contracts into escrow.

13 (g) Upon the closing of the escrow for the sale of a time
14 share interest, the remainder of the purchaser's funds held in
15 escrow pursuant to subsection (a), if any, shall be disbursed in
16 accordance with section 514E-18.

17 (h) If a purchaser is entitled to receive a refund of the
18 purchaser's deposits pursuant to this chapter, the amount of
19 such refund shall not be reduced to pay the cost of any surety
20 bond or letter of credit that the developer has deposited with
21 the director and the escrow agent pursuant to subsection (a).



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

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



1 Statutes. IF THE SURETY BOND OR LETTER OF CREDIT IS NOT
2 HONORED, THERE IS A RISK THAT YOUR DEPOSITS WILL NOT BE
3 REFUNDED TO YOU. You should carefully consider this risk
4 in deciding whether to proceed with your purchase.

5 Signature _____ Date _____

6 I acknowledge that I have received and read the disclosure
7 statement regarding my deposit under my sales contract for
8 the purchase of a time share interest."

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



1 be sent to the developer at the address specified on the
2 contract, or at such other address as the developer may
3 designate by written notice to the purchaser in accordance with
4 the notice provisions of the sales contract. The developer may
5 designate by written notice to the purchaser in accordance with
6 the notice provisions of the sales contract. The developer
7 shall send written notice to the purchaser of any change in the
8 developer's address, and the purchaser shall send written notice
9 to the developer of any change in the purchaser's address, each
10 in accordance with the notice provisions of the sales contract."

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

13 1. By adding five new definitions to be appropriately
14 inserted and to read:

15 "Accommodation" means any apartment, condominium or
16 cooperative unit, cabin, lodge, hotel or motel room, or other
17 real or personal property suitable and intended to provide
18 overnight lodgings for one or more individuals.

19 "Conspicuous type" means type in upper and lower case
20 letters, two point sizes larger than the nearest nonconspicuous



1 type, exclusive of headings, on the page on which it appears and
2 in no less than ten-point type.

3 "Short-term product" means a one-time allotment of use
4 nights or points used for accommodations, and offered for the
5 purpose of soliciting a time share sale.

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

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

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

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



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

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

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

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

20 (2) The developer has not, during the two-year period
21 preceding the time of the offer, had a time share



1 registration suspended, restricted, or revoked in any
2 state or been convicted of an offense involving fraud
3 or dishonesty. In the event the developer satisfies
4 the requirement of paragraph (1) above through an
5 affiliated entity, the developer has not, during the
6 twenty-year period preceding the time of the offer,
7 had a time share registration suspended, restricted,
8 or revoked in any state or been convicted of an
9 offense involving fraud or dishonesty;

10 (3) In satisfaction of the disclosure requirements of
11 section 514E-9, the purchaser is provided the time
12 share disclosure documents the purchaser would have
13 received if the purchase had occurred in the state or
14 jurisdiction where the purchaser initially purchased
15 the time share interest;

16 (4) The contract for purchase signed by the purchaser
17 includes a notice that is the same as or similar to
18 the rescission notice required pursuant to section
19 514E-9(a)(7); provided that the rescission period
20 shall be at least seven days;



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

17 (6) The contract for purchase shall contain the following
18 statement in conspicuous type:
19 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR
20 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY
21 OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE



1 _____ (DEVELOPER OR AFFILIATE'S
2 NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH
3 THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF
4 APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE
5 SELLER AS THE TERM IS DEFINED IN CHAPTER 514E, HAWAII
6 REVISED STATUTES."; and

7 (7) The offer complies with the provisions of sections
8 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13),
9 and 514E-11.1."

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

12 "§514E-16 Deposit of purchaser's funds, notes, and
13 contracts into escrow. (a) All funds and any negotiable
14 instruments and purchase money contracts received before closing
15 from or on behalf of purchasers or prospective purchasers in
16 connection with the purchase or reservation, in the State, of
17 time share interests must be placed in an escrow account.

18 However, the developer or a sales agent may hold, until the
19 expiration of the seven-day-~~[cancellation]~~ cancellation period
20 provided by section 514E-8 or any longer purchaser
21 ~~[cancellation]~~ cancellation period provided in the sales



1 contract, a negotiable instrument, or purchase money contract
2 made by a purchaser:

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

6 (2) Where the payee is:

7 (A) The escrow agent; or

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

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

20 (c) The establishment of such an escrow account shall be
21 evidenced by a written escrow agreement between the developer



1 and the [~~in state or out of state~~] escrow agent. The escrow
2 agreement must provide for the handling of purchaser's funds,
3 negotiable instruments, and purchase money contracts as required
4 by this chapter and must contain any provisions required by
5 rules adopted by the director pursuant to chapter 91.

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

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

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

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



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

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

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

18 SECTION 7. In codifying the new sections added by section
19 2 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

5 (1) Sections 514E-B and 514E-C, Hawaii Revised Statutes,
6 established in section 2 of this Act, shall be
7 repealed on July 1, 2020; and

8 (2) Sections 4 and 5 of this Act shall be repealed on July
9 1, 2020, and sections 514E-10.2 and 514E-16, Hawaii
10 Revised Statutes, shall be reenacted in the form in
11 which they read on the day prior to the effective date
12 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 disbursement of purchasers' funds to a developer; provided that the developer first posts a bond or letter of credit. (SB754 HD2)

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

