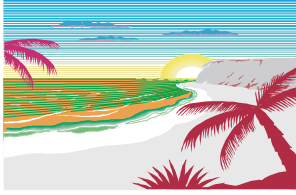


# IMANAKA KUDO & FUJIMOTO



## HAWAII VACATION OWNERSHIP FAXLETTER

An Update on Vacation Ownership Issues in Hawaii

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### UPDATE ON BILLS THAT PASSED THE 2005 LEGISLATIVE SESSION

As the 2005 Legislative Session has come to an end, a number of industry-related measures were in front of the Legislature. The following is a summary of some of the more significant measures that passed this 2005 Legislative Session. A list of all the measures that passed this 2005 Legislative Session can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/lists/passed\\_list.asp](http://www.capitol.hawaii.gov/sessioncurrent/lists/passed_list.asp).

### NEW AND AMENDED DEFINITIONS FOR THE TIME SHARE ACT

House Bill 155 was amended to include the contents of Senate Bills 107, 108 and 1141, and the measure amends the Time Share Act to define numerous terms as follows:

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

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

**Developer.** Any person that creates a time sharing plan or is in the business of selling time share units. However, certain parties are excluded if they meet certain conditions.

The first exemption applies to a person who has acquired one or more time share interests for the person's own use and occupancy and later offers the time share interest for resale; provided that a rebuttable presumption shall exist that an owner who has acquired more than twelve time share interests did not acquire them for the owner's own use and occupancy.

The second exemption applies to an association not otherwise a developer, that offers for sale, through its plan manager or a third party, time share interests transferred to the association through foreclosure, conveyance in lieu of foreclosure, cancellation for non-payment of assessments, or a gratuitous transfer.

The last exemption applies to a licensed real estate broker who owns times share interests in a time share plan and who offers one or more of the time share interests for resale, provided that the licensed real estate broker and time share interests meet certain conditions.

House Bill 155 passed final reading and was transmitted to the Governor on April 26, 2005. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/bills/hb155\\_sd1\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/bills/hb155_sd1_.htm).

### GIFT AND PRIZE DISCLOSURE REQUIREMENTS; SIGNAGE

House Bill 835 narrows the gift and prize and disclosure requirements relating to time shares, amends the content requirements and places of posting time share signs, and allows developers to accept money from purchasers or prospective purchasers prior to signing a contract or reservation agreement for a purchase of a time share plan or unit when the money is paid for tourist activities, products, or services when offered to induce attendance at a time share sales presentation.

This measure requires disclosure of all material terms and conditions attached to a prize or gift offered to a prospective purchaser as part of any time share advertising or sales promotion plan. Key

provisions of the content requirements include allowing time share booth signage to contain art and design elements. House Bill 835 passed final reading and was transmitted to the Governor on April 27, 2005. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/bills/hb835\\_sd1\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/bills/hb835_sd1_.htm).

### MORTGAGE FORECLOSURES OF TIME SHARE INTERESTS

House Bill 785 adds provisions governing the foreclosure power of sale to the Mortgage Broker Act by authorizing the nonjudicial foreclosure of time share interests under the power of sale when the following conditions are met:

- (1) The notice of intention to foreclose the mortgage is sent to the mortgagor at the mortgagor's last known address, for those mortgagors whose address is within the United States the notice of intention must be sent certified mail with the return receipt requested; and
- (2) Three publications, once in each of three successive weeks and the last publication meeting certain requirements, in a newspaper of general circulation in the county in which the mortgaged time share interest lies.

This measure also regulates the day and notice requirements of the sale of time share interest, as well as post-sale notice and affidavit requirements. House Bill 785 passed final reading and was transmitted to the Governor on May 5, 2005. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/bills/hb785\\_cd1\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/bills/hb785_cd1_.htm).

### TRANSIENT ACCOMMODATIONS TAX

Senate Bill 1729 proposes to increase the transient accommodations tax to the Tourism Special Fund to 34.2 percent to facilitate the Hawaii Tourism Authority with existing and expanding programs, as well as allocating transient accommodations tax revenue to safety and security programs in accordance with the Hawaii tourism strategic plan for 2005-2015. Previously, this measure contained the contents of House Bill 997 which contained a provision imposing a transient accommodations tax on hotels that convert to a time sharing plan or condominium project in an amount equal to 50% of the average of the previous two years of transient accommodations tax revenues collected by the hotel. However Senate Bill 1729 passed without the conversion provision. Senate Bill 1729 passed final reading and was transmitted to the Governor on May 6, 2005. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/bills/sb1729\\_cd1\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/bills/sb1729_cd1_.htm).

'A'ohē pilo uku  
No reward is a trifle.  
Even a small gift is appreciated.

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