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STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Wednesday, January 29, 2014
2:10 p.m.

TESTIMONY ON HOUSE BILL NO. 2018, RELATING TO TIME SHARE.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lori Beth Van Cantfort, Time Share Administrator of the Professional and Vocational Licensing Division ("PVL"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department takes no position on the intent of H.B. No. 2018 which seeks to amend Hawaii Revised Statutes Chapter 514E to (1) no longer require plan managers of out-of-state time share plans to register, and (2) allowing time share owners associations to be registered as any type of nonprofit entity. However, the Department requests that should the bill pass, the disclosure found on page 5, lines 11 – 15, be amended to read "BECAUSE THE TIME SHARE UNITS OF THIS TIME SHARE PLAN

Testimony on House Bill No. 2018
Wednesday, January 29, 2014
Page 2

ARE LOCATED OUTSIDE OF THE STATE OF HAWAII, THE PLAN MANAGER IS EXEMPT FROM REGULATION REGISTERING UNDER HAWAII HAWAII'S TIME SHARE LAW AND HAWAII HAWAII'S TIME SHARE LAW PROVIDES NO PROTECTIONS TO PURCHASERS WITH RESPECT TO THE PLAN MANAGER."

The current language found in the bill is too broad and would exempt the out-of-state plan manager from any regulation under any Hawaii law.

Thank you for this opportunity to provide testimony on H.B. No. 2018 with amendments.



January 24, 2014

TO: HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Representative Angus McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

FROM: Henry Perez, Chair
ARDA-Hawaii

RE: HB 2018, Relating to Time Shares
Position: Support

Dear Chair McKelvey, Vice Chair Kawakami and members of the Committee:

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports HB 2018, Relating to Time Shares. The bill makes several changes to the current timeshare law to reflect changes in the timeshare industry as a result of the growth of the industry.

As the timeshare industry has grown, the ownership and management of timeshare developments has diversified. Hawaii law requires that managers of foreign timeshare plans register in Hawaii as a timeshare plan manager despite not doing business in Hawaii. This bill would eliminate that requirement and provide as an added measure of consumer information, a disclosure that the manager of a foreign timeshare is not registered in Hawaii.

When our timeshare law was created, nonprofit corporations were the most appropriate corporate structure for timeshare associations. However, new types of business organizational structures have been developed that are similarly appropriate for governance of an association. This law would allow for the use of other corporate structures creating an entity organized on a non-profit or not-for-profit basis, or that qualifies under federal law as a homeowners association.

Finally, the bill would make corrections to internal references to maintain consistency.

Thank you for the opportunity to submit these comments.

CHARLES E. PEAR, JR.

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January 28, 2014

Rep. Angus L. K. McKelvey, Chair
Rep. Derek S. K. Kawakami, Vice Chair
Members of the Committee on Consumer
Protection and Commerce
Twenty-Seventh Legislature
Regular Session, 2014

Re: H.B. 2018
Hearing on January 29, 2014, 2:10 p.m.
Conference Room 325

Dear Chair, Vice-Chair and Members of the Committee:

My name is Charles Pear. I am appearing as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports the bill.

1. Form of Time Share Owners Association.

In 1982, at the request of the Chairperson of the House Consumer Protection Committee, I drafted legislation requiring, among other things, that each time share plan must have an association of time share owners. The statute provides:

§ 514E-29. Association; lien for delinquent assessments.

(a) All time share plans shall have an association which shall be a nonprofit corporation. Each owner shall be a member of the association.

The 1982 amendment dealt primarily with the establishment of escrow and blanket lien safeguards to protect the consuming public. Some of those safeguards require the presence of an association of time share owners as part of the system of check and balances intended to protect the consuming public

For example, § 514E-22(4), dealing with lien payment trusts, requires that the association be made a third party beneficiary of the trust. The purpose of this requirement is to give the association standing to enforce the trust agreement on behalf of the owners. Enforcement of the trust is critical in that the statutory scheme prohibits the trustee from conveying or encumbering

units held in trust, thus protecting purchasers from blanket liens. By making the association and express third-party beneficiary, the owners have a practical means of enforcing the trust through the association. This is better than requiring individual owners to file separate lawsuits because the costs of such a suit would substantially exceed the investment of any single owner but, when shared via an association, the costs become manageable.

In addition, § 514E-22(6), requires that any amendment to the trust be approved by the association of time share owners. In this capacity, the association serves an oversight function in ensuring that the developer does not modify the trust instrument in a manner that adversely impacts the rights of owners unless the owners concur in the modification.

§ 514E-22 deals with time share plans which utilize a trust as a means to protect purchasers from blanket liens. Purchasers may also be protected from blanket liens via another method, called the “pledged equity election.” This little-known and never-used mechanism is contained in § 514E-25. Essentially, it is a permitted permutation of the lien payment trust concept. Under § 514E-25, the association again serves an oversight function on behalf of the owners. In addition, it receives title to a mortgage as security for the obligations of the developer.

Basically, the inclusion of these two provisions in the 1982 amendments to the Act made it necessary to require that each time share plan have an association of timeshare owners. As a result, I included what is now § 514E-29(a).

In the intervening years, it has become common for time share developers to offer for sale in Hawaii time share interests in time share plans located in other states or countries. In some cases, the time share associations have been established as a non-for-profit corporation, a nonprofit limited liability company, or perhaps in some other form.

The statutory purposes of having a time share owners association are fully served regardless of whether the association is established as a nonprofit corporation, a not-for-profit corporation, a nonprofit limited liability company, or some other kind of entity. The establishment of an association in any format provides a vehicle through which the owners and collectively protect themselves as a group from blanket liens and provide oversight functions on behalf of the owners.

H.B. 2018 is intended to recognize this and to expressly authorize the use of other forms of entities to serve as the time share owners association.

2. Registration of Plan Managers of Foreign Time Share Plans.

The 1982 amendment also adopted Section 514E-30. Among other things, §514E-30 established the applicability of the Hawaii Time Share Act to time share plans not located in Hawaii, stating as follows:

§ 514E-30. Scope of chapter.

This chapter applies to the offer and sale in Hawaii of time share interests in time share units located in Hawaii. If time share units are located outside of Hawaii, but any offer or sale is made within the State, this chapter, except for sections 514E-3, 514E-4, 514E-5, 514E-6, 514E-7, and 514E-14, shall apply. As to the offer and sale outside of Hawaii of time share interest in a time share plan which includes time share units located in Hawaii, this chapter, except for sections 514E-2.5, 514E-8, 514E-9, 514E-10(b) and (c), 514E-11, and 514E-11.1 shall apply. [Emphasis added.]

The 1982 legislation was adopted in response to the collapse of the Paradise Palms Vacation Club. At the time, a few states had adopted time share legislation, but many others had not yet done so. As a result, the 1982 amendment was purposely drawn to be as broadly applicable as possible in order to protect time share buyers and, frankly, the time share industry.

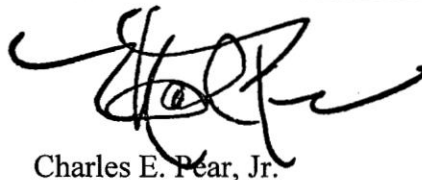
From time to time during the ensuing 31 years, a question has arisen as to whether the State of Hawaii has jurisdiction to regulate the manager of a time share plan if all of the property of the time share plan is located entirely outside of the State of Hawaii, and if the manager has no contacts with the State of Hawaii. In addition, during the past three decades, most states have adopted laws or regulations governing the establishment, management, offer and sale of time share plans. In light of the foregoing, it is appropriate to leave the regulation of out-of-state property managers to the governance of the jurisdictions in which they are actually managing property.

The proposed bill exempts managers of foreign time share plans from the plan manager registration requirements of the Hawaii Time Share Act. The bill also requires that the Hawaii Disclosure Statement provide notice to prospective time share buyers that the plan manager is not required to be registered under Hawaii law.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Charles E. Pear, Jr.



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

January 29, 2014

To: Honorable Angus McKelvey, Chair
House Committee on Consumer Protection and Commerce

RE: **HB 2018 - Relating to Time Share – In Support**
Conference Room 325, 2:10 p.m.

Chair McKelvey, Vice Chair Kawakami and members of the committee:

Starwood Vacation Ownership (“Starwood”) appreciates the opportunity to offer testimony in support of HB 2018, which eliminates the requirement that a manager of a foreign time share plan register in Hawaii as a time share plan manager, requires disclosure that the manager of the foreign time share plan is not registered in Hawaii and recognizes that an association of timeshare owners may be any kind of nonprofit entity.

Starwood supports this bill because it updates and streamlines Hawaii timeshare law. When the Hawaii law regulating plan managers was created, it was broadly worded and required all timeshare plan managers to register with the Department of Commerce and Consumer Affairs (DCCA). Today, many out of state timeshare plans are registered in Hawaii and the managers of these out of state plans (which are regulated in their state of operation) are required to register as Hawaii managers. These managers do not conduct business in Hawaii, therefore, this requirement should be eliminated as it creates unnecessary regulatory burdens on the DCCA and the industry and does not further consumer protection. The bill also provides clarification that a timeshare association can be any kind of nonprofit entity. This update modernizes the statute, recognizing that owners associations, especially in out of state plans, may take different forms.

For the aforementioned reasons, we respectfully request that you pass HB 2018. Thank you.

Robin Suarez
Vice President/General Counsel
Starwood Vacation Ownership

**Testimony of
Jason Gamel
on behalf of
Wyndham Vacation Ownership**

DATE: January 28, 2014

TO: Representative McKelvey
Chair, Committee on Consumer Protection and Commerce
Submitted Via CPCtestimony@capitol.hawaii.gov

RE: **H.B. 2018 – Relating to Timeshares**
Hearing Date: Wednesday, January 29, 2014 at 2:10 p.m.
Conference Room 325

Dear Chair McKelvey and members of the Committee,

I am Jason Gamel, SVP-Legal, testifying on behalf of Wyndham Vacation Ownership. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership has substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **strongly supports** H.B. 2018, which would exempt an out-of-state time share plan manager from filing a disclosure statement in the State. Wyndham develops projects all over the world, and its managers may or may not conduct business in the State. The requirement that managers of out-of-state time share plans register in Hawaii is no longer practical, and this bill adapts the practice to the evolving nature of the time share business. We believe that consumer protection concerns are also provided for in the bill by requiring a disclosure statement that the manager is not registered in Hawaii.

Wyndham also supports the amendments the bill makes to HRS Chapter 514E. The time share law was amended in 1982 to require that an association of timeshare owners be formed as a non-profit entity in the state of Hawaii or elsewhere. However, this requirement has become obsolete because today, new types of business organizations

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have been created to reflect changing business models. Wyndham supports the changes to Chapter 514E to reflect the current practices for the industry.

For the above reasons, Wyndham strongly supports this measure and respectfully requests that the Committee pass H.B. 2018 for further consideration.

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

MARRIOTT
VACATIONS
WORLDWIDESM

January 28, 2014

Rep. Angus L. K. McKelvey, Chair
Rep. Derek S. K. Kawakami, Vice Chair
Members of the Committee on Consumer
Protection and Commerce
Twenty-Seventh Legislature
Regular Session, 2014

Re: H.B. 2018
Hearing on January 29, 2014, 2:10 p.m.
Conference Room 325

Dear Chair, Vice-Chair and Members of the Committee:

My name is John McGowan, Vice President & Assistant General Counsel for Marriott Vacations Worldwide ("Marriott"). Marriott is the developer and operator of multiple vacation ownership properties in Hawaii including Marriott's Ko Olina Beach Club and Marriott's Maui Ocean Club. Marriott supports H.B. 2018.

One of the purposes of H.B. 2018 is recognize that an association of time share owners may be formed as any kind of non-profit or not-for-profit entity.

Current Hawaii law requires that all timeshare plans have associations that are nonprofit corporations. In recent years, it has become common for timeshare developers to offer for sale in Hawaii timeshare interests in timeshare plans located in other states or countries. Often, the timeshare associations created for those timeshare plans are not-for-profit corporations, nonprofit limited liability companies, nonprofit mutual benefit corporations or some other form.

The statutory purposes of having a timeshare owners association are fully served regardless of the form of entity that the timeshare owners association takes. H.B. 2018 recognizes this and authorizes the use of other forms of entities to serve as timeshare owners associations.

Current Hawaii law requires that plan managers of foreign timeshare plans register in Hawaii as plan manger. This requirement was enacted into law more than 30 years ago, a time when few states had enacted comprehensive timeshare legislation to protect consumers. Most states have now adopted timeshare legislation governing the development, marketing, sale, management and operation of timeshare plans. In addition, it is questionable whether the State of Hawaii has jurisdiction to regulate the manager of a timeshare plan if all of the property of the timeshare plan is located entirely outside the State of Hawaii and the plan manager has no contacts with the State of Hawaii.

6649 Westwood Boulevard, Orlando, Florida 32821 t 407-206-6000 marriottvacationsworldwide.com

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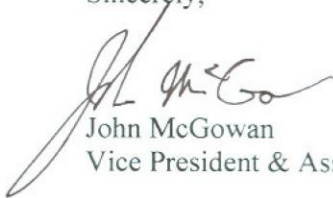


Rep. Angus L. K. McKelvey, Chair
Rep. Derek S. K. Kawakami, Vice Chair
Members of the Committee on Consumer Protection and Commerce
January 28, 2014
Page 2 of 2

H.B 2018 eliminates the requirement that the plan manager of a foreign timeshare plan register in Hawaii as a plan manager but requires that the Hawaii Timeshare Disclosure Statement provide notice to prospective timeshare purchasers that the plan manager is not required to be registered under Hawaii law.

Thank you for your consideration of this legislation and thank you for the opportunity to submit this written testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "JL McGowan", is written over a horizontal line.

John McGowan
Vice President & Assistant General Counsel, Marriott Vacations Worldwide

kawakami3-Benigno

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 28, 2014 2:31 PM
To: CPCtestimony
Cc: teresa.parsons@hawaii.edu
Subject: *Submitted testimony for HB2018 on Jan 29, 2014 14:10PM*

HB2018

Submitted on: 1/28/2014

Testimony for CPC on Jan 29, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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