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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunset Evaluation Report: Time Sharing

Summary

We evaluated the regulation of time share plans under Chapter 514E, Hawaii Revised Statutes, and conclude that the public interest is best served by reenactment of the statute.

Time share plans divide units of real estate, generally condominium apartments, into 52 one-week segments that are sold separately. Buyers receive an exclusive right to occupy the unit for a recurring period of time, usually one to four weeks each year. Sellers claim that time sharing provides the advantages of a vacation home without the high cost and protects future vacations from inflation.

Time share marketing depends heavily on getting prospective buyers to attend sales presentations. Gifts or discounts are typically offered as an inducement. Prospective purchasers are often solicited from booths located in hotel and resort areas.

Hawaii began to regulate the time share industry in 1980. We found that since then, the Department of Commerce and Consumer Affairs has carried out an efficient registration program covering plan developers, sales agents, and others. There are strict disclosure requirements to let consumers know what they are getting into. Expert consultants review all documents filed by developers.

As a result, buyers of time share properties have received protection against foreclosures on their units and misrepresentation by developers and salespersons. The department's Regulated Industries Complaints Office (RICO) has enforced the time share law by helping buyers to obtain titles, refunds, and other promised services.

For these reasons, we believe the regulatory program should be continued with several improvements to address recent problems. In particular, time share owners increasingly have run into difficulties with the management of time share plans. Because owners are geographically dispersed and spend only a short time each year in their units, they need strong protection from management abuses such as exorbitant increases in maintenance fees and unexpected special assessments. The current time share law is designed to protect buyers from abuses in sales practices but offers insufficient protection from management abuses. Furthermore, most time share units are located in

condominium projects, but it is not clear whether the units are covered by the management provisions in the state's condominium law.

We also found that the department's administrative rules go beyond the statute by adding new registrants and by attempting to regulate conduct too broadly. In addition, members of the time share industry disagree constantly with the time share administrator as to how the disclosure rules for time share promotional material should be applied. Moreover, the department has not yet implemented its new booth location form, and it has not issued the required annual report on the time sharing program since 1986.

Recommendations and Response

We recommend that Chapter 514E be reenacted to continue the regulation of time sharing. To increase the protections for consumers, the Legislature should consider amending the law to strengthen controls over plan management. The law could require management to (a) adopt and distribute an annual operating budget, including proper disclosure of reserves and (b) submit to the Department of Commerce and Consumer Affairs an annual independent financial audit of the plan. In addition, time share owners could be authorized to discharge unresponsive plan managers. The director of commerce and consumer affairs should explore alternatives to the bond required of plan managers and propose legislation to clarify the relationship between the time share law and the condominium law.

We also recommend that the department clarify the rules regarding disclosures on time share promotional materials. It should repeal the section of the rules entitled Conduct and the provisions requiring registration of the employees and independent contractors of acquisition agents and sales agents. The department should implement its revised booth location form and include a report on the time share program as part of its annual report to the Legislature.

The department agrees that Chapter 514E should be reenacted and amended to address emerging problems in plan management. In addition, the department agrees to review the relationship between the time share and condominium laws, to clarify the rules on promotional materials, and to implement a revised booth location form. The department believes it has the authority to retain the section of the rules entitled Conduct and the provisions requiring registration of sales agent employees or independent contractors who work for sales agents and outside public contacts (OPCs) who work for acquisition or sales agents. Nevertheless, it does agree to discontinue the registration of OPCs. Finally, the department believes that its annual report to the Legislature meets the requirement of an annual report on time sharing.

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