

ACT 198

S.B. NO. 799

A Bill for an Act Relating to Time Sharing Plans.

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

SECTION 1. The legislature finds that the sale of a time share interest may only close if the buyers are protected from the foreclosure of blanket liens, such as mortgages, existing at the time of the closing or which may be placed on the property after the closing. For example, if a time share unit is subject to a mortgage at the time of the closing and the developer fails to pay the mortgage, the lender may then foreclose and extinguish the rights of the time share owners

to use the time share unit. Existing law requires that the use rights of buyers be protected from existing blanket liens such as this.

The rights of buyers must also be protected from blanket liens that may arise in the future. For example, consider a situation where the buyer and developer enter into a contract providing that the developer will retain title to a hotel but that the buyer may use a room each year for the next forty years. Even if the property is free of any mortgage at the time of the sale, the developer could mortgage the property in the future. If the developer does not pay the mortgage, the lender could foreclose and extinguish the rights of the time share owners to use the time share unit. Existing law provides that an escrow may close only if the buyers are protected from both present and future blanket liens using one of the statutorily approved methods.

The legislature further finds that in many time share plans, title to the time share units is conveyed into a title holding trust. Under such trusts, a trustee holds title for the benefit of the owners or the association of time share owners, or both. Among other things, a title holding trust is intended to protect the right of the time share buyer to use the time share unit from blanket liens that may arise after the buyer's purchase. To accomplish this, the trust instrument typically restricts the ability of the trustee to submit the time share units to new blanket liens. Developers must submit a title report or other evidence of title as part of the application for registration of a time share plan. The title report will identify any existing blanket liens.

The legislature also finds that existing law allows developers to protect buyers from blanket liens that may arise in the future by recording a notice of time share plan. When a notice of time share plan is recorded, the rights of the time share owners to use the property are, by statute, protected from claims against the developer and anyone else who signed the notice of time share plan.

The legislature further finds that many modern time share plans include time share units from other states or even other countries. In recognition of the impossibility or impracticability of a proposed time share plan satisfying some of the requirements of the previously discussed methods because of factors over which the developer has little or no control, the director may accept alternative arrangements for the protection of the use rights of purchasers. Some alternative arrangements may require that various documents be recorded in the State or in the recording systems of other jurisdictions.

If the time share plan uses a title holding trust or notice of time share plan, or if alternative arrangements require the recordation of documents, to protect buyers from future blanket liens, the title report should also show that title has been conveyed to the trustee, the notice of time share plan has been recorded, or the required documents have been recorded, respectively. If it does not, then upon conveyance to the trustee or recordation of the time share property, the developer should be required to submit an update to the title report showing title vested in the trustee or showing the recordation of the required documents before the registration is accepted. After the developer has submitted such a title report, however, there is no need to submit additional title reports since the blanket lien protections are fully in place.

The purpose of this Act is to bolster the protections provided for buyers of time share units by:

- (1) For time share plans that use a title holding trust to protect buyers from future blanket liens, requiring the developer to submit a title report showing that title to the time share property is vested in the trustee, but not requiring the developer thereafter to submit additional title reports on that time share property;

- (2) For time share plans that use a notice of time share plan to protect buyers from future blanket liens, requiring the developer to submit a title report showing that the notice of time share plan has been recorded on title to the time share property, but not requiring the developer thereafter to submit additional title reports on that time share property; and
- (3) For time share plans that use recorded documents as part of alternative arrangements intended to protect buyers from future blanket liens, requiring the developer to submit a title report showing the recordation of all documents required to be recorded as part of the alternative arrangements, but not requiring the developer thereafter to submit additional title reports on that time share property.

SECTION 2. 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-; title report; title holding trusts.

(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) 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;
 - (3) 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) 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) A financial statement of the developer; or
 - (2) 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) To the extent that a time share plan utilizes a title holding trust to protect the rights of purchasers to use the time share property from blanket liens that may arise subsequent to the closing of the sale of a time share interest:

- (1) The developer shall submit a title report:
 - (A) Showing that title to the time share units or time share interest to be protected by a title holding trust has been conveyed to the trustee; and
 - (B) Showing the recordation of any documents required to be recorded for the purpose of protecting the rights of purchasers

- to use the time share property from blanket liens that will remain on title subsequent to the closing; and
- (2) The developer shall not thereafter be required to submit additional title reports on property covered by a title report that meets the requirements of paragraph (1) unless otherwise required in another section of this chapter.
- (i) To the extent that a time share plan utilizes a notice of time share plan to protect the rights of purchasers to use the time share property from blanket liens that may arise subsequent to the closing of the sale of a time share interest:
- (1) The developer shall submit a title report:
- (A) Showing that a notice of time share plan has been recorded on title to the time share units or time share interests to be so protected; and
- (B) Showing the recordation of any documents required to be recorded for the purpose of protecting the rights of purchasers to use the time share property from blanket liens that will remain on title subsequent to the closing; and
- (2) The developer shall not thereafter be required to submit additional title reports on property covered by a title report that meets the requirements of paragraph (1) unless otherwise required in another section of this chapter.
- (j) To the extent that a time share plan utilizes alternative arrangements to protect the rights of purchasers to use the time share property from blanket liens:
- (1) The developer shall submit a title report showing the recordation of all documents that, as part of the alternative arrangements accepted by the director, are required to be recorded for the purpose of protecting the rights of purchasers to use the time share property from blanket liens; and
- (2) The developer shall not thereafter be required to submit additional title reports on property covered by a title report that meets the requirements of paragraph (1) unless otherwise required in another section of this chapter.”

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.)