

ACT 68

H.B. NO. 1552

A Bill for an Act Relating to Time Sharing.

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

SECTION 1. Section 421J-2, Hawaii Revised Statutes, is amended by amending the definition of "planned community" to read as follows:

"Planned community" means a common interest community, other than a condominium or a cooperative housing corporation[;] or a time share plan, which includes all of the following characteristics:

- (1) Real property subject to a recorded declaration placing restrictions and obligations on the owners of the real property and providing for rights and responsibilities of a separate entity, the association:
 - (A) Which owns and maintains certain property within the planned community for the common use or benefit, or both, of the owners of units within the planned community;
 - (B) Which is obligated to maintain certain property it does not own within the planned community for the common use or benefit, or both, of the owners of units within the planned community; or
 - (C) Which is obligated to provide services to any such owners or units;
- (2) Individual owners own separate units which are part of a planned community at least some of which are improved by or are to be improved by residential dwellings;
- (3) Owners have automatic and non-severable membership in an association by virtue of ownership of units within the planned community; and
- (4) Owners, other than a master developer or declarant, are obligated to pay mandatory assessments by virtue of ownership of a unit within the planned community."

SECTION 2. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

- (1) Indebtedness that is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980;
- (2) Consumer credit agreement of sale made after May 30, 1980, under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest or the manner in which such rate shall be determined is clearly stated. As used in this paragraph, "agreement of sale" includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. Notwithstanding the first sentence of this paragraph, with respect to

- any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale immediately prior to such maturity or renegotiation or four percentage points above the highest weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board within sixty days prior to the time of extension or renegotiation;
- (3) Indebtedness that is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after June 18, 1982; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property that is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction;
 - (4) Transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by chapter 412 or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller's right to charge interest under section 478-2; [ø]
 - (5) Payment of any claim under section 431:13-108[-] or
 - (6) Indebtedness secured by a time share interest defined in 514E-1, if that time share interest is not otherwise governed by section 478-8(a) or 478-8(b)(1) to (4), and if the rate of interest does not exceed eighteen per cent per year. This subsection shall not be deemed to limit a seller's right to charge interest under section 478-2."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that the amendments made to section 478-8, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2002, pursuant to section 5 of Act 99, Session Laws of Hawaii 1999.

(Approved April 27, 2001.)