

**CHAPTER 514E
TIME SHARING PLANS**

SECTION

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§514E-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Acquisition agent" means any person, other than a developer or sales agent, who, for compensation, solicits or encourages others to attend a time share sales presentation or to contact a time share sales agent or developer; provided that this term shall not include individuals who perform the stated activities and are employed by or in contract with:

- (1) A real estate broker who is licensed under chapter 467; or
- (2) An acquisition agent registered pursuant to section 514E-10.

"Association" means the time share owners association.

"Blanket lien" means any mortgage, deed of trust, option to purchase, master lease, vendor's lien or interest under a contract or agreement of sale, or any other lien or encumbrance that (i) affects more than one time share interest either directly or by reason of affecting an entire time share unit or the property upon which the time share unit to be used by the purchasers is located, and (ii) secures or evidences the obligation to pay money or to sell or convey the property and that authorizes, permits, or requires the foreclosure and sale or other defeasance of the property affected; provided that for the purpose of this chapter, the following shall not be considered blanket liens:

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority and that are not yet due and payable;
- (3) A lien for common expenses under chapter 514A or 514B or a lien on an individual time share unit for similar expenses in favor of a homeowners or community association;
- (4) An apartment lease or condominium conveyance document conveying or demising a single condominium apartment or unit or a lease of a single cooperative apartment; and
- (5) Any lien for costs or trustee's fees charged by a trustee holding title to time share units pursuant to a trust created under section 514E-19; provided that the costs or trustee's fees are not yet due and payable.

"Commission" means the real estate commission established under section 467-3.

"Developer" means any person that creates a time sharing plan or is in the business of selling time share units. "Developer" does not include:

- (1) A person who has acquired one or more time share interests for the person's own use and occupancy and later offers the time share interest for resale; provided that a rebuttable presumption shall exist that an owner who has acquired more than twelve time share interests did not acquire them for the owner's own use and occupancy;
- (2) An association not otherwise a developer, that offers for sale, through its plan manager or a third party, time share interests transferred to the association through foreclosure, conveyance in lieu of foreclosure, cancellation for non-payment of assessments, or gratuitous transfer; and
- (3) A licensed real estate broker who owns time share interests in a time share plan and who offers one or more of the time share interests for resale if:
 - (A) The time share interests are in a registered or previously registered time share plan and were not acquired from a developer who, during the six month period prior to conveying the time share interests to the real estate broker, was actively engaged in offering or selling the time share interests through advertising, promotional, or marketing efforts, whether within or outside the time share project itself, excluding public auctions pursuant to a foreclosure sale;
 - (B) The licensed real estate broker complies with all laws and rules applicable to resale time share interests and resale agents, excluding any registration provision requiring confirmation that the time share interests were purchased for the person's own occupancy;
 - (C) The licensed real estate broker has not used, offered, submitted, or incorporated the time share interest as part of another time share plan that would otherwise be subject to chapter 514E; and
 - (D) The licensed real estate broker owns at any one time not more than twelve time share interests in the particular time share plan.

"Director" means the director of commerce and consumer affairs.

"Exchange agent" means a person who operates an exchange program.

"Exchange program" means a plan or program in which the owners or holders of time share interests in a time share plan may exchange occupancy rights among themselves or with the owners or holders of time share interests in other time share plans or with the owner or holders of units in other projects.

"Master development" means a real estate development that consists of more than one project, including but not limited to a planned community association subject to chapter 421J with one or more sub-associations.

"Negotiable instrument" means any check, draft, bill of exchange, certificate of deposit, note, and any other document which is an "instrument" within the meaning of article 3 of chapter 490, including instruments subject to said article pursuant to section 490:3-805.

"Nondisturbance agreement" means an instrument by which the holder of a blanket lien agrees that its rights in the property shall be subordinate to the rights of owners. Every nondisturbance agreement shall contain a covenant by the lienholder that the lienholder, its

successors, and anyone who acquires the property through the blanket lien shall not use, or cause or permit the property to be used in a manner which prevents the owners from using the time share units in the manner contemplated by the time share plan. The lienholder's agreement not to disturb an owner may require as a continuing condition that the owner perform all obligations and make all payments due under any purchase money contract and, if the time share interest or unit is held as a leasehold, under the lease.

"Notice of time share plan" means an instrument executed by the holder of the legal and equitable title to the fee or long-term leasehold interest in a time share unit, and which provides notice of the existence of the time share plan and of rights of owners. The notice of time share plan must identify the use period for each time share interest and the name of the initial purchaser thereof. If the time share unit is located outside the State, the notice shall be contained in a declaration of covenants, conditions, and restrictions which provide that the notice shall, as a matter of covenant, have the effects described in section 514E-21. The declaration of covenants, conditions, and restrictions must be prepared so as to (i) constitute a covenant running with and an equitable servitude upon the time share units for the duration of the time share plan, and (ii) have the effects described in section 514E-21.

"One-to-one use-right to use-night requirement" means that the sum of the nights which owners are entitled to use in a given year shall not exceed the number of nights available for use by those owners during that year.

"Owner" means any person who owns a time share interest; provided, however, that to the extent and for such purposes as are provided in any agreement of sale, the vendee under such agreement of sale shall be considered the owner of the time share interest.

"Person" includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entities, or any combination thereof.

"Plan manager" means a person who undertakes the duties, responsibilities, and obligations of managing a time share plan.

"Project" means:

- (1) An individual condominium project;
- (2) Two or more contiguous condominium projects that have been merged and for administrative purposes operate as a single condominium project;
- (3) An individual cooperative housing project;
- (4) An individual subdivision of single-family homes subject to one or more project instruments; or
- (5) An individual subdivision of townhomes subject to one or more project instruments.

"Project" does not include a master development.

"Project instrument" means one or more documents, including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project.

"Purchase money contract" means any note, negotiable instrument, agreement of sale, installment sales contract, or other contract which evidences or embodies a debt arising from a purchase money loan made to a purchaser by the developer or a creditor (i) who is affiliated with the developer by common control, contract, or business arrangement, or (ii) to whom the developer referred the purchaser.

"Purchaser" means any person who has contracted to acquire a time share interest.

"Purchaser money lien" means a lien on a time share interest that is:

- (1) Taken or retained by the developer to secure payment by the purchaser of a time share interest of all or part of its price; or
- (2) Given by a purchaser to a person who provides financing to the purchaser to enable the purchaser to buy the time share interest.

The rights of a seller of a time share interest under an agreement of sale shall be considered a purchase money lien for the purpose of this section.

"Record, recorded, etc." means to record in accordance with chapter 502, or to register in accordance with chapter 501.

"Sales agent" means a person who sells or offers to sell for compensation a time share interest in a time share plan, except a person who acquired a time share interest for the person's own occupancy and later offers it for resale.

"Time share instrument" means one or more documents, by whatever name denominated, creating or regulating any time share plan.

"Time share interest" means any interest in a time share unit or plan which entitles the owner or holder thereof to the use, occupancy or possession of a time share unit on a periodically recurring basis.

"Time share plan" means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a sixty day period in any year, for any occupant. The term time share plan shall include both time share ownership plans and time share use plans, as follows:

- (1) "Time share ownership plan" means any arrangement whether by tenancy in common, sale, deed or by other means, whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.
- (2) "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time share unit for a specific or discernible period by temporal division, but does not receive an ownership interest.

"Time share unit" means the actual and promised accommodations, and related facilities, which are the subject of a time share plan.

"Transient vacation rentals" means rentals in a multi-unit building to visitors over the course of one or more years, with the duration of occupancy less than thirty days for the transient occupant.

"Unit owner" means the holder of the fee of a unit not used as a time share unit; except that if the fee is encumbered by a lease of at least five years duration, then the person entitled to possession shall be deemed to be the unit owner.

§514E-1.5 Time share administrator; duties. The director shall appoint a time share administrator, who shall not be subject to chapter 76, to administer this chapter. The

administrator shall be responsible for the performance of the duties conferred upon the director by this chapter.

§514E-2 Status of property. (a) The temporal division of any interest in real property shall not, in and of itself, affect its status as real property.

(b) Whether a time share plan is a time share ownership plan or time share use plan, for purposes of chapter 467 a time share interest shall constitute "real estate" and the offer or sale thereof shall constitute the offer or sale of an interest in real property.

§514E-2.5 Licensing of sales agents and acquisition agents. (a) Except as provided in section 467-2, no sales agent shall act or assume to act as a real estate salesperson or a real estate broker without a license previously obtained under and in compliance with chapter 467 and the rules and regulations of the real estate commission.

(b) Except as provided in section 467-2, no acquisition agent shall solicit or encourage others to attend a time share sales presentation or to contact a time share sales agent or developer except as otherwise provided for by rules adopted by the director pursuant to chapter 91 without a real estate broker's license previously obtained under and in compliance with chapter 467 and the rules and regulations of the real estate commission or without registering as required by section 514E-10.

(c) The director shall adopt rules limiting the activities of and governing sales agents and acquisition agents, regardless of whether such persons are also licensed under chapter 467. The rules:

- (1) May authorize an acquisition agent, whether or not licensed under chapter 467, and its employees and independent contractors, whether or not licensed under chapter 467, to invite others to attend a time share sales presentation or an entertainment function offered in connection therewith, so long as the invitation is made from a principal place of business, branch office, or other real estate place of business, or from a booth operated in accordance with state and county laws by the acquisition agent;
- (2) May authorize an acquisition agent, whether or not licensed under chapter 467, and its employees and independent contractors, whether or not licensed under chapter 467, to extend invitations from a principal place of business, branch office, or other real estate place of business, or from a booth, without requiring the physical presence of a person licensed under chapter 467; provided that the acquisition agent's employees remain in the principal place of business or the booth at all times;
- (3) Shall provide that any individual, who for compensation solicits or encourages others to attend a time share sales presentation or to contact a time share sales agent or developer, shall be employed, either directly or as an independent contractor, by a sales agent or acquisition agent;
- (4) Shall provide that a real estate broker or acquisition agent who employs, either directly or as an independent contractor, an individual who is not licensed under chapter 467, to solicit or encourage others to attend a time share presentation or to

contact a time share sales agent or developer, shall be responsible for the acts of the employee;

- (5) Shall establish rules and conditions strictly regulating and, if legally permissible, prohibiting telephone solicitation of guests in hotels; and
- (6) Shall establish such other rules as the director deems to be in the public interest.
- (d) If the director determines, after notice and a hearing, that an acquisition 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 registration of such person as an acquisition agent.
- (e) If the real estate broker's license, issued under chapter 467, of an acquisition agent or sales agent is forfeited, suspended, revoked, terminated, or placed on inactive status, the acquisition agent or sales agent shall not act as an acquisition agent or sales agent under this chapter.

§514E-2.6 REPEALED.

§514E-3 Taxation. (a) The plan manager, if any, shall collect and pay real property and transient accommodations taxes due on the time share units or occupants under the plan manager's authority as the agent of the owners of the individual units or temporal divisions thereof. The liability of the individual owners of the units, or temporal division thereof, for real property taxes, shall be primary to all parties except the plan manager. The right to contest or appeal any real property or transient accommodations tax assessment shall apply to the plan manager and any person having an interest in a time share unit.

(b) The acquisition agent and sales agent shall maintain records pertaining to the general excise tax of any independent contractors employed by them, their addresses and commissions paid during each calendar year. The plan manager shall maintain records of the general excise and transient accommodations taxes due and owing with respect to any occupants or time share units under the plan manager's management. The records for any year shall be retained for at least two years and be available for inspection by the director or the director of taxation.

[§514E-4] County authority. The several counties shall, by amendment of their zoning ordinances, limit the location of time share units, time share plans and other transient vacation rentals, within such areas as are deemed appropriate.

§514E-5 Geographic limitations. Except as provided in this section, time share units, time share plans, and transient vacation rentals are prohibited.

- (1) Existing time share units, time share plans, and transient vacation rentals are not impaired by the provisions of this section.
- (2) Time share units, time share plans, and transient vacation rentals are allowed:

- (A) In areas designated for hotel use, resort use, or transient vacation rentals, pursuant to county authority under section 46-4, or where the county, by its legislative process, designates hotel, transient vacation rental, or resort use;
- (B) In a hotel where the county explicitly approves such use, in advance, as a nonconforming use; or
- (C) In a county with a population in excess of five hundred thousand, in an existing hotel which is a valid nonconforming use under county ordinance.

§514E-5.5 Foreign time share plans; exemption. (a) A foreign time share plan may obtain an exemption from the requirements of this chapter as provided in this section.

(b) The developer of a foreign time share plan shall pay an exemption fee of \$100 and file the following minimum information pertaining to the foreign time share plan with the director:

- (1) The name and address of the foreign time share plan;
- (2) The name and address of the developer and seller of the foreign time share plan, if any;
- (3) The name and registration number of the time share plan located in Hawaii; provided that the registration shall be active at the time of filing under this subsection; and
- (4) The duration of the foreign time share plan.

(c) Time share interests that are part of a foreign time share plan exempt under this section shall not be resold in the United States.

(d) The developer of a foreign time share plan exempt under this section shall not subject time share interests or units in the foreign time share plan that are located in Hawaii to blanket liens.

(e) The contract to purchase an interest in a foreign time share plan exempt under this section shall contain the following disclosure in conspicuous type immediately above the space provided for the purchaser's signature:

"THE OFFERING AND OPERATION OF THIS TIME SHARE PLAN OUTSIDE THE JURISDICTIONAL LIMITS OF THE UNITED STATES OF AMERICA IS EXEMPT FROM REGULATION UNDER HAWAII LAW, AND ANY SUCH PURCHASE AND OPERATION OF THIS TIME SHARE PLAN IS NOT PROTECTED BY THE LAWS OF THE STATE OF HAWAII. NO RESALE OF INTERESTS IN THIS TIME SHARE PLAN MAY BE MADE BY ANY PERSON WITHIN THE JURISDICTIONAL LIMITS OF THE UNITED STATES OF AMERICA. THE MANAGEMENT AND OPERATION OF ANY ACCOMMODATIONS OR FACILITIES LOCATED IN HAWAII, HOWEVER, ARE SUBJECT TO HAWAII LAW, AND MAY GIVE RISE TO AN ENFORCEMENT ACTION REGARDLESS OF WHERE THE OFFER WAS MADE."

(f) All promotional literature and other printed or written material used in connection with the sale of interests in a foreign time share plan exempt under this section shall include the following caption:

"This time share plan is exempt from registration under Hawaii law and, therefore, the purchase and operation of this time share plan is not protected by the laws of the State of Hawaii."

(g) For the purposes of this section, "foreign time share plan" means a time share use plan that:

- (1) Contains time share interests or units located in Hawaii that are part of a Hawaii time share plan; and
- (2) Is offered and sold solely outside the jurisdictional limits of the United States.

(h) Failure by the developer to abide by the requirements for the exemption shall result in the loss of the exemption and shall require registration under this chapter.

§514E-6 Time sharing in projects. (a) If the project in which the time share unit or time share plan is to be created contains an existing time share unit or time share plan, then time share units and plans shall be regulated according to the terms of the project instruments.

(b) If the project in which the time share unit or time share plan is to be created is not a hotel and does not contain time share units or a time share plan, then such use may be created only if such use is explicitly and prominently authorized by the project instruments, or the project instruments are amended by unanimous vote of the unit owners to explicitly and prominently authorize time sharing.

(c) Any condominium project in an area not designated for hotel use, resort use, or transient vacation rentals that:

- (1) Contains one or more transient vacation rental units may be classified as a hotel use; or
- (2) Contains more than ninety-five per cent transient vacation rental units shall be classified as a hotel.

The foregoing shall not limit the individual counties in zoning for or defining hotels.

[§514E-6.5] 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.

[§514E-7] Maintenance charges. If time share units, or transient vacation rentals are located in the same project as private residential units, charges for the maintenance of common elements assessed against time share and transient vacation rental units may exceed the charges assessed against other units by as much as fifty per cent; provided that such charges do not exceed those assessed against units in the project accommodating transient vacationers with stays of thirty days or less, and such charges are in proportion to extra maintenance expenses actually attributable to the time share and transient vacation rental units.

§514E-8 Mutual right to cancel. Within seven calendar days after the execution of the contract to purchase an interest in a time share plan, or within seven calendar days after the purchaser's receipt of a disclosure statement required by this chapter, whichever occurs later,

either party may cancel the contract without penalty by mailing or delivering a notice of cancellation to the other party at an address specified on the contract. The notice of cancellation shall be effective upon mailing or delivery to the other party at the address specified on the contract.

[§514E-8.5] Classes of time share interests. (a) A time share plan may establish classes of time share interests defined by characteristics as the developer shall determine, including but not limited to season, unit size, location, view, or otherwise.

(b) If one or more of the time share units will not be available for the entire duration of the time share plan then, in addition to other characteristics as the developer shall determine, the time share interests shall be classified by duration.

[§514E-8.6] One-to-one use-right to use-night requirement. (a) A developer shall not offer or dispose of a time share unit or a time share interest unless the one-to-one use-right to use-night requirement is currently satisfied and will continue to be satisfied for the duration of the time share plan.

(b) The time share instruments shall contain provisions assuring satisfaction of the one-to-one use-right to use-night requirement for the duration of the time share plan except during temporary periods of noncompliance due to casualty or condemnation.

(c) The following criteria shall be considered in determining whether the one-to-one use-right to use-night requirement is satisfied:

- (1) If the time share plan has more than one class of time share interest, then the requirement must be satisfied within each class;
- (2) Only use nights available and protected from blanket liens for the duration of the time share plan shall be counted; provided that if time share interests are classified by duration, then as to each class, only use nights available and protected from blanket liens for the entire duration of that class shall be counted;
- (3) A use night counted to satisfy the requirement for one class may not also be counted to satisfy the requirement for a competing class;
- (4) No individual time share unit may be counted as providing more than three hundred sixty-five use nights per calendar year (or more than three hundred sixty-six use nights per leap year);
- (5) The use rights of each owner shall be counted without regard to whether the owner's use rights have been suspended for failure to pay assessments or otherwise. Use rights attributable to unsold time share interests shall be counted;
- (6) Use rights of nonowners shall be counted. Use rights of the developer and its affiliates in excess of those attributable to unsold time share interests shall be counted;
- (7) Use nights reserved by the association or plan manager for the purpose of performing maintenance and repairs to a time share unit shall not be considered;
- (8) Use rights borrowed from a subsequent year or carried over from a prior year shall not be considered; provided that such practice is not established for the purpose of evading the requirements of this section; and provided further that any

such acceleration or deferral of use rights is appropriately balanced and restricted; and

(9) The director may adopt rules identifying additional criteria to be used to calculate whether the one-to-one use-right to use-night requirement is satisfied.

(d) This section shall not be deemed to prohibit the time share instruments from including provisions permitting rental by the association or the developer, or reservation and use by owners, of use nights which remain unreserved as of sixty or fewer days in advance of the use night. Any such use rights shall not be considered in determining whether the one-to-one use-right to use-night requirement is satisfied.

§514E-9 Disclosure statement. (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 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;
- (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 include the initial price and 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; and
- (13) Other disclosures required by the director, as provided by rules adopted pursuant to chapter 91.

(b) The requirements of this section shall not apply to the following transactions:

- (1) Any transaction pursuant to order of any court;
- (2) Any disposition by a government or governmental agency;
- (3) Normal hotel operations; or
- (4) Any gratuitous transfer.

(c) A developer or sales agent shall promptly amend or supplement the disclosure statement to report any material change in the information required by this section.

[§514E-9.5] Exchange program; general provisions. (a) An exchange agent (including the developer if it is also an exchange agent) shall distribute not less than annually to each purchaser of a time share interest participating in the exchange program materials containing written information which shall include the following:

- (1) The manner in which the program is operated, the identity of the persons operating the program, and the affiliation between the persons operating the program and the developer;
- (2) Whether membership, participation, or both, in the program are voluntary or mandatory;
- (3) The costs or ranges of costs of membership and participation in the program as of a specified date, not more than one year before the disclosure statement is delivered to the purchaser, and the person to whom those costs are payable;
- (4) Whether and how any of the costs specified in paragraph (3) may be altered, which costs are to be fixed on a case-by-case basis, and the manner in which they are to be fixed in each case;
- (5) A description of the availability of time share units represented to be participating in the exchange program;
- (6) The reservation and confirmation or other procedures to effectuate the exchange of occupancy rights; and
- (7) Other disclosures required by the director as provided by rules adopted pursuant to chapter 91.

(b) A copy of the most current written materials supplied by the exchange agent pursuant to subsection (a) of this section shall be delivered to each purchaser simultaneously with the delivery of the disclosure statement.

(c) If the exchange agent is not the developer, a subsidiary of the developer, controlled by the developer, or affiliated with the developer, then:

- (1) The developer shall have no liability for the publication or distribution by the developer of the most current written materials supplied to the developer by the exchange agent pursuant to this section or the rules adopted by the director; and
- (2) The exchange agent shall have no liability with respect to any violation of this chapter or the rules adopted by the director arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange agent.

[§514E-9.8] Time share interest owner referrals. (a) An owner of an interest in a time share plan duly registered under this chapter who is not licensed under chapter 467 and provides the name and address of a prospective purchaser or otherwise refers a prospective purchaser of an interest in the same time share plan to a developer, sales agent, or resale agent of the time share plan shall be exempt from licensing requirements under chapter 467; provided that:

- (1) Any fee paid to the owner shall be in the form of a credit or other nonmonetary compensation and shall not exceed \$1,000 per project during any twelve-month calendar period;

- (2) The owner shall be limited to providing the name and address of the prospective purchaser and the owner shall not advertise or promote the time share plan or the referral provided to developers, sales agents, or resale agents under this section; and
 - (3) The developer, sales agent, or resale agent shall provide the owner who received a referral fee with a written receipt that identifies and provides the value of the compensation given.
- (b) Nothing in this chapter or in chapter 467, including section 467-14(14), shall be construed to prohibit or prevent a developer, sales agent, or resale agent from entering into a transaction with a time share interest owner pursuant to this section.

§514E-10 Registration required; developer, acquisition agent, 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. 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.

[§514E-10.2] Limited permit. (a) Notwithstanding any other provision of this chapter, the director may issue a limited permit to developer permitting the offer or sale, in this state, of an additional interest in a time share plan to an existing purchaser in the same time share plan; provided that :

- (1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration was originally approved or amended within seven years from the date of the offer or disposition, and the registration has not been terminated or withdrawn;
- (2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) above through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud and dishonesty;
- (3) In satisfaction of the disclosure requirements of section 514E-9, the purchaser is provided the time share disclosure documents the purchaser would have received if the purchase had occurred in the state or jurisdiction where the purchaser initially purchased the time share interest;
- (4) The contract for purchase signed by the purchaser includes a notice that is the same as or similar to the rescission notice required pursuant to section 514E-9(a)(7); provided that the rescission period shall be at least seven days;
- (5) All funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account in the state. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the state under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this state;
- (6) The contract for purchase shall contain the following statement in conspicuous type:

"THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE XXX (DEVELOPER OR AFFILIATE'S NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THE TERM IS DEFINED IN 514E, HAWAII REVISED STATUTES"; and

(7) The offer complies with the provisions of sections 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13), and 514E-11.1.

(b) Except as provided in subsection (a), the offer or sale of an additional interest in a time share plan by a developer in accordance with subsection (a) shall not otherwise be subject to any other provisions of this chapter.

(c) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer or sale by the developer, in this state, of a time share interest in a time share plan located outside of this state, but within the United States, to an individual who currently owns a time share interest that was purchased from that developer, or from an affiliated entity of that developer; provided that:

(1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration of the developer or an affiliated entity of the developer was originally approved or amended within seven years from the date of the offer or disposition and which registration has not been terminated or withdrawn;

(2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) above through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;

(3) The developer shall provide the purchaser with all time share disclosure documents required to be provided to purchases as if the offer occurred in the state where the time share plan is located;

(4) The contract for purchase shall include a notice that is the same as or similar to the rescission notice required pursuant to section 514E-9(a)(7); provided that the rescission period shall be at least seven days;

(5) In satisfaction of section 514E-16, all funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account in the state. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the state under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located

after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this state;

- (6) The developer shall provide the purchaser, in writing, either in the disclosure documents or otherwise, all of the following:
 - (A) A description of the type of time share plan offered, including the duration and operation of the time share plan;
 - (B) A description of the existing or proposed accommodations and amenities in the time share plan;
 - (C) A description of the method and timing for performing maintenance on the accommodations;
 - (D) If applicable, copies of the declaration, association articles of incorporation, association bylaws, and association rules and regulations; and
 - (E) The current annual budget for the time share plan;
- (7) The time share plan being offered is registered in the state where the time share plan is located; or in the event registration of the time share plan is not required in the state where the time share plan is located, the time share plan being offered is in compliance with the applicable laws of that state; and
- (8) The contract for purchase shall contain the following statement in conspicuous type:

"THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN A TIME SHARE PLAN THAT YOU PURCHASED FROM XXX (DEVELOPER OR AFFILIATE'S NAME), AND XXX HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THAT TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES. THE TIME SHARE INTEREST YOU ARE PURCHASING REQUIRES CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER FOR YOU TO USE YOUR INTEREST. THESE PROCEDURES MAY BE DIFFERENT FROM THOSE FOLLOWED IN OTHER TIME SHARE PLANS. YOU SHOULD READ AND UNDERSTAND THESE PROCEDURES PRIOR TO PURCHASING."

(d) The offer or sale of an interest in a time share plan by a developer in accordance with subsection (c) above shall be exempt from the requirements of sections 514E-3, 514E-4, 514E-5, 514E-6, 514E-7, 514E-10.5, and 514E-14; the disclosure statement requirements of sections 514E-9 and 514E-11(1); and the registration requirements of section 514E-10.

(e) A developer offering a time share plan under this section shall file an application on a form as set forth in subsection (g), along with payment of a one-time fee of \$1,000 per time share plan. Within ten days from receipt by the director of a completed application and fee, the director shall issue a limited permit to the developer reflecting that the filing has been accepted, and that the offering of the time share plan is permitted in accordance with the provisions of this section.

(f) If at any time the director determines that any requirement of this section has not been complied with, the developer shall be subject to any remedies set forth in section 514E-12.

(g) The application as described under subsection (e) shall be signed by an officer or principal of the developer, and shall contain the following information:

- (1) The name and principal address of the developer;
- (2) The name and address of the time share plan being offered;
- (3) The name and address of the managing entity of the time share plan;
- (4) The form of business entity of the developer; and
- (5) The name, address, and telephone number of the officer or principal signing the notice on behalf of the developer.

(h) A limited permit issued under this section shall be renewed by December 31 of each year. The developer shall submit a renewal application on a form prescribed by the director along with the renewal fee of \$50. The renewal application shall be deemed accepted upon receipt by the director of the renewal application and fee.

(i) For purposes of this section:

"Affiliated entity" means a person or other entity that, directly or indirectly through one or more intermediaries, is controlled by or under common control with the developer.

"Control," "controlled by," or "under common control with" means the possession of the power to direct or cause the direction of the management and policies of another person or entity, other than by commercial contract for goods or services. Control shall be presumed to exist if the developer has an ownership interest of at least fifty per cent in the other person or entity, or the developer has the same parent corporation as the other entity.

[§514E-10.3] Time share owners association; budgets and reserves. (a) For each fiscal year, the plan manager, or the board of the association if there is no plan manager, shall adopt an operating budget and distribute copies to all members of the association. The budget shall contain at least the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total cash reserves of the association as of the date of the budget;
- (4) The estimated cash reserves the association will require to maintain the property;
- (5) A general explanation of how the estimated cash reserves are computed; and
- (6) The amount the association must collect for the year to fund the estimated cash reserves.

(b) The plan manager, or the board of the association if there is no plan manager, shall arrange for an annual independent audit of the association's financial accounts conducted by a public accountant in accordance with generally accepted auditing standards. Upon request, a copy of the audit shall be provided to the director, to any member of the association, and any prospective purchaser. The audit report shall include such information as provided by rules adopted by the director pursuant to chapter 91.

§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 (f). 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. 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.

§514E-11 Prohibited practices. It is a violation of this chapter for any sales agent or acquisition agent of time share units or plans to:

- (1) Fail to comply with the disclosure requirements set forth in section 514E-9 or any rule adopted pursuant thereto;
- (2) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, transportation, luaus, ocean recreational activities, land recreational activities, aerial recreational activities, or tours, or other inducements, or make any offer thereof, without fully disclosing orally and as provided in paragraph (3) that the device is being used or offered for the purpose of soliciting sales of time share units or interests;
- (3) Offer a prospective purchaser a prize or gift as part of any time share advertising or sales promotion plan, if in order to claim the prize, the prospective purchaser must attend and complete a sales presentation, unless written disclosure is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type and contains all of the following:
 - (A) A full description of the exact prize or gift won by the prospective purchaser including its cash value;
 - (B) All material terms and conditions attached to the prize or gift;
 - (C) A statement that the consumer must attend and complete a sales presentation; and
 - (D) An identification of the time share project to be offered for sale, including type of ownership and price ranges of the time share interests in that project;
- (4) Misrepresent or deceptively represent any material fact concerning the time share plan or time share unit;
- (5) Make any representation that a time share interest is an investment, including but not limited to the value of the interest at resale;
- (6) Fail to honor and comply with all provisions of a contract or reservation agreement with the purchaser;
- (7) Include, in any contract or reservation agreement, provisions purporting to waive any right or benefit provided for purchasers pursuant to this chapter;

- (8) Receive from any prospective purchaser any money, property (including but not limited to a credit card), or other valuable consideration prior to signing a contract or reservation agreement for the purchase of a time share plan or unit; provided that this paragraph shall not apply to sums paid by a purchaser or prospective purchaser for a tourist activity or for any other product or service offered to induce attendance at a time share sales presentation;
- (9) Make any agreement or contract with a purchaser before delivering, furnishing, or tendering to that prospective purchaser any promised promotional device or other instrument;
- (10) Distribute any promotional or disclosure material separately if the material was filed in a consolidated form;
- (11) Use any unregistered time share booth, or fail to display at all times a conspicuous, clear, and unobstructed sign of a permanent nature:
 - (A) That contains the words "time share" or "time sharing" in letters at least three inches tall and in a color that distinctively contrasts with the background on which the words appear;
 - (B) With minimum dimensions of nine inches by twenty-four inches, excluding any frame;
 - (C) Posted on or in the booth in an upright position, perpendicular to the ground, and in a location that is easily visible to passersby; and
 - (D) Consistent with such rules as the director may adopt pursuant to this chapter and consistent also with county ordinances.

No person shall post anything upon or adjacent to the sign, or include anything in the sign, which indicates that the booth is not being used for time share solicitation purposes. As used in this paragraph, "sign of a permanent nature" specifically excludes banners, grease boards, marker boards, handwritten signs, or signs constructed of temporary materials such as paper, poster board, or cardboard. The signage requirements of this paragraph shall not apply to a booth located within a project subject to a time share plan;

- (12) Misrepresent the amount of fees to be charged, including management fees, or the structure for future fee increase; or
- (13) Sell, offer for sale, or advertise for sale, by any person, partnership, firm, corporation, joint stock company, or other association engaged in marketing time share plans within the State, any tourist activity, including but not limited to land, aerial, or water recreational activities, at less than the actual cost of the activity paid for by the licensee thereof to such vendor or give, offer to give, or advertise with the intent to give away any such tourist activity with the purpose or effect of inducing the prospective purchaser to purchase a time share plan or to attend a time share marketing event.

Any violation of this section shall also constitute an unlawful or deceptive practice within the meaning of section 480-2; provided that in addition violations of section 514E-31 or of paragraph (11) shall result in a fine of not less than \$50 for each separate offense for a maximum aggregate amount of \$500.

§514E-11.1 Deceptive trade practices. It shall constitute an unfair or deceptive practice, within the meaning of chapter 480, for any developer, acquisition agent, or sales agent of time share units or plans to:

- (1) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, or other inducements without fully disclosing that the device is being used for the purpose of soliciting sales of time share interests;
- (2) Offer a prospective purchaser a prize or gift, in writing, as part of any time share advertising or sales promotion plan, if to claim the prize or gift, the prospective purchaser must attend a sales presentation, unless the written disclosure described in section 514E-11(3) is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type;
- (3) Fail to inform each purchaser orally and in writing, at the time the purchaser signs the contract, of the purchaser's seven-day right to cancel or void the contract to purchase a time share interest in a time share plan or unit;
- (4) Misrepresent in any manner the purchaser's right to cancel or void any contract to purchase a time share interest in a time share plan or unit;
- (5) Include in any contract or document provisions purporting to waive any right or benefit to which the purchaser is entitled under this chapter;
- (6) Fail or refuse to honor any valid notice of cancellation of the contract by the purchaser and, within fifteen business days after receipt of such notice, fail or refuse to refund all payments made under the contract or sale; or fail or refuse to cancel and return any negotiable instrument executed by the purchaser in connection with the contract or sale and take any appropriate action to terminate promptly any mortgage, lien, or other security interest created in connection with the transaction;
- (7) Fail to include above the signature line of any sales contract or, if no sales contract is used, above the signature line of any agreement with the purchaser, in conspicuous bold type and capital letters, the following: "Any purchaser has, under the law, a seven-day right of rescission of any time sharing sales contract";
- (8) Misrepresent the amount of time or period of time the time share unit will be available to any purchaser;
- (9) Misrepresent or deceptively represent the location or locations of the offered time share unit;
- (10) Misrepresent the size, nature, extent, qualities, or characteristics of the offered time share units;
- (11) Misrepresent the nature or extent of any services incident to the time share unit;
- (12) Misrepresent the conditions under which a purchaser may exchange the purchaser's occupancy rights to a time share unit in one location for occupancy rights to a time share unit in another location;
- (13) Fail to orally disclose during the initial oral contact with a prospective purchaser that any promised entertainment, prizes, gifts, food and drinks, games, or other inducements are being offered for the purpose of soliciting sales of time share interests in time share units or plans; or

- (14) Fail to include in promotional literature and other printed or written material a disclosure that the product or activity involves time share. The director may by rule prescribe the nature of the disclosure. This paragraph shall not apply to a sign or banner, except as provided in section 514E-11 (11).

§514E-11.2 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 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.

(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.

[§514E-11.3] Remedies; sales voidable; when and by whom. Every sale or transfer made in violation of this chapter shall be voidable at the election of the purchaser. Without limiting any other remedy of the purchaser, the person making the sale or transfer and every director, officer, or agent of or for the seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, transfer, or solicitation, shall be jointly and severally liable to the purchaser in any action at law in any court of competent jurisdiction upon tender of the time share interest sold, or of the contract made, for the full amount paid by the purchaser, with interest at the rate of ten per cent a year from the date of payment by the purchaser, together with all taxable court costs and reasonable attorney's fees, less a pro rata portion of the amount paid representing the portion of any benefits the purchaser actually received or had the right to receive during the time preceding tender.

[§514E-11.4] Defense to action. In the event a purchaser of a time share interest brings an action for damages under this chapter or under chapter 480, pursuant to section 514E-11.1, it shall be a defense to the action that:

- (1) The seller offered in writing to cancel the sale of the time share interest within fifteen days of receipt of written notification by the purchaser of an alleged violation of this chapter or chapter 480, pursuant to section 514E-11.1;
- (2) The seller simultaneously with the offer of cancellation offered in writing to refund the full amount paid by the purchaser, together with interest thereon at the

rate of ten per cent a year from the date of payment by the purchaser until the date of repayment, less a pro rata portion of the amount paid representing the portion of any benefits the purchaser actually received or had the right to receive during the time preceding cancellation; and

- (3) The purchaser refused or failed to accept the written offer of cancellation and refund within thirty days from the date the purchaser received the seller's written offer of cancellation and refund.

§514E-12 Civil penalty; suspension or revocation of registrations. (a) For any cause authorized by law, including but not limited to a determination by the director 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, in addition to any other actions authorized by law, the director:

- (1) May fine the person a sum of not less than \$500 nor more than \$25,000 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.

[§514E-12.5] Statutory or common-law remedies. Nothing in this chapter shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the development, sale, exchange, or purchase of a time share interest, or right of the State to punish any person for any violation of law.

[§514E-13] Authority of director. The director and the several counties may adopt rules and forms, pursuant to chapter 91, to effectuate the purpose of this chapter and to implement its provisions. The director shall submit an annual report to the legislature.

[§514E-14] Preexisting time share units and plans. Time share units and time share plans for existing units which were created in a project prior to June 29, 1980, shall, within six months after June 29, 1980, comply with this chapter, except as to section 514E-5.

[§514E-15] Severability. If any provision of this chapter or the application thereof to any person or circumstance, is held invalid, the invalidity thereof shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application. To that end, the provisions of this chapter are severable.

§514E-16 Deposit of purchaser's funds, notes, and contracts into escrow. (a) All funds and any negotiable instruments and purchase money contracts received before closing from or on behalf of purchasers or prospective purchasers in connection with the purchase or reservation of time share interests must be placed in an escrow account. However, the developer or a sales agent may hold, until the expiration of the seven-day-cancellation period provided by section 514E-8 or any longer purchaser cancellation period provided in the sales contract, a negotiable instrument, or purchase money contract made by a purchaser:

- (1) For which subsequent holders cannot claim holder in due course status within the meaning of article 3 of chapter 490; or
- (2) Where the payee is:
 - (A) The escrow agent; or
 - (B) The trustee of a lien payment trust.

(b) The escrow agent must be a bank, savings and loan association, or a trust company authorized to do business in the State under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. However, in connection with sales made out of the State for the use of time share units located in the State, the escrow agent may be located in and the purchasers' funds, negotiable instruments, and purchase money contracts may be impounded in the jurisdiction where the sale is made, if the law of such jurisdiction requires it. In such event, the out-of-state escrow agent shall be subject to the approval of the director.

(c) The establishment of such an escrow account shall be evidenced by a written escrow agreement between the developer and the in-state or out-of-state escrow agent. The escrow agreement must provide for the handling of purchaser's funds, negotiable instruments, and purchase money contracts as required by this chapter and must contain any provisions required by rules adopted by the director pursuant to chapter 91.

§514E-17 Release of purchaser's funds, notes, and contracts from escrow without a closing. A purchaser's funds, negotiable instruments, and purchase money contracts may be released from escrow without a closing as follows:

- (1) If a purchaser or developer gives a valid notice of cancellation of the contract pursuant to section 514E-8, all of the purchaser's funds and any negotiable instruments and purchase money contracts made by the purchaser shall be returned to the purchaser within fifteen days after the notice of cancellation is received.

- (2) If a purchaser or developer properly terminates a contract pursuant to its terms, or if a developer or prospective purchaser terminates a reservation agreement, all of the purchaser's funds and any negotiable instruments and purchase money contracts made by the purchaser or prospective purchaser shall be delivered in accordance with the contract or reservation agreement.
- (3) If the purchaser defaults in the performance of the purchaser's obligations under the contract, all of the purchaser's funds and any negotiable instruments or purchase money contracts made by the purchaser under the contract shall be delivered in accordance with the contract.
- (4) If purchaser's funds are to be used for construction the funds may be disbursed by the escrow agent from time to time to pay for:
 - (A) Construction costs of the buildings and improvements in proportion to the valuation of the work completed by the contractor in accordance with the contract documents, as certified by a registered architect or engineer and approved for payment by the construction lender;
 - (B) Architectural, engineering, and interior design service fees in proportion to the services performed within each phase of services, as approved by the construction lender;
 - (C) The costs of purchasing furnishings and fixtures for the time share units, as approved by the construction lender; and
 - (D) Finance and legal fees, and other incidental expenses of constructing the time share units or developing the time share plan as approved by the construction lender;

provided that no such disbursements shall be made unless the developer first deposits with the director (i) a copy of the executed construction contract, (ii) a copy of executed performance and labor and material payment bonds in an amount which is not less than one hundred per cent of the cost of construction and covering any changes to the contract which do not in the aggregate increase the amount of the construction contract by more than ten per cent, (iii) a verified statement showing all costs involved in completing the project, and (iv) satisfactory evidence acceptable to the director of funds sufficient to cover the total costs of constructing, furnishing, and completing the project from purchaser's funds, equity funds, interim or permanent loan commitments or other sources.

§514E-18 Release of purchaser's funds, notes, and contracts from escrow upon closing. (a) Upon the closing of the escrow for the sale of a time share interest, the purchaser's funds and any negotiable instruments and purchase money contracts made by the purchaser shall be delivered by the escrow agent:

- (1) To the trustee of a lien payment trust if a lien payment trust is established pursuant to section 514E-19 to protect purchasers from blanket liens; or
- (2) As provided by any alternative arrangements accepted by the director pursuant to section 514E-27 where such alternative arrangements are used pursuant to section 514E-19 to protect purchasers from blanket liens; or

- (3) To the developer only after the requirements of any other alternative under section 514E-19 for protecting purchasers from blanket liens have been satisfied.
- (b) Notwithstanding any other provisions of this chapter, the escrow agent may not release the purchaser's funds, negotiable instruments, and purchase money contracts from the escrow account to or for the benefit of the developer or a sales agent or for construction until:
 - (1) The seven-day cancellation period under section 514E-8 expires as to the purchaser whose funds are being released; and
 - (2) The escrow agent receives a sworn statement from the developer that:
 - (A) No cancellation notice postmarked on a date within the seven-day cancellation period was received from the purchaser whose funds are being released; and
 - (B) No cancellation notice was otherwise received during the seven-day cancellation period from the purchaser whose funds are being released.

§514E-19 Protection of purchasers from blanket liens. (a) An escrow for the sale of a time share interest in a time share ownership plan may close only if the requirements of any one of the following alternatives for protecting the purchaser have been satisfied:

- (1) The time share interest is conveyed to the purchaser free and clear of any blanket liens.
 - (2) The time share unit is conveyed to a trustee:
 - (A) Free and clear of any blanket liens under a trust meeting the requirements of sections 514E-22 and 23; or
 - (B) Under a lien payment trust meeting the requirements of sections 514E-22, 23, 24, and 25.
 - (3) (A) The time share interest is conveyed to the purchaser subject only to blanket liens:
 - (i) Where every person holding an interest in the blanket lien has executed and recorded a nondisturbance agreement; or
 - (ii) For which the director's acceptance of a surety bond or an irrevocable letter of credit meeting the requirements of section 514E-28 has been recorded with respect to that time share unit; and
 - (B) If legal or equitable title will be held by anyone other than the purchaser, a notice of time share plan is recorded.
 - (4) The requirements of any alternative arrangements accepted by the director have been met.
- (b) An escrow for the sale of a time share interest in a time share use plan may close only if the requirements of any one of the following alternatives for protecting purchasers have been satisfied:
- (1) The time share unit is conveyed to a trustee:
 - (A) Free and clear of any blanket liens under a trust meeting the requirements of sections 514E-22 and 23; or
 - (B) Under a lien payment trust meeting the requirements of sections 514E-22, 23, 24, and 25.
 - (2) A notice of time share plan is recorded and either:

- (A) Every person holding an interest in a recorded blanket lien against any time share interests in that time share unit executes and records a nondisturbance agreement; or
 - (B) The director's acceptance of a surety bond or an irrevocable letter of credit meeting the requirements of section 514E-28 is recorded.
- (3) The requirements of any alternative arrangements accepted by the director have been met.
- (c) A time share interest in any time share plan which satisfies the escrow and blanket lien protection requirements of this chapter shall not be deemed a risk capital security under chapter 485A, and the offer or sale of a time share interest therein shall not be deemed the offer or sale of a security.

§514E-20 Effect of recording a nondisturbance agreement. When a nondisturbance agreement has been executed by the lienholder and recorded, the lienholder, its successors, and anyone who acquires the property through foreclosure or by a deed, assignment, or other transfer in place of foreclosure, shall take the property subject to the rights of the owners.

§514E-21 Effect of recording a notice of time share plan. When a notice of time share plan is recorded, claims by creditors of the developer and claims upon, or by successors to, the interest of the title holder who executed the notice of time share plan, shall be subordinate to the interest of owners whose purchase of time share interests in the time share plan is closed after the notice of time share plan is recorded. The recording of a notice of time share plan shall not affect:

- (1) The rights or lien of a lienholder whose lien was recorded prior to the notice of time share plan;
- (2) The rights of the holder of an option recorded before the notice of time share plan;
- (3) The rights or lien of a lienholder having a purchase money lien on a time share interest.

§514E-22 General requirements for trusts. If time share units are required to be conveyed to a trustee pursuant to section 514E-19, the trust instrument must provide for at least the following:

- (1) Title to the time share units must be transferred to the trustee before the purchaser's funds are disbursed by the escrow agent.
- (2) The trustee shall not convey or transfer the time share units except for any units with respect to which no owner has any further right of occupancy or as permitted in section 514E-26.
- (3) The trustee shall be prohibited from encumbering the time share units unless the director shall consent thereto. Such consent shall be given if the trust shall meet all of the requirements of section 514E-24 or all requirements of one of the alternative provisions in section 514E-19 are then satisfied.
- (4) The association on behalf of the owners must expressly be made a third party beneficiary of the trust.

- (5) Notice of the intention of the trustee to resign must be given to the director at least ninety days before the resignation takes effect.
- (6) No amendment of the trust instrument adversely affecting the interests or rights of owners may be made without the written approval of the association.
- (7) Any other provisions required by the director as provided by rules adopted pursuant to chapter 91.

§514E-23 Requirements for trustees. If time share units are conveyed to a trustee pursuant to section 514E-19, the following requirements shall be met:

- (1) The trustee must be a bank, savings and loan association, or a trust company meeting the requirements of any rules adopted by the director pursuant to chapter 91.
- (2) The trustee must at all times:
 - (A) Maintain fidelity bonds in a form approved by the director in such amounts and providing coverage as required by rules adopted by the director pursuant to chapter 91; and
 - (B) Maintain a policy of errors and omissions insurance in a form approved by the director in such amounts and providing coverage as required by rules adopted by the director pursuant to chapter 91.

§514E-24 Additional requirements for lien payment trusts. (a) If a lien payment trust is established to meet the requirements of section 514E-19, then in addition to the requirements of section 514E-22, the trust instrument shall:

- (1) Require the deposit into trust of a lien payment deposit meeting the requirements of section 514E-25, before closing the sale of the first time share interest.
- (2) Require the deposit into trust before closing the sale of the first time share interest, and the retention for the duration of the trust, of an installment payment reserve consisting of funds in an amount at all times sufficient:
 - (A) To pay the total of three successive monthly installments of debt service on the blanket lien(s); provided if the developer complies with section 514E-25(c), the amount paid shall be a pro rata share of the amount required above, determined in accordance with section 514E-25(c).
 - (i) If installments of debt service are due less frequently than monthly, the funds retained in trust shall be sufficient to pay all installments becoming due within the next succeeding six months, the next installment due.
 - (ii) If the payments of debt service are not payable in equal installments, such additional funds shall be retained in the trust as the director shall determine to be reasonably necessary to assure that the trustee will have sufficient cash to pay any installments under the blanket liens when due.
 - (B) To create a sinking fund to extinguish the debt at its maturity if a blanket lien against the trust property is an interest-only loan, contains a balloon

payment provision, or is otherwise not fully amortized under the terms for repayment.

- (3) Authorize the trustee to sell, transfer, hypothecate, encumber, or otherwise dispose of the purchase money contracts or other assets composing the lien payment deposit or any portion thereof, if in the trustee's judgment, such action is necessary in order to enable the trustee to make all payments required to be made under the blanket liens so as to prevent any foreclosure thereof.
 - (4) Require the developer to replenish the funds and assets in the trust whenever the lien payment deposit or the funds in the installment payment reserve fail to meet the requirements set forth in this section.
 - (5) Provide that the trustee periodically shall disburse funds in the trust as follows: first, to the payment of real property taxes, governmental assessments, and lease rent, if any; second, to the payment of current payments then due on the blanket liens, in their order of priority; third, to any sinking fund established for the payment of blanket liens, including any prepayment penalties and release prices; fourth, to any service charges and costs payable to the trustee and its collection agent, if any, pursuant to the trust instrument; and fifth, to the developer or as directed by the developer.
 - (6) Contain any other provisions required by the director as provided by rules adopted pursuant to chapter 91.
- (b) If a lien payment trust is established to meet the requirements of section 514E-19, every purchase money contract must contain the following provision in at least ten-point bold face type:

NOTICE

Immediately upon demand by the trustee under the lien payment trust for the time share plan, the holder of this document must promptly deliver to the trustee all payments made by the purchaser after the trustee mails or otherwise sends notice that the funds and other assets in the trust are inadequate to meet the requirements for the lien payment deposit. The holder must continue to send the trustee the purchaser's payments until the lien payment deposit is replenished.

§514E-25 Lien payment deposit. (a) The lien payment deposit shall consist of either (i) nondelinquent purchase money contracts from purchasers of time share interests in the time share plan or (ii) other assets deposited into trust by the developer and approved by the director.

- (b)(1) The purchase money contracts must have an aggregate remaining principal balance of not less than, and any other assets deposited must have a liquidated value of not less than, one hundred ten per cent of the difference between (i) the aggregate remaining principal balance owing under blanket liens against the time share unit or time share interests in it, including any prepayment penalties, release prices,

and similar charges, (ii) the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket lien. The developer shall have the burden of establishing to the satisfaction of the director the liquidated value of assets other than purchase money contracts from purchasers in the time share plan.

- (2) If the blanket lien payment deposit consists of purchase money contracts, the payments required to be made by purchasers under the contracts shall:
 - (A) Be due on or before the dates on which payments become due on the blanket liens;
 - (B) If paid when due, be equal to at least one hundred ten per cent of the amount required to be paid on the blanket liens on such date; and
 - (C) Be sufficient to pay, in full, during the term of such contracts (i) all amounts secured by the blanket liens, including prepayment penalties and release prices, if any; and (ii) all service charges payable to the trustee, any collection agent, and any other servicing agent pursuant to the trust instrument.
- (3) If the developer proposes to deposit into trust assets other than purchase money contracts, such assets must be sufficient to pay debt service installments on the blanket lien as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket lien at its maturity.
- (c)(1) In lieu of the requirements of subsection (b), the developer may elect to follow the requirements of paragraphs (2), (3), (4), and (5) of this subsection if the following requirements are met:
 - (A) The developer owns or leases under a lease for a term of not less than thirty years all the noncommercial portions of a hotel, condominium, cooperative, or other project;
 - (B) No more than seventy-five per cent of the appraised value of the project is subject to a mortgage or other lien. The appraised value shall be based on the use of the project prior to the creation of the time share plan;
 - (C)
 - (i) As security for the obligations of the developer to the owners, the developer executes and records a mortgage in favor of the trustee under the lien payment trust or the association, in either case as trustee on behalf of the owners, twenty-five per cent of the appraised value of the project; or
 - (ii) The developer conveys or transfers the project to a trust meeting the requirements of sections 514E-22 and 23, and under the terms of the trust instrument the twenty-five per cent of the beneficial interest in the trust is held for the benefit of, or conveyed or transferred to, the association, acting as trustee for the owners, as security for the obligations of the developer to owners; and
 - (D) The developer files a verified statement of the program of financing acceptable to the director containing a cash flow analysis showing that the developer has adequate funds to pay the debt service installments on the blanket liens on the project during the sales period and to extinguish the debt secured by the blanket lien at its maturity, whether from sales

proceeds, loan commitments, income from operations of the project, or other sources.

- (2) The purchase money contracts must have an aggregate remaining principal balance of not less than, and any other assets deposited must have a liquidated value of not less than, one hundred ten per cent of the difference between (i) a pro rata share of the aggregate remaining principal balance owing under blanket liens against the time share unit or time share interests in it, including any prepayment penalties, release prices and similar charges, (ii) a pro rata share of the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket lien. The developer shall have the burden of establishing to the satisfaction of the director the liquidated value of assets other than purchase money contracts from purchasers in the time share plan.
- (3) If the blanket lien payment deposit consists of purchase money contracts, the payments required to be made by purchasers under the contracts must:
 - (A) Be due on or before the dates on which payments become due on the blanket liens;
 - (B) If paid when due, be equal to at least one hundred ten per cent of a pro rata share of the amount required to be paid on the blanket liens on such date; and
 - (C) Be sufficient to pay, in full, during the term of such contracts (i) a pro rata share of all amounts secured by the blanket liens, including prepayment penalties and release prices, if any; and (ii) all service charges payable to the trustee, any collection agent, and any other servicing agent pursuant to the trust instrument.
- (4) If the developer proposes to deposit into trust assets other than purchase money contracts, such assets must be sufficient to pay a pro rata share of the debt service installments on the blanket lien as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket lien at its maturity.
- (5) For purposes of this subsection, the term "pro rata share" means a share proportionate to the ratio that the number of time share units in which the sale of time share interests have been closed bears to the total number of time share units in the project. No more than fifty-one weeks of use annually may be attributed to each time share unit in determining the pro rata share.
- (6) The developer may elect to terminate the use of the provisions of this subsection upon satisfying all of the requirements of either subsection (b) or section 514E-26(c).
- (d) For purposes of this section, a purchase money contract is deemed delinquent when an installment payment is more than fifty-nine days past due.

§514E-26 Termination of a trust. (a) In the case of a time share use plan, the trust for the time share units shall be irrevocable during the time that any owner of a time share interest has a right to the occupancy of a time share unit, except as provided in subsection (c).

(b) In a time share ownership plan, the trust for a time share unit shall be irrevocable until all blanket liens are extinguished, except as provided in subsection (c).

(c) The developer may elect to terminate the use of a trust for a time share unit if, at a later date,

- (1) The trustee records a notice of time share plan after the recording of either:
 - (A) Nondisturbance agreements executed by every lienholder who has a blanket lien against the time share unit, or
 - (B) The director's acceptance of a surety bond or irrevocable letter of credit for that unit; or
- (2) The director approves alternative arrangements which permit the termination of the trust.

§514E-27 Alternative arrangements for purchaser protection. (a) In recognition of the impossibility or impracticability of a proposed time share plan satisfying some of the requirements of section 514E-19 because of factors over which the developer has little or no control, the director may accept arrangements, other than those prescribed by section 514E-19, which in the judgment of the director will give rights and remedies affording equivalent benefits and protections to time share owners which are at least comparable in scope though not necessarily in nature to those designed to be afforded by the section.

(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; 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-10.5 for all filings which are submitted by time share developers.

§514E-28 Requirements for surety bonds and letters of credit. Any surety bond or irrevocable letter of credit furnished to the director pursuant to section 514E-19 must be in an amount which is not less than one hundred ten per cent of the remaining principal balance of every indebtedness secured by a blanket lien related to the time share unit. Any such bond must be issued by a surety authorized to do business in the State and having sufficient net worth to be acceptable to the director. Any such letter of credit must be irrevocable and must be drawn upon a bank, savings and loan association, or other financial institution authorized to do business in the State and having a sufficient net worth to be acceptable to the director. The bond or irrevocable letter of credit shall provide for payment (up to the limit of such bond or letter of credit) of all amounts secured by the blanket lien, including costs, expenses, and legal fees of the lienholder, if for any reason the blanket lien is enforced. The beneficiary of any such letter of credit and the

obligee of any such bond shall be the director on behalf of the owners. The bond or irrevocable letter of credit may be reduced periodically in proportion to the reduction of the remaining principal balance of the indebtedness secured by the blanket liens. Upon being furnished with a surety bond or irrevocable letter of credit satisfying the foregoing requirements, the developer shall prepare and the director shall execute and acknowledge a document in recordable form accepting such surety bond or irrevocable letter of credit and identifying the time share units to which it applies.

§514E-29 Association; lien for delinquent assessments. (a) All time share plans shall have an association which shall be a nonprofit corporation. Each owner shall be a member of the association.

(b) The association may levy regular, special, and other assessments in accordance with its governing documents. Any regular, special, or other assessment, and any late charges, interest, and costs of collection, including reasonable attorneys' fees, assessed by the association in accordance with its governing documents, shall be a debt of the owner of the time share interest at the time the assessment or other sums are levied.

(c) The amount of the assessment, plus any late charges, interest, costs of collection, and reasonable attorneys' fees, assessed by the association and chargeable to any owner of a time share interest, shall be a lien on the owner's time share interest.

(d) Notice of any delinquent lien created pursuant to subsection (c) shall be recorded in the bureau of conveyances and upon recordation shall be prior to all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the time share interest;
- (2) All sums unpaid on any mortgage of record encumbering the time share interest which was recorded prior to the recordation of a notice of a lien by the association; and
- (3) For a time share interest subject to a condominium property regime, the lien of the association of owners under chapter 514A or 514B created pursuant to section 514A-90, or 514B-146.

(e) A lien created pursuant to subsection (c) may be enforced by the association in any manner permitted by law, including:

- (1) Foreclosure by an action in like manner as a mortgage of real property; or
- (2) Foreclosure under power of sale, if the power of sale is contained in the governing documents of the association, or in the original deed of the time share interest;

provided that the procedures and notice requirements contained in chapter 667 shall govern. The plan manager or board of directors of the association, acting on behalf of the owners, unless prohibited by the project instruments, may bid on the time share interest at the foreclosure sale and acquire and hold, lease, mortgage, and convey the same.

(f) Where the association or other purchaser obtains title to the time share interest as a result of the foreclosure of the association's lien, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the expenses or assessments by the association chargeable to the time share interest which became due prior to the acquisition of title to the time share interest by the acquirer. Notwithstanding the immediately preceding sentence,

the unpaid share of expenses or assessments shall be deemed to be expenses collectible from all of the time share owners, including the acquirer and the acquirer's successors and assigns.

(g) Nothing in this section prohibits the association from bringing an action to recover a money judgment against the owner of a time share interest for unpaid assessments and expenses without first either foreclosing or waiving the association's lien securing the same.

§514E-30 Scope of chapter. This chapter applies to the offer and sale in Hawaii of time share interests in time share units located in Hawaii. If time share units are located outside of Hawaii, but any offer or sale is made within the State, this chapter, except for sections 514E-3, 514E-4, 514E-5, 514E-6, 514E-7, and 514E-14, shall apply. As to the offer and sale outside of Hawaii of time share interest in a time share plan which includes time share units located in Hawaii, this chapter, except for sections 514E-2.5, 514E-8, 514E-9, 514E-10(b) and (c), 514E-11, and 514E-11.1 shall apply.

[§514E-31] Private right of action. Nothing in this chapter shall be construed to preclude a person aggrieved by a violation of this chapter from filing an action in court for civil damages. A violation of this chapter shall be deemed a cause of action for the purpose of the court action.