



HAWAII VACATION OWNERSHIP FAXLETTER

An Update on Vacation Ownership Issues in Hawaii

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2006 LEGISLATIVE SESSION

As the 2006 Legislative Session has come to an end, a number of industry-related measures were passed. The following is an update of the status of some of the more significant measures this 2006 Legislative Session. A list of all the measures that passed this 2006 Legislative Session can be viewed at http://www.capitol.hawaii.gov/sessioncurrent/lists/passed_list.htm

Senate Bill 2454/Act 278 amends Hawaii Revised Statutes Chapter 514E to provide that Hawaii's time share laws *do not* apply to a sale outside of the United States of a time share interest in a time share unit located in Hawaii if such time share unit is part of a time share plan that was previously registered in Hawaii. The developer of a foreign time share plan must pay an exemption fee and file minimum information with the director of the Department of Commerce and Consumer Affairs and the purchase contract for such foreign time share plans must contain specific disclosure language as provided in the new law. On July 5, 2006 Governor Lingle signed this measure, now Act 278, into law. This law became effective upon its approval on July 5, 2006. The entire text of this measure can be viewed at http://www.capitol.hawaii.gov/sessioncurrent/bills/SB2454_hd2_.htm

House Bill 3225/Act 273 amends certain provisions in the Hawaii Revised Statutes to make such provisions consistent with Chapter 514B, Hawaii's new condominium law. Also, the measure amends, among other things, the scope of applicability of Chapter 514B to preexisting condominiums. On July 5, 2006 Governor Lingle signed this measure, now Act 273, into law. This law became effective on July 1, 2006. The entire text of the measure can be viewed at http://www.capitol.hawaii.gov/sessioncurrent/bills/HB3225_cd1_.htm

House Bill 1935/Act 276 sought to amend Chapter 508D to provide a prospective purchaser of residential real property in a planned community the right to receive and review a disclosure statement, which would include the declaration and other association documents, as well as the right to cancel the sales contract within fifteen (15) days of the receipt of the disclosure statement. **This measure would not apply to (i) time share interests as defined under Chapter 514E; and (ii) the sale of condominium apartments accompanied by the delivery of an unexpired public report.** On July 5, 2006 Governor Lingle signed this measure, now Act 276, into law. This law became effective on July 1, 2006. The entire text of this measure can be viewed at http://www.capitol.hawaii.gov/sessioncurrent/bills/hb1935_cd1_.htm.

Senate Bill 3262/Act 295 establishes a new chapter to protect public health and welfare by prohibiting smoking in places open to the public and places of employment. The definition of "open to the public" includes hotel and motel lobbies, however, hotel and motel rooms that are rented to guests designated as smoking rooms are exempt; provided that such smoking rooms shall not exceed more than 20% of the rooms rented to guests and other conditions regarding location of such smoking rooms. On July 10, 2006 Governor Lingle signed this measure, now Act 295, into law. This law shall take effect on November 16, 2006.

House Bill 1800 sought to amend Hawaii Revised Statutes Section 235-68(b) to increase the tax withheld upon disposition of real property by non-resident sellers by requiring that a non-resident seller deduct and withhold a tax equal to eight and a quarter percent (8.25%) of the amount realized on the disposition of real property. Currently, non-resident sellers are required to deduct and withhold a tax equal to five percent (5%) of the amount realized on the disposition of real property.

On May 3, 2006 this measure was transmitted to Governor Lingle for signature, however, on July 11, 2006, this measure was vetoed by Governor Lingle.

MAUI COUNTY MEASURES

Hotel Zoning District Amendment measure seeks to eliminate the "stacking" of permitted uses in the hotel district by proposing to revise Section 19.14.020 of the Maui County Code to no longer permit uses permitted in residential and apartment districts in hotel districts. The Maui County Council has not yet scheduled a meeting to review these proposed amendments.

Affordable Workforce Housing Policy measure seeks to require a developer developing five or more dwelling units, new undeveloped lots, hotel units, or any combination thereof, to comply with certain affordable housing requirements. This measure would apply to the conversion of hotel units to dwelling units or time share units, as well as any hotel redevelopment or renovation project that would increase the number of lodging or dwelling units in the hotel.

Affordable Workforce Housing Policy (cont'd)

This measure would *not* apply to developments that fall into certain exempted categories, such as (i) developments already subject to an affordable housing requirement evidenced by an executed agreement with the county; (ii) subdivisions granted preliminary subdivision approval prior to the effective date of this chapter; (iii) submittal of the building permit application prior to the effective date of this chapter.

If the development does not fall into an exempted category, prior to final subdivision approval or issuance of a building permit, the measure requires the developer to enter into a residential workforce housing agreement requiring that a certain percent of dwelling units and/or lots and/or lodging, dwelling or hotel units, as applicable, be sold or rented to residents within a particular income-qualified group.

The developer may satisfy the foregoing requirements by complying with one or more of the following, as determined by the Director: (i) offer for sale or rent dwelling units within the community plan area; (ii) convey such units to a housing provider subject to the Department of Housing and Human Concerns; and (iii) payment of an in-lieu fee of \$200,000 per unit, or donation of improved or unimproved land acceptable to the Director. On October 20, 2006, this measure passed first reading, and second reading is expected to occur on November 3, 2006.

E ala! E alu! E Kuilima!
Up! Together! Join Hands!
A call to come together to tackle a given task.

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