

STEVEN R. LEE
ATTORNEY AT LAW

Practice Limited to Real Estate Matters

Watumull Plaza
4334 Rice Street, Suite 204C
Lihue, Kauai, Hawaii 96766
Telephone: (808) 246-1101
Facsimile: (808) 246-9481
Email: steve@homesharehawaii.com

OF COUNSEL

SANFORD K. OKURA
ATTORNEY AT LAW, A Law Corporation

155 Wailuku Drive, Hilo, Hawaii 96720
Tel: (808) 935-3344 Fax: (808) 935-3300
Email: s.okura@okuralaw.com

ETHAN R. OKURA

Interstate Building, Suite 760
1314 S. King Street, Honolulu, HI 96814
Tel: (808) 593-8885 Fax: (808) 593-8897
Email: ethan@okuralaw.com

**HOMESHARE HAWAII FRACTIONAL OWNERSHIP
PLAN DECLARATIONS: WHAT THEY DO AND WHY**

A fractional declaration determines how a property is used and operated by multiple owners, in what is called the "Plan." The declaration is frequently a general document designed to address day to day issues and problems. General principles are qualified and limited by the specific language in the Declaration sections and, in a separate document, sometimes called the "Fractional Details" which is a part of the fractional project but separate from the declaration. The Fractional Details contain specific legal requirements that are complicated and may hinder simple understanding of the Plan, but which will decide any matters of legal controversy about the interpretation and enforcement of the Plan. The intent of the Plan declaration is guided by introductory "Recitals" which should be considered by any trier of fact or arbitrator in the event of future disagreements between or among individual owners or between owners and the Declarant.

A primary purpose of all the Plan documents is to ensure the uncomplicated and understandable use of a quality Hawaiian vacation property by all of its owners and the people they invite to stay in their property. Wherever multiple parties share the use of a desirable property, the primary rule is to respect the rights of others by never being in the Unit when it is not your turn and by taking care of the Unit according to the rules of use.

Homeshare HawaiiSM is the unique name given to a series of independently owned and operated properties that share underwriting and operational principles and characteristics which ensure observation of all currently known legal and land use restrictions affecting the real property interests which constitute the various Homeshare Hawaii fractional ownership projects. With few exceptions, the owners in Homeshare Hawaii projects can own, exchange, rent and use their interests with confidence that the provisions of the law and all fractional ownership plan documents which apply to their personal project(s) have been accommodated by or incorporated into the Project documents. No single Homeshare Hawaii project has a contractual or other legal relationship of any kind with any other Homeshare Hawaii project, although the independent individual projects may enter into cooperative marketing efforts and exchange programs as the

individual owners or groups of owners may agree. An owner in one project may enter into agreements with an owner or owners in another Homeshare Hawaii project or any other project or property, subject to the requirements of the Plan.

Some of the distinctive features of fractional interest projects are: every ownership interest in a fee simple project is at least a one-sixth fee simple interest in the Unit. The interests are “undivided”, meaning that the division of ownership is not described as ownership of a particular part or piece of land or buildings, but the division is by periods of time of use of the Unit in the project. We also call this type of ownership “co-tenancy” which means that all owners stand in essentially the same relationship to each other, unless special rights are created. For this reason, this document is also called a “Co-tenancy Agreement” which will apply to all owners as long as there are co-owners.

The period of time acquired by an owner is usually called an “interval,” meaning an “interval of time” in which the Unit in the Plan is available for use. A “fractional” interest is called that because each interval represents a fraction of the total ownership of the Unit in question. The numerator of the fraction is “one” and the denominator is usually “six,” the legal maximum in Hawaii. A single owner may purchase more than one fractional interest. Each fractional interest has the same vote in matters requiring ownership voting or approval. Disagreements resulting in a deadlock are resolved by binding arbitration.

A typical one-sixth fractional ownership gives owners specific advantages: each fraction bears the burden of only one sixth of the taxes, utilities, insurance, management and other expenses and responsibilities and obligations of land ownership. The owners of the other interests have equal concern and responsibility for all such matters, so an owner is never alone in concerns for the welfare of the Unit. There is typically professional management, but the owners as a group working together have the choice of managing their own interests by appointing one or more owners to perform normal management duties. The ability to obtain specific professional management depends on whether the fee charged or potential rental income is sufficient to keep any particular manager interested in staying with the project.

Fractional ownership also comes with limitations on the rights of owners to use and operate their property interests. Each owner must respect the rights of the others and do no unusual damage to the Unit. There is a committee of up to six interests to make every relevant decision about such things as furnishings, insurance, upgrades and remodeling, maintaining a standard of care in upkeep of the Unit and regulation of renting the Unit. The “association” of the owners may delegate decisions about various aspects of ownership, renting, furnishing and use of the Unit. The group must also interact with the Association of Apartment Owners of any condo project in which the property is located or a subdivision association if the fractional project is a single family dwelling in an organized subdivision project. All of the documents, rules and regulations of record on the land will apply to the fractional or interval project. Costs of ownership depend on the size, location, amenities and level of maintenance of each project. It can be as little as \$500.00 per month or as much as \$5,000.00 per month, depending on the amenities included (such as a car, a boat or other “toys” that go with the property).

As a group, the owners of the intervals form an “association,” which may be incorporated, unincorporated, an LLP or LLC. The operation of the Plan and a description of the rights and responsibilities of owners is the primary reason for this document. Often, as in the case of the Ilikai, the condominium unit comprising this Project is already part of an existing association, complete with its own governing documents and financial and operational requirements.