

ACT 176

H.B. NO. 11

A Bill for an Act Relating to Time Sharing Plans.

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

SECTION 1. 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 simple or leasehold condominium unit in the condominium project, 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 material liens, title defects, or encumbrances on or affecting the title to the units or plan[;] and any other lien, title defect, or encumbrance impacting a purchaser's utilization of the property, as the director may require. For all other liens, title defects, and encumbrances, in lieu of listing these in the disclosure statement, a reference may be made to a website by way of link or otherwise, wherein these items may be listed and thereby disclosed, and be available for review along with a statement that the developer has determined that these liens, title defects, and encumbrances are not expected to directly, substantially, and adversely impact utilization of the property by a purchaser;
- (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 subsection (d), if applicable; [~~and~~]
- (14) A list of the primary plan documents.

For purposes of this paragraph:

"Primary plan documents" means the constituent documents of the time share plan, including any time share declaration; any trust agreement; the articles of incorporation and bylaws of the association, if the association is a corporation, or the operating agreement or similar organizational 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 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 documents modify the terms and provisions of the time share plan as established in the existing primary plan documents, for example, by establishing 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 shall constitute primary plan documents and shall not constitute supplementary plan documents; and

- [(14)] (15) Other disclosures required by the director, as provided by rules adopted pursuant to chapter 91."

SECTION 2. Section 514E-10.5, Hawaii Revised Statutes, is amended to read as follows:

**“§514E-10.5 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) and [(e)]. The cost of contracting private consultants 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 that the director may request for filings that 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 provided materials[-]; provided that in lieu of reviewing copies of all encumbrances on title, the consultant shall accept a certification from the developer that the developer has reviewed all encumbrances on title and has determined that the time share interest being sold is free and clear of blanket liens or other material encumbrances that may directly, substantially, and adversely impact utilization of the property by a purchaser, or if that is not the case, identifying the blanket liens or other material encumbrances and either specifying how those encumbrances will be addressed or what the impact of the encumbrances may be to the purchaser. 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 adopted rules. The director may adopt rules pursuant to chapter 91 to further delineate the duties of the consultant in undertaking the review and analysis required pursuant to this section.”

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.

(Approved July 3, 2023.)