



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 HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Wednesday, February 20, 2008  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2372, H.D. 1, RELATING TO TIME SHARE  
PLANS.**

TO THE HONORABLE ROBERT N. HERKES, 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 on House Bill No. 2372, H.D. 1, Relating to Time Share Plans. The Department has concerns with this bill which need to be addressed before the Department can support it.

The bill seeks to (1) allow registered developers, or their affiliates, 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, or their affiliates, to sell

00048

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 first proposed exemption would allow a developer to sell intervals in an out-of-state time share plan that is not registered in Hawaii to anyone who already owns an interval in that unregistered time share plan if the developer either (a) has a currently registered time share plan in Hawaii or (b) is affiliated with a developer who has a currently registered time share plan in Hawaii. The Department supports allowing currently registered developers to sell additional intervals to existing owners without registering that time share plan first. These purchasers are current owners and should know what they are buying. **However**, the Department does not support allowing this exemption for developers who are merely affiliated with a currently registered developer. The Department may have no record of these unregistered developers and whether they have a history of honesty, truthfulness and fair dealing. The fact that the developer's affiliate is registered in Hawaii and is reputable does not necessarily mean the unregistered developer is reputable. **The Department could support this exemption if it does not apply to unregistered developers whose affiliates are registered in Hawaii.**

The second proposed exemption goes further and would allow a developer to sell intervals in an out-of-state time share plan that is not registered in Hawaii to anyone who owns any time share interest purchased from the developer or from an affiliate of the developer so long as the developer or an affiliate has a currently registered time share plan in Hawaii. Unlike the prior exemption, purchasers in this situation would not

know what they are purchasing. The time share plan they are buying may be significantly different from the time share plan they already own. Also, the developer would not be required to have a currently registered time share plan in Hawaii if an affiliate is registered in Hawaii. Again, we would know nothing about the unregistered developer to protect consumers' interest. However, the Department could support such an exemption provided the following amendments are made:

1. The out-of-state time share plan must be located in the United States;
2. The out-of-state time share plan must be registered in the situs state;
3. The situs state must have registration requirements equivalent to Hawaii's registration requirements with regard to disclosure requirements and blanket lien protections;
4. Hawaii's escrow requirements must be complied with, although the escrow account may be maintained in the situs state;
5. All moneys collected from the purchasers must be held in a Hawaii escrow account during the seven day rescission period;
6. A disclosure that the time share plan is not registered in Hawaii must be given to all purchasers;
7. The developer must not have had any disciplinary actions, license denials or convictions directly related to its time share operations or involving an act of fraud or dishonesty within the past 2 years, in this State or in any other state;
8. Following the practice of the state of Florida, developers must file a notice with the Department prior to selling the out-of-state time share plan and pay a \$1,000 fee;
9. The exemption only applies to currently registered developers and not those who are merely affiliated with a currently registered developer.

The Department has been working with the proponents of the bill to address the Department's concerns. It is the Department's understanding that the proponents of the

bill will be proposing amendments which address some of the Department's concerns.

These amendments were included in S.B. 2026, S.D. 1, the companion bill to H.B. 2372. While some of the Department's concerns have been addressed with these amendments, there are still outstanding issues that require further discussion. These issues include:

- Escrow requirements prior to closing – Developers should be required to comply with Hawaii's escrow requirements; however, following the requirements of the Florida law, the escrow account may be maintained in the situs jurisdiction, provided the escrow agent submits to personal jurisdiction in Hawaii.
- Whether the exemption should also apply to affiliates of registered developers – The exemption should only apply to currently registered developers and not their affiliates.

The Department will continue to work with the parties to resolve these issues. We ask your Committee to defer decision making on this proposal in hopes consensus can be reached between the proponents and the Department. The Department would also not object to the Committee holding this measure and awaiting the companion bill, S.B. 2026, S.D.1 to cross over.

Thank you for the opportunity to testify.

HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

February 20, 2008

HB 2372, HD 1 Relating to Time Share Plans

Chair Herkes and members of the House Committee on Consumer Protection and Commerce, I am Rick Tsujimura, representing Marriott International, Inc. (Marriott).

Marriott supports House Bill 2372, HD 1 Relating to Time Share Plans. This bill would allow an existing owner of time share interests to purchase additional interests in other projects of the same developer or an affiliate of that developer. This would mean an owner of a Marriott time share interest in say Orlando who lives in Hawaii could purchase an additional time share interest in a Marriott project in Las Vegas without Marriott registering that Las Vegas project in Hawaii. In order to provide some deference to consumers who reside in Hawaii, we have agreed to the inclusion of several requirements, including allowing a rescission period which is governed by Hawaii law. Moreover, the developer must have a time share plan currently registered in the State of Hawaii in order to solicit the Hawaii consumer even if that consumer does not own an interest in that Hawaii project. Similar bills have been enacted in other jurisdictions, and while there is no definitive model, we believe that the proposal before you provides more than adequate safeguards for Hawaii consumers.

We are in support of Wyndham Vacation Ownership's Proposed HD 2 which has been drafted as a result of current discussions. We continue to meet with the Department of Commerce and Consumer Affairs and are in agreement with the vast majority of the amendments proposed. However, we are still discussing the definition of "affiliates".

For these reasons we request that you pass House Bill 2372, HD 2 as proposed by Wyndham, so that we may continue our discussions with the Department. Thank you for the opportunity to present this testimony.

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

February 19, 2008

TO: Representative Robert N. Herkes  
Chair, House Committee on Consumer Protection & Commerce  
Hawaii State Capitol, Room 320  
Via Email: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)

FROM: Joanna Markle  
H.B. 2372, HD1 - Relating to Time Share Plans  
Hearing Date: Wednesday, February 20, 2008 @ 2:00 p.m.

---

Dear Chair Herkes and Members of the Committee on Consumer Protection & Commerce:

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, HD1 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, HD1 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 most 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 respectfully ask for your support of H.B. 2372, HD1.

Thank you very much for this opportunity to submit testimony.

# 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

February 19, 2008

TO: Representative Robert N. Herkes  
Chair, House Committee on Consumer Protection & Commerce  
Hawaii State Capitol, Room 320  
Via Email: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)

FROM: Gary M. Slovin

RE H.B. 2372, HD1 - Relating to Time Share Plans  
Hearing Date: Wednesday, February 20, 2008 @ 2:00 p.m.

---

Dear Chair Herkes and Members of the Committee on Consumer Protection & Commerce:

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, HD1 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, HD1 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

February 19, 2008

Page 2

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 address the concerns of the administration and feel confident that all concerns can be appropriately addressed. We have attached a proposed HD2 that reflects the work done by the industry and the time share administrator. We would ask the committee to maintain the defective effective date in the HD1 to allow us to work together on the remaining points.

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 respectfully ask for your support of H.B. 2372, HD1.

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

Attachment: Proposed HD2

00055



---

---

## 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;

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

12 THIS TIMESHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED  
13 BY THE STATE OF HAWAII;

14 (5) The offer complies with the provisions of sections  
15 514E-11(2)-(9), (11)-(12) and 514E-11.1 of this chapter;

16 (6) The developer or an affiliated entity of the developer  
17 has a time share plan currently registered with the  
18 department, provided that the registration was  
19 originally approved or amended within seven years from  
20 the date of the offer or disposition and which  
21 registration has been neither terminated nor  
22 withdrawn; and

23 (7) The developer has not, during the two year period  
24 preceding the time of the offer, had a timeshare  
25 registration suspended, restricted or revoked in any  
26 state.

1        b) Notwithstanding any other provision of this chapter,  
2 the offer or sale by a developer, in this State, of a time share  
3 interest in a time share plan located outside of Hawaii, but  
4 within the United States, to an individual who currently owns a  
5 timeshare interest that was purchased from that developer, or  
6 from an affiliated entity of that developer, will be exempt from  
7 the requirements of sections 514E-3, 514E-4, 514E-5, 514E-6,  
8 514E-7, 514E-10.5 and 514E-14, the disclosure statement  
9 requirements of sections 514E-9 and 514E-11(1), and the  
10 registration requirements of section 514E-10 of this chapter  
11 provided that:

12        (1) The developer shall provide the purchaser with all  
13 time share disclosure documents required to be  
14 provided to purchasers as if the offer occurred in the  
15 state where the time share plan is located;

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

20        (3) In satisfaction of section 514E-16 of this chapter,  
21 all funds and any negotiable instruments received  
22 during the seven day rescission period must be placed  
23 in an escrow account in Hawaii. The escrow agent must  
24 be a bank, savings and loan association, or trust  
25 company authorized to do business in the State under

1 an escrow arrangement or a corporation licensed as an  
2 escrow depository under chapter 449;

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  
24 offer or disposition and which registration has been  
25 neither terminated or withdrawn;

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

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

9       THIS TIMESHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY  
10      THE STATE OF HAWAII.

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

16      (8) The developer has not, during the two year period  
17      preceding the time of the offer, had a timeshare  
18      registration suspended, restricted or revoked in any  
19      state.

20      (c) The developer of an out-of-state timeshare plan  
21      offered pursuant to subsection (b) shall be required to provide  
22      notice of such plan to the department on a form as set forth in  
23      subsection (e), along with payment of a one-time fee of \$1,000  
24      per time share plan. Upon receipt by the department of the  
25      notice and fee, the filing shall be deemed accepted and the

1 offering of the time share plan will be permitted in accordance  
2 with the terms of this section.

3 (d) If at any time the department determines that any  
4 requirement of this section has not been complied with, the  
5 developer shall be subject to any remedies set forth in section  
6 514E-12.(e) The notice as described in subsection (c) above  
7 shall be signed by an officer or principal of the developer and  
8 shall contain the following information:

- 9 (1) The name and principal address of the developer;  
10 (2) The name and address of the time share plan being  
11 offered;  
12 (3) The name and address of the managing entity of the  
13 time share plan;  
14 (4) The form of business entity of the developer; and  
15 (5) The name, address, and telephone number of the officer  
16 or principal signing the notice on behalf of the  
17 developer.

18 (f) For purposes of this section:

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

22 "Control" (including controlled by, and under control with)  
23 means the possession of the power to direct or cause the  
24 direction of the management and policies of another person or  
25 entity, other than by commercial contract for goods or services.

1 Control shall be presumed to exist if (i) the developer has an  
2 ownership interest of at least fifty per cent in the other  
3 person or entity; or (ii) the developer has the same parent  
4 corporation as the other entity."

5 SECTION 2. New statutory material is underscored.

6 SECTION 3. This Act shall take effect on July 1, 2025.



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

February 20, 2008

TO: Representative Robert Herkes , Chair  
Representative Angus McKelvey, Vice-Chair  
House Committee on Consumer Protection & Commerce

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

RE: **CPC Hearing**  
**Wednesday, February 20, 2008**  
**Room 325, 2:00 p.m.**  
**House Bill 2372, HD1; Relating to Timeshares Plans**

Dear Chair Herkes, Vice-Chair McKelvey and members of the committee:

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.

HB 2372, HD1 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-Hawaii **supports the concepts** behind HB 2372, HD1 and acknowledges that the timeshare industry will continue to work with the Department of Commerce and Consumer Affairs to draft language that will be acceptable to all parties.

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

00063