

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2010**

**Wednesday, March 24, 2010
2:00 p.m.**

**TESTIMONY ON SENATE BILL NO. 2164, S.D. 1, H.D. 1, RELATING TO
CONDOMINIUMS.**

**TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Michele Loudermilk and I serve as the Chairperson of the Real Estate Commission's ("Commission") Condominium Review Committee. We thank you for the opportunity to provide testimony only on Section 1 and Section 3 of Senate Bill No. 2164, S.D. 1, H.D. 1, Relating to Condominiums.

Section 1 of Senate Bill No. 2164, S.D. 1, H.D. 1, amends chapter 514B, HRS, by adding a new section requiring that notice of amendments to project documents be provided to owners, purchasers, and potential purchasers. The Commission has the following concerns and questions with this section as follows.

As previously testified before the Senate Committee on Commerce and Consumer Protection on Senate Bill No. 2164, and House Committee on Housing on Senate Bill No. 2164, S.D. 1, the Commission believes that current statutes already provide owners, purchasers, and potential purchasers notice of amendments to project documents thereby making the proposed section unnecessary. For instance, the

purchasing consumers. For the Committee's information, developers are still selling condominium apartments with effective dates issued prior to July 1, 2006 pursuant to chapter 514A, HRS (original condominium law). However, the proposed amendments to Section 1 of this bill only affect changes to declarations, bylaws, condominium maps, and public reports of condominiums created after July 1, 2006 relating to chapter 514B, HRS and not 514A, HRS. The proposed new publication requirement (subsection (a)(3)) appears to require that even simple and common changes, e.g., changes of the real estate broker or escrow company, to a developer's public report be published in a newspaper of general circulation in this state at least once in each of two successive weeks. Such a requirement causes significant increase in costs to the developer and eventually the consumer.

Section 3 of Senate Bill No. 2164, S.D. 1, H.D. 1 proposes to amend section 514B-41, HRS by adding a new subsection (e), requiring the developer to set aside a percentage of the initial sales price of each residential apartment in a condominium project to be used to fund the project's estimated replacement reserve fund. The Commission has the following comments:

- The Commission notes that the proposed amended section 514B-41, HRS, is not one of the enumerated parts or sections for which the Commission has regulatory jurisdiction; thereby, making it a civil matter for resolution. (§§514B-65, 514B-66, 514B-68, 514B-69, HRS).

- The Commission notes that in a new development as little as 10% of unit owners may call for an annual meeting. See HRS §514B-102(a). Under this scenario, this new subsection will leave the important collection of the reserves to a newly formed organization of lay volunteers.

In summary, the Commission is unsure as to the intent and purpose of the proposed amendments of Section 1 of the bill and believes they may be unnecessary; and notes that the proposed amendments of section 3 (e) leave some questions unanswered.

Thank you for the opportunity to present testimony.



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March 23, 2010

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 2164, S.D.1, H.D.1, Relating to Condominiums

HEARING: Wednesday, March 24, 2010 at 2:00 p.m.

Aloha Chair Herkes, Vice Chair Wakai and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, here to testify on behalf of its 8,800 members in Hawai'i. HAR **opposes** S.B. 2164, S.D.1, H.D.1, which requires that notice of amendments to project documents be provided to owners and potential purchasers, and that the developer set aside 1% of the initial sales price of each residential apartment in a condominium project to be used to fund the project's estimated replacement reserve fund.

The purpose of this measure appears to protect purchasers of condominiums by lessening the likelihood that AOA maintenance fees will be raised dramatically once the developer sells the property and the actual operating costs become apparent.

While we applaud the intent of this measure, HAR believes that the requirement for developers to provide 180 days of operating capital into Escrow may lead to misinformation and confusion. Notwithstanding the 180 days requirement, there will still be potential for increases in maintenance fees. We believe it is preferable to make sure that the developer's report accurately projects the maintenance costs.

Additionally, we believe the proposed new publication requirement in Section 1 of the bill that requires simple and common changes to a developer's public report be published in a newspaper of general circulation in this state at least once in each of two successive weeks will cause a significant increase in costs to the developer and eventually to the consumer.

While the intent of the bill is admirable in attempting to help homeowners maintain reasonable maintenance fees, we believe that the present law likely accomplishes this goal.

Mahalo for the opportunity to testify.

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MEMORANDUM

TO: Representative Robert N. Herkes
Chair, Committee on Consumer Protection & Commerce
VIA Email: CPCtestimony@Capitol.hawaii.gov

FROM: Mihoko Ito

DATE: March 23, 2010

RE: **S.B. 2164 SD1, HD1 – Relating to Condominiums**
Hearing: Wednesday, March 24, 2010 at 2:00 p.m.

Dear Chair Herkes and Members of the Committee:

I am Mihoko Ito, testifying on behalf of Wyndham Worldwide (“Wyndham”). Wyndham Worldwide has substantial interests in Hawaii that include Wyndham Vacation Ownership, with its resort at Waikiki Beach Walk.

Wyndham is opposed to S.B. 2164, SD1, HD1, which requires that notice of amendments to project documents be provided to owners and potential purchasers and that amendments that effect a material change trigger a purchaser's right of rescission. It further requires that the developer set aside a percentage of the initial sales price of each residential apartment in a condominium project to be used to fund the project's estimated replacement reserve fund and requires disclosure of the cost of capital equipment installed in the project.

We believe that the requirement that a right of rescission be specifically provided for any material changes in the project is redundant and already provided for in HRS Section 514B-87 (“Purchasers shall have a thirty-day right to rescind a binding sales contract for the purchase of a unit from a developer if there is a material change in the project. . .”).

In addition, we believe that the present law, which requires the establishment of a reserve fund under either a percent funded or cash flow plan, pursuant to HRS 514B-148(a), is an adequate requirement upon the developer because the newly formed association is in the best position to determine the project's budgetary needs. Ultimately, requiring the developer to pay this amount will increase the costs of condominium ownership for the consumer.

For these reasons, we respectfully oppose this measure and request that it be held.

Thank you very much for the opportunity to submit testimony.

STARWOOD

VACATION OWNERSHIP

9002 San Marco Court
Orlando, Florida 32819
(407) 418-7271

March 24, 2010

LATE TESTIMONY

Honorable Robert Herkes, Chair
House Committee on Consumer Protection and Commerce

Re: SB 2164, SD1 HD1, Relating to Condominiums - Oppose
Hawaii State Capitol, Conference Room 325, 2 PM

Aloha Chair Herkes, Vice Chair Wakai, and Committee Members:

I am Robin Suarez, Vice President & Associate General Counsel for Starwood Vacation Ownership ("SVO"). We appreciate the opportunity to share our concerns regarding SB 2164 SD1 HD1.

SVO is opposed to this bill because it would impose new requirements on parties to a project that are already in effect in Hawaii's Condominium Law, which was recently revised and recodified in 2006.

Firstly, we believe the rescission provision in this bill is not needed. Hawaii's revised condominium law presently provides clarification with regard to the purchaser's rights of rescission, which is contained in HRS 514B-87 and gives purchasers a 30-day right to rescind a binding sales contract if there is a material change in the project.

Additionally, we believe the proposed a requirement that the developer set aside a percentage of the initial sales price of each residential apartment in a condominium project to be used to fund the project's estimated replacement reserve fund is not needed. The issue of adequate funding of reserve accounts is already provided for by current law, which requires that associations set up reserve funds under either a "percent funded" or a "cash flow plan" based on the required amount needed to replace or repair capital equipment.

Requiring developers to contribute a portion of the purchase price to reserves, will only result in increased purchase prices which could negatively impact sales and deter new development. In addition, this requirement is particularly unnecessary in timeshare resorts, which have longer period of developer sales and where developer affiliated managers operate the projects on a long term basis. Timeshare projects with their high and consistent rates of occupancy and customer satisfaction should not be discouraged, but seen as a vital part of Hawaii's tourism industry. In addition to providing traditional resort operations jobs similar to hotel projects, timeshare projects add high skilled and high compensated sales and marketing jobs. As such, timeshare projects represent a valuable and diverse component of Hawaii's important tourism market.

For these reasons, we respectfully request your hold this bill for the remainder of the session.

Sincerely,
Robin Suarez,
Vice President & Associate General Counsel for Starwood Vacation Ownership

March 22, 2010

Robert N. Herkes
Chair, Committee on Consumer Protection & Commerce
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: **Hawaii State Legislature 2010 Regular Session
SB2164, Relating to Condominiums**

Dear Chairperson Herkes and Members of the Committee:

Please permit me to submit this testimony in **OPPOSITION** to the captioned measure. This measure seeks to impose requirements on parties to a project that are already in effect in Hawaii's condominium law.

As you may know, Hawaii's condominium law was substantially revised in 2006. In this recodification, clarification with regard to purchaser's rights of rescission were set forth. For instance, under Section 514b-87, purchasers have a 30-day right to rescind a binding sales contract *if there is a material change in the project*. Thus, if any amendment to the project documents constitutes a "material change," this would trigger a rescission right. Material change is defined as:

[a]ny change that directly, substantially and adversely affects the use or value of:

- (1) A purchaser's unit or appurtenant limited common elements; or
- (2) Those amenities of the project available for the purchaser's use.

H.R.S. Section 514B-3.

Accordingly, this measure with regard to a purchaser's rescission rights is *not necessary*.

Representative Robert N. Herkes

March 22, 2010

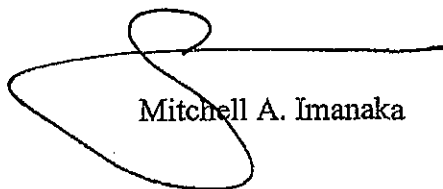
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With regard to the establishment of reserves for condominium associations, this issue was addressed over a decade ago and resulted in a requirement that associations set up reserve funds under either a "percent funded" or "cash flow plan." Hawaii's condominium law requires that budgets include the required amount. H.R.S. Section 514B-48(a). It was determined at that time that any new association need not collect estimated replacement reserves until the fiscal year which begins after the association has its first annual meeting. Part of the reason for requiring this plan at that juncture was to permit new owners to determine what would fit their budget best.

The requirement under the proposed measure seeks to impose an obligation on the *developer* of the project to set aside a percentage of the sales price to fund a project's estimated replacement reserve. This amount will necessarily result in an adjustment to sales prices. Accordingly, *it is the owners who will ultimately pay this amount up front*, as the cost will be passed on to the unit purchasers. This will accelerate the amount that would be paid by owners to the date of closing, thus placing additional burdens on purchasers of units in projects which may not be necessary, especially where there is an obligation to think through a plan of funding for reserves upon formation of the association at a duly called initial meeting of the association. Again, these issues were discussed and decided with good input from the community, many years ago.

For the foregoing reasons, this measure should not be passed. Thank you very much for your consideration.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a horizontal line and a loop at the end.

Mitchell A. Imanaka

MAI:anlb