

A Bill for an Act Relating to Time Sharing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 514E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§514E- Consultant review of developer filing. The director may contract with private consultants in connection with the review of the filing required of time share developers pursuant to section 514E-10(a), the cost of which shall be borne by the developer; provided that the consultant review required under this section shall not affect the scope of the review under section 514E-27 which the director may request for filings which encompass alternative arrangements for purchaser protection. The consultant shall be asked to thoroughly review the filing for the purpose of examining its compliance with the requirements of this chapter and any rule adopted by the director, including the documentation and other materials provided in connection therewith. Upon

completing the review, the consultant shall provide a written analysis of the filing and an opinion of the nature and extent to which it complies with this chapter and the rules adopted pursuant thereto. The director may adopt rules pursuant to chapter 91 to further delineate the duties of the consultant in undertaking the review and analysis required under this section.

§514E- Voting rights for time share units. Voting rights for any apartment units designated or sold as time share units shall be as provided in rules adopted by the director of the department of commerce and consumer affairs; provided the rules shall seek to provide reasonable protection for persons who own partial interests in or rights to occupy the units.”

SECTION 2. Section 514E-27, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

“(b) Whenever the director is asked to accept alternative arrangements pursuant to this section, the director may contract with an attorney or attorneys and may contract with any other private consultants which the director or the attorney deems necessary or advisable, in connection with the review of the proposed arrangements for protecting purchasers[. Such attorney shall be asked to thoroughly review the time share plan for the purpose of examining the purchaser protections, including the documentation used in connection therewith and the disclosure thereof in the developer’s disclosure statement. Upon completing the review, the attorney shall provide a written analysis of the proposal and an opinion as to the nature and extent of the protections which the proposal affords purchasers against blanket liens. The cost of retaining such attorneys and other consultants shall be borne by the developer.]; provided that the cost of retaining such attorneys and other consultants shall be borne by the developer. The attorney shall be asked to thoroughly review the time share plan for the purpose of examining the purchaser protections, including the documentation used in connection therewith and the disclosure thereof in the developer’s disclosure statement. Upon completing the review, the attorney shall provide a written analysis of the proposal and an opinion as to the nature and extent of the protections which the proposal affords purchasers against blanket liens. The review of alternative arrangements pursuant to this section shall be in addition to the consultant review required under section 514E- for all filings which are submitted by time share developers.”

SECTION 3. Section 514E-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the director determines, after notice and a hearing, that an acquisition agent or sales agent has violated any provision of this chapter or any rule or regulation adopted by the director pursuant to this chapter, the director

may suspend or revoke the [license] registration of such person as [a real estate broker, real estate salesman,] an acquisition agent, or sales agent.”

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

“§514E-10 [Filing] Registration required; developer, [sales agent,] acquisition agent, sales agent, [exchange agent, and] plan manager and exchange agent. (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.

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall [file] register under this chapter by filing with the director a statement setting forth the time sharing plan or plans 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. 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 (i) a bond or blanket bond of \$10,000 has been placed with a surety company or file a cash bond with the director to cover any violations by the acquisition agent of any solicitation ordinances[,] or other regulations governing the use of the premise or premises in which time sharing plan or plans are promoted; or (ii) that the acquisition agent is currently licensed pursuant to chapter 467 as a real estate salesman or a real estate broker and his activities as such are covered by the real estate recovery fund established pursuant to chapter 467.

(c) A sales agent (including the developer[,] if it is also the sales agent) shall [file] register under this chapter by filing with the director a statement setting forth the time sharing plan or plans that it is selling, its address, telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the sales agent is not a natural person, the name of the responsible managing employee and [any special escrow accounts set up] the escrow account required under section 514E-16 for the deposit and collection of purchasers’ funds. [All sales agents not licensed under chapter 467 shall be approved by the director.] The director shall not approve any sales agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The sales agent shall furnish evidence that [(i) a bond or blanket bond of \$10,000 has been placed

with a surety company or file a cash bond with the director to cover any violations by the sales agent; or (ii) that] the sales agent is currently licensed pursuant to chapter 467 as a real estate salesman or real estate broker and his activities as such are covered by the real estate recovery fund established pursuant to chapter 467.

(d) A plan manager (including the developer if it is also the plan manager)[,] shall [file] register under this chapter by filing with the director a statement setting forth the time sharing plan or plans that it is managing, its principal office address, telephone number, and responsible managing employee. The plan manager shall furnish evidence that a blanket bond of \$10,000 has been placed with a surety company or file a cash bond with the director to cover any default of the plan manager and any of its employees of their duties and responsibilities.

(e) An exchange agent (including the developer if it is also an exchange agent) shall [file] register under this chapter by filing with the director a statement setting forth the time [share] sharing plan or plans for which it is offering exchange services, its principal office address and telephone number, and designate its responsible managing employee.

(f) If the acquisition agent[, sales agent,] or plan manager [are] is under the control of, a subsidiary of, or an affiliate of the developer, the bonds or blanket bonds can be consolidated and set in the amount of \$20,000; provided that there is a disclosure of the affiliation.

(g) Any [filing] registration required in this section shall be renewed on December 31 of each odd-numbered year; provided that this shall not relieve the person required to [file] 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 promptly to file amendments or supplements to the disclosure statement and to supply the same to purchasers of time share interests.”

SECTION 5. Section 514E-11.2, Hawaii Revised Statutes, is amended to read as follows:

“§514E-11.2¹ **Power to enjoin.** (a) Whenever it shall appear to the director, upon complaint or otherwise, that any person has engaged in, is engaged in, or is about to engage in any act, practice or transaction in violation of this chapter or the rules of the director adopted pursuant thereto, the director may conduct an investigation of the matter. Whenever the director finds that such person has engaged in, is engaged in, or is about to engage in any act, practice or transaction in violation of this chapter or the rules of the director adopted pursuant thereto, the director may, in addition to any other remedies, bring suit in the name and on behalf of the State against such person and any other person or persons concerned in, or in any way participating in, or about to

ACT 41

participate in such act, practice or transaction in violation of this chapter or rules adopted pursuant thereto, to enjoin such person and such other person or persons from continuing such act, practice or transaction, or engaging therein, or doing any act or acts in furtherance thereof or in violation of this chapter or rules adopted pursuant thereto. [The remedies under this section are in addition to any other remedies provided by this chapter or by law.]

(b) The court shall give priority to the expeditious processing of suits under this section.

(c) The remedies under this section are in addition to any other remedy provided by this chapter or by law."

SECTION 6. Section 514E-12, Hawaii Revised Statutes, is amended to read as follows:

“§514E-12 Civil penalty; suspension or revocation of registrations. (a) If the director determines, after notice and a hearing, that any person has violated any provision of this chapter or any rule adopted by the director pursuant to this chapter, or that a person has authorized, directed, ordered, or personally participated in any violation of this chapter or any rule adopted by the director pursuant to this chapter, the director [may issue a cease and desist order requiring such person to cease and desist from that conduct. The cease and desist order may also require such person to comply with the provisions of this chapter and the director’s rules and orders and take affirmative action to correct conditions resulting from that conduct or failure to comply.

(b) If the director determines, after notice and a hearing, that any person has failed to comply with a cease and desist order issued by the director or has concealed, diverted, or disposed of any funds or assets of any person in any manner impairing the rights of purchasers of time share interest, then the director:

- (1) May fine such person a sum of not less than \$500 nor more than \$10,000 for each separate offense. Each date of violation shall constitute a separate offense;
 - (2) May issue an order suspending or revoking the registration of such person and the right of such person to offer or sell time share interests. For the first offense, the director shall suspend the registration of such person and the right of such person to offer or sell time share interests for a period of thirty days. For the second offense, the director shall revoke permanently the registration of such person and the right of such person to offer or sell time share interests.];
- (1) May fine the person a sum of not less than \$500 nor more than \$10,000 for each separate offense; provided that each date of violation shall constitute a separate offense; and

(2) May issue an order suspending or revoking the registration of the person and the right of the person to offer or sell time share interests or otherwise engage in time share activities.

(b) If the director makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order the director may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the director whenever possible by telephone or otherwise shall give notice to the person of the proposal to issue a temporary cease and desist order. Every temporary cease and desist order shall be effective for a period of ten days and shall include in its terms a provision that a hearing will be held promptly to determine whether or not it shall remain permanently in effect following the expiration of the ten-day period; provided that, if the person subject to the temporary cease and desist order is granted a continuance of the hearing, the temporary cease and desist order shall remain in effect throughout the period of such continuance. If the director determines that any person has failed to comply with a temporary cease and desist order issued by the director, then the director may subject such person to the penalties set forth in subsections (a)(1) and (a)(2) of this section.”

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored.²

SECTION 8. This Act shall take effect upon its approval.

(Approved April 18, 1984.)

Notes

1. Brackets missing.
2. Edited pursuant to HRS §23G-16.5.