



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Wednesday, March 12, 2008
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 2372, H.D. 2, RELATING TO TIME SHARE
PLANS.**

TO THE HONORABLE RUSSELL S. KOKUBUN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lori Beth Van Cantfort, Time Share Administrator, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). I thank you for the opportunity to present testimony in support of House Bill No. 2372, H.D. 2, Relating to Time Share Plans, and also to ask for an amendment to the bill.

The purpose of this bill is to (1) allow registered developers to sell additional time share interests to existing owners of an out-of-state time share plan that is not registered in Hawaii, and (2) allow registered developers to sell time share interests in

an out-of-state time share plan that has not been registered in Hawaii to anyone who owns an interest in any of the developer's time share plans.

The Department believes this version of the bill addresses the consumer protection concerns we raised earlier and allows the exemptions for registered developers only. However, the Department requests that the escrow provision beginning on page 2, line 21 and ending on page 3, line 4 be amended to clarify that funds and negotiable instruments may be released from escrow in accordance with HRS §514E-17 or §514E-18 and that the escrow account may be maintained in the state where the time share plan is located only after the seven day rescission period has passed. Purchasers' funds should remain in a Hawaii escrow account during the rescission period to help facilitate purchasers receiving their refund. After the rescission period has passed, purchasers' funds may be maintained out of state but should be protected by allowing funds to be released only when the requirements of HRS §514E-17 or §514E-18 have been met.

The Department also has no objections if the proponents ask to incorporate the following specific provisions found in the companion measure, S.B. 2026, S.D. 2, into this bill:

- Exempt registered developers who are claiming an exemption specifically from the requirements of HRS §§514E-3, 514E-4, 514E-5, 514E-6, 514E-7, 514E-9, 514E-10, 514E-10.5, 514E-11(1) and 514E-14;

- Allow the exemption for time share plans located in a state where the time share plan is not required to be registered as long as it is in compliance with the applicable laws of that state;
- Require that registered developers who are claiming an exemption shall be subject to any remedies set forth in HRS §514E-12 if it is determined that the developer is not in compliance with all exemption requirements.

Should other changes be requested or made which resurrect previous concerns the Department had with other substantive matters regarding this proposal, the Department requests the defective date remain intact to encourage further discussions.

Thank you for the opportunity to testify.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
ANNE T. HORIUCHI, ESQ.
MIHOKO E. ITO, ESQ.
JOANNA J. H. MARKLE*
LISA K. KAKAZU**

* Government Relations Specialist
** Legal Assistant

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:

gslovin@goodsill.com
cpablo@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com
jmarkle@goodsill.com
lkakazu@goodsill.com

March 11, 2008

TO: Senator Russell S. Kokubun
Chair, Senate Committee on Commerce, Consumer Protection, and Affordable
Housing
Hawaii State Capitol, Room 407
Via Email: testimony@capitol.hawaii.gov

FROM: Joanna Markle

RE: **H.B. 2372, HD2 - Relating to Time Share Plans**
Hearing Date: Wednesday, March 12, 2008 @ 9:00 a.m., Room 229

Dear Chair Kokubun and Members of the Committee on Commerce, Consumer Protection, and Affordable Housing:

I am Joanna Markle testifying on behalf of Group RCI, the leading global provider of leisure travel services to businesses and consumers, and the worldwide leader in timeshare exchange. RCI employs 5,500 people in more than 50 worldwide locations, and has more than 3,700 resorts registered to their exchange network worldwide. Many of our affiliates are resort operators in Hawaii, such as Hilton, Shell, and Wyndham Vacation Ownership.

We strongly support H.B. 2372, HD2 as it proposes to address an omission in the Hawaii Revised Statutes that does not allow the sale of an additional interest in a timeshare plan to an existing customer in Hawaii when the timeshare plan is not registered in Hawaii. H.B. 2372, HD2 would allow an entity in Hawaii to sell additional interests to their existing owners without having to satisfy all of the Hawaii registration requirements, but still provides substantive consumer protection safeguards.

In the states that have a similar law in place, there have not been consumer complaints in relation to the sales of additional interests. Existing customers already have an established relationship with the time share developer, and in many cases, want to purchase additional interests because they have had positive experiences with their original purchase from the developer.

Timeshares play an integral role in Hawaii's tourism offerings. Passage of this bill would remove the present barrier and allow the sales of additional interests to our existing owners and allow us to service our owners in the state of Hawaii. We understand that a proposed SD1 has been submitted by Wyndham Worldwide for your consideration. We respectfully ask for your support and adoption of the proposed SD1.

Thank you very much for this opportunity to submit testimony.



American Resort Development Association
c/o PMCI Hawaii 84 N. King Street Honolulu, HI 96817 (808) 536-5688

March 12, 2008

TO: Senator Russell Kokubun, Chair
Senator David Ige, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Affordable Housing

FROM: ARDA-Hawaii
Contact: Donalyn Dela Cruz, PMCI Hawaii

RE: **CPH Hearing**
Wednesday, March 12, 2008
Room 229, 9:00 a.m.
House Bill 2372, HD 2; Relating to Timeshares Plans

Dear Chair Kokubun, Vice-Chair Ige, and members of the committee:

The American Resort Development Association (ARDA)-Hawaii is the local chapter of the national timeshare trade association. Hawaii's timeshare industry currently accounts for over eight percent of the State's lodging inventory.

ARDA-Hawaii **supports HB 2372 HD2**, which proposes to exempt the offer or sale of a timeshare interest from the timeshare law if the offer or sale is for an additional interest in the same timeshare plan to an existing owner.

ARDA understands that there is a cooperative effort being made on solidifying language that is acceptable to the Department of Commerce and Consumer Affairs.

Thank you very much for the opportunity to offer testimony on this measure.

GOODSILL ANDERSON QUINN & STIFEL

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* Government Relations Specialist
** Legal Assistant

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
cpablo@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com
jmarkle@goodsill.com
lkakazu@goodsill.com

March 11, 2008

TO: Senator Russell S. Kokubun
Chair, Senate Committee on Commerce, Consumer Protection, and
Affordable Housing
Hawaii State Capitol, Room 407
Via Email: testimony@capitol.hawaii.gov

FROM: Gary M. Slovin

RE H.B. 2372, H21 - Relating to Time Share Plans
Hearing Date: Wednesday, March 12, 2008 @ 9:00 a.m., Room 229

Dear Chair Kokubun and Members of the Committee on Commerce, Consumer Protection, and Affordable Housing:

I am Gary Slovin testifying on behalf of Wyndham Worldwide. Wyndham Worldwide offers individual consumers and business-to-business customers a broad suite of hospitality products and services across various accommodation alternatives and price ranges through its portfolio of world-renowned brands. Wyndham Worldwide has substantial interests in Hawaii that include Wyndham Vacation Ownership, with its new resort at Waikiki Beach Walk.

We strongly support H.B. 2372, HD2 as it proposes to address an omission in the Hawaii Revised Statutes that does not allow the sale of an additional interest in a timeshare plan to an existing customer in Hawaii when the timeshare plan is not registered in Hawaii. H.B. 2372, HD2 would allow an entity in Hawaii to sell additional interests to their existing owners, without having to satisfy all of the Hawaii registration requirements but would still provide substantive consumer protection safeguards.

Currently, if an existing timeshare owner who previously purchased from Wyndham wants to purchase additional interests from Wyndham while in Hawaii, that owner is not able to do so if the plan is not registered in Hawaii. Rather, Wyndham must have the owner travel to where the property is located in order to offer the additional interest, creating unnecessary cost and inconvenience.

In Hawaii, the sale of the additional interests in a timeshare would be managed by individuals who hold a Hawaii real estate license. The consumer could therefore seek relief through the DCCA in the event the consumer felt there had been a violation of Hawaii law. The consumer could also seek recourse through the Hawaii Attorney General's office if there was an

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allegation of fraud or a deceptive practice. In the states that have a similar law in place, there have not been consumer complaints in relation to the sales of additional interests. Existing customers already have an established relationship with the time share developer and want to purchase additional interests because they have had positive experiences with their original purchase from the developer.

We have been working diligently with Lori Beth Van Cantfort, the State's Timeshare Administrator, to attempt to address concerns raised by DCCA. We have attached a proposed SD1 that reflects the work done by the industry and the time share administrator. We understand that the Timeshare Administrator has concerns regarding the incorporation of affiliates under common control in the exemption. We will have to respectfully disagree with the Administration's position. The bill defines the "affiliated entity" to be an entity that is controlled by or under common control with the developer. The developer would have to have an ownership interest of at least fifty per cent in this affiliated entity. It is common business practice for parent companies to open subsidiaries to comply with the laws and rules governing the subsidiary in the jurisdiction it resides in. Fifty percent ownership is substantial and, in all practical matters, the parent company does take an active role in the affiliates' operations. The exemption is very narrow and would only allow the sales of an additional interest to existing owners. The exemption does not apply to new timeshare purchasers. We have also added numerous consumer protection provisions to ensure that the owners are fully protected. This concept is widely accepted by all the other large timeshare states, and there have been no consumer complaints since its first inception in Illinois in 2000.

Timeshares play an integral role in Hawaii's tourism offerings. The sales the exemption would permit will not be numerous. However, it is important because it provides convenience to the visitor and that enhances the goodwill between the visitor and the State as well as with the company. The exemption creates no risk anyone can foresee. The timeshare industry itself would not support such an exemption if it would open the door to unsavory practices as that result would reflect badly upon the industry, a result that makes no sense. In the unlikely event a problem should arise, DCCA is given sufficient authority to deal with any problem.

Passage of this bill would remove the present barrier and allow the sales of additional interests to our existing owners and allow us to service our owners in the state of Hawaii. We respectfully ask for your support of HB2372 and adoption of the proposed SD1, which also asks for the measure to be effective upon approval.

Thank you very much for your consideration and for this opportunity to submit testimony.

Attachment: Proposed SD1

A BILL FOR AN ACT

RELATING TO TIME SHARE PLANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 514E, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§514E- Existing owner purchase exemptions. (a)

5 Notwithstanding any other provision of this Chapter, the offer
6 or sale, in this State, of an additional interest in a time
7 share plan to an existing purchaser in the same time share plan
8 shall not be subject to the provisions of this chapter if:

9 (1) The contract for purchase signed by the purchaser
10 includes a notice which is the same as or similar to
11 the rescission notice required pursuant to section
12 514E-9(a)(7) and the rescission period shall be at
13 least seven days;

14 (2) In satisfaction of the disclosure requirements of
15 section 514E-9 of this chapter, the purchaser is
16 provided the time share disclosure documents the
17 purchaser would have received if the purchase had

1 occurred in the state or jurisdiction where they
2 initially purchased the time share interest;

3 (3) All funds and any negotiable instruments received
4 during the seven day rescission period must be placed
5 in an escrow account in Hawaii. The escrow agent must
6 be a bank, savings and loan association, or trust
7 company authorized to do business in the State under
8 an escrow arrangement or a corporation licensed as an
9 escrow depository under chapter 449. The funds or
10 negotiable instruments may be released from escrow in
11 accordance with sections 514E-17 or 514E-18. Any
12 escrow account established for any out-of-state time
13 share plan offered under this subsection may be
14 maintained in the state where the time share plan is
15 located provided the escrow agent submits to personal
16 jurisdiction in this state.;

17 (4) The contract for purchase shall contain the following
18 statement in conspicuous type:

19 THIS TIMESHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED
20 BY THE STATE OF HAWAII;

21 (5) The offer complies with the provisions of sections
22 514E-11(2)-(9), (11)-(13) and 514E-11.1 of this chapter;

23 (6) The developer or an affiliated entity of the developer
24 has a time share plan currently registered with the

H.B. NO. 2372
H.D. 2
Proposed SD1

1 department, provided that the registration was
2 originally approved or amended within seven years from
3 the date of the offer or disposition and which
4 registration has been neither terminated nor
5 withdrawn; and

6 (7) The developer has not, during the two year period
7 preceding the time of the offer, had a timeshare
8 registration suspended, restricted or revoked in any
9 state or been convicted of an offense involving fraud
10 or dishonesty. In the event the developer satisfies
11 the requirement of subsection (6) above through an
12 affiliated entity, the developer has not, during the
13 20 year period preceding the time of the offer, had a
14 timeshare registration suspended, restricted or
15 revoked in any state or been convicted of an offense
16 involving fraud or dishonesty.

17 b) Notwithstanding any other provision of this chapter,
18 the offer or sale by a developer, in this State, of a time share
19 interest in a time share plan located outside of Hawaii, but
20 within the United States, to an individual who currently owns a
21 timeshare interest that was purchased from that developer, or
22 from an affiliated entity of that developer, will be exempt from
23 the requirements of sections 514E-3, 514E-4, 514E-5, 514E-6,
24 514E-7, 514E-10.5 and 514E-14, the disclosure statement

1 requirements of sections 514E-9 and 514E-11(1), and the
2 registration requirements of section 514E-10 of this chapter
3 provided that:

4 (1) The developer shall provide the purchaser with all
5 time share disclosure documents required to be
6 provided to purchasers as if the offer occurred in the
7 state where the time share plan is located;

8 (2) The contract for purchase shall include a notice which
9 is the same as or similar to the rescission notice
10 required pursuant to section 514E-9(a)(7) and the
11 rescission period shall be at least seven days;

12 (3) In satisfaction of section 514E-16 of this chapter,
13 all funds and any negotiable instruments received
14 during the seven day rescission period must be placed
15 in an escrow account in Hawaii. The escrow agent must
16 be a bank, savings and loan association, or trust
17 company authorized to do business in the State under
18 an escrow arrangement or a corporation licensed as an
19 escrow depository under chapter 449. The funds or
20 negotiable instruments may be released from escrow in
21 accordance with sections 514E-17 or 514E-18. Any
22 escrow account established for any out-of-state time
23 share plan offered under this subsection may be
24 maintained in the state where the time share plan is

1 located provided the escrow agent submits to personal
2 jurisdiction in this state.;

3 (4) The developer shall provide the purchaser, in writing,
4 either in the disclosure documents or otherwise, all
5 of the following:

6 (A) A description of the type of timeshare plan
7 offered, including the duration and operation of
8 the timeshare plan;

9 (B) A description of the existing or proposed
10 accommodations and amenities in the timeshare
11 plan;

12 (C) A description of the method and timing for
13 performing maintenance on the accommodations;

14 (D) If applicable, copies of the declaration,
15 association articles of incorporation,
16 association bylaws and association rules and
17 regulations; and

18 (E) The current annual budget for the time share
19 plan;

20 (5) The developer or an affiliated entity has a time share
21 plan currently registered with the department,
22 provided that the registration was originally approved
23 or amended within seven years from the date of the

1 offer or disposition and which registration has been
2 neither terminated or withdrawn;

3 (6) The timeshare plan being offered is registered in the
4 state where the timeshare plan is located; or in the
5 event registration of the timeshare plan is not
6 required in the state where the timeshare plan is
7 located, the timeshare plan being offered is in
8 compliance with the applicable laws of that state;

9 (7) The contract for purchase shall contain the following
10 statements in conspicuous type:

11 THIS TIMESHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED
12 BY THE STATE OF HAWAII.

13 THE TIMESHARE INTEREST YOU ARE PURCHASING REQUIRES
14 CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER FOR YOU TO
15 USE YOUR INTEREST. THESE PROCEDURES MAY BE DIFFERENT
16 FROM THOSE FOLLOWED IN OTHER TIMESHARE PLANS. YOU
17 SHOULD READ AND UNDERSTAND THESE PROCEDURES PRIOR TO
18 PURCHASING; and

19 (8) The developer has not, during the two year period
20 preceding the time of the offer, had a timeshare
21 registration suspended, restricted or revoked in any
22 state or been convicted of an offense involving fraud
23 or dishonesty. In the event the developer satisfies
24 the requirement of subsection (5) above through an

1 affiliated entity, the developer has not, during the
2 20 year period preceding the time of the offer, had a
3 timeshare registration suspended, restricted or
4 revoked in any state or been convicted of an offense
5 involving fraud or dishonesty.

6 (c) The developer of an out-of-state timeshare plan
7 offered pursuant to subsection (b) shall be required to provide
8 notice of such plan to the department on a form as set forth in
9 subsection (e), along with payment of a one-time fee of \$1,000
10 per time share plan. Upon receipt by the department of the
11 notice and fee, the filing shall be deemed accepted and the
12 offering of the time share plan will be permitted in accordance
13 with the terms of this section.

14 (d) If at any time the department determines that any
15 requirement of this section has not been complied with, the
16 developer shall be subject to any remedies set forth in section
17 514E-12.

18 e) The notice as described in subsection (c) above shall
19 be signed by an officer or principal of the developer and shall
20 contain the following information:

- 21 (1) The name and principal address of the developer;
22 (2) The name and address of the time share plan being
23 offered;

1 (3) The name and address of the managing entity of the
2 time share plan;

3 (4) The form of business entity of the developer; and

4 (5) The name, address, and telephone number of the officer
5 or principal signing the notice on behalf of the
6 developer.

7 (f) For purposes of this section:

8 "Affiliated entity" means a person or other entity that,
9 directly or indirectly through one or more intermediaries, is
10 controlled by or under common control with the developer.

11 "Control" (including controlled by, and under control with)
12 means the possession of the power to direct or cause the
13 direction of the management and policies of another person or
14 entity, other than by commercial contract for goods or services.
15 Control shall be presumed to exist if (i) the developer has an
16 ownership interest of at least fifty per cent in the other
17 person or entity; or (ii) the developer has the same parent
18 corporation as the other entity."

19 SECTION 2. New statutory material is underscored.

20 SECTION 3. This Act shall take effect upon approval.