



HAWAII VACATION OWNERSHIP FAXLETTER

An Update on Vacation Ownership Issues in Hawaii

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UPDATE ON PROPOSED BILLS FOR 2005 LEGISLATIVE SESSION

The 2005 Legislative Session has seen the introduction of a number of industry-related measures. The following is a summary of some of the more significant measures, but please note that this is not an exhaustive list of all of the proposed measures. A list of all 2005 Legislative bills can be reviewed at http://www.capitol.hawaii.gov/sessioncurrent/lists/sb_intro.htm and http://www.capitol.hawaii.gov/sessioncurrent/lists/hb_intro.htm.

NEW AND AMENDED DEFINITIONS FOR TIME SHARE LAW

A number of the 2005 Legislative measures either propose new definitions, or amend and clarify existing definitions within the time share law. House Bills 155 and 156, as well as Senate Bill 107 propose to create a definition for the terms "master development" and "person."

Master Development. The measures propose that a "master development" be defined as a real estate development that consists of more than one project, including but not limited to a planned community association subject to chapter 421J, with one or more subassociations.

Person. The measures define a "person" as a natural person, as well as a corporation, limited liability company, partnership, joint venture, association, estate, trust, government, governmental subdivision or agency, or other legal entity, and any combination thereof.

Project. The bills propose that the definition of "project" be clarified to explicitly exclude a "master development," but include any of the following:

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

Currently, House Bill 155 has been referred to the Commerce, Consumer Protection, and Housing and Tourism Committees, and House Bill 156 has been deferred, while the Commerce, Consumer Protection and Housing Committee has recommended that Senate Bill 107 be passed.

Developer. House Bills 155 and 391, as well as Senate Bill 1141, propose to clarify the definition of "developer" to exclude certain parties if they meet certain conditions. The first exemption applies to a person who is offering time share interests for resale, and who owns at any one time not more than twelve (12) time share interest in a particular time share plan that the person did not create. The second exemption applies to an Association that engages a third party to offer on its behalf a time share interest in the time share plan for which it serves as an association, provided certain condition relating to use and the association are met. The Commerce, Consumer Protection, and Housing Committee has recommended that Senate pass with amendments by, while House Bill 391 has been deferred. The entire text for these measures can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/hb155_hd1_.htm, http://www.capitol.hawaii.gov/sessioncurrent/bills/hb156_.htm, http://www.capitol.hawaii.gov/sessioncurrent/bills/hb391_.htm, http://www.capitol.hawaii.gov/sessioncurrent/bills/sb107_.htm, and http://www.capitol.hawaii.gov/sessioncurrent/bills/sb1141_.htm.

TRANSIENT ACCOMMODATION TAX

Senate Bill 1730 imposes the transient accommodation tax surcharge on hotels converting to time shares or condominiums in an amount equal to 50% of the average of the previous two years of tax accommodations tax revenues collected by the hotel, with such surcharge assessed and levied against the owner of the hotel prior to the conversion. The Ways and Means Committee recommended that Senate Bill 1730 be passed with amendments. The entire text for Senate Bill 1730 can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/sb1730_sd1_.htm. House Bill 1084 proposes to establish a resort time share vacation tax based on the assessed value of the time share unit. This measure has been referred to the Tourism and Culture, Economic Development and Business Concerns, Judiciary, and Finance Committees. The entire text of House Bill 1084 can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/hb1084_.htm.

House Bill 997 proposes to repeal the transient accommodation tax fund, increase the ceiling amount that may be transferred from the transient accommodation tax to the convention center enterprise special fund, and also adjusts the transient accommodation tax fund

percentages that are earmarked for specific purposes. Currently, the Finance Committee is scheduled to hear House Bill 997 on February 28, 2005. The entire text for this bill can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/hb997_.htm.

House Bill 609 and Senate Bill 718 amend Hawaii Revised Statutes, sections 237D-5.5 and 237D-6.5 to increase the cap of the transient accommodations tax collections and increase the amount of transient accommodations tax revenues that are designated to the Hawaii Convention Center and tourist special fund, as well as decreasing the amount of transient accommodations tax revenues to be deposited into the transient accommodations tax trust fund. House Bill 609 has been deferred, while The Tourism Committee has recommended that Senate Bill 718 be held. The entire text for these bills can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/hb609_.htm and http://www.capitol.hawaii.gov/sessioncurrent/bills/sb718_.htm.

RELEASE OF PURCHASER'S FUNDS

House Bill 155 and Senate Bill 1139 propose to allow an escrow agent to release a purchaser's funds to a developer prior to closing if the developer secures the funds with a bond or letter of credit if certain conditions relating to the amount of bond or letter of credit, the name of a director on behalf of the purchasers as the obligee, an authorized issuance of the bond or letter of credit, and verification by an escrow agent have been met. The Commerce, Consumer Protection, and Housing Committee has deferred further action relating to Senate Bill 1139 until March 2, 2005. The entire text of Senate Bill 1139 can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/sb1139_.htm.

SIGNAGE

House Bill 835 and Senate Bill 971 clarify and amend the signage requirements related to time share advertisements by proposing that the only content restriction on time share signs be that the sign must contain the words "time share" or "time sharing" in letters of a particular size and color. Further, these signage requirements would not apply to a booth located within a project subject to a time share plan, or within a hotel in the project, or a hotel if it is owned or operated by the developer, or an affiliate of the developer. Currently, the Commerce, Consumer Protection, and Housing Committee has deferred further action relating to deferred Senate Bill 971 until March 2, 2005, while the same committee has recommended that House Bill 835 pass with amendments. The entire text of these bills can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/hb835_hd1_.htm and http://www.capitol.hawaii.gov/sessioncurrent/bills/sb971_sd1_.htm.

EXEMPTION FOR LICENSED REAL ESTATE BROKERS OR SALESPERSONS

House Bills 155 and 157 and Senate Bill 108 propose to exempt time share sales agents from mortgage broker/solicitor licensing requirements if the time share sales agent is a licensed real estate broker or salesperson, and the time share developer is a licensed mortgage broker. Currently, House Bill 157 has been deferred, and the Commerce, Consumer Protection, and Housing Committee has deferred further action relating to Senate Bill 108 until March 2, 2005. The entire text of these bills can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/hb157_.htm and http://www.capitol.hawaii.gov/sessioncurrent/bills/sb108_.htm.

MORTGAGE BROKERS

House Bill 661 and Senate Bill 771 repeals the existing law relating to mortgage brokers and solicitors, and replaces it with more specialized regulation by the Division of Financial Institutions rather than the Professional & Vocational Licensing Division. Currently, the Ways and Means Committee recommended that Senate Bill 770 be passed with amendments, and House Bill 661 has been referred to the Consumer Protection and Commerce, Finance, and Judiciary Committees. The entire text of these measures can be obtained at http://www.capitol.hawaii.gov/sessioncurrent/bills/hb661_.htm and http://www.capitol.hawaii.gov/sessioncurrent/bills/sb770_sd1_.htm.

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