



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
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

KEALI'I S. LOPEZ
DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
TOURISM

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012

MONDAY, MARCH 12, 2012
9:30 A.M.

TESTIMONY ON SENATE BILL NO. 2284 S.D.1
RELATING TO RESIDENTIAL REAL PROPERTY

TO THE HONORABLE TOM BROWER, CHAIR,
AND TO THE HONORABLE JAMES KUNANE TOKIOKA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs appreciates the opportunity to testify on Senate Bill No. 2284 S.D.1, Relating To Residential Real Property. My name is Daria Loy-Goto, RICO's Acting Complaints and Enforcement Officer. RICO offers the following comments on the bill.

Senate Bill No. 2284 S.D.1 amends Chapter 514E, Hawaii Revised Statutes, to require plan managers to maintain a list of the names and addresses of time

Testimony on Senate Bill No. 2284 S.D.1
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share owners and to make the list available to members of time share associations.

The bill also restricts the use of the list by owners.

Chapter 514E, HRS, contemplates that time share owners will work with time share projects and associations in a system of self-governance. As a consequence, access to owner information is important so that owners can meaningfully participate in decisions that affect their ownership rights. Senate Bill No. 2284 S.D.1 will facilitate such access.

Thank you for the opportunity to testify on Senate Bill No. 2284 S.D.1. I will be happy to answer any questions the members of the Committee may have.



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Fax Number: 586-2856

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KEALI'I S. LOPEZ
DIRECTOR

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

TO THE SENATE COMMITTEE ON TOURISM

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Monday, March 12, 2012
9:30 a.m.

**TESTIMONY ON SENATE BILL NO. 2284, S.D.1, RELATING TO RESIDENTIAL
REAL PROPERTY.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lori Beth Van Cantfort, Time Share Administrator of the Professional and Vocational Licensing Division, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). Thank you for the opportunity to present testimony in support of Senate Bill No. 2284, S.D.1, Relating to Residential Real Property.

Senate Bill 2284, S.D.1, seeks to amend Hawaii Revised Statutes ("HRS") Chapter 514E, Time Sharing Plans, by adding a new section which requires plan managers to maintain a list of the names and addresses of time share owners and to make that list available to members of the time share association. This proposed

language is similar to language found in HRS §514A-83.3 of the Condominium Property Regime law.

Currently, Hawaii Administrative Rules, §16-106-12(g) requires plan managers to keep a current owners list. However, the rule also provides that, "if the association's by-laws or rules do not authorize the release of this list to a time share owner, the association shall develop a reasonable procedure by which time share owners may solicit votes or proxies or by which time share owners may provide information to other time share owners with respect to association matters." Depending on the procedures developed by a plan manager, it may be difficult for a time share owner to solicit votes on an issue, to be elected onto the association board, or to provide information to other time share owners. Senate Bill 2284, S.D.1, will help to ensure that time share owners have access to the owners list so that owners may share information and have a fair opportunity to participate in association board matters.

The bill further provides that owners requesting a list must provide an affidavit stating that (1) the list shall be used by the owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters, and (2) the list shall not be used or furnished to anyone else for any other purpose. This provision requiring an affidavit will help to ensure that the owners list is not used for any improper purpose.

As previously stated, this new section is similar to HRS §514A-83.3, relating to condominiums. Therefore, this provision will give time share owners the same right to obtain an owners list as condominium owners have.

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The Department has been in contact with the American Resort Development Association ("ARDA") and understands that they have concerns with the proposed amendment. The Department will continue to work with ARDA to address all parties' concerns.

Thank you for this opportunity to testify in support of Senate Bill No. 2284, S.D.1.



March 12, 2012

TO: HOUSE COMMITTEE ON TOURISM
Representative Tom Brower, Chair
Representative James Kunane Tokioka, Vice Chair

FROM: Daniel Dinell
ARDA – Hawaii, Chair

RE: SB 2284, SD1, Relating to Residential Real Property
Position: Oppose

Dear Chair Brower, Vice Chair Tokioka, and members of the Committee:

ARDA-Hawaii is the local chapter of the American Resort Development Association, the national timeshare trade association, comprising of over 20 local members with 45 properties statewide. In the aggregate the timeshare industry comprises approximately 12% of the visitor units throughout the state.

SB 2284, SD1 requires a plan manager keep an accurate and current list of the names and addresses of timeshare association members; and requires the list of time share association members be made available to owners under certain terms and for reasonable costs. While ARDA-Hawaii supports the requirement to maintain accurate and current lists of timeshare owners, **ARDA-Hawaii strongly opposes the requirement to make timeshare owners' lists available to other owners.**

Firstly, ARDA-Hawaii believes this bill is unnecessary since current administrative rules already address this situation. Under Hawaii Administrative Rules (HAR), Section 16-106-12(g) the plan manager is required to keep an accurate and current list of the names and addresses of association members, including the names and addresses of vendors under agreements of sale. HAR further states that if the association's by-laws or rules do not authorize the release of this list to a time share owner, the association shall develop a reasonable procedure by which time share owners may solicit votes or proxies or provide information to other time share owners with respect to association matters.

Clearly a mechanism is already in place which addresses the purpose of SB 2284, SD1, short of releasing the owners' list. If this regulation is not being adhered to, avenues are available to parties including pursuing resolution through the Regulated Industries Complaint Office (RICO). If the regulations require further clarification or refinement, ARDA-Hawaii is willing to discuss such modifications.

Additionally, ARDA-Hawaii remains strongly opposed to any attempt to release the personal information of owners for the following reasons:

- Since timeshares are utilized as vacation properties and not personal residences, they are purchased with the expectation that personal data will remain confidential. This expectation is reinforced at the point of sale.
- In today's information age, the fear of electronic spam and receiving unsolicited junk mail is a real one and there are enough examples of owners receiving unsolicited mail from information acquired for nefarious purposes or utilizing unethical methods. Once a list is released, there is always the risk of an inadvertent or illegal leak.
- ARDA-HI is not aware of any other state that allows for this type of access to owner information.

In closing, ARDA-Hawaii remains opposed to the release of owner information in the fashion outlined in this measure. Thank you for the opportunity to submit this testimony.

"Timeshare With Aloha"

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM
GARY M. SLOVIN
MIHOKO E. ITO
CHRISTINE OGAWA KARAMATSU
ANNE T. HORIUCHI

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
meito@goodsill.com
ckaramatsu@goodsill.com
ahoriuchi@goodsill.com

TO: Representative Tom Brower
Chair, Committee on Tourism
Hawaii State Capitol, Room 315
Via Email: TOUTestimony@Capitol.hawaii.gov

FROM: Gary M. Slovin

DATE: March 11, 2012

RE: **S.B. 2284, SD1 – Relating to Residential Real Property**
Hearing Date: Monday, March 12, 2012 at 9:30 a.m.
Conference Room 312

Dear Representative Tom Brower and Members of the Committee on Tourism:

Wyndham Vacation Ownership offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **opposes** S.B. 2284, SD1, which requires that a plan manager keep an accurate and current list of the names and addresses of time share association members and requires the list of time share association members to be made available to owners under certain terms and for reasonable costs.

Wyndham has serious concerns with the release of time share associations' owners lists, for varying reasons including protecting the privacy rights of our owners and the possibility of various abuses that could occur if owners' lists are readily made available and could be disseminated to the public.

If the concern is the ability of owners to communicate with each other, we would be open to working with the Legislature in coming up with a reasonable solution that protects the integrity of the owner's list while still providing owners an opportunity to communicate on legitimate association business such as proxy matters.

Thank you for the opportunity to submit testimony on this measure.

March 10, 2012

TO: Committee on Tourism
Representative Tom Brower, Chair
Representative James Kunane Tokioka, Vice-Chair

FROM: Wayne Cober
Vice President of Hawaii Operations
Consolidated Resorts Management, LLC
Plan Manager for Multiple Hawaii Timeshare Associations

DATE: Monday, March 12, 2012
Conference Room 312
9:30 a.m.

RE: SB 2284, SD1 Relating To Residential Real Property.

Chair Brower, Vice-Chair Tokioka and Members of the Committee:

Please permit me to submit this testimony IN OPPOSITION to the above-captioned measure, which would allow any timeshare owner of a resort in Hawaii to obtain a copy of the timeshare association's highly confidential list of thousands of timeshare owners at the project, including owner names and home addresses (in most cases), all by the simple act of submitting a signed form to the plan manager. Granting such a right would have serious negative repercussions, such as (1) jeopardizing the privacy rights and expectations of all timeshare owners in the project and (2) making timeshare owners' lists permanently available to (a) any individual willing to sign the requisite form, regardless of their true motives for requesting the list [in general], and (b) unscrupulous out-of-state timeshare resale agents [in particular].

I have been a resident of the State of Hawaii since 1974. I have worked in the timeshare management industry since 1994. I have worked for Consolidated Resorts Management, LLC ("CRM") since 2000. CRM currently serves as the plan manager for eight (8) separate timeshare plans in Hawaii representing over forty-five thousand (45,000) timeshare owners residing throughout the United States and the world.

During my time in the timeshare management industry I have had the great pleasure of working with thousands of timeshare owners as they make lasting family memories at our timeshare resorts here in the Hawaiian Islands. If experience has taught me anything about what our timeshare owners want, it has taught me that timeshare owners want to (1) understand what they purchased; (2) know how to make the most of their vacation experience; and (3) receive assurances that (a) their resort is being well maintained and managed in the most efficient way, and (b) their personal information is held in the strictest of confidence. With the foregoing in mind, my concerns with SB 2284, SD1 are based upon the following knowledge and experience:

First, it is not an overstatement to say that virtually all timeshare owners purchased with the expectation that their personal information would be kept confidential. Owners have made it clear to me that this expectation of privacy was reinforced by developers at the point of sale. In addition, the expectation of privacy has even been recognized in the Hawaii Administrative Rules for decades.

Second, owners have a very real and well-founded fear of spam and/or scams that result when their personal contact information is released. For example, owners continually complain about being contacted by timeshare resale marketing firms, many of which will take advantage of the language contained in SB 2284 SD1 to purchase or illegally acquire their resort's owners lists. Owners also complain about solicitations from transfer companies and travel clubs that contact them with intimate knowledge about their existing ownership coupled with false or misleading statements in an attempt to generate business.

Third, I am not personally aware of any other state that allows for this type of access to owner names and addresses. In addition, with many of our timeshare owners owning property at multiple resorts in various states, the access contemplated by SB 2284 SD1 will definitely cause owner confusion as different management companies apply different standards to the personal information of our owners.

Fourth, as CRM exercises its fiduciary duties as a plan manager to protect owner information I am very concerned about the potential for conflicts between the language contained in SB2284 SD1 and (1) our fiduciary duties and (2) other state and federal laws protecting the privacy rights of our timeshare owners. I can anticipate that Plan managers and associations will find themselves involved in litigations with its own owners over the release of owner names and addresses if SB 2284 SD1 becomes law.

For the foregoing reasons we ask that this bill be DEFERRED. Thank you for your consideration.

Sincere regards,

CONSOLIDATED RESORTS MANAGEMENT,
LLC

Wayne Cober

March 10, 2012

TO: Committee on Tourism
Representative Tom Brower, Chair
Representative James Kunane Tokioka, Vice-Chair

FROM: Glenn T. Stockton II
Past and Present Board Member
Various Hawaii Timeshare Associations

DATE: Monday, March 12, 2012
Conference Room 312
9:30 a.m.

RE: **SB 2284, SD1 Relating To Residential Real Property.**

Chair Brower, Vice-Chair Tokioka and Members of the Committee:

This testimony is submitted **IN OPPOSITION** to the above-captioned measure. SB 2284 SD1 would allow any timeshare owner of a resort in Hawaii to obtain a copy of the timeshare association's highly confidential list of thousands of timeshare owners at the project, including owner names and home addresses (in most cases), all by the simple act of submitting a signed form to the plan manager. Granting such a right would have serious negative repercussions. For example, it would jeopardize the privacy rights and expectations of all timeshare owners in the project. In addition, it would effectively ring a bell that cannot be "un-rung" by releasing the timeshare owners' lists to any individual willing to sign the requisite form, regardless of their true motives for requesting the list; which will undoubtedly include unscrupulous out-of-state timeshare resale agents.

I am a licensed attorney in the State of Nevada and have been involved in the timeshare industry in Hawaii since 2003. I have served on more than a half dozen timeshare association boards since 2008. I currently serve on the board of a timeshare resort in Hawaii that represents over fifteen thousand (15,000) timeshare owners residing throughout the United States and the world.

It has been one of the highlights of my professional career to be affiliated with the timeshare industry in Hawaii and play a small part in helping thousands of timeshare owners make lasting family memories at timeshare resorts in the Hawaiian Islands. This affiliation has taught me that timeshare owners just want to understand what they purchased and know how to make the most of their vacation experience. That being said, owners also expect (if not demand) assurances from timeshare associations and plan managers that (1) their resort is being well maintained and managed in the most efficient way, and (2) their personal information is held in the strictest of confidence. With the foregoing understanding in mind, I oppose SB 2284, SD1 for the following reasons:

First, experience has taught me that owners purchase timeshare with an expectation that their personal information will be kept confidential. This expectation of privacy is reinforced by developers at the point of sale. Hawaii's Administrative Rules have even acknowledged this expectation of privacy for over twenty (20) years. [See HAR 16-106-12(g)].

Second, owners have a well-founded fear of spam and/or scams that result when their personal contact information is released. For example, owners continually complain about being contacted by mail by timeshare resale marketing firms with fraudulent sales pitches. Such marketing firms will certainly take advantage of the language contained in SB 2284 SD1 and purchase or illegally acquire owners lists. Owners also complain about solicitations from travel clubs that also contact them by mail. These solicitations are especially confusing to owners because they contain intimate knowledge about the owner's existing ownership coupled with false or misleading statements in an attempt to generate business (or even a false claim of affiliation with the resort).

Third, it is my understanding that no other state allows for this type of access to owner names and addresses. In addition, many timeshare owners own property at multiple resorts in various states. As such, the access contemplated by SB 2284 SD1 will definitely cause owner confusion as different management companies apply different standards to the personal information of these owners.

Fourth, if associations or plan managers are forced to give out owner names and addresses [as contemplated by SB 2284 SD1] they will find themselves in a precarious situation as they attempt to exercise their fiduciary duties to protect owner information. That is, I am very concerned about the potential for conflicts between (1) the language contained in SB2284 SD1, (2) the fiduciary duties of associations and plan managers, and (3) other state and federal laws protecting the privacy rights of timeshare owners. We can also anticipate that associations and plan managers will find themselves involved in litigations with the owners they represent over the release of owner names and addresses if SB 2284 SD1 becomes law.

For the foregoing reasons I ask that this bill be **DEFERRED**.

Thank you for your consideration.

Re: **SB 2284, SD1, Relating to Residential Real Property**

Chair Oshiro and Members of the Committee:

On behalf of RCI, LLC ("RCI") and our thousands of RCI subscribing members that own timeshare in Hawaii, including those that also reside in Hawaii, I write in opposition to S.B. 2284, SD1 which would require that a plan manager make available to owners the list of time share association members, under certain terms and for reasonable costs.

For more than 36 years, RCI has been at the forefront of the timeshare industry, transforming the vacation experience for resort developers and owners alike. As the world's largest vacation exchange company, our network includes more than 4,000 affiliated resorts worldwide many of which are located in the beautiful state of Hawaii.

RCI is very concerned with this measure and the idea that the owner lists may be released, for varying reasons, including protecting the privacy rights of our members who own in Hawaii, and the possibility of various abuses that could occur if the list is readily made available, and could be disseminated to the public and end up in the hands of someone with nefarious intent.

While the owners' ability to communicate with one another for legitimate association business is of great importance, RCI believes that a mechanism already exists which addresses the purpose of SB 2284, SD1, short of releasing the owners' list. Under Hawaii Administrative Rules (HAR), Section 16-106-12(g), if the association's by-laws or rules do not authorize the release of the timeshare owner list to a time share owner, the association shall develop a reasonable procedure by which time share owners may solicit votes or proxies or provide information to other time share owners with respect to association matters.

We would be open to the idea of working with the Legislature in coming up with a reasonable solution that protects the integrity of the owner's list while still providing owners an opportunity to communicate on legitimate association business such as proxy matters.

Thank you for the opportunity to submit testimony on this measure.

Respectfully,

RCI, LLC