

JAN 16 2020

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# 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 under existing law  
2 the current process for time share developers to renew their  
3 registration is arduous and requires a significant amount of  
4 information. The extensive process has caused a backlog for  
5 developers to submit their annual renewals for time share  
6 registration. The legislature further finds that existing law  
7 does not authorize a developer to utilize electronic means,  
8 which further exacerbates the extensive process for renewal  
9 registration.

10           Accordingly, the purpose of this Act is to streamline the  
11 annual renewals for time share registration by:

- 12           (1) Amending the information required to be included in a  
13 time share disclosure statement, under certain  
14 circumstances;
- 15           (2) Amending the information required to be included on an  
16 application to renew a developer's registration; .



- 1           (3) Expanding the information that developers are not  
2                   required to include on an application to renew their  
3                   registration;
- 4           (4) Requiring developers to submit copies of encumbrances  
5                   on title using any form of electronic record  
6                   acceptable;
- 7           (5) Limiting the copies that developers are required to  
8                   submit in an application for renewal registration; and
- 9           (6) Requiring developers to submit copies of the  
10                  supplementary plan documents of the time share plan.

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

14           "Primary plan document" means the constituent documents of  
15 the time share plan, including any time share declaration, any  
16 trust agreement, articles of incorporation and bylaws of the  
17 association, if the association is a corporation, or the  
18 operating agreement or similar organization document, if the  
19 association is a limited liability company or other entity, the  
20 rules for reserving the use of the time share units, and the  
21 rules and regulations governing the occupancy of the time share



1 units. "Primary plan document" does not include supplementary  
2 plan documents.

3 "Supplementary plan document" means any declaration of  
4 annexation, active property declaration, notice of access,  
5 notice of conveyance, notice of activation, deed conveying  
6 property to the trustee of a time share plan or to the time  
7 share owners association, and other instruments submitting or  
8 committing property to the time share plan or removing property  
9 from the time share plan. To the extent that any such documents  
10 modify the terms and provisions of the time share plan as  
11 established in the existing primary plan documents, including by  
12 establishing a new class or category of time share interest  
13 having rights that differ from existing time share interests in  
14 the time share plan, the documents constitute primary plan  
15 documents and shall not constitute supplementary plan  
16 documents."

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

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



- 1           (1) The name and address of the developer and of the time  
2           share units;
- 3           (2) The name and address of the plan manager, if any, and  
4           a description of the plan manager's responsibilities  
5           and authority;
- 6           (3) A description of the time share units, including the  
7           developer's schedule for completion of all buildings,  
8           units, and amenities and dates of availability;
- 9           (4) If the time share plan is located in a condominium  
10          property regime, a description of the project, and if  
11          the purchaser will own an undivided interest in a fee  
12          or leasehold condominium unit, a brief description of  
13          any pertinent provisions of the project instruments;
- 14          (5) Any restraints on the transfer of the buyer's time  
15          share interest in the time share units or plan;
- 16          (6) Whether the time share plan is a time share ownership  
17          plan or a time share use plan, along with a  
18          description of the rights and responsibilities under  
19          said plan;
- 20          (7) A statement that there is a seven-calendar-day period  
21          of mutual rescission;



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- 1           (8) A statement that pursuant to section 514E-11.3, every  
2           sale or transfer, made in violation of this chapter is  
3           voidable at the election of the purchaser;
- 4           (9) ~~[Notice of any liens, title defects or encumbrances on~~  
5           ~~or affecting the title to the units or plan,]~~ A list  
6           of the primary plan documents of the time share plan  
7           and a statement indicating that the supplementary plan  
8           documents, or representative samples of the  
9           supplementary plan documents, are on file with the  
10          director for purchaser review;
- 11          (10) Notice of any pending or anticipated suits that are  
12          material to the time share units or plan, of which the  
13          developer has, or should have, knowledge;
- 14          (11) The total financial obligation of the purchaser, which  
15          shall consist of:
- 16                (A) A statement that the purchaser is obligated to  
17                pay the initial price stated in the purchaser's  
18                purchase agreement; and
- 19                (B) A list or description of any additional charges  
20                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;

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

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

9           SECTION 4. Section 514E-10, Hawaii Revised Statutes, is  
10          amended to read as follows:

11           **"§514E-10 Registration required; developer, acquisition  
12          agent, plan manager, and exchange agent; registration renewal.**

13          (a) A developer shall not offer or dispose of a time share unit  
14          or a time share interest unless the disclosure statement  
15          required by section 514E-9 is filed with the director pursuant  
16          to the time specified in this chapter, or the development is  
17          exempt from filing, and the time share plan to be offered by the  
18          developer is accepted by the director for registration under  
19          this chapter. The director shall not accept a developer's time  
20          share plan if the developer does not possess a history of  
21          honesty, truthfulness, financial integrity, and fair dealing.



1           (b) An acquisition agent (including the developer if it is  
2 also the acquisition agent) shall register under this chapter by  
3 filing with the director a statement setting forth the time  
4 sharing plan for which it is providing prospective purchasers,  
5 its address, the telephone number, other information required by  
6 the director as provided by rules adopted pursuant to chapter  
7 91, and, if the acquisition agent is not a natural person, the  
8 name of the responsible managing employee; provided that an  
9 acquisition agent licensed under chapter 467 as a real estate  
10 broker shall not be required to register under this chapter.  
11 All acquisition agents not licensed under chapter 467 shall be  
12 approved by the director. The director shall not approve any  
13 acquisition agent who is not of good character and who does not  
14 possess a reputation for honesty, truthfulness, and fair  
15 dealing. The acquisition agent shall furnish evidence that the  
16 acquisition agent is bonded as required by rules adopted by the  
17 director pursuant to chapter 91 to cover any violation by the  
18 acquisition agent of any solicitation ordinance or other  
19 regulation governing the use of the premise or premises in which  
20 the time share plan is promoted; provided that the acquisition



1 agent shall be separately bonded for each time share plan for  
2 which it is providing prospective purchases.

3 (c) A plan manager (including the developer if it is also  
4 the plan manager) shall register under this chapter by filing  
5 with the director a statement setting forth the time sharing  
6 plan that it is managing, its principal office address,  
7 telephone number, and responsible managing employee. The plan  
8 manager shall furnish evidence that the plan manager is bonded  
9 as required by rules adopted by the director pursuant to chapter  
10 91 to cover any default of the plan manager and any of its  
11 employees of their duties and responsibilities; provided that  
12 the plan manager shall be separately bonded for each time share  
13 plan under the management of the plan manager.

14 (d) An exchange agent (including the developer if it is  
15 also an exchange agent) shall register under this chapter by  
16 filing with the director a statement setting forth the time  
17 sharing plan for which it is offering exchange services, its  
18 principal office address and telephone number, and designate its  
19 responsible managing employee.

20 (e) Any plan manager or developer registration required in  
21 this section shall be renewed by December 31 of each even-





1 numbered year, and any acquisition agent or exchange agent  
2 registration required in this section shall be renewed on  
3 December 31 of each odd-numbered year; provided that this  
4 subsection shall not relieve the person required to register  
5 from the obligation to notify the director promptly of any  
6 material change in any information submitted to the director,  
7 nor shall it relieve the developer of its obligation to promptly  
8 file amendments or supplements to the disclosure statement, and  
9 to promptly supply the amendments or supplements to purchasers  
10 of time share interests.

11 (f) An application for renewal of a developer registration  
12 shall be on a form prescribed by the director and shall include:

13 ~~[(1) A current disclosure statement that meets the~~  
14 ~~requirements of section 514E-9 and section 16-106-3,~~  
15 ~~Hawaii Administrative Rules, if not already on file;~~

16 ~~+(2)]~~ (1) A statement that is certified by the developer to  
17 be true and correct in all respects and that  
18 identifies, as appropriate:

19 ~~[(A) The time share units in the time share plan~~  
20 ~~registered pursuant to this chapter; the total~~  
21 ~~number of time share interests registered for~~



1 ~~sale in each unit pursuant to this chapter, and~~  
2 ~~the total number of time share interests that~~  
3 ~~have not yet been sold as of the date specified~~  
4 ~~in the developer's certification, which date~~  
5 ~~shall not be more than sixty days prior to the~~  
6 ~~date of the developer's certification; or~~

7 ~~(B) The property in the time share plan registered~~  
8 ~~pursuant to this chapter, the total number of~~  
9 ~~points registered for sale in each property~~  
10 ~~pursuant to this chapter, and the total number of~~  
11 ~~points in the time share plan that have not yet~~  
12 ~~been sold as of the date specified in the~~  
13 ~~developer's certification, which date shall not~~  
14 ~~be more than sixty days prior to the date of the~~  
15 ~~developer's certification;]~~

16 (A) If points are a component part of the time share  
17 interest in the time share plan, the total number  
18 of points registered for sale as of the date of  
19 submittal; or

20 (B) If points are not a component part of the time  
21 share interest in the time share plan:



1            (i) The total number of whole time share units  
2            registered for sale as of the date of  
3            submittal; and

4            (ii) The total number of time share interests in  
5            the time share plan that are registered for  
6            sale as of the date of submittal and are not  
7            attributable to whole time share units  
8            included in the plan;

9            [~~3~~] (2) If the developer is a corporation, partnership,  
10            joint venture, limited liability company, or limited  
11            liability partnership, an original certificate of good  
12            standing issued by the business registration division  
13            of the department of commerce and consumer affairs not  
14            more than forty-five days before the date of  
15            submission of the renewal application; and

16            [~~4~~] (3) The biennial renewal fee.

17            (g) Developers shall not be required to include the  
18 following in an application for renewal of a developer  
19 registration of a time share plan:

20            (1) The current disclosure statement, or any proposed  
21            amendment to or amended disclosure statement;



1        (2) Except as otherwise provided in subsection (f)(1)(B),  
2        a statement describing the registered units included  
3        in the plan, number of time share interests created,  
4        and number of time share interests that have been sold  
5        or that remain unsold;

6        [~~1~~] (3) A financial statement of the developer; or

7        [~~2~~] (4) A policy of title insurance, a preliminary title  
8        report, abstract of title, or certificate of title on  
9        the units or time share interests in the time share  
10       plan.

11       (h) A developer shall submit copies of encumbrances on  
12       title to any time share unit using any form of electronic record  
13       acceptable to the director.

14       For the purposes of this subsection, "electronic record"  
15       has the same meaning as defined in section 489E-2.

16       (i) Unless requested by the director, a developer shall  
17       not be required to include copies of the following in any  
18       application for a developer registration, application to amend a  
19       developer registration, application for renewal of a developer  
20       registration, or otherwise:



- 1        (1) Copies of any federal, state, or local constitutions,  
2        charters, laws, or regulations referred to in any  
3        title report, title policy, or other evidence of  
4        title;
- 5        (2) Copies of any land court maps, subdivision maps, file  
6        plans, or any other subdivision plats or plans  
7        referred to in any title report, title policy, or  
8        other evidence of title;
- 9        (3) Copies of any land court certificates of title, land  
10       court orders, or other judicial or quasi-judicial  
11       determinations or orders referred to in any title  
12       report, title policy or other evidence of title; or
- 13       (4) Copies of such other documents as deemed necessary by  
14       the director.
- 15       (j) A developer shall be required to submit to the  
16       director copies of the supplementary plan documents of the time  
17       share plan that is the subject of an application for  
18       registration or an application for annexation, except to the  
19       extent that the director agrees to accept representative samples  
20       of such supplementary plan documents."



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1           SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:           *Russell H. Baker*            
*By Request*



# S.B. NO. 2049

**Report Title:**

Time Sharing; Time Share; Developer Applications; Disclosure Statements; Encumbrances; Annual Renewal Registration

**Description:**

Amends the information required to be in a time share disclosure statement, under certain circumstances. Amends the information required to be on a developer registration renewal application. Expands the information developers are not required to include on a developer registration renewal application. Limits the copies of documents developers are required to submit in a developer registration renewal application. Requires developers to submit copies of supplementary plan documents of the time share plan. Allows for submission of certain document in electronic form.

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