



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection & Commerce
and
House Committee on Judiciary
Thursday, March 12, 2020
2:00 p.m.
State Capitol, Conference Room 329**

**On the following measure:
S.B. 2049, S.D. 1, RELATING TO TIME SHARING**

Chair Takumi, Chair Lee, and Members of the Committees:

My name is Lori Beth Van Cantfort, and I am the Time Share Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division. The Department appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) amend the information required to be in a time share disclosure statement, under certain circumstances; (2) amend the information required to be on a developer registration renewal application; (3) expand the information developers are not required to include on a developer registration renewal application; (4) limit the copies of documents developers are required to submit in a developer registration renewal application; (5) require developers to submit copies of supplementary plan documents of the time share plan, or a sampling of such documents; and (6) allow for submission of certain documents in electronic form.

Section 3 of the bill (page 5, subsection 9) seeks to remove the requirement that all encumbrances listed in a title report be disclosed in the disclosure statement. Instead, the disclosure statement would only list primary plan documents and include a disclosure that supplementary plan documents are on file with and can be reviewed at the Department. This change is intended to decrease the length of the disclosure statement which can exceed 100 pages for multi-site time share plans. The supplementary plan documents are documents required to be recorded to add property to the time plan. These documents are likely not significant to purchasers when deciding to purchase.

While the Department agrees that many encumbrances do not need to be listed in the disclosure statement, further discussions with the American Resort Development Association – Hawaii (ARDA), the proponent of this bill, are necessary to address the following:

1. The bill only addresses and defines “primary plan documents” and “supplementary plan documents”. It does not address other encumbrances that do not fall within these two definitions. Clarification is needed as to which of these other encumbrances will be disclosed.
2. The bill should provide the Department with the discretion to require that certain encumbrances be disclosed.
3. The bill requires a disclosure that supplementary plan documents are on file with the Director and can be reviewed at the Department. The bill should require that developers provide copies of encumbrances for review upon request by purchasers. Purchasers should not be required to come to the Department to review documents.

Section 4 of the bill (pages 10 to 11, subparagraphs (A) and (B)) seeks to simplify the certified statement of inventory submitted with a renewal application. While the Department agrees with the simplified statement, the developer should also: (1) identify the total number of points or time share interests that have been sold; and (2) be required to certify that the information in the statement is not more than 60 days old.

Section 4 of the bill (pages 12 to 13, subsection (h)) also seeks to no longer require a developer to submit copies of certain encumbrances with its applications. Although the encumbrances identified in the bill may not be material to the time share plan, that cannot be determined if they are not submitted. Hawaii Administrative Rules section 16-106-2.5(c) provides that it is the developer's duty to ascertain and disclose all material facts. Therefore, the developer should certify that it has reviewed all encumbrances and determined that none of the encumbrances omitted are material.

The Department should have the discretion to require copies of any encumbrance it determines to be necessary. The bill currently provides on page 13, lines 7 to 8 that a developer shall not be required to include "(4) copies of such other documents as the director shall determine." This paragraph (4) should be deleted from the bill.

Section 4 of the bill (page 13, subsection (i)) also allows a developer to submit a representative sampling of certain supplementary plan documents. Because multi-site time share plans are continually adding hundreds of individual intervals into the time share plan, documentation of each interval being properly added to the time share plan is very voluminous. Allowing a sampling of the properly recorded documents will help to reduce the size of the filings and save the Department filing space, while still allowing the Department to see that the developer is properly recording the required documents. However, the developer should be required to certify that all required supplementary plan documents not submitted have been properly recorded. Again, the Department should have the discretion to require copies of any supplementary plan documents it determines to be necessary for its review.

Contrary to the statement in Standing Committee Report No. 2960 that this bill "incorporates consensus language between stakeholders [ARDA] and the Department of Commerce and Consumer Affairs," the Department has not agreed to this bill as written. The Department has discussed the above concerns with ARDA and understands that ARDA will propose amendments to S.D. 1 to address the Department's concerns. The Department has not had an opportunity to review ARDA's

proposed amendments but will continue its discussions with ARDA after it has had an opportunity to review those amendments.

Thank you for the opportunity to testify on this bill.



March 12, 2020

TO: Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice-Chair
Members of the House Committee on Consumer Protection and Commerce
Representative Chris Lee, Chair
Representative Joy San Buenaventura, Vice-Chair
Members of the House Committee on Judiciary

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION (ARDA) – HAWAII
Kim Yoshimoto

RE: **SB2049 SD1 RELATING TO TIME SHARING. – SUPPORT with Amendments**
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.

Dear Chairs Takumi and Lee, Vice-Chairs Ichiyama and San Buenaventura, and Members of the Joint Committee:

Thank you for the opportunity to testify on Senate Bill SB2049 SD1. This bill was the product of long discussions and negotiations during the interim with the Department of Commerce and Consumer Affairs Timeshare Administration office (Timeshare Office). Several hours and several drafts were exchanged, and while ARDA did not prevail on all of the issues brought to the table, ARDA believes it was a fruitful discussion and we thank the Timeshare Office for the time, energy and frank discussion.

SB2049 SD1 was one of two bills we have filed as a product of the interim work, and it reflects an agreement by the parties to streamline an outdated and cumbersome annual renewal process for timeshare registrations.

We understand that the Timeshare Office still has some concerns with the language and so we are still in discussions on those outstanding issues. But, ARDA is optimistic that we may be able to reach agreement so request that the bill continue to move forward. We have attached a draft that we believe reflects that most recent discussions incorporating our recommended approach to the issues and concerns raised by the Timeshare Office. Thank you for your consideration.

STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO TIME SHARING.

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

SECTION 1. The legislature finds that under existing law the current process for time share developers to register or renew the registration of their time share plans is arduous and requires a significant amount of information. The extensive amount of information required has caused a backlog for initial registration and renewal of time share registrations. The legislature further finds that existing law does not require a developer to file information using electronic means, which further exacerbates the extensive registration process.

Accordingly, the purpose of this Act is to streamline the initial registrations and renewals for time share registration by:

- (1) Amending the information required to be included in a time share disclosure statement, under certain circumstances;
- (2) Amending the information required to be included on an application to register or renew a developer's registration;

(3) Expanding the information that developers are not required to include on an application to register or renew their registration of a time share plan;

(4) Require developers to submit copies of encumbrances on title using any form of electronic record acceptable to the director;

(5) Limiting the copies that developers are required to submit in an application for registration or renewal of a registration; and

(6) Require developers to submit copies of the primary plan documents and supplementary plan documents, and other encumbrances on title.

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

"Material encumbrance" means an encumbrance on title to a time share unit that directly, substantially, and adversely affects the use or value of a purchaser's time share interest or the time share units in the time share plan.

"Primary plan documents" means the constituent documents of the time share plan, including any time share declaration, any trust agreement, articles of incorporation and bylaws of the association, if the association is a corporation, or the operating agreement or similar organization 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 and regulations governing the occupancy of the time share units. "Primary plan documents" does not include supplementary plan documents.

"Supplementary plan documents" means any declaration of annexation, active property declaration, notice of access,

notice of conveyance, notice of activation, deed conveying property to the trustee of a time share plan or to the time share owners association, and other instruments submitting or committing property to the time share plan or removing property from the time share plan. To the extent that any such documents modify the terms and provisions of the time share plan as established in the existing primary plan documents, including but not limited to documents that establish a new class or category of time share interest having rights that differ from existing time share interests in the time share plan, the documents constitute primary plan documents and shall not constitute supplementary plan documents."

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 own an undivided interest in a fee or leasehold condominium unit, a brief description of any pertinent provisions of the project instruments;
- (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 of any liens, title defects or encumbrances on or affecting the title to the units or plan;~~ All of the following:

(A) A list of (i) the primary plan documents of the time share plan, (ii) all material encumbrances and any other encumbrances that the developer determines to include, and (iii) any encumbrances that the director requests the developer to include;

(B) A statement that copies of the supplementary plan documents and any other recorded encumbrances on or affecting title to the time share units shall be provided to the purchaser upon request, provided that that the purchaser pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request; and

(C) A statement either quoting the definition of "supplementary plan documents" established in this chapter, or a statement that provides substantially as follows: "Supplementary plan documents include documents used to submit or commit property to the time share plan or to remove it from the time share plan, but they do not change the terms and provisions of the time share plan as established in the existing primary plan documents.";

(10) 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 statement required by 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)~~ (1) 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;]~~

(A) If points are a component part of the time share interests in the time share plan, the total number of points registered for sale and the total number of points sold, if any, both as of the date specified in the developer's certification, which date shall not be more than

sixty days prior to the date on which the developer's certification is submitted; or

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

(i) The total number of whole time share units registered for sale as of the date specified in the developer's certification, which date shall not be more than sixty days prior to the date on which the developer's certification is submitted; and

(ii) The total number of time share interests in the time share plan (a) that are registered for sale as of the date specified in the developer's certification, which date shall not be more than sixty days prior to the date on which the developer's certification is submitted, and (b) that are not attributable to whole time share units included in the plan; and

(iv) The total number of time share interests that have been sold, if any, as of the date specified in the developer's certification, which date shall not be more than sixty days prior to the date on which the developer's certification is submitted;

~~[(3)]~~ (2) 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)]~~ (3) 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) The current disclosure statement, or any proposed amendment to or amended disclosure statement;

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

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

~~[(2)]~~ (4) 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) The developer shall include in an application for a developer registration or application to amend a developer registration, copies of all encumbrances on title to any time share unit to be registered except as otherwise provided in this chapter, and except that the developer shall not be required to submit copies of any encumbrance to the extent that a copy cannot reasonably be obtained, as certified by a title company or by affidavit of the developer. The director may relieve the developer of the obligation to file copies of such encumbrances as the director shall determine; provided that the director may require, as a condition to so doing, that the developer file a certification stating substantially that (i) the developer has

reviewed such document, and (ii) the developer has determined that such document is not a material encumbrance.

(i) The developer shall submit copies of all encumbrances on title to any time share unit required to be submitted to the director pursuant to this chapter using any form of electronic record acceptable to the director. For the purposes of this subsection, "electronic record" has the same meaning as defined in section 489E-2.

(j) A developer shall not be required to include copies of the following in any application for a developer registration, application to amend a developer registration, application for renewal of a developer registration, or otherwise: (1) Copies of any federal, state, or local constitutions, charters, laws, or regulations referred to in any title report, title policy, or other evidence of title; (2) Copies of any land court maps, subdivision maps, file plans, or any other subdivision plats or plans referred to in any title report, title policy, or other evidence of title; or (3) Copies of any land court certificates of title, land court orders, or other judicial or quasi-judicial determinations or orders referred to in any title report, title policy or other evidence of title; provided that, as to each document not filed with the director pursuant to clauses (2) and (3) of this sentence, upon the request of the director, the developer shall file a certification stating substantially that the developer has reviewed such document and determined that such document is not a material encumbrance. Notwithstanding the foregoing, the developer shall provide to the director a copy of any document identified in clauses (2) and (3) of this subsection (j) that the director determines to be necessary for the director's review, in which case, the developer shall have no obligation to provide for such document the certification required by the preceding sentence.

(k) A developer shall be required to submit to the director copies of the supplementary plan documents of the time share plan that is the subject of an application for registration or an application for annexation, except to the extent that the director agrees to accept representative samples of such supplementary plan documents. A developer shall be required to certify that all supplementary plan documents not submitted have been properly recorded and/or delivered in accordance with the Primary Plan Documents of the time share plan."

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: _____

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.

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

SB-2049-SD-1

Submitted on: 3/11/2020 10:53:00 AM

Testimony for CPC on 3/12/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Stephanie P. Donoho	Kohala Coast Resort Association	Support	No

Comments:

CHARLES E. PEAR, JR.
ATTORNEY AT LAW

DIRECT #S:
PHONE - (808) 223-1212
FAX - (808) 535-8029
E-MAIL - PEAR@M4LAW.COM

March 11, 2020

Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair
Members of the House Committee on
Consumer Protection and Commerce
Thirtieth Legislature
Regular Session, 2020

Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Members of the House Committee on
Judiciary
Thirtieth Legislature
Regular Session, 2020

Re: S.B. 2049, S.D.1
Hearing on March 12, 2020, 2:00 p.m.
Conference Room 329

Dear Chairs, Vice Chairs and Members of the Committees:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports the bill with revisions.

This bill is the product of a collaborative effort between ARDA Hawaii and the Department of Commerce and Consumer Affairs. The language of the bill has continued to evolve as the stakeholders continue to discuss ways to improve the bill.

Attached as Exhibit A is redlined copy of the latest draft of the bill showing changes proposed to be made as a new House Draft 1. This draft was prepared by ARDA and the DCCA may have additional suggestions for improvements to the bill.

Here are some of the highlights:

A. Disclosure of Encumbrances.

The developer of a time share plan must provide a disclosure statement on the plan to each buyer. Under current law, the disclosure statement must list all encumbrances on title to the time share units.

When the Hawaii time share law was first adopted in 1980, most time share plans were confined to a single site. Buyers would typically receive a deed of a 1/51st interest in a specific condominium unit together with the right to use that unit for a specific week in every year.

Listing the encumbrances for a single condominium project was simple and added maybe a page or two to the disclosure statement.

Modern time share plans frequently involve hundreds of units at dozens of sites. I am currently working on the registration of a project having about 22 sites. The list of encumbrances adds perhaps 25 pages to the disclosure statement. The plan that I most recently registered has perhaps 34 sites or so, and the list of encumbrances added 42 pages to the disclosure statement.

In each of these projects, the buyers do not receive a deed of a unit at any given site. Instead, title is lodged in a land trust, and buyers own a beneficial interest in the trust. While it may be nice to list the encumbrances, there is a concern that if the disclosure statement becomes too long, buyers simply will not read any of it.

The bill addresses that concern. The proposed HD1 requires as follows:

1. The disclosure statement must list the primary time share plan documents. This would include, for example, the time share declaration and bylaws.

It would not include, however, supplementary plan documents. "Supplementary plan documents" are used to submit or commit property to the time share plan. Examples would include deeds transferring property to the trustee of a time share plan (there could be hundreds or even thousands of these), and documents used to submit property to the time share declaration (again, there could be hundreds or thousands of these).

2. The developer must also disclose any "material encumbrances." These are documents that directly, substantially, and adversely affect the use or value of the buyer's time share interest or the time share units. This language is patterned on language used in the Condominium Property Act.
3. The disclosure statement must list any other documents that the Director of the DCCA requests.

B. Renewal Applications.

The developer of a time share plan must renew its registration every other year. Existing law essentially requires that the developer disclose the inventory registered for sale and how much of it has been sold. This bill makes technical changes to the information to be included in the renewal registration based on evolution of the time share products.

C. Copies of Encumbrances.

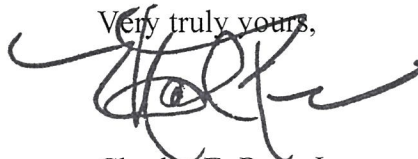
The Director requires that the developer submit to the Director copies of all encumbrances on title to the time share units. Proposed HD1 provides as follows:

1. Encumbrances must be submitted in the form of electronic records in a format acceptable to the Director.
2. The developer is not required to submit encumbrances that cannot reasonably be obtained, but only if the developer or a title company submits an affidavit stating that the records cannot be obtained. For example, many records of the County of Kauai were destroyed when a hurricane hit the island. In such cases, the developer would not be obligated to submit records that no longer exist.
3. The developer would not be required to submit copies of any constitutions or other laws. These can be obtained online using legal research systems.
4. The developer would not be required to submit copies of land court maps, subdivision maps, and other governmental records. However, the director may require either (i) that the developer submit the document, or (ii) that the developer certify that it has reviewed the document and determined that it is not a material encumbrance.

The DCCA and ARDA Hawaii have been working on this legislation since last year. The parties may propose additional changes as they reach consensus on the bill. In the meantime, we ask that you move this bill out of committee so that the DCCA and ARDA can continue to work on resolving the problems addressed in this bill.

Thank you for your kind consideration of these thoughts.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', written over the text 'Very truly yours,'.

Charles E. Pear, Jr.

CEP:kn

THE SENATE
THIRTIETH LEGISLATURE, 2020

S.B. NO. 2049, SD1
~~S.D.~~
4Proposed
HD1

STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO TIME SHARING.

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

SECTION 1. The legislature finds that under existing law the current process for time share developers to register or renew ~~their~~the registration of their time share plans is arduous and requires a significant amount of information. The extensive ~~process~~amount of information required has caused a backlog for ~~developers to submit their annual renewals for time share~~ initial registration, and renewal of time share registrations. The legislature further finds that existing law does not ~~authorize~~require a developer to ~~utilize~~file information using electronic means, which further exacerbates the extensive ~~process for renewal~~ registration process.

Accordingly, the purpose of this Act is to streamline the ~~annual~~initial registrations and renewals for time share registration by:

(1) Amending the information required to be included in a time share disclosure statement, under certain circumstances;

(2) Amending the information required to be included on an application to [register or renew a developer's registration](#);

(3) Expanding the information that developers are not required to include on an application to [register or renew their registration of a time share plan](#);

(4) ~~Requiring~~[Require](#) developers to submit copies of encumbrances on title using any form of electronic record acceptable [to the director](#);

(5) Limiting the copies ~~of documents~~ that developers are required to submit in an application for [registration or renewal of a registration](#); and

(6) ~~Requiring~~[Require](#) developers to submit copies of the [primary plan documents and supplementary plan documents of the time share plan, and other encumbrances on title](#).

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

~~_____~~ "" "Material encumbrance" means an encumbrance on title to a time share unit that directly, substantially, and adversely affects the use or value of a purchaser's time share interest or the time share units in the time share plan.

"Primary plan documents" means the constituent documents of the time share plan, including any time share declaration, any trust agreement, articles of incorporation and bylaws of the association, if the association is a corporation, or the operating agreement or similar organization 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 and regulations governing the occupancy of the time share units. "Primary plan documents" does not include supplementary plan documents.

"Supplementary plan documents" means any declaration of annexation, active property declaration, notice of access, notice of conveyance, notice of activation, deed conveying property to the trustee of a time share plan or to the time share owners association, ~~or~~ and other instruments submitting or committing property to the time share plan or removing property from the time share plan. To the extent that any such documents modify the terms and provisions of the time share plan as established in the existing primary plan documents, including but not limited to documents that establish a new class or category of time share interest ~~that has~~ having rights that differ from existing time share interests in the time share plan, the documents constitute primary plan documents and shall not constitute supplementary plan documents."

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 own an undivided interest in a fee or leasehold condominium unit, a brief description of any pertinent provisions of the project instruments;

(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 of any liens, title defects or encumbrances on or affecting the title to the units or plan;]~~ A list of the primary plan documents of the time share plan and a statement indicating that the supplementary plan documents, or representative samples of the supplementary plan documents, are on file with the director for purchaser review; All of the following:

(A) A list of (i) the primary plan documents of the time share plan,

(ii) all material encumbrances and any other encumbrances that the developer determines to include, and (iii) any encumbrances that the director requests the developer to include;

(B) A statement that copies of the supplementary plan documents and any other recorded encumbrances on or affecting title to the time share units shall be provided to the purchaser upon request, provided that that the purchaser pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request; and

(C) A statement either quoting the definition of "supplementary plan documents" established in this chapter, or a statement that provides substantially as follows: "Supplementary plan documents include documents used to submit or commit property to the time share plan or to remove it from the time share plan, but they do not change the terms and provisions of the time share plan as established in the existing primary plan documents.";

(10) 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]~~ required by 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)]~~ (1) 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;]~~

(A) If points are a component part of the time share interests in the time share plan, the total

number of points registered for sale ~~as of the~~
~~date of submittal~~ and the total number of points
sold, if any, both as of the date specified in
the developer's certification, which date shall
not be more than sixty days prior to the date on
which the developer's certification is submitted;

or

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

(i) The total number of whole time share units
registered for sale as of the date ~~of~~
~~submittal~~ specified in the developer's
certification, which date shall not be more
than sixty days prior to the date on which
the developer's certification is submitted;

and

(ii) The total number of time share interests in
the time share plan (a) that are registered
for sale as of the date ~~of submittal~~
~~and~~ specified in the developer's
certification, which date shall not be more
than sixty days prior to the date on which
the developer's certification is submitted,
and (b) that are not attributable to whole
time share units included in the plan; and

(iv) The total number of time share interests
that have been sold, if any, as of the date

specified in the developer's certification, which date shall not be more than sixty days prior to the date on which the developer's certification is submitted;

[(3)] (2) 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)] (3) The biennial renewal fee.

(g) ~~{Developers} In addition to subsection (h), developers~~ shall not be required to include the following in an application for renewal of a developer registration of a time share plan:

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

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

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

[(2)] (4) 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) Unless requested by the director, a~~ (h) The developer shall include in an application for a developer registration or application to amend a developer registration, copies of all encumbrances on title to any time share unit to be registered except as otherwise provided in this chapter, and except that the developer shall not be required to submit copies

of any encumbrance to the extent that a copy cannot reasonably be obtained, as certified by a title company or by affidavit of the developer. The director may relieve the developer of the obligation to file copies of such encumbrances as the director shall determine; provided that the director may require, as a condition to so doing, that the developer file a certification stating substantially that (i) the developer has reviewed such document, and (ii) the developer has determined that such document is not a material encumbrance.

(i) The developer shall submit copies of all encumbrances on title to any time share unit required to be submitted to the director pursuant to this chapter using any form of electronic record acceptable to the director. For the purposes of this subsection, "electronic record" has the same meaning as defined in section 489E-2.

(j) A developer shall not be required to include copies of the following in any application for a developer registration, application to amend a developer registration, application for renewal of a developer registration, or otherwise:

— (1) Copies of any federal, state, or local constitutions, charters, laws, or regulations referred to in any title report, title policy, or other evidence of title;

— (2) Copies of any land court maps, subdivision maps, file plans, or any other subdivision plats or plans referred to in any title report, title policy, or other evidence of title;

— or (3) Copies of any land court certificates of title, land court orders, or other judicial or quasi-judicial determinations or orders referred to in any title report, title policy or other evidence of title; ~~or~~ provided that, as to each document not filed with the director pursuant

to clauses (2) and (3) of this sentence, upon the request of the director, the developer shall file a certification stating substantially that the developer has reviewed such document and determined that such document is not a material encumbrance. Notwithstanding the foregoing, the developer shall provide to the director a copy of any document identified in clauses (2) and (3) of this subsection (j) that the director determines to be necessary for the director's review, in which case, the developer shall have no obligation to provide for such document the certification required by the preceding sentence.

~~—(4) Copies of such other documents as the director shall determine.~~

~~—(i) (k) A developer shall be required to submit to the director copies of the supplementary plan documents of the time share plan that is the subject of an application for registration or an application for annexation, except to the extent that the director agrees to accept representative samples of such supplementary plan documents. A developer shall be required to certify that all supplementary plan documents not submitted have been properly recorded and/or delivered in accordance with the Primary Plan Documents of the time share plan."~~

~~—(j) A developer shall submit copies of encumbrances on title to any time share unit using any form of electronic record acceptable to the director.~~

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

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: _____

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.—(SD1)

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