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

March 27, 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
Monday, March 31, 2008
Room 325, 2:00 p.m.
Senate Bill 1815; Relating to Condominiums

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.

ARDA-Hawaii **opposes SB 1815, SD1,** which would allow the board of directors of a condo to lease common elements of the condo that are not used by the unit owners and would require that all costs attributable to condo hotel operations be charged only to unit owners whose units are included in the operation.

Many timeshare projects are also condominium projects. This measure would prevent a managing agent from providing rentals to visitors in a condominium project.

We respectfully ask that this measure be held. Thank you very much for the opportunity to offer testimony.

RESORTQUEST HAWAII

March 28, 2008

RE: SB 1815 SD1
House Consumer Protection & Commerce Committee
March 31, 2008 2:00 PM House conference room 325

Dear Honorable Chair Robert Herkes, Vice Chair Angus McKelvey and Members of the Committee:

My name is Ruth Okada. I am the Vice President of Condominium Administration at ResortQuest Hawaii, LLC. ResortQuest opposes SB 1815 SD1 relating to Condominiums. We request that you hold the bill in your committee.

Section 2.(c) and Section 4.(e) of the SB 1815 SD1 seek to make all direct costs attributable to a condominium hotel operation in a condominium project that includes residential units and condominium hotel units charged only to the unit owners whose units are included in the condominium hotel operations.

If passed and enacted, the proposed legislation would discriminate against owners who have decided to use their units as a vacation rental, which is an allowed use under their condominium documents or by law, rather than for residential use. In making the decision to use their unit as a rental, the owner should not have to pay more because the facilities are being used by their guests. Should owners with large families pay more than empty nesters or single unit owners because their family members use the pool more often than the single person, or use the elevators more than the empty nester because they have more family members? Or should owners who like to have family and guests visit them pay more than owners who never have guests?

When owners purchased their units in properties where rental operations are allowed, the disclosures that are provided to them indicate that there are rental operations at the property. It should be up to the owner to perform their due diligence at the time they are considering to purchase their unit to factor in the costs associated with the rental program in the property and whether they agree with it or not before they purchase the property.

The legislation would also create an accounting nightmare for the condominium association. In many cases it would be impossible to determine "direct costs attributable to the unit owners in the hotel operations". How do you determine how much an owner versus a guest of an owner uses the pool, elevators, exercise room, common grounds, etc? How do you determine which unit's guest is using what facility. And how do you allocate the cost of their use of the facilities. Additionally, if this requires that all utilities, including electricity, water sewer, gas, etc., be separately metered, in many cases the layout of utility lines may not allow separate or sub-metering. How then does the association determine usage and allocate those utility costs..

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Even if the association is able to meter the usage, it goes back to the accounting issue of having to bill each unit owner their allocated costs. And what happens in the all too common case where a number of vacation rental operators are operating rentals out of the same property, as well as the cases where individual owners are renting their units on their own?

The bottom line on this issue is that it would not be easily implemented for those condominiums that are set-up as residential condominiums in which vacation rentals are allowed and are operating out of.

Section 3.(5) of SB 1815 SD1 seeks to regulate rents on leases of common elements to not be set at an amount below fair market rent unless the lease is approved by 67 percent of the common interest in the association.

If passed and enacted, the proposed legislation will hamper the Board of Directors of condominium associations in which resort rental programs are being operated from leasing space to the resort rental operator and generating miscellaneous revenue for the condominium association, which in turn helps to offset condominium maintenance fees.

This legislation fails to recognize that it is difficult to determine fair market value when the lease for the space for the front desk and ancillary areas cannot be compared to other commercial leases. Areas leased also include storage areas which are usually utility closets. There is no market for these types of spaces. The Board's of Directors have a fiduciary duty to the association to determine lease rents for vacation rental operators; therefore the legislation should not be passed to require lease rents that may not be determinable or otherwise interfere with the Board's responsibilities.

Accordingly, we hereby urge you to hold SB 1815 SD1 in committee and thank you for this opportunity to testify.

Sincerely,

RESORTQUEST HAWAII, LLC

Ruth Okada

Ruth Okada, PCAM®, CMCA®
Vice President
Condominium Administration

GOODSILL ANDERSON QUINN & STIFEL
A LIMITED LIABILITY LAW PARTNERSHIP LLP

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March 28, 2008

TO: Representative Robert N. Herkes
Chair, Committee on Consumer Protection & Commerce

FROM: Joanna Markle

RE: SB 1815 SD1 – Relating to Condominiums
Hearing Date: Monday, March 31, 2008 at 2:00 pm in Room 325

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

I am Joanna Markle 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.

Wyndham Worldwide opposes S.B. 1815 S.D. 1. The S.D.1 appears to statutorily interfere with the ability to set the lease rent by prohibiting the consideration of other factors in setting the lease rent amount. Subsection (c) is problematic as the "direct costs attributable to the condominium hotel operations" may include functions of the condotel that also benefit the unit owners. For these reasons, we respectfully ask you to hold S.B. 1815, S.D.1.

Thank you very much for the opportunity to submit testimony.

Castle Resorts & Hotels
Hawaii • Micronesia • New Zealand • Asia

March 28, 2008

RE: SB 1815 SD1
House Consumer Protection & Commerce Committee
March 31, 2008 2:00 PM House Conference Room 325

Dear Honorable Chair Robert Herkes, Vice Chair Angus McKelvey and Members of the Committee:

My name is Jeff Caminos and I am the Vice President of Operations at Castle Resorts & Hotels. I am writing to inform you that Castle Resorts & Hotels opposes SB 1815 SD1 relating to Condominiums. We respectfully request that you hold the bill in your committee.

Section 2.(c) and Section 4.(e) of the SB 1815 SD1 seek to make all direct costs attributable to a condominium hotel operation in a condominium project that includes residential units and condominium hotel units, charged only to the unit owners whose units are included in the condominium hotel operations.

If passed and enacted, the proposed legislation would discriminate against owners who have decided to use their unit as a vacation rental, which is an allowed use under their condominium documents or law. In making the decision to use their unit as a rental, the owner should not have to pay more because the facilities are being used by their guests. Should owners with large families pay more than single unit owners because their family members use the pool more often than the single person? Should owners who like to have family and friends visit them pay more than owners who rarely have guests visit them?

When owners purchased their units in properties where rental operations are allowed, the disclosures that are provided them indicate that there are rental operations at the property. It should be up to the owner to perform their due diligence at the time they are considering to purchase their unit to factor in the costs associated with the rental program in the property before they purchase the property.

The legislation would also create an accounting nightmare for the condominium association. In many cases, it would be nearly impossible to determine "direct costs attributable to the unit owners in the hotel operations". How do you determine how much an owner, versus a guest of an owner, uses the pool, elevators, exercise room? And how do you allocate the cost of using these facilities?

If this requires that all utilities, including electricity, water, sewer, gas, etc be separately metered, installation of the equipment could create a financial burden on the owners. And in many cases, the layout of the utility lines may not allow separate or sub-metering.

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Even if the association is able to meter the usage, accounting still has the issue of having to bill each unit owner their allocated costs. How does the association handle billings with multiple vacation rental operators, as well as individual owners renting their units on their own, all at the same property?

The bottom line on this is; it would not be easily implemented for condominiums that are set up as residential condominiums, but vacation rentals are allowed and operated out of. The property is simply not set up to handle this.

Section 3.(5) of SB 1815 SD1 seeks to regulate rents on leases of common elements not to be set at an amount below fair market rent, unless the lease is approved by 67 percent of the common interest in the association.

If passed and enacted, the proposed legislation will hamper the Board of Directors of condominium associations in which resort rental programs are allowed, from leasing space to the resort rental operator. Please know that many associations are dependent on this revenue to help offset the condominium maintenance fees.

This legislation does not recognize that it is difficult to determine fair market value when the lease for the space cannot be compared to other commercial leases. Areas leased include the front desk, storage areas, utility closets and other ancillary areas. There is no market for these types of spaces. The Board of Directors have a fiduciary duty to the association to determine lease rents for the resort rental operators and therefore, the legislation should not be passed to require lease rents that may not be determinable, or otherwise interfere with the Board's responsibilities.

We urge you to hold SB 1815 SD1 in committee and thank you for this opportunity to provide this testimony.

Sincerely,

CASTLE RESORTS & HOTELS

Jeff Caminos
Vice President of Operations

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HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

March 31, 2008

Rep. Robert N. Herkes, Chair
Rep. Angus L. K. McKelvey, Vice Chair
Committee on Consumer Protection
and Commerce

Testimony on SB 1815, SD 1 Relating to Condominiums

Dear Representatives:

Thank you for this opportunity to testify in strong support of SB 1815, SD 1 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

SB 1815, SD 1 sets reasonable standards that Boards of Directors of condominiums and condominium hotels must follow to ensure that the rights of individual owners will not be compromised by declarations and by-laws that are being developed by unscrupulous attorneys. Most importantly, it will ensure that direct costs attributable to condominium hotel operations shall be charged only to the unit owners whose units are included in the condominium hotel operations.. It will also ensure that owners will have an opportunity to make certain that rental of the association's common elements will not be set below fair market rent.

HICCO requests that your committee support SB 1815, SD 1 . I will be present to answer any questions you may have.

Sincerely,

Richard Port

Richard Port, Chair
Legislative Committee

mckelvey3

From: DIMAUROAJ@aol.com
Sent: Sunday, March 30, 2008 12:36 AM
To: CPCtestimony
Subject: CPC, Monday, March 31, 2008, 2:00 PM, SB1815, Comments A. J. Di Mauro in Support

A. J. Di Mauro, Testimony in Favor of SB1815
Committee on Consumer Protection & Commerce
Monday, March 31, 2008
2:00 PM
SB1815, SD1, (SSCR2546)

To: Chair Robert N. Herkes, Vice-Chair Angus L.K. McKelvey and members of the Committee on Consumer Protection and Commerce

I am writing in support of the amended form of SB1815, which was drafted by Jane Sugimura of the HCAA with the concurrence of the CAI and HICCO. SB1815 is a modest bill and although it does not have as broad a scope as SB1815 as initially introduced it does effectively address some of the problems that exist within the conflict of interest relationships that are created when a condo hotel operator is also the association manager and the operations officer at the same condo complex. In essence, one entity holds three different hats with conflicting responsibilities.

That conflict of interest relationship benefits mainland and foreign condo owners who make up the great majority of condo owners who participate in the condo hotel operation but to the detriment of the Hawaii resident condo owners who do not participate in the condo hotel operation.

SB1815 addresses two specific problems that have been created by these condo hotel conflict of interest relationships.

1. The fact that condo hotel operators pay significantly less than fair market value to rent their on site facilities from the condo association. As a result, those Hawaii resident condo owners who do not participate in the condo hotel operation end up subsidizing the condo hotel operation and its participants by paying more in association assessments to make up for the lost rental income caused by the sweetheart rental deal for the condo hotel operator. SB1815 addresses that problem by requiring association boards to obtain approval of 75% of the owners before renting association facilities for less than market value.

2. The fact that condo hotel operators have created combined employee arrangements whereby a condo hotel employee is also an association employee but without any means of clearly determining what costs are attributable to the condo hotel operation and what costs are attributable to managing the association.

   SB1815 addresses that problem by directing that the costs of the condo hotel operation be charged only to those condo owners who participate in the condo hotel.

The various condo associations have been aware of these problems for a number of years because they

have received complaints about these issues from condo owners who are not part of the condo hotel operation in their complex.

SB1815 is modest in its scope and very specific in its application to address two clearly identified problems. I hope the CPC Committee will support this legislation.

Sincerely,

A. J. Di Mauro

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TESTIMONY OF MURRAY TOWILL
PRESIDENT
HAWAI'I HOTEL & LODGING ASSOCIATION

March 31, 2008

RE: SB 1815 SD 1 Relating to Condominiums

Good afternoon Chairman Herkes and members of the House Committee on Consumer Protection & Commerce. I am Murray Towill, President of the Hawai`i Hotel & Lodging Association.

The Hawai`i Hotel & Lodging Association is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms and individuals. Our membership includes over 170 hotels representing over 47,300 rooms. Our hotel members range from the 2,523 rooms of the Hilton Hawaiian Village to the 4 rooms of the Bougainvillea Bed & Breakfast on the Big Island.

The Hawai`i Hotel & Lodging Association opposes SB 815 SD 1. In discussions with many of our members who operate resort condominiums with rental programs, it is apparent that a number of problems would be created by this measure.

In section 1, we have a very practical concern with the requirement of determining the "fair market value" of facilities that are by definition restricted to the use and benefit of a project's residents. This would create real problems for the Board of Directors of the Association of Owners.

Subsequent sections in the bill create additional problems for the Associations due to the nature of the condominium hotel arrangement. In many projects there are numerous companies operating on the same property including individual owners renting their own unit or units. Some owners also move their own property in and out of a rental program based on their personal needs. These realities make the expense allocations called for in this bill very difficult and potentially expensive for the Board of Directors of the Association.

Given the difficulties created by this bill, we urge you to hold SB 1815 SD1. Mahalo again for this opportunity to testify.

HOUSE OF REPRESENTATIVE
24th LEGISLATURE
REGULAR SESSION of 2008

COMMITTEE ON CONSUMER PROTECTION
Representative Robert N. Herkes, Chair

SB 1815, SD 1
Relating to Condos

3/31/08
2:00 PM – Room 325

Chair Herkes and members of the Consumer Protection Committee, my name is Max Sword, here on behalf of Outrigger Hotels, in opposition to this bill.

This bill has two parts.

The first part of the bill, in short, requires that when an area is rented out to a property managing company such as Outrigger in a resort condo project, the rent of that space has to be set at fair market value. The question then becomes, to which fair market is the value set? In a resort condo project, especially if a project is gated, to whom is the space valuable? Unlike a commercial space in say an open shopping center or an office building, a space in a gated project has limited value. Plus, the language of the bill assumes that a board does not negotiate in good faith for its owners in setting the most appropriate rent possible for their space. Most times board members negotiate for a rent that is far in excess of what is fair market value for the space in question.

The second part of the bill is more problematic. The simple fact is the language being proposed lacks the understanding of how a mixed-use hotel condo operates. It sounds great on paper, but is impractical in application.

(1) The owners at condo projects who participate in condo hotel operations changes from month to month; owners decide to not participate any longer; or an owner decides to go ahead and try it out; or an owner decides to come live in the unit for several months at a time. There is no way for determining who is/is not a participant at any particular time; this will make a mess of the assessment process for the association; and

(2) There are often more than one condo hotel operator on a property; not always with an official space from which they operate, but they operate at the project nonetheless. So how will, and who will, determine assessment in that context?

(3) In addition to any formal or semi-formal condo hotel operation at a project, there are owners who own one or several condominium units who run their own independent operation; how would these owners get factored into this provision? To not factor them in would be unfair to all other owners.

(4) The costs at a project do not go up because there is a formal condo hotel operation on site, or several such operations, or that owners independently operate their own mini condo hotel operation individually with one or several units. Whether you are a resident in the project or a guest staying in a unit at the project, the use remains the same. You can use the swimming pool and whirlpool spa or not use it; you park a car, walk the walkways and hallways to get to your unit. You flush the toilets the same whether you live in the unit or you're a guest in a unit. You use electricity the same (some might argue that guests are out all the time so they use less electricity and water while residents use more). Watering the landscaping, taking care of the landscaping, paying electricity charges for lighting walkways and open areas at night, paying for water in the pool or the electric to run a whirlpool, all of that remains the same whether or not there are residents or guests in house. Security is the same; residents want to be just as safe as any guest wants to be. Insurance premiums are not increased because there is a condo hotel operation on property. As for employees, employees whose tasks are performed for both AOAO functions and for unit interior functions are absolutely split appropriately between the two already. In fact, at this time, were an assessment to truly be made between the actual use of time for a general manager who is in charge of both the rental operation and the entire complex as a whole, generally the split is 60/40 with the rental operation paying the higher proportion, when in actuality you speak with any general manager and they will quickly confirm that their time is really spent more in dealing with AOAO matters. This will shift a larger burden of cost onto the AOAO budget in the future if this kind of assessment had to be followed.

(5) Finally, who is going to determine what are direct and indirect costs? Look at the list in the preceding paragraph. The AOAO is going to incur an extra cost in having managing agents make determinations that are going to be difficult to discern. This will end up costing the association money to perform this task. And if a managing agent is fearful of not making an appropriate assessment, they will ask that a professional of some sort be brought in to assist with this and that will be another cost factor added on to the association.

Mr. Chairman, we urge that you table this bill and mahalo for allowing me to testify!