

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 106

TIME SHARING

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-106-1 Objective. This chapter is intended to clarify and implement chapter 514E, Hawaii Revised Statutes, to the end that the provisions thereunder may best be effectuated and the public interest most effectively served. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-13)

§16-106-2 Definitions. Definitions of terms found in section 514E-1, HRS, shall be adopted by reference. In addition, as used in this chapter:

"Annex" means to add any unit or units to a registered time share plan.

"Booth" means a temporary place of business, other than a licensed real estate broker's principal place of business, branch office, or site office, which is established for the purpose of inviting or encouraging invitees to attend a time share sales presentation.

"Cash bond" means a bond running to the State and executed by the acquisition agent or plan manager, as principal; provided that in lieu of any surety or sureties, the principal shall furnish security in certified checks or certificates of deposit equal to the full cash value or one hundred per cent of the amount of the bond.

"Department" means the department of commerce and consumer affairs.

"Facilities" means any structure, service, or property, whether improved or unimproved, made available to the purchaser for recreational, social, family, or personal use.

"Invitee" means an individual who is contacted by an OPC and invited or encouraged to attend a time share sales presentation.

"Irrevocable letter of credit" means an irrevocable credit running to the State, drawn upon a bank or savings and loan association in the amount required by section 16-106-40.

"Material change" means any change of circumstance which would render the information provided in the disclosure statement or in any application for registration no longer accurate or misleading as to purchasers or which affects the rights and obligations of a purchaser or a prospective purchaser of a time share interest, including, but not limited to, change in the nature of the time share plan; change in the period of time usage of the unit; and change in terms and increase in the amounts of underlying encumbrances; provided that administrative changes relating to the operation of the time share plan, including, but not limited to, a

change in the RME or person designated for service of process for a corporate registrant, shall not be deemed a material change for purposes of this chapter.

"Outside public contact" or "OPC" means an individual who acts as an acquisition agent and who does not engage in the sale of time share interests.

"Preexisting time share unit" means:

- (1) A time share unit in existence prior to June 29, 1980, in which the actual receipt of possession, occupancy, or right of use of the unit was obtained by the purchaser or user prior to June 29, 1980, which receipt of possession, occupancy, or right of use may be evidenced by, but not be limited to, tenancy in common, sale, deed, membership agreement, lease, rental agreement, license, use agreement, or security; or
- (2) A time share unit which has been explicitly provided for in a project instrument or in a declaration or other instrument describing a time share plan for property specified therein and which instrument or declaration was recorded in the State office of the assistant registrar of the land court or the State bureau of conveyances prior to June 29, 1980.

"Registrant" means a developer, acquisition agent, sales agent, OPC, sales agent employee/independent contractor, plan manager, or exchange agent required under chapter 514E, HRS, or any rule promulgated pursuant thereto, to register with the director.

"Resale agent" means a person who, for a commission or compensation, sells or offers to sell a resale time share interest on behalf of a third party.

"Resale time share interest" means:

- (1) A time share interest in a registered or previously registered time share plan that is being resold by the holder of a purchaser money lien who acquires title or ownership to the time share interest as a result of the default of the purchaser under the purchaser money lien; provided, however, that time share interests that are reacquired by currently registered developers are not included; or
- (2) A time share interest that is being sold by a person who acquired the time share interest for the person's own occupancy. For the purposes of this definition, the phrase "person who acquired the time share interest for the person's own occupancy" shall mean a person who owns not more than two time share interests, unless the person can prove to the satisfaction of the director that more than two time share interests were purchased for the person's own occupancy.

"Responsible managing employee" or "RME" means the individual employed by a corporate registrant, which individual is responsible for the direct management of the corporate registrant's time share operation.

"State" means the State of Hawaii.

"Supplementary disclosure statement" means an amended disclosure statement filed when there has been a material change in the information provided in the original disclosure statement.

"Time share operation" means any business or operation which, for compensation, solicits or encourages others to attend a time share sales presentation or to contact a time share sales agent or developer; or creates a time share plan; or sells time share units; or sells or offers to sell an interest in a time share plan for a developer; or undertakes the duties, responsibilities, and obligations of managing a time share plan. [Eff 11/15/80; am 3/19/82; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; am and comp 6/5/87; comp 3/7/88; am and comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-1, 514E-13)

§16-106-2.5 Conduct. (a) To fully protect the general public in its time share transactions, every registrant shall conduct business in accordance with this section.

(b) The registrant shall protect the public against fraud, misrepresentation, or unethical practices in the time share industry. The registrant shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the time share industry. The registrant shall assist the director in its efforts to regulate the practices of the time share industry in this State.

(c) The registrant shall ascertain and disclose all material facts concerning every time share interest so that the registrant may fulfill its obligation to avoid error, misrepresentation, or concealment of material facts.

(d) The registrant shall not be a party to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

(e) The registrant shall recommend that title be examined, survey be conducted, or legal counsel be obtained when the interest of either party requires it.

(f) The registrant, for the protection of all parties with whom the registrant deals, shall see that financial obligations and commitments regarding time share transactions are in writing, expressing the exact agreements of the parties, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved.

(g) Violation of any part of this chapter by a registrant or resale agent may be cause for revocation or suspension of a registration of that registrant or resale agent. [Eff and comp 9/15/90] (Auth: HRS §§514E-13, 514E-2.5) (Imp: HRS §514E-12)

SUBCHAPTER 2

REGISTRATION REQUIREMENTS

§16-106-3 Developer registration. (a) Unless the transaction is exempt by law, a developer shall not offer, sell, transfer, or otherwise dispose of any time share interest in a time share plan through marketing efforts in the State, whether the plan is comprised of any unit or units located in the State or out-of-state, unless the developer for the plan has filed with the director an application for registration as prescribed by section 16-106-4(a), and the application has been accepted for registration by the director. The requirement for registration shall also be satisfied before a developer may offer, sell, transfer, or otherwise dispose of any interest in a time share plan comprised of any unit or units located in the State through out-of-state marketing efforts. An application for registration shall include the filing of a disclosure statement meeting the requirements set forth in this section.

(b) The following shall be printed on the bottom half of the face page of the disclosure statement, in centered capital letters in bold print one-half inch in size, with one-half inch spaces between lines:

**READ THIS
DISCLOSURE STATEMENT
BEFORE SIGNING
ANYTHING**

and below it, the following shall be printed:

The disclosure statement is prepared and issued by the developer of the time share plan. It is NOT prepared or issued by the State of Hawaii.

**THE STATE OF HAWAII HAS NOT PASSED ON THE MERITS OF
THE TIME SHARE PLAN DESCRIBED HEREIN.**

(c) Any disclosure statement distributed to the public shall:

- (1) Comply with the disclosure requirements set forth in section 514E-9, HRS;
 - (2) Provide a description of the number of units and types of units being offered by the developer for the time share plan;
 - (3) Provide a summary of the provisions of the escrow agreement required under chapter 514E, HRS, and as provided for in subchapter 9;
 - (4) If the developer is offering to sell any time share interest by agreement of sale or other installment sales contract, and the time share interest being sold is subject to a "blanket lien" (as that term is defined in section 514E-1, HRS), provide a description of the consequences which a subsequent foreclosure of that blanket lien will have upon the purchaser's interest in the agreement of sale or sales contract and the time share interest being sold thereunder;
 - (5) Provide a brief description of the hazard and liability insurance coverages on the project and any protection afforded purchasers against the possible loss or destruction of the time share unit or units;
 - (6) Provide a brief description of the method by which interests in the time share plan will be offered, the name and address of each sales agent through which the offering is to be made, and a statement of any material relationship, exclusive of the marketing relationship, between the developer and each agent;
 - (7) Disclose the major conflicts of interest which may arise on the part of the plan manager in carrying out the duties, responsibilities, and obligations attendant to the position of a plan manager, if the developer or an affiliate of the developer is also designated as the plan manager for the time share plan; and
 - (8) Disclose the major conflicts of interest which may arise on the part of the exchange agent (if an exchange program is offered for the time share plan) in carrying out the duties, responsibilities, and obligations attendant to the position of an exchange agent, if the developer or an affiliate of the developer is also designated as an exchange agent for the time share plan.
- (d) Any disclosure statement not in conformance with the requirements of subsection (c) shall be void and any offer, sale, transfer, or disposition of any interest in the time share plan which is the subject thereof shall be voidable at the option of the purchaser pursuant to section 514E-11.3, HRS.
- (e) The format for the disclosure statement shall be prescribed by the director. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85;

comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-9, 514E-13) (Imp: HRS §§514E-9, 514E-10)

§16-106-4 Registration required; developer, acquisition agent, sales agent, OPC, plan manager, exchange agent, sales agent employees, and independent contractors. (a) In addition to the requirements set forth in section 514E-9, HRS, a developer shall file the following with the director for the purpose of registering the time share plan to be offered by the developer; provided that an application submitted by a developer who has only an option to purchase property to be offered under a time share plan shall not be acceptable; and provided further that no application shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for registration on a form prescribed by the director;
- (2) A disclosure statement meeting the requirements of section 514E-9, HRS, and section 16-106-3;
- (3) A current financial statement not more than ninety days old at the time of submission of the application, prepared in accordance with generally accepted accounting principles and certified by the developer or a certified public accountant to be true and correct in all respects and to fairly, completely, and accurately represent the financial condition of the subject thereof as of the respective date thereof; provided that in lieu of this financial statement, an audited financial report may be submitted if it is the most current report of the subject thereof and is not more than fifteen months old at the time of submission of the application. Any false, misleading, or fraudulent financial statement or report submitted by the developer shall be grounds for cancellation, suspension, or revocation of a registration;
- (4) For each unit to be registered under the time share plan, a policy of title insurance, preliminary title report, abstract of title, or certificate of title not more than sixty days old at the time of submission of the application; provided that the policy of title insurance, preliminary title report, abstract of title, or certificate of title discloses the status of ownership of the unit and any and all liens and encumbrances affecting the unit;
- (5) Copies of all encumbrances against title to each unit to be registered under the time share plan;

- (6) If a corporation, a certified copy of the articles of incorporation and bylaws thereof; if a partnership or joint venture, a certified copy of the partnership registration and partnership agreement;
- (7) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the department not more than thirty days before the date of submission of the application;
- (8) A copy of an executed escrow agreement meeting the requirements of chapter 514E, HRS, and as provided for in subchapter 9;
- (9) The name and address of the person in the State authorized to receive service of process on behalf of the developer; provided that written notification of any change of this name or address shall be submitted to the director within twenty days of any change;
- (10) As required by section 16-106-45, confirmation by the respective county that the time share plan meets the geographic limitation requirements of section 514E-5, HRS; provided that this confirmation of zoning shall be obtained from the respective county not more than thirty days before the date of submission of the application. The director shall prescribe a form to be completed by the proper county authority evidencing this confirmation of zoning;
- (11) A complete statement as to the manner in which the time share plan complies with the requirements of section 514E-6, HRS, governing time sharing in projects;
- (12) A complete statement, including a specific citation to the appropriate provision of section 514E-19, HRS, of the method which the developer intends to use to protect purchasers against underlying blanket liens; provided that the statement required under this subsection shall not be deemed complete unless it includes both sufficient detail to enable the director to determine the precise means by which the requisite protection will be provided and copies of all pertinent agreements and materials relevant to the proposed method of protection;
- (13) As required by sections 16-106-25 and 16-106-26, if the time share plan is a "preexisting plan" as defined in this chapter, evidence of the creation of the plan prior to June 29, 1980, and the filing of the plan not later than December 31, 1980, and the number of interests in the plan, if any, which were previously sold;
- (14) If applicable, a copy of the declaration of horizontal property regime for the subject property, as recorded and subsequently amended, the bylaws of the association of apartment owners and house rules of the association, and for any project which is not

- registered with the state real estate commission under chapter 514A, HRS, a copy of the project's condominium map;
- (15) If applicable, a copy of the declaration of covenants, conditions and restrictions, as recorded and subsequently amended, which establishes the time share plan;
 - (16) A copy of the petition and charter of incorporation for the time share owners association required by section 514E-29, HRS, accepted by the department, as well as the bylaws of the association or club;
 - (17) A completed specimen copy of the notice of mutual right of cancellation of time share purchase prescribed in section 16-106-20(c);
 - (18) A completed specimen copy of the reservation agreement, contract of sale, or agreement of sale to be used in connection with the sale of time share interests;
 - (19) If applicable, a completed specimen copy of the deed, lease, or other instrument to be used to convey the property to the purchaser;
 - (20) A specimen copy of the purchaser's declaration of understanding of the plan and the contract, if any;
 - (21) A copy of the executed management agreement;
 - (22) A copy of each executed sales agency or broker listing agreement; provided that the commission schedule may be omitted from such agreement;
 - (23) A copy of the executed contract with an exchange agent, if applicable;
 - (24) As required by section 16-106-38, copies of any advertising or promotional materials to be used in connection with the marketing of time share interests; and
 - (25) The registration fee.

Pursuant to section 514E-10.5, HRS, the director may contract with private consultants in connection with the review of the filing required of time share developers under section 514E-10(a), HRS, and this section, the cost of the review to be borne by each developer; provided that this review shall not affect the consultant review authorized under section 514E-27, HRS, which the director may request for filings which encompass alternative arrangements for purchaser protection. The consultant fees are in addition to the registration fees specified in chapter 16-53, Hawaii Administrative Rules.

(b) An acquisition agent, including the developer if it is also the acquisition agent, conducting business in the State shall not solicit or encourage others to attend a time share sales presentation or to contact a time share sales

agent or developer whether the time share plan includes any unit located in the State or out-of-state, unless the acquisition agent submits an application for registration to the director and the director accepts the application; provided that the acquisition agent shall submit a separate application for each time share plan with respect to which the acquisition agent is providing prospective purchasers; and provided further that no application shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for registration on a form prescribed by the director; provided that the application shall include, but not be limited to, the following:
 - (A) The name of the time share plan with respect to which the acquisition agent is providing prospective purchasers;
 - (B) The principal office address and telephone number of the acquisition agent; and
 - (C) If a corporation, the name, address, and telephone number of its responsible managing employee;
- (2) Satisfactory evidence that the acquisition agent is bonded as required by section 16-106-40.1 to cover any violation by the acquisition agent of any solicitation ordinances or other regulations governing the use of the premise or premises in which the time share plan is promoted; or evidence that the acquisition agent is currently licensed pursuant to chapter 467, HRS, as a real estate salesperson or a real estate broker;
- (3) As required by section 16-106-8(a), an alphabetized list of the names, addresses, and telephone numbers of all employees and independent contractors who will be engaged in contacting persons who may be interested in purchasing time share interests in the time share plan, and, if any of these employees and independent contractors is licensed pursuant to chapter 467, HRS, as a real estate salesperson or a real estate broker, evidence that the employee or independent contractor is so licensed;
- (4) A copy of the executed agency agreement applicable to the time share plan;
- (5) The name and address of the person in the State authorized to receive service of process on behalf of the acquisition agent; provided that written notification of any change of this name or address shall be submitted to the director within twenty days of any change;
- (6) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the

department not more than thirty days before the date of submission of the application; and

- (7) The registration fee.

An acquisition agent shall submit, for each employee or independent contractor who will be acting as an OPC by contacting persons who may be interested in purchasing interests in the time share plan, an application for registration on a form prescribed by the director and signed by the prospective employee or independent contractor and the registration fee.

(c) A sales agent, including the developer if it is also the sales agent, conducting business in the State shall not sell or offer to sell any interest or interests in a time share plan for a developer whether the time share plan includes any unit located in the State or out-of-state, unless the sales agent submits an application for registration to the director and the director accepts the application; provided that the sales agent shall submit a separate application for each time share plan with respect to which the sales agent is offering or selling time share interests; and provided further that no application shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for registration on a form prescribed by the director; provided that the application shall include, but not be limited to, the following:
 - (A) The name of the time share plan with respect to which the sales agent is selling time share interests;
 - (B) The principal office address and telephone number of the sales agent; and
 - (C) If a corporation, the name, address, and telephone number of its responsible managing employee;
- (2) Evidence that the sales agent is currently licensed pursuant to chapter 467, HRS, as a real estate salesperson or a real estate broker;
- (3) As required by section 16-106-8(a), an alphabetized list of the names, addresses, and telephone numbers of all employees and independent contractors who will be engaged in offering or selling interests in the time share plan, as well as evidence that each of these individuals is currently licensed pursuant to chapter 467, HRS, as a real estate salesperson or a real estate broker;
- (4) A copy of the executed sales agency or brokerage agreement applicable to the time share plan; provided that the commission schedule may be omitted from such agreement;
- (5) A copy of the executed escrow agreement meeting the requirements of chapter 514E, HRS, and as provided for in subchapter 9;

- (6) The name and address of the person in the State authorized to receive service of process on behalf of the sales agent; provided that written notification of any change of this name or address shall be submitted to the director within twenty days of any change;
- (7) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the department not more than thirty days before the date of submission of the application; and
- (8) The registration fee.

A sales agent shall submit, for each employee or independent contractor who will be acting as an OPC by contacting persons who may be interested in purchasing interests in the time share plan, an application for registration on a form prescribed by the director and signed by the prospective employee or independent contractor and the registration fee.

A sales agent shall also submit, for each person on the list required by paragraph (3), an application for registration on a form prescribed by the director and signed by the real estate salesperson or broker.

(d) A plan manager, including the developer if it is also the plan manager, shall not undertake the duties, responsibilities, and obligations of managing a time share plan sold or offered for sale in the State, whether the time share plan contains any unit located in the State or out-of-state, unless the plan manager submits an application for registration to the director and the director accepts the application; provided that the plan manager shall submit a separate application for each time share plan for which the plan manager is offering management services; and provided further that no application shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for registration on a form prescribed by the director; provided that the application shall include, but not be limited to, the following:
 - (A) The name of the time share plan with respect to which the plan manager is offering management services;
 - (B) The principal office address and telephone number of the plan manager;
 - (C) If a corporation, the name, address, and telephone number of its responsible managing employee; and
 - (D) The address at which all accounting records, including but not limited to receipts, expenditures, and payment vouchers, are maintained;

- (2) A notarized statement, signed by the developer and the plan manager, listing the plan manager's duties, responsibilities, and obligations, which shall include, but not be limited to:
 - (A) Management and maintenance of each time share unit;
 - (B) Assessment and collection of maintenance fees;
 - (C) Payment of real property taxes due on each time share unit as provided in section 514E-3(a), HRS;
 - (D) Supervising and monitoring occupancy scheduling to assure owners or users of time share interests in each time share unit that they will be provided with the promised use of the unit;
 - (E) Providing time share owners or users with a copy of the house rules of the building and supervising the enforcement of these rules; and
 - (F) Keeping a detailed and accurate record, in chronological order, of receipts and expenditures relating to the time share plan with which the plan manager is affiliated;
- (3) Satisfactory evidence that the plan manager is bonded as required by section 16-106-40 to cover any default of the plan manager or any of the employees of the plan manager of their duties and responsibilities;
- (4) A copy of the executed management agreement for the time share plan;
- (5) The name and address of the person in the State authorized to receive service of process on behalf of the plan manager; provided that written notification of any change of this name or address shall be submitted to the director within twenty days of any change;
- (6) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the department not more than thirty days before the date of submission of the application; and
- (7) The registration fee.
- (e) An exchange agent, including the developer if it is also an exchange agent, shall not operate an exchange program for a time share plan:
 - (1) If the time share plan includes any unit or units located in the State; or
 - (2) If any time share interest in the time share plan is offered for sale or sold in the State (whether or not any time share unit in the time share plan is located in the State);

unless the exchange agent registers under the chapter by filing with the director the information required in section 514E-10(e), HRS, and the registration fee.

(f) All applications for registration required by this section shall be deemed accepted if the director has not acted upon the applications within sixty days following receipt of the same; except that this subsection shall not apply to any application which is incomplete and does not contain all of the information required to be submitted to the director under this section.

(g) Any party required to register under this section shall notify the director in writing of any material change in any information submitted to the director within twenty days of any material change. Failure to notify the director of any material change in the information submitted shall be grounds for cancellation, suspension, or revocation of a registration.

(h) Any registration required by this section shall be renewed not later than December 31 of each odd-numbered year. Failure to complete all renewal requirements before December 31 of each odd-numbered year shall result in forfeiture of the registration.

(i) The registration of a developer, acquisition agent, sales agent, OPC, plan manager, exchange agent, or sales agent employees or independent contractors, or both, may be placed on inactive status. The information required by this section shall be updated before an inactive registration will be activated.

(j) The registration fees required by this section shall be in the form of a cashier's check or certified check made payable to the "Department of Commerce and Consumer Affairs" in the amount specified in chapter 16-53, Hawaii Administrative Rules.

(k) A cash bond form shall be prescribed by the director.

(l) The registration fee shall be paid upon submission of a registration application. Applications shall not be accepted for department review unless accompanied by the requisite fee.

(m) The format for registration shall be prescribed by the director. [Eff 11/15/80; am and comp 3/28/85; am and comp 8/30/85; am and comp 11/29/85; am and comp 6/5/87; am and comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-9, 514E-13) (Imp: HRS §§514E-9, 514E-10)

§16-106-4.1 Subsequent filing registration requirement. (a) A developer shall submit the following to the director for the purpose of annexing any unit or units to a registered time share plan; provided that no subsequent filing application for registration of the additional unit or units shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

(1) A subsequent filing application for registration on a form prescribed by the director;

- (2) A copy of the declaration of annexation, if applicable, which contains the following:
 - (A) A legal description of the unit or units to be annexed, as well as the names and addresses of the record owner or owners thereof;
 - (B) A statement submitting each annexed unit to the declaration of covenants, conditions and restrictions for the time share plan, which declaration shall be identified by title and recording data; and
 - (C) A schedule of the use periods for each annexed unit;
- (3) A revised disclosure statement reflecting the annexation of the unit or units to the time share plan; provided that this subsection shall not be subject to the requirements of section 16-106-16;
- (4) A current financial statement not more than ninety days old at the time of submission of the application, prepared in accordance with generally accepted accounting principles and certified by the developer or a certified public accountant to be true and correct in all respects and to fairly, completely, and accurately represent the financial condition of the subject thereof as of the respective date thereof; provided that in lieu of this financial statement, an audited financial report may be submitted if it is the most current report of the subject thereof and is not more than fifteen months old at the time of submission of the application. Any false, misleading, or fraudulent financial statement or report submitted by the developer shall be grounds for cancellation, suspension, or revocation of a registration;
- (5) For each unit to be annexed, a policy of title insurance, preliminary title report, abstract of title, or certificate of title not more than sixty days old at the time of submission of the application; provided that the policy of title insurance, preliminary title report, abstract of title, or certificate of title discloses the status of ownership of the unit and any and all liens and encumbrances affecting the unit;
- (6) Copies of all encumbrances against title to each unit to be annexed; provided that copies of encumbrances included with the initial application for registration of the time share plan or any prior subsequent filing application accepted by the department in connection with the plan may be incorporated by reference;
- (7) Confirmation by the respective county that the time share plan meets the geographic limitation requirements of section 514E-5, HRS; provided that this confirmation of zoning shall be obtained

from the respective county not more than thirty days before the date of submission of the application. The director shall prescribe a form to be completed by the proper county authority evidencing this confirmation of zoning; and

(8) The registration fee.

(b) A developer shall notify the director in writing of any material change in any information submitted to the director pursuant to this section within twenty days of any material change. Failure to notify the director of any material change in the information submitted shall be grounds for cancellation, suspension, or revocation of a registration.

(c) Any subsequent filing application for registration required by this section shall be deemed accepted if the director has not acted upon the application within sixty days following receipt of the same; except that this subsection shall not apply to any application which is incomplete and does not contain all of the information required to be submitted to the director under this section.

(d) The registration fee required by this section shall be in the form of a cashier's check or certified check made payable to the "Department of Commerce and Consumer Affairs" in the amount specified in chapter 16-53, Hawaii Administrative Rules.

(e) The registration fee shall be paid upon submission of a registration application. Applications shall not be accepted for department review unless accompanied by the requisite fee.

(f) The format for subsequent filing registration shall be prescribed by the director. [Eff and comp 3/28/85; am and comp 8/30/85; comp 11/29/85; comp 6/5/87; am and comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-9, 514E-13) (Imp: HRS §§514E-9, 514E-10)

§16-106-4.2 Biennial renewal requirement. (a) A developer shall submit the following to the director at the time of renewal of the registration for a time share plan not later than December 31 of each odd-numbered year, as required by section 514E-10(f), HRS, and section 16-106-4(h); provided that no application for renewal shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for renewal of registration on a form prescribed by the director;
- (2) A current disclosure statement meeting the requirements of section 514E-9, HRS, and section 16-106-3;
- (3) A current financial statement prepared not more than one hundred twenty days before the date of renewal in accordance with

generally accepted accounting principles and certified by the developer or a certified public accountant to be true and correct in all respects and to fairly, completely, and accurately represent the financial condition of the subject thereof as of the respective date thereof; provided that in lieu of this financial statement, an audited financial report may be submitted if it is the most current report of the subject thereof and is not more than fifteen months old at the time of renewal of the developer's registration. Any false, misleading, or fraudulent financial statement or report submitted by the developer shall be grounds for cancellation, suspension, or revocation of a registration;

- (4) With respect to any unsold interests in each registered unit in the time share plan which are held by the developer at the time of renewal of the registration for the plan, a policy of title insurance, a preliminary title report, abstract of title, or certificate of title not more than ninety days old at the time of renewal of the registration for the time share plan; provided that the policy of title insurance, preliminary title report, abstract of title, or certificate of title discloses the status of ownership of the unit and any and all liens and encumbrances affecting the unit;
- (5) The name and address of the person in the State authorized to receive service of process on behalf of the developer; provided that written notification of any change of this name or address shall be submitted to the director within twenty days of any change;
- (6) A complete statement setting forth the number of registered units in the time share plan and the number of time share interests being offered for sale in each unit; provided that this statement shall also specify the number of interests which have currently been sold in each unit and the number of interests which remain unsold as of the date of renewal; and provided further that this statement shall be certified by the developer to be true and correct in all respects;
- (7) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the department not more than forty-five days before the date of submission of the application; and
- (8) The biennial renewal fee.

A developer is prohibited from renewing the registration of sold interests in a registered time share unit.

(b) An acquisition agent, including the developer if it is also the acquisition agent, shall submit the following to the director at the time of renewal of the acquisition agent's registration not later than December 31 of each

odd-numbered year; provided that the acquisition agent shall submit a separate application for renewal with respect to each time share plan with which the acquisition agent is registered; and provided further that no application for renewal shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for renewal of registration on a form prescribed by the director;
- (2) Satisfactory evidence that the acquisition agent is currently bonded as required by section 16-106-40.1 to cover any violation by the acquisition agent of any solicitation ordinances or other rules governing the use of the premise or premises in which the time share plan is promoted; or evidence that the acquisition agent is currently licensed pursuant to chapter 467, HRS, as a real estate salesperson or a real estate broker;
- (3) An alphabetized list of the names, addresses, and telephone numbers of all employees and independent contractors who are currently engaged in contacting persons who may be interested in purchasing interests in the time share plan;
- (4) A copy of the executed agency agreement currently applicable to the time share plan;
- (5) The name and address of the person in the State authorized to receive service of process on behalf of the acquisition agent; provided that written notification of any change of this name or address shall be submitted to the director within twenty days of any change;
- (6) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the department not more than forty-five days before the date of submission of the application; and
- (7) The biennial renewal fee.

An OPC employed directly or indirectly by the acquisition agent shall submit the biennial renewal fee and an application for renewal of the OPC's registration not later than December 31 of each odd-numbered year on a form prescribed by the director.

(c) A sales agent, including the developer if it is also the sales agent, shall submit the following to the director at the time of renewal of the sales agent's registration not later than December 31 of each odd-numbered year; provided that the sales agent shall submit a separate application for renewal with respect to each time share plan with which the sales agent is registered; and provided further that no application shall be deemed complete, nor shall the same

be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for renewal of registration on a form prescribed by the director;
- (2) Evidence that the sales agent is currently licensed pursuant to chapter 467, HRS, as a real estate salesperson or a real estate broker;
- (3) An alphabetized list of the names, addresses, and telephone numbers of all employees and independent contractors who are currently selling or contacting persons who may be interested in purchasing interests in the time share plan, as well as evidence that each of these employees and independent contractors is currently licensed pursuant to chapter 467, HRS, as a real estate salesperson or a real estate broker;
- (4) A copy of the executed sales agency or brokerage agreement currently applicable to the time share plan;
- (5) The name and address of the person in the State authorized to receive service of process on behalf of the sales agent; provided that written notification of any change of this name or address shall be submitted to the director within twenty days of any change;
- (6) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the department not more than forty-five days before the date of submission of the application; and
- (7) The biennial renewal fee.

An OPC employed directly or indirectly by the sales agent shall submit the biennial renewal fee and an application for renewal of the OPC's registration not later than December 31 of each odd-numbered year on a form prescribed by the director.

A sales agent shall submit, for each person on the list required by paragraph (3), the biennial renewal fee and an application for renewal of the real estate salesperson or broker's registration not later than December 31 of each odd-numbered year on a form prescribed by the director.

(d) A plan manager, including the developer if it is also the plan manager, shall submit the following to the director at the time of renewal of the plan manager's registration not later than December 31 of each odd-numbered year; provided that the plan manager shall submit a separate application for renewal with respect to each time share plan with which the plan manager is registered; and provided further that no application for renewal shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed

information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for renewal of registration on a form prescribed by the director;
 - (2) The address at which all accounting records, including but not limited to receipts, expenditures, and payment vouchers, are currently maintained;
 - (3) Satisfactory evidence that the plan manager is currently bonded as required by section 16-106-40 to cover any default of the plan manager and any of the employees of the plan manager of their duties and responsibilities;
 - (4) A copy of the executed management agreement currently applicable to the time share plan;
 - (5) The name and address of the person in the State authorized to receive service of process on behalf of the plan manager; provided that written notification of any change of this name or address shall be submitted to the director within twenty days of any change;
 - (6) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the department not more than forty-five days before the date of submission of the application; and
 - (7) The biennial renewal fee.
- (e) An exchange agent, including the developer if it is also the exchange agent, shall submit to the director at the time of renewal of the exchange agent's registration not later than December 31 of each odd-numbered year the biennial renewal fee and an application for renewal of registration on a form prescribed by the director and copies of the exchange program materials containing the written information set forth in section 514E-9.5, HRS, which are currently distributed to each purchaser of a time share interest participating in the exchange program.
- (f) Any application required for renewal of registration by this section shall be deemed accepted if the director has not acted upon the application within sixty days following receipt of the same; except that this subsection shall not apply to any application which is incomplete and does not contain all of the information required to be submitted to the director under this section. Restoration of a forfeited registration may be made in accordance with section 16-106-4.3(c).
- (g) Any party required to renew a registration under this section shall notify the director in writing of any material change in any information submitted to the director within twenty days of any material change. Failure to notify the director of any material change in the information submitted shall be grounds for cancellation, suspension, or revocation of a registration.

(h) Any registration which has been forfeited may be restored within ninety days upon written application and payment to the department of the delinquent fee and penalty fee; provided that the registration meets all the requirements for renewal specified in this section. The registrant shall not engage in any time share activities in connection with the forfeited registration until the registration has been restored.

(i) The registration of a developer, acquisition agent, sales agent, OPC, plan manager, exchange agent, or sales agent employees or independent contractors, or both, may be placed on inactive status upon payment of the biennial renewal fee; provided that the registration shall be renewed biennially before December 31 of each odd-numbered year. The information required by this section shall be updated before an inactive registration will be activated.

(j) The biennial renewal fee required by this section shall be in the form of a cashier's check or certified check made payable to the "Department of Commerce and Consumer Affairs" in the amount specified in chapter 16-53, Hawaii Administrative Rules.

(k) The renewal fee shall be paid upon submission of a renewal application. Applications shall not be accepted for department review unless accompanied by the requisite fee.

(l) The format for renewal of registration shall be prescribed by the director. [Eff and comp 3/28/85; am and comp 8/30/85; comp 11/29/85; am and comp 6/5/87; am and comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-4.3 Repealed. [R 3/7/88]

§16-106-4.4 Resale agent disclosure requirement. The resale agent shall give prospective purchasers of a resale time share interest a copy of the time share plan's latest disclosure statement on file with the director. If the resale agent is not the party who filed the most recent disclosure statement, the resale agent shall attach to the disclosure statement the following statement: "This is the most recent disclosure statement filed by the developer of this time share plan or by the developer's agent. It is not a disclosure statement filed by the resale agent."

- (1) Notice of any liens, title defects, or encumbrances on or affecting the resale time share interest being sold;
- (2) Any restraints in the transfer of the purchaser's resale time share interest in the time share plan;

- (3) The dues, maintenance fees, and real property taxes for the current year, and any additional charges or periodic expenses to which the purchaser may be subject;
- (4) Notice of any pending or anticipated suits that are material to the resale time share interest or time share plan; and
- (5) Any other information required to be disclosed by real estate licensees pursuant to chapter 467, HRS, and chapter 99, Hawaii Administrative Rules. [Eff and comp 3/7/88; am and comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-4.5 Resale agent registration requirement. (a) A resale agent shall not sell or offer to sell any resale time share interest unless the resale agent submits an application for registration to the director and the application is accepted for registration; provided that no application shall be deemed complete, nor shall the same be accepted for registration, unless the prescribed information is provided separately tabbed and numbered in the exact order as follows:

- (1) An application for registration on a form prescribed by the director;
- (2) Evidence that the resale agent is currently licensed pursuant to chapter 467, HRS, as a real estate broker;
- (3) An alphabetized list of the names, addresses, and telephone numbers of all employees and independent contractors who will be engaged in offering or selling resale time share interests, as well as evidence that each of these individuals is:
 - (A) Currently licensed pursuant to chapter 467, HRS, as a real estate salesperson or broker;
 - (B) Currently registered as a time share sales agent employee/independent contractor;
 - (C) Currently registered as an outside public contact, if applicable.
- (4) A specimen copy of the contract of sale to be used in connection with the sale of resale time share interests;
- (5) A copy of the executed escrow agreement meeting the requirements of chapter 514E, HRS, and as provided for in subchapter 9;
- (6) The name and address of the person in the State authorized to receive service of process on behalf of the resale agent; provided that written notification of any change of this name shall be submitted to the director within twenty days of any changes;
- (7) If a corporation, partnership, or joint venture, a certificate of good standing issued by the business registration division of the

department not more than thirty days before the date of submission of the application;

- (8) A completed specimen copy of the notice of mutual right of cancellation of time share purchase prescribed in section 16-106-20(c);
- (9) A copy of the disclosure statement required by section 16-106-4.4;
- (10) A specimen copy of the deed, lease, or other instrument to be used to convey the resale time share interest to the purchaser; and
- (11) The registration fee.

(b) If the time share plan is located in a horizontal property regime, copies of the project instruments shall be made available to the purchaser for review prior to closing.

(c) A Notice of Mutual Right of Cancellation of Time Share Purchase, as prescribed in section 16-106-20, shall be given to each purchaser.

(d) Resale agents shall comply with the requirements of subchapter 10, advertising and promotional material.

(e) Any application for registration required by this section shall be deemed accepted if the director has not acted upon the application within sixty days following receipt of the application; except that this subsection shall not apply to any application that is incomplete and does not contain all of the information required to be submitted to the director under this section.

(f) Resale agents shall notify the director in writing of any material change in any information submitted to the director within twenty days of any material change. Failure to notify the director of any material change in the information submitted shall be grounds for cancellation, suspension, or revocation of a registration.

(g) Resale agents shall ascertain that persons reselling more than two time share interests received written confirmation from the director that the time share interests were purchased for the person's own occupancy.

(h) The registration fee required by this section is \$100 (\$50 application and \$50 compliance resolution fund). Payment shall be in the form of a certified check, cashier's check, or money order made payable to the "Department of Commerce and Consumer Affairs." [Eff and comp 3/7/88; am and comp 9/15/90] (Auth: HRS §514E-13 (Imp: HRS §514E-10))

§16-106-4.6 Purchaser protections required for resales by developer.

(a) Any developer who reacquires a time share interest and resells the same shall meet and adhere to all sales registration requirements under chapter 514E, HRS; provided that the reacquired time share interest need not be re-registered if the same has previously been registered and there has been no material changes in the

status of the time share program. For the purposes of this section, the term "reacquired time share interest" shall mean that the time share interest was previously sold by or through the developer and reacquired by the developer through foreclosure, repurchase, or other means whereby title to that interest becomes vested in the developer or the developer's agent.

(b) Any developer who resells reacquired time share interests without conforming to the requirements of chapter 514E, HRS, and this chapter shall be subject to the sanctions provided by chapter 514E, HRS, and this chapter.

(c) The developer must notify the department of its intention to sell reacquired time share interests on a form prescribed by the director which shall include, but not be limited to, the following:

- (1) The name of the time share plan under which the reacquired time share interest was previously registered;
- (2) The unit number of the reacquired time share interest; and
- (3) The number of interests being offered for sale in each unit. [Eff and comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-5 Responsible managing employee; designation, duties, and change. (a) No application of a corporate developer, corporate acquisition agent, corporate sales agent, corporate plan manager, or corporate exchange agent shall be accepted unless the corporation has designated a responsible managing employee (RME) and prescribed the RME's duties, responsibilities, and obligations with respect to the corporation's time share operation.

(b) The RME shall be responsible for the direct management of the corporation's affairs with respect to the corporation's time share operation. The RME shall not be deemed to have the direct management of the corporation's time share operation unless the RME:

- (1) Is a bona fide employee of the corporation and has direct control, supervision, and management of the corporation's time share operation;
- (2) Has full knowledge and control of the corporation's accounting practices;
- (3) Has full knowledge and control over the moneys belonging to and in the custody of the corporation in connection with the time share operation; and
- (4) Has full access to all books, records, and documents materially relative to the corporation's part in the time share operation, whether these materials are kept in the State or out-of-state.

(c) The name, address, and telephone number of the RME shall be provided to the director.

(d) A plan manager may designate one or more RMEs.

(e) When there is a change in RME, the name of the new RME shall be reported to the director in writing within twenty days of the change.

(f) Where a developer or plan manager of two or more time share plans, at least one of which plans includes time share units located in this State, maintains its principal office or has primary management and accounting functions out-of-state, the duties of the RME specified in subsection (b) may be divided between two or more RMEs of the developer or plan manager, with no one RME being vested with all of these duties; provided that at least one RME is located within the State; and provided further that the RME located within the State shall be responsible for all activities conducted in the State with respect to the corporation's time share operation. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-6 Copy of disclosure statement to be given to prospective purchasers. (a) A prospective purchaser of any interest or interests in a time share plan shall, before signing a sales contract, be:

(1) Provided with a copy of the disclosure statement which shall be a true, accurate, and complete reproduction or printing of the statement filed with and accepted by the director; and

(2) Given an opportunity to read the statement.

(b) Prospective purchasers receiving a copy of the disclosure statement shall sign a statement acknowledging receipt of the same on a form prescribed by the director; provided that:

(1) The receipt shall be kept at the principal office of the developer, whether the office is located in the State or out-of-state, for a period of two years from the date thereof; and

(2) Upon reasonable notice, the receipt shall be made available for inspection in the State by the director or a representative of the director.

If the receipt is not made available, inspection shall be made at the place where the receipt is kept and any and all costs, including travel expense, per diem, and salary of the inspector, shall be borne by the developer. The director may require the developer to remit in advance the amount of the estimated cost prior to inspection. Failure on the part of the developer to comply with the director's request to remit the amount of the estimated cost may be grounds for cancellation, suspension, or revocation of a registration. [Eff 11/15/80; am and comp 3/28/85;

comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-9)

§16-106-7 Issuance of registration number. (a) The director shall issue a registration number for each time share plan in consecutive order of acceptance of the plan for registration pursuant to section 514E-10(a), HRS, and section 16-106-4(a). The registration number and the date of acceptance of the plan shall be printed on the upper right-hand corner of the face page of the disclosure statement.

(b) The director shall issue a registration number to each acquisition agent, sales agent, OPC, plan manager, and exchange agent in consecutive order of acceptance of the registration application submitted by each applicant pursuant to section 514E-10(b) to (e), HRS, and section 16-106-4(b) to (e). [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-8 Filing names of employees and independent contractors for acquisition agent and sales agent registration. (a) In accordance with the requirements of section 16-106-4(b) and (c), an acquisition agent and sales agent shall submit to the director an alphabetized list of the names, addresses, and telephone numbers of all employees and independent contractors who will be engaged in selling interests in the time share plan or in contacting persons who may be interested in purchasing these time share interests.

The director shall not approve any employee or independent contractor who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing.

(b) The director shall, upon registration, issue a pocket identification card to each employee or independent contractor acting as an OPC, which shall be kept in the possession of the employee or independent contractor at all times.

(c) Acquisition agents and sales agents shall keep on file a list of names of all current employees and independent contractors, including their mailing addresses, and a list of the names and addresses of all previous employees and independent contractors whose employment or services as an independent contractor have been terminated within the preceding two years.

(d) Acquisition agents and sales agents shall notify the director in writing of any personnel changes within twenty days of such change. Failure to notify the director of any personnel changes shall be grounds for cancellation, suspension, or revocation of a registration.

(e) This section shall not apply to clerical or administrative personnel who have no contact with the public. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; am and comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-8.1 Rejection by the director. (a) The director shall reject a developer, sales agent, or acquisition agent's application for registration if the director finds that the applicant does not possess a history of honesty, truthfulness, and fair dealing. A rebuttable presumption that the developer, sales agent, or acquisition agent does not possess a history of honesty, truthfulness, or fair dealing shall arise if the applicant has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil or administrative action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered any indictment, formal investigation, examination, or civil or administrative proceedings that resulted in any agreements, undertakings, consents, or orders being issued by any federal or state court; any department, agency, or commission of the United States government; any state or municipality; any self-regulatory trade or professional organization; or any foreign government or governmental entity which involves an act of fraud or dishonesty;
- (4) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (5) Knowingly made or caused to be made in any application or report filed with the director, or in any proceeding before the director, any written or oral statement which was at the time and in light of the circumstances under which it was made false or misleading with respect to material fact;
- (6) Wilfully omitted to state a material fact with respect to information furnished or requested in connection with an application;
- (7) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of state law or rule;
- (8) Been involved in unlicensed activity;
- (9) Been the subject of a series of complaints in this state or other jurisdictions; or

(10) Violated bonding requirements in this State or in other jurisdictions.

(b) The director shall reject a developer's application for registration if the director finds that the developer does not possess a history of financial integrity. The director may ask an applicant to describe the factors and circumstances which caused or surrounded any filing by the applicant for bankruptcy. A rebuttable presumption that a developer does not possess a history of financial integrity shall arise if the developer:

(1) Has been placed in receivership or conservatorship during the previous ten years; or

(2) Is liable for amounts of debt which, in the opinion of the director, create excessive risks of default and pressure on the developer.

(c) The director shall reject an application if the director finds that the history of honesty, truthfulness, and fair dealing of the developer, sales agent, or acquisition agent, its officers or directors, or any of its proposed management personnel; or the financial integrity of the developer, indicates that it would not be in the interests of the public to approve the application.

(d) Subsections (a), (b), and (c) shall not be deemed an exclusive list of the grounds upon which the director finds that the relevant statutory criteria have not been met. [Eff and comp 3/7/88; am and comp 9/15/90] (Auth: HRS §514E-13) (Imp: SLH 1987, Act 60)

§16-106-9 Denial of registration. In the event the director denies the registration of a developer, acquisition agent, sales agent, OPC, plan manager, or exchange agent, the director shall notify the applicant by letter of the director's action which shall include a concise statement of the reasons therefor and if the applicant is entitled to a hearing, a statement informing the applicant of the right to a hearing if the applicant so desires. [Eff and comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-10 Demand for a hearing. Any developer, acquisition agent, sales agent, OPC, plan manager, or exchange agent whose registration has been denied by the director, shall be entitled to a hearing; provided that a demand for a hearing is filed with the director within sixty days of the date of the letter informing the applicant of the denial of registration; and provided further that this section shall not apply to a denial based on the failure to file an application within the period provided by this chapter. [Eff and comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-11 Proceedings upon demand for hearing. If a demand for a hearing is filed within the time prescribed, the director shall order a hearing pursuant to chapters 91 and 92, HRS, and chapter 16-201, the administrative practice and procedure rules of the department. [Eff and comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

SUBCHAPTER 3

PLAN MANAGER

§16-106-12 Plan manager or RME of plan manager designated for time share plan. (a) All time share plans shall have a designated plan manager.

(b) Each time share plan which is comprised of any unit or units located in the State shall have a plan manager or an RME of the plan manager in the State, whether or not the plan is offered for sale in the State or out-of-state.

(c) A plan manager may manage one or more time share plans; provided that the plan manager applies for and is accepted for registration by the director with respect to each plan.

(d) A plan manager's duties, responsibilities, and obligations shall include, but not be limited to:

- (1) Management and maintenance of the time share units;
- (2) Assessment and collection of maintenance fees;
- (3) Payment of real property taxes due on the time share units;
- (4) Supervision of occupancy scheduling so that time share unit owners or users will be provided with the promised use of time share units;
- (5) Providing time share owners and users with a copy of the house rules of the building;
- (6) Supervision of enforcement of the house rules;
- (7) Keeping of a detailed and accurate record, in chronological order, of receipts and expenditures;
- (8) Providing the time share owners with a statement of receipts and expenditures which shall include but not be limited to:
 - (A) Management fees paid;
 - (B) Total compensation paid to the board of directors; and
 - (C) Amount of reserves set aside for refurbishment, or if no refurbishment account, the reasons therefor.
- (9) Providing that the minutes of the board of directors and association meetings, and the association's financial statements be available for examination by time share owners at convenient hours at a place designated by the association; and

(10) Providing that the minutes of meetings and association financial statements be mailed to any time share owner upon such owner's request. A reasonable fee may be charged to defray any administrative or duplicating cost.

(e) All accounting records of the plan manager shall be subject to inspection upon reasonable notice by the director or a representative of the director. Accounting records shall be kept at the principal office of the plan manager, which may be located in the State or in another state.

(g) The plan manager shall keep an accurate and current list of the names and addresses of association members, including the names and addresses of vendors under agreements of sale, if any. If the association's by-laws or rules do not authorize the release of this list to a time share owner, the association shall develop a reasonable procedure by which time share owners may solicit votes or proxies or by which time share owners may provide information to other time share owners with respect to association matters.

(f) If the accounting records are not kept in the State, the records should be made available for inspection in the State upon reasonable notice. If the records are not made available, inspection shall be made at the place where the records are kept and any and all costs, including travel expense, per diem, and salary of the inspector, shall be borne by the plan manager. The plan manager may be required by the director to remit in advance the amount of the estimated cost prior to inspection. Failure on the part of the plan manager to comply with the director's request to remit the amount of the estimated cost may be grounds for cancellation, suspension, or revocation of the plan manager's registration.

Further, if the principal office of the developer is not in the State, failure to make available upon the director's request any bookkeeping records, computer records, or any other records of the developer for the time share plan within a reasonable time, may be grounds for cancellation, suspension, or revocation of the plan manager's registration. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; am and comp 9/15/90]
(Auth: HRS §514E-13) (Imp: HRS §514E-10)

SUBCHAPTER 4

NOTIFICATION OF CHANGES IN DISCLOSURE STATEMENT

§16-106-16 Material change in disclosure statement. (a) A developer shall notify the director in writing of any material change or changes in the disclosure statement for the developer's time share plan.

(b) A developer shall amend or supplement the disclosure statement by submitting to the director a supplemental disclosure statement which shall specify, in detail, the material change or changes which have occurred, within twenty days after the material change or changes become known to the developer.

(c) Upon acceptance of the supplemental disclosure statement by the director, a true, accurate, and complete copy of the statement shall be given to each purchaser adversely affected by the material change or changes and to each prospective purchaser. A receipt from each purchaser and prospective purchaser shall be obtained and filed as provided in section 16-106-6(b). The developer shall not be in violation of this chapter if the purchaser fails to return the receipt and the developer is able to verify that a statement was sent to the purchaser.

(d) The director may independently determine that a material change has occurred and require the developer to prepare a supplemental disclosure statement disclosing the material change or changes in a form approved by the director.

(e) Where the purchaser has received title by instrument of record in the sale of an interest in an ownership plan, the developer is under no obligation to give the purchaser a supplemental disclosure statement. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-9, 514E-10)

SUBCHAPTER 5

CANCELLATION OF CONTRACT

§16-106-20 Mutual right to cancel contract. (a) A developer or purchaser may cancel the contract to purchase an interest or interests in a time share plan by giving the other party written notification within seven calendar days after execution of the sales contract or after the purchaser's receipt of the disclosure statement for the time share plan, whichever occurs later. The notice of cancellation shall be effective upon mailing or delivery to the other party at the address specified on the contract.

(b) Within fifteen business days after the date the notice of cancellation of the contract is received, the seller shall return all payments made by the purchaser and the purchaser shall return in good condition all materials received, reasonable wear and tear excepted; provided that if these materials are not returned, the developer may deduct the reasonable value of the same not to exceed \$25 and return the balance to the purchaser.

(c) A developer or sales agent shall furnish each purchaser at the time the contract for purchase of an interest or interests in a time share plan is signed the following cancellation notice prepared in ten point bold face type:

**NOTICE OF MUTUAL RIGHT OF
CANCELLATION OF
TIME SHARE PURCHASE**

Date contract signed

Date disclosure statement received

YOU OR THE DEVELOPER MAY CANCEL THIS TRANSACTION WITHIN SEVEN (7) CALENDAR DAYS AFTER EXECUTION OF THE CONTRACT OR AFTER YOUR RECEIPT OF THE TIME SHARE DISCLOSURE STATEMENT, WHICHEVER OCCURS LATER, AND YOU SHALL BE ENTITLED TO A REFUND WITHIN FIFTEEN (15) BUSINESS DAYS AFTER THE DATE THE NOTICE OF CANCELLATION IS RECEIVED. YOU ARE REQUIRED WITHIN FIFTEEN (15) BUSINESS DAYS AFTER YOU SEND THIS CANCELLATION NOTICE TO THE DEVELOPER, TO RETURN TO THE DEVELOPER ALL SALES MATERIALS (SUCH AS YOUR SALES CONTRACT, DISCLOSURE STATEMENT, ETC.), IN GOOD CONDITION, REASONABLE WEAR AND TEAR EXCEPTED. IF YOU DO NOT RETURN THESE MATERIALS BY THIS DATE, THEN THE DEVELOPER IS ENTITLED TO DEDUCT UP TO \$25 FROM YOUR REFUND.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO

_____, at _____,
Name of seller Address of seller

NO LATER THAN MIDNIGHT OF _____.

I HEREBY CANCEL THIS TRANSACTION.

Purchaser's signature

Date

Purchaser's signature

The developer or sales agent shall complete all of the information required in the notice of cancellation, except for the date of cancellation and purchaser's signature. [Eff 11/15/80; am and comp 3/28/85; am and comp 8/30/85; am and comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-8, 514E-9, 514E-11.1)

§16-106-21 Purchaser's right to void contract. The right to cancel a contract of purchase pursuant to section 16-106-20 does not preclude the purchaser from seeking appropriate relief from the contract in any court of competent jurisdiction. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-8, 514E-9, 514E-12.5)

§16-106-22 Retention of copy of contract. A copy of the contract for each sale of an interest or interests in a time share plan shall be retained by the developer for a period of at least one year after the parties to the contract have completely performed all of their respective obligations under the contract. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-8, 514E-11.3)

SUBCHAPTER 6

PREEXISTING TIME SHARE UNIT

§16-106-25 Preexisting time share unit. (a) Except as to the geographic limitation set forth in section 514E-5, HRS, preexisting time share units and time share plans for preexisting time share units shall comply with the requirements of this chapter and chapter 514E, HRS, by January 1, 1981.

(b) Time share units not qualifying for preexisting status by June 29, 1980, shall be subject to the provisions of section 514E-5, HRS.

(c) A developer, sales agent, or plan manager shall submit evidence, such as an agreement, contract, or document, at the time of registration of any preexisting time share units or preexisting time share plan to show that each unit or plan was created prior to June 29, 1980.

(d) A form for registration of any preexisting time share units or preexisting time share plan shall be prescribed by the director. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-14)

§16-106-26 Persons responsible for registration of preexisting time share plan. In addition to the requirements of chapter 514E, HRS, and this chapter, a developer, sales agent, or plan manager shall submit to the director at the time of registration of the preexisting time share plan a certified statement setting forth the location of the plan, the number of time share units in the plan, the nature of ownership of the units, the ownership or use periods, the date and an explanation of the manner in which the time share plan was created, the number of purchasers who purchased time share interests in the plan, and the name and address of the plan manager for the plan. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-14)

§16-106-27 Plan manager for preexisting time share plan. A preexisting time share plan shall have a plan manager. Any provision relating to a plan manager in this chapter shall be applicable to the plan manager for a preexisting time share plan. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-14)

SUBCHAPTER 7

MIXED-USE PROJECT

§16-106-29 Mixed-use project containing existing time share unit or plan. Additional time share units shall not be created in a mixed-use project containing an existing time share unit or time share plan and any residential unit, unless time share units are allowed in the project pursuant to section 514E-5, HRS, and section 514E-6, HRS, and all of the requirements of this chapter relating to the use are met. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-5, 514E-6, 514E-14)

SUBCHAPTER 8

STATUTE AND RULES RELATING TO TIME SHARING

- §16-106-31 Statute and rules available. A developer or sales agent shall:
- (1) Have a copy of chapter 514E, HRS, and a copy of this chapter available for inspection by any prospective purchaser;
 - (2) Advise each prospective purchaser at the time any interest in a time share plan is offered for sale in this State or out-of-state that copies of the statute and rules are available for inspection; and
 - (3) Provide copies of chapter 514E, HRS, and this chapter upon request and payment of a reasonable amount to defray printing costs. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-13)

SUBCHAPTER 9

PLAN MANAGER'S ACCOUNT AND ESCROW ACCOUNT

§16-106-32 Repealed. [R 3/28/85]

§16-106-33 Plan manager's account. A plan manager shall establish and maintain an account with a bank, savings and loan association, or trust company authorized to do business in this State for the deposit of any moneys received by the plan manager in connection with the management of the time share plan. An account with a bank, savings and loan association, or trust company doing business in another state may be established upon approval by the director. [Eff

11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-13)

§16-106-34 Escrow account required for deposit of purchaser's funds, notes, and contracts. (a) A developer for a time share plan shall establish and maintain an escrow account for the deposit of all funds, negotiable instruments, and purchase money contracts received before closing from or on behalf of purchasers or prospective purchasers of interests in the time share plan. The developer or sales agent designated by the developer for the time share plan, resale agent, however, may hold until the expiration of the seven-day cancellation period provided by section 514E-8, HRS, and section 16-106-20, 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, HRS; or
- (2) Where the payee is:
 - (A) The escrow agent; or
 - (B) The trustee of a lien payment trust established pursuant to section 514E-19, HRS.

(b) The escrow agent must be a bank, savings and loan association, or trust company authorized to do business in the State, or a corporation licensed as an escrow depository under chapter 449, HRS. In connection with sales made out of the State for the use of time share units located in the State, however, the escrow account may be established and maintained in the jurisdiction where the sale is executed if the law of the jurisdiction requires it; provided that the out-of-state escrow agent shall be subject to the approval of the director.

(c) The establishment of the escrow account shall be evidenced by a written escrow agreement executed by the developer and the in-state or out-of-state escrow agent; provided that each sales agent designated by the developer for the time share plan shall be made a party to the escrow agreement or shall otherwise agree to obey and be bound by the terms of the agreement. The escrow agreement required under this subsection shall provide for the handling of purchasers' funds, negotiable instruments, and purchase money contracts as required by chapter 514E, HRS, and must include the following provisions:

- (1) All funds, negotiable instruments, and purchase money contracts received by the developer or sales agent before closing from or on behalf of purchasers or prospective purchasers in connection with the purchase or reservation of any interest or interests in the time share plan shall be placed in the escrow account, subject to the

- exceptions set forth in section 514E-16(a), HRS, and subsection (a);
- (2) A complete statement, including a specific citation to the applicable provision of section 514E-19, HRS, of the method to be used to protect purchasers against underlying blanket liens on the time share unit or units;
 - (3) The conditions under which a purchaser's funds, notes, and contracts may be released from escrow without a closing, as specified in section 514E-17, HRS; and
 - (4) The conditions under which a purchaser's funds, notes, and contracts may be released from escrow upon closing, as specified in section 514E-18, HRS; provided that the agreement shall refer specifically to the purchaser protection alternative set forth in section 514E-18(b), HRS, which applies to the time share plan.
- (d) As required by section 16-106-3(c)(3), a summary of the escrow agreement shall be included in the disclosure statement.
- (e) A purchaser's funds, negotiable instruments, and purchase money contracts which are required to be placed in an escrow account shall not be expended or released for any purpose prior to closing except for the purposes specified in section 514E-17, HRS. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; am and comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-9, 514E-13, 514E-16) (Imp: HRS §§514E-16, 514E-17, 514E-18, 514E-19)

§16-106-35 Repealed. [R 3/28/85]

§16-106-36 Account open for inspection. A developer and sales agent, or plan manager, shall provide any information on the respective accounts maintained by each party to the director upon written request. The account shall be subject to inspection upon reasonable notice by the director or a representative of the director. If the accounting records are not kept in this State, the provisions on inspections and production of records in section 16-106-12(f) shall apply. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

SUBCHAPTER 10

ADVERTISING AND PROMOTIONAL MATERIAL

§16-106-38 Filing of advertising and promotional material. (a) No advertisements, promotional brochures, circulars, pamphlets, handouts, or other material shall be published or used by a developer, acquisition agent, sales agent, or OPC in connection with the sale of any interest or interests in a time share plan unless copies of these materials are filed with the director at least fifteen days prior to use.

(b) No radio or television advertisements or any standard verbal sales presentation shall be used by a developer, acquisition agent, or sales agent in connection with the sale of any interest or interests in a time share plan unless copies of verbatim scripts relating to these advertisements or a sales presentation are filed with the director at least fifteen days prior to use.

(c) Any audio-visual material used in connection with a sales presentation for a time share plan shall be produced for examination upon the request of the director. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-11, 514E-11.1)

§16-106-39 Requirements for promotional literature and other printed or written material. (a) The following caption shall be included on all promotional literature and other printed or written material used in connection with the sale of any interest or interests in a time share plan; provided that the caption shall be printed in capital letters of twenty-four point bold type or type as large as the largest printing or writing elsewhere in the material:

"THIS IS A TIME SHARING SALES PRESENTATION. ANY PURCHASER HAS, UNDER THE LAW, A SEVEN-DAY RIGHT OF RESCISSION OF ANY TIME SHARING SALES CONTRACT."

Failure to include this caption on any printed or written material shall constitute an unfair or deceptive trade practice within the meaning of chapter 480, HRS, and shall be a violation of chapter 514E, HRS, and this chapter.

(b) Any written invitation used in connection with any time share advertising or sales promotion plan which offers a prospective purchaser a prize or gift, conditioned upon the attendance of the prospective purchaser at a sales presentation, shall contain the following written disclosure; provided that the disclosure is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; and provided further that the disclosure shall be written or printed in a size equal to at least ten point bold type:

(1) A full description of the exact prize or gift won by the prospective purchaser, including the cash value of the prize or gift;

- (2) All terms and conditions attached to the prize or gift;
- (3) A statement that the prospective purchaser must attend a sales presentation; and
- (4) An identification of the time share plan to be offered for sale, including type of ownership, exchange privileges, limitations, and price ranges of the time share interests in the plan.

Failure to provide the written disclosure required in this subsection shall constitute an unfair or deceptive trade practice within the meaning of chapter 480, HRS, and shall be a violation of chapter 514E, HRS, and this chapter. [Eff and comp 3/28/85; am and comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-11, 514E-11.1)

SUBCHAPTER 11

BOND

§16-106-40 Plan manager's bond. (a) A plan manager shall at all times maintain a bond, naming the time share owners association and all time share owners as obligees, covering all of its directors, officers, employees, agents, and volunteers having control of or access to moneys of the plan manager or moneys which are collected, held, managed, or disbursed by the plan manager in the performance of its duties as plan manager for a time share plan. The bond shall cover any loss of money or other property the plan manager, time share owners association and time share owners may sustain as a result of any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, unlawful obstruction, misapplication, misplacement, destruction or misappropriation, or any other dishonest or criminal act or omission, or infidelity to duty of or by any director, officer, employee, agent, or volunteer of the plan manager, and may contain at least the following provisions:

- (1) That the surety shall provide, not less frequently than annually, written assurances to the director and to the time share owners association that the bond is in full force and effect;
- (2) That the surety may not cancel the bond without giving at least thirty days prior written notice to the director and to the time share owners association of the cancellation of the bond;

- (3) That the prosecution or conviction or both of a director, officer, employee, agent, or volunteer of the plan manager shall not be a condition precedent to recovery on the bond;
 - (4) That knowledge of defalcations shall not be imputed to the plan manager where a director, officer, employee, agent, or volunteer other than the offending party has knowledge of the defalcations;
 - (5) That the identification of a specific offending party shall not be a condition precedent to recovery on the bond; provided that it is conclusively shown that loss has occurred as a result of the actions of a director, officer, employee, agent, or volunteer of the plan manager;
 - (6) That the surety expressly acknowledges the plan manager's status (if such be the case) as an independent contractor or agent of the time share owners association, and that coverage under the bond shall not be affected thereby;
 - (7) That the bond may not be changed or amended without the prior written consent of the director; and
 - (8) That the surety waives any defense based upon the exclusion of volunteers or other persons who serve without pay from coverage under the bond.
- (b) The amount and form of the above-described bond and the identity of the surety thereon shall be approved by the director; provided that the amount of the bond shall be not less than the following:
- (1) If payments are collected or received by the plan manager or due from the time share owners at intervals of forty-five days or less, an amount equal to three times the total amount due at each such interval from the owners of all time share units in the time share plan; or
 - (2) If payments are collected or received by the plan manager or due from the time share owners at intervals longer than forty-five days, an amount equal to two times the total amount due at each such interval from the owners of all time share units in the time share plan.
 - (3) Notwithstanding subsections (1) and (2), the amount of the bond shall not be less than \$10,000 nor more than \$200,000, unless said amount is increased or decreased by the director pursuant to subsection (d).
- (c) In lieu of the above-described bond, a plan manager may file a cash bond or irrevocable letter of credit with the director in the applicable amount specified in subsection (b)(1) or subsection (b)(2) above.

(d) The director shall have the discretion to accept a bond or other equivalent, the form and amount of which are not in conformance with this section if, in the judgment of the director, that bond or equivalent would give time share owners the benefits and protections designed to be afforded by this section. In the exercise of that discretion, the director may take into consideration the following factors:

- (1) The background and experience of the plan manager;
- (2) The length of operation of the time share program;
- (3) The financial history and strength of the plan manager;
- (4) The history of complaints or non-complaints against the plan manager;
- (5) The plan manager is a real estate broker, licensed pursuant to chapter 467, HRS;
- (6) The existence of other types of insurance covering the plan manager;
- (7) The method of collection and procedures in place to protect time share owners; and
- (8) Such other factors upon which the benefits and protections to be afforded the time share owners by this section can best be met without undue burden to the plan manager.

(e) A plan manager shall annually provide evidence that a bond which satisfies the requirements of this section has been secured for each time share plan under the management of the plan on a form prescribed by the director. [Eff and comp 9/1/85; am and comp 11/29/85; am and comp 6/5/87; am and comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-10, 514E-13) (Imp: HRS §514E-10)

§16-106-40.1 Acquisition agent's bond. (a) An acquisition agent not licensed pursuant to chapter 467, HRS, shall at all times be bonded in the amount of \$25,000 by a surety company authorized to do business in the State or file a cash bond in an equivalent amount with the director to cover any violation by the acquisition agent and any of its employees, agents, or independent contractors of any solicitation ordinances or other regulations governing the use of the premise or premises in which a time share plan is promoted.

(b) An acquisition agent shall provide evidence that a bond which satisfies the requirements of subsection (a) has been secured for each time share plan with which the acquisition agent is affiliated. [Eff and comp 9/1/85; am and comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-10, 514E-13, 106-32(c)) (Imp: HRS §514E-10)

§16-106-41 Beneficiary of bond. Any bond required under this chapter shall inure to the benefit of purchasers who suffer loss as a result of any violations, defalcations, or default described in section 514E-10(b) and (d), HRS, or any rule adopted pursuant thereto. [Eff 11/15/80; am and comp 3/28/85; am and comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

§16-106-42 Cancellation of bond. (a) A surety company may cancel the bond by giving thirty days notice in writing to the director and to the time share owners association; provided that cancellation of the bond shall not relieve a surety company from liability for any cause of action arising out of acts which may have occurred during the period of the bond.

(b) A registrant who has filed a cash bond may cancel the bond by giving thirty days notice in writing to the director; provided that the security for the bond shall not be returned for a period of six years after the effective date of cancellation of the bond. [Eff 11/15/80; am and comp 3/28/85; am and comp 8/30/85; comp 11/29/85; am and comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-10)

SUBCHAPTER 12

COUNTY ZONING REGULATIONS

§16-106-45 Evidence of compliance with county regulation required. The developer of a time share plan, in conjunction with the submission of an application for registration of a time share plan as required by chapter 514E, HRS, and this chapter, shall provide confirmation that each time share unit or time share plan is located in an area designated by the county for time share use; provided that no confirmation is required for preexisting time share units. Confirmation shall be provided on a form prescribed by the director and completed by the proper county authority not more than thirty days before the date of submission of the application. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-4, 514E-5)

SUBCHAPTER 13

PROHIBITED AND DECEPTIVE TRADE PRACTICES

§16-106-46 Practices prohibited. (a) It shall be a violation of chapter 514E, HRS, and this chapter for any sales agent or acquisition agent for any time share plan or unit to:

- (1) Fail to comply with the disclosure requirements set forth in section 514E-9, HRS, or any rule adopted pursuant thereto;
- (2) Use any promotional device without fully disclosing that the device is being used for the purpose of soliciting sales of any interest or interests in time share units or a time share plan;
- (3) Offer a prospective purchaser a prize or gift, in writing, as part of any time share advertising or sales promotion plan if in order to claim the prize or gift the prospective purchaser must attend a sales presentation, unless the written disclosure set forth in section 514E-11(3), HRS, and section 16-106-39(b) is provided at the time the prospective purchaser is notified of the prize or gift;
- (4) Misrepresent or deceptively represent any material fact concerning the time share unit offered or sold, including, but not limited to:
 - (A) The amount of time or period of time the unit will be available to any purchaser;
 - (B) The location or locations of the time share unit;
 - (C) The size, nature, extent, qualities, or characteristics of the time share unit;
 - (D) The nature or extent of any services incident to the time share unit;
 - (E) The rights of a purchaser, if any, to exchange the purchaser's occupancy rights to a unit in one location for occupancy rights to a unit in another location; or
 - (F) The contents of the contract or other document or the purchaser's rights, privileges, or benefits thereunder;
- (5) Fail to honor or comply with all provisions of a contract or reservation agreement with the purchaser;
- (6) Include, in any contract or reservation agreement, provisions purporting to waive any right or benefit provided for purchasers pursuant to chapter 514E, HRS;
- (7) 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 unit; and
- (8) Make a sales presentation to a prospective purchaser before delivering, furnishing, or tendering to that prospective purchaser any promised promotional device or other instrument.

(b) An acquisition agent operating in the State is prohibited from selling or offering to sell or discussing price or terms of sale of any interest or interests in a time share plan with prospective purchasers. The function of an acquisition agent shall be limited to soliciting or encouraging others to attend a time share sales presentation or to contact a time share sales agent or developer.

(c) A sales agent operating in the State shall not sell or offer to sell any interest or interests in a time share plan unless the sales agent has an active real estate broker's license issued by the State real estate commission, and all of the sales agent's employees and independent contractors engaged in sales activities with respect to the time share plan have an active real estate broker or salesperson's license issued by the state real estate commission. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §§514E-2.5, 514E-11)

§16-106-47 Deceptive trade practices. It shall constitute an unfair or deceptive trade practice within the meaning of chapter 480, HRS, and shall be a violation of chapter 514E, HRS, for any developer, acquisition agent, or sales agent to:

- (1) Engage in the prohibited practices set forth in section 16-106-46(a), paragraphs (2), (3), and (4);
- (2) Fail to inform each purchaser orally and in writing, at the time the purchaser signs the contract to purchase an interest or interests in a time share unit or plan, of the purchaser's seven-day right to cancel or void the contract;
- (3) Misrepresent in any manner the purchaser's right to cancel or void any contract to purchase a time share interest in a time share unit or plan;
- (4) Fail or refuse to honor any valid notice of cancellation of the contract by the purchaser and fail or refuse to refund all payments made under the contract or sale within fifteen business days after receipt of the cancellation notice; or fail or refuse to cancel and return any negotiable instrument executed by the buyer 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;
- (5) Fail to include on promotional literature and other printed or written material the caption required by section 514E-11.1(7), HRS, and section 16-106-39(a); and
- (6) Fail to orally disclose during the initial oral contact with a prospective purchaser that any promised promotional device is

being offered for the purpose of soliciting sales of time share interests in time share units or a time share plan. [Eff and comp 3/28/85; am and comp 8/30/85; am and comp 11/29/85; comp 6/5/87; am and comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-11.1)

SUBCHAPTER 14

SUSPENSION OR REVOCATION OF REGISTRATION

§16-106-49 Cause for suspension or revocation. The director may suspend or revoke the registration of a developer, acquisition agent, sales agent, OPC, plan manager, or exchange agent for violation by the registrant or any of its employees of any of the provisions of chapter 514E, HRS, or any rules adopted pursuant thereto, after a hearing conducted pursuant to chapters 91 and 92, HRS, and chapter 16-201, the administrative practice and procedure rules of the department, or if the director determines that any registrant has failed to comply with a temporary cease and desist order issued by the director pursuant to section 514E-12(b), HRS. [Eff 11/15/80; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; am and comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §514E-13) (Imp: HRS §514E-12)

SUBCHAPTER 15

OUTSIDE PUBLIC CONTACT

§16-106-50 OPC to be employed by broker. The OPC at all times shall be employed either directly or indirectly by a licensed real estate broker who shall also be registered as a time share sales agent or acquisition agent. A real estate broker who employs an OPC who is not licensed pursuant to chapter 467, HRS, shall be responsible for the acts of the OPC. [Eff 3/19/82; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-2.5, 514E-13) (Imp: HRS §§514E-2.5, 514E-10)

§16-106-51 Limitation on activity of OPC. (a) The sole function of the OPC shall be to contact invitees to attend a time share sales presentation which shall be conducted by a licensed real estate broker or salesperson.

(b) The OPC shall not respond to questions regarding the time share plan being promoted at the time share sales presentation or participate in or conduct any portion of the sales presentation. Questions regarding the time share plan shall be referred to a licensed real estate broker or salesperson.

(c) The OPC shall conduct business activities only from the licensed real estate broker's place of business or a booth operated by the broker. The OPC may distribute handbills or similar materials which otherwise conform to the requirements of this chapter from outside the booth but must perform all business activities from the booth. For the purposes of this section, the term "business activities" shall mean signing up individuals for sales presentations, exchanging moneys, or accepting deposits of moneys. A licensed real estate broker or salesperson need not be physically present at the place of business or in the booth when the OPC contacts invitees; provided that the OPC remains in the booth at all times when conducting business activities. [Eff 3/19/82; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; am and comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-2.5, 514E-13) (Imp: HRS §§514E-2.5, 514E-10)

§16-106-52 Disclosure to be made by OPC. The OPC shall verbally inform the invitee of the following:

- (1) Any promised entertainment, prizes, gifts, food and drinks, games, or other inducement offered at the time share sales presentation are being offered for the purpose of soliciting sales of time share interests in time share units or plans;
- (2) The name of the time share program; and
- (3) The name of the time share company the OPC represents. [Eff 3/19/82; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-2.5, 514E-13) (Imp: HRS §§514E-2.5, 514E-9, 514E-10, 514E-11, 514E-11.1)

§16-106-53 Location of booth. The location of any booth operated by the licensed real estate broker shall be in compliance with applicable state or county laws, ordinances, or rules. Information on the location of the booth shall be provided to the director on a form prescribed by the director. No booth shall be operated until an application containing the information required herein has been accepted by the director. The application shall be deemed accepted if the director has not acted upon the application within sixty days following receipt of the same. [Eff 3/19/82; am and comp 3/28/85; comp 8/30/85; comp 11/29/85; comp 6/5/87;

comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-2.5, 514E-13) (Imp: HRS §§514E-2.5, 514E-9, 514E-10)

SUBCHAPTER 16

LIEN PAYMENT TRUST

§16-106-56 Requirements for trustees. (a) The requirements of this section shall be met if time share units are conveyed to a trustee under a lien payment trust established pursuant to section 514E-19, HRS.

(b) The trustee shall be a bank, savings and loan association, or trust company authorized to do business in the State; provided that if the trustee is an out-of-state bank, savings and loan association, or trust company, the trustee shall be subject to approval of the director.

(c) The trustee shall at all times maintain a fidelity bond or fidelity bonds covering all of its directors, officers, employees, agents, and volunteers having control of or access to moneys or securities of the trustee, or moneys or securities which are collected, held, managed, or disbursed by the trustee. The fidelity bond or fidelity bonds shall cover any loss of money or other property the trustee, the time share owners association, time share owners, and time share purchasers may sustain as a result of any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, unlawful obstruction, misapplication, misplacement, destruction or misappropriation, or any other dishonest or criminal act or omission, or infidelity to duty of or by any director, officer, employee, agent, or volunteer of the trustee. The bond may be in the form of individual bonds, a schedule fidelity bond, or a blanket bond covering all of the persons mentioned above, and may contain at least the following provisions:

- (1) That the surety shall provide, not less frequently than annually, written assurances to the director and to the time share owners association that the bond is in full force and effect;
- (2) That the surety may not cancel the bond without giving at least thirty days notice in writing to the director and to the time share owners association of the cancellation of the bond;
- (3) That the prosecution or conviction or both of a director, officer, employee, agent, or volunteer of the trustee shall not be a condition precedent to recovery on the bond;
- (4) That knowledge of defalcations shall not be imputed to the trustee where a director, officer, employee, agent, or volunteer other than the offending party has knowledge of the defalcations;

- (5) That the identification of a specific offending party shall not be a condition precedent to recovery on the bond; provided that it is conclusively shown that loss has occurred as a result of the actions of a director, officer, employee, agent, or volunteer of the trustee;
- (6) That the bond may not be changed or amended without the prior written consent of the director; and
- (7) That the surety waives any defense based upon the exclusion of volunteers or other persons who serve without pay from coverage under the bond.

The amount and form of the fidelity bond or fidelity bonds covering directors, officers, employees, agents, and volunteers of the trustee, and the sufficiency of the surety thereon, shall be approved by the director; provided that the amount of any bond shall be at least \$50,000 or equivalent to the sum of all blanket liens on the time share units which are registered for sale in the time share plan.

(d) The trustee shall at all times maintain a policy of errors and omissions insurance covering any loss which the trustee shall become legally obligated to pay as a result of any claims made against the trustee by reason of liability arising out of any "wrongful act" on the part of the trustee in its capacity as trustee of a time share plan under section 514E-19, HRS. The term "wrongful act" shall mean any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by the trustee. The policy of insurance may contain at least the following provisions:

- (1) That the insurer shall provide, not less frequently than annually, written assurances to the director and to the time share owners association that the policy is in full force and effect;
- (2) That the insurer may not cancel the policy without giving at least thirty days notice in writing to the director and to the time share owners association of the cancellation of the policy; and
- (3) That the policy may not be changed or amended without the prior written consent of the director.

The amount and form of the policy and the sufficiency of the insurer thereon shall be approved by the director; provided that the amount of any policy shall be at least \$5,000,000. [Eff and comp 3/28/85; comp 8/30/85; am and comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-13, 514E-23) (Imp: HRS §514E-23)

SUBCHAPTER 17

VOTING RIGHTS FOR APARTMENT UNITS DESIGNATED FOR TIME SHARE USE

§16-106-58 Voting rights for apartment units designated or sold as time share units. (a) The time share instruments creating or regulating any time share plan in a condominium project or apartment building shall include provisions governing:

- (1) Voting rights of each time share owner in the time share owners association;
- (2) The manner in which each time share unit's vote in the association of apartment owners shall be cast by the owners of the time share unit;
- (3) The voting rights of a time share purchaser under an agreement of sale;
- (4) Whether meetings of the board of directors of the time share owners association shall be open to all members of the time share owners association;
- (5) The use of proxies; and
- (6) The maintenance of a membership list of the members of the time share owners association;

Provided that if the time share plan is created in a condominium project, these provisions shall be subject to the provisions of the condominium project's declaration of horizontal property regime and bylaws.

(b) Notwithstanding anything to the contrary contained in the time share instruments, voting rights in the time share owners association may be exercised only by owners of time share interests (or by the holders of their proxies) and no voting rights shall attach or be allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar areas located outside apartments. [Eff and comp 3/28/85; am and comp 8/30/85; comp 11/29/85; comp 6/5/87; comp 3/7/88; comp 9/15/90] (Auth: HRS §§514E-6.5, 514E-13) (Imp: HRS §514E-6.5)

Amendments to and compilation of chapter 16-106, Hawaii Administrative Rules, on the Summary Page dated July 30, 1990, were adopted on July 30, 1990, following a public hearing held on July 9, 1990, after public notices were given in the Honolulu Advertiser, Hawaii Tribune-Herald, West Hawaii Today, Maui News, and the Kauai Times on June 1, 1990.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Robert A. Alm

ROBERT A. ALM

Director of Commerce and Consumer Affairs

APPROVED AS TO FORM: Date 8-16-90

/s/ Glenn S. Grayson

Deputy Attorney General

APPROVED: Date 9-4-90

/s/ John Waihee

JOHN WAIHEE

Governor

State of Hawaii

September 5, 1990

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-106
Hawaii Administrative Rules

July 30, 1990

SUMMARY

1. §16-106-2 is amended.
2. §16-106-2.5 is added.
3. §§16-106-4.4 and 16-106-4.5 are amended.
4. §16-106-8.1 is amended.
5. §16-106-12 is amended.
6. Chapter 106 is compiled.