



NEIL ABERCROMBIE
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LT. GOVERNOR

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

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KEALI'I S. LOPEZ
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DEPUTY DIRECTOR

**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. 2019, 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 supports H.B. No. 2019, which seeks to amend Hawaii Revised Statutes Chapter 514E to (1) add a new section providing time share purchasers the option to receive the time share disclosure statement in electronic form, and (2) amend section 514E-10 to simplify the renewal requirements for developers to no longer require a title report and financial statement.

Section 2 of H.B. No. 2019 adds a new section to Chapter 514E which allows purchasers the option to receive the time share disclosure statement in electronic form. Currently developers are required to provide a hard copy of the time share disclosure statement to all purchasers. This is required so that purchasers have the opportunity to read the disclosure statement before their seven-day rescission period expires, which may expire while they are still on vacation. The Department realizes that most people now have the ability to access documents electronically and may prefer receiving an electronic version of the time share disclosure statement instead of a hard copy. However, there are still purchasers who do not have the ability to access an electronic version while on vacation and would still need a hard copy. These purchasers will still automatically receive a hard copy because H.B. 2019 only allows for an electronic version if a purchaser opts in writing to receive an electronic version.

The Department requests that the disclosure regarding the seven-day rescission period found on page 4, lines 1-4 be amended to read "ANY PURCHASER HAS UNDER THE LAW A SEVEN-DAY RIGHT OF RESCISSION OF ANY TIME SHARING SALES CONTRACT. PURCHASERS SHOULD READ THE DISCLOSURE STATEMENT BEFORE THE SEVEN-DAY RIGHT OF RESCISSION PERIOD EXPIRES." The Department believes that this statement is clearer in alerting purchasers to read the disclosure statement before the seven-day rescission period expires when they no longer can cancel their time share purchase.

Section 3 of H.B. No. 2019 seeks to amend section 514E-10 by adding a new subsection (f) which simplifies the renewal requirements for developers. Currently

developers are required to submit with their renewal applications a title report for all unsold inventory and a current financial statement. The title report can be very voluminous and costly for time share plans that include multiple properties and thousands of units. The information provided in the title report regarding the unsold inventory is also provided in a certified statement provided by the developer. The Department can rely on the developer's certified statement for this information. The Department requests that the bill be amended to require Developers to identify the total number of registered time share interests in each unit and the total number of registered points in each property. This information is currently required and helps to cross check the number of interests registered and the number of interests developers are selling. This is information the developers should already be keeping track of.

Section 3 also removes the requirement that a financial statement be submitted with the renewal application. This would be consistent with PVL's other licensing areas.

Thank you for this opportunity to provide testimony supporting H.B. No. 2019 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 2019, 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 2019, to update the Hawaii timeshare law in conformance with modern customer preference and business practices.

Under current law, prospective purchasers of timeshare interests must be provided a hard copy of a disclosure statement. However, the increase in the use of computers and electronic document transmission has resulted in a consumer preference to have the option of receiving the disclosure documents electronically. In response to this changing marketplace, we would like to be able to permit prospective purchasers of timeshare interests to receive either printed or electronic copies of the disclosure statement on the time share plan.

In addition to updating the law with respect to providing information to our prospective buyers, ARDA Hawaii also supports clarification of our reporting requirements to the State. This bill also contains several important changes to simplify the renewal process by clarifying the information required to be submitted and deleting documents currently being provided. Such documents include financial statements of the developer and title reports which can be burdensome and expensive.

Finally, in discussions with DCCA, ARDA Hawaii would like to submit the attached amendments to pages 7 & 8 of the bill.

We ask that you support these changes which simplify the process for developers, provide potential purchasers with the option to receive documentation electronically, and maintain meaningful protections for the consumers. Thank you for the opportunity to submit testimony in support of HB 2019.

Proposed Amendment follows:

A BILL FOR AN ACT

RELATING TO TIME SHARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that under chapter 514E,
2 Hawaii Revised Statutes, prospective purchasers of time share
3 interests must be provided a copy of a disclosure statement.
4 When this chapter was originally adopted, receipt of paper
5 documents was common practice. However, recent years have
6 witnessed the rise of electronic commerce and the widespread
7 distribution of information through electronic means. Many
8 consumers and purchasers now prefer an option of receiving
9 important documents electronically.

10 The legislature further finds that time share registrations
11 are required to be renewed every other year. Developers are
12 currently required to disclose the number of time share units
13 and the number of time share interests in each unit during the
14 renewal process. However, although some time share plans
15 continue to divide time share units into time share interests,
16 the modern trend is for time share plans to use a points system.

17 The legislature additionally finds that developers of time
18 shares are also required to provide title reports in connection



1 with renewal registrations. Some non-deeded time share plans
2 may include property in dozens of or more than one hundred
3 locations, and furnishing title reports on each unit in a time
4 share plan is burdensome and expensive. Furthermore, there are
5 already existing lien protections for non-deeded time share
6 plans; these are designed so that the encumbrances recorded
7 after the blanket lien protections are established will not
8 impair the rights of time share purchasers.

9 The legislature also finds that developers are required to
10 file a financial statement in connection with renewal
11 registration. Many developers are subsidiaries of publicly
12 traded companies, and preparation of financial statements for
13 the subsidiaries has proven burdensome for developers while
14 providing little to no perceived benefit to consumers.

15 The purpose of this Act is to:

- 16 (1) Permit prospective purchasers of time share interests
17 to receive printed or electronic copies of the
18 disclosure statement on the time share plan; and
- 19 (2) Amend the renewal process for time share registrations
20 by:



- 1 (A) Permitting the developer to disclose either the
- 2 total number of time share interests or the total
- 3 number of points in a time share plan;
- 4 (B) Eliminating the requirement that developers
- 5 provide title insurance and reports; and
- 6 (C) Eliminating the requirement that developers file
- 7 a financial statement.

8 SECTION 2. Chapter 514E, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§514E- Disclosure statement; prospective purchasers.**

12 The purchaser of a time share interest shall be provided a copy
13 of the disclosure statement filed with and accepted by the
14 director concurrently with the execution of a sales contract.

15 The disclosure statement shall be provided in printed form
16 unless the purchaser indicates in a separate writing the
17 purchaser's election to receive the disclosure statement through
18 means of a computer disc, electronic mail, download from an
19 internet site, thumb drive, any other media that may require the
20 use of a device or a machine to be viewed or heard, or by any
21 other means contemplated by chapter 489E. The separate writing
22 shall include, above the signature line in bold type and capital



1 letters, the following statement: "PROSPECTIVE PURCHASERS
2 SHOULD READ THE DISCLOSURE STATEMENT ON THE TIME SHARE PLAN.
3 ANY PURCHASER HAS, UNDER THE LAW, A SEVEN-DAY RIGHT OF
4 RESCISSION OF ANY TIME SHARING SALES CONTRACT."."

5 SECTION 3. Section 514E-10, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§514E-10 Registration required; developer, acquisition**
8 **agent, plan manager, and exchange agent[-]; registration**

9 **renewal.** (a) A developer shall not offer or dispose of a time
10 share unit or a time share interest unless the disclosure
11 statement required by section 514E-9 is filed with the director
12 pursuant to the time specified in this chapter, or the
13 development is exempt from filing, and the time share plan to be
14 offered by the developer is accepted by the director for
15 registration under this chapter. The director shall not accept
16 a developer's time share plan if the developer does not possess
17 a history of honesty, truthfulness, financial integrity, and
18 fair dealing.

19 (b) An acquisition agent (including the developer if it is
20 also the acquisition agent) shall register under this chapter by
21 filing with the director a statement setting forth the time
22 sharing plan for which it is providing prospective purchasers,



1 its address, the telephone number, other information required by
2 the director as provided by rules adopted pursuant to chapter
3 91, and, if the acquisition agent is not a natural person, the
4 name of the responsible managing employee; provided that an
5 acquisition agent licensed under chapter 467 as a real estate
6 broker shall not be required to register under this chapter.

7 All acquisition agents not licensed under chapter 467 shall be
8 approved by the director. The director shall not approve any
9 acquisition agent who is not of good character and who does not
10 possess a reputation for honesty, truthfulness, and fair
11 dealing. The acquisition agent shall furnish evidence that the
12 acquisition agent is bonded as required by rules adopted by the
13 director pursuant to chapter 91 to cover any violation by the
14 acquisition agent of any solicitation ordinance or other
15 regulation governing the use of the premise or premises in which
16 the time share plan is promoted; provided that the acquisition
17 agent shall be separately bonded for each time share plan for
18 which it is providing prospective purchases.

19 (c) A plan manager (including the developer if it is also
20 the plan manager) shall register under this chapter by filing
21 with the director a statement setting forth the time sharing
22 plan that it is managing, its principal office address,



1 telephone number, and responsible managing employee. The plan
2 manager shall furnish evidence that the plan manager is bonded
3 as required by rules adopted by the director pursuant to chapter
4 91 to cover any default of the plan manager and any of its
5 employees of their duties and responsibilities; provided that
6 the plan manager shall be separately bonded for each time share
7 plan under the management of the plan manager.

8 (d) An exchange agent (including the developer if it is
9 also an exchange agent) shall register under this chapter by
10 filing with the director a statement setting forth the time
11 sharing plan for which it is offering exchange services, its
12 principal office address and telephone number, and designate its
13 responsible managing employee.

14 (e) Any plan manager or developer registration required in
15 this section shall be renewed by December 31 of each even-
16 numbered year, and any acquisition agent or exchange agent
17 registration required in this section shall be renewed on
18 December 31 of each odd-numbered year; provided that this
19 subsection shall not relieve the person required to register
20 from the obligation to notify the director promptly of any
21 material change in any information submitted to the director,
22 nor shall it relieve the developer of its obligation to promptly



1 file amendments or supplements to the disclosure statement, and
2 to promptly supply the amendments or supplements to purchasers
3 of time share interests.

4 (f) An application for renewal of a developer registration
5 shall include:

6 (1) An application for renewal of registration on a form
7 prescribed by the director;

8 (2) A current disclosure statement that meets the
9 requirements of section 514E-9 and section 16-106-3,
10 Hawaii Administrative Rules, if not already on file;

11 (3) A statement that is certified by the developer to be
12 true and correct in all respects and that identifies,
13 as appropriate:

14 (A) The time share units in the time share plan
15 registered pursuant to this chapter; the total
16 number of time share interests registered for
17 sale pursuant to this chapter; and the total
18 number of time share interests that have not yet
19 been sold ~~and closed~~ as of the date specified in
20 the developer's certification, which date shall
21 not be more than sixty days prior to the date of
22 the developer's certification; or

in each unit



in each property

1 (B) The property in the time share plan registered
2 pursuant to this chapter; the total number of
3 points registered for sale pursuant to this
4 chapter; and the total number of points in the
5 time share plan that have not yet been sold ~~and~~
6 ~~closed~~ as of the date specified in the
7 developer's certification, which date shall not
8 be more than sixty days prior to the date of the
9 developer's certification;

10 (4) If the developer is a corporation, partnership, joint
11 venture, limited liability company, or limited
12 liability partnership, an original certificate of good
13 standing issued by the business registration division
14 of the department of commerce and consumer affairs not
15 more than forty-five days before the date of
16 submission of the renewal application; and

17 (5) The biennial renewal fee.

18 (g) Developers shall not be required to include the
19 following in an application for renewal of a developer
20 registration of a time share plan:

21 (1) A financial statement of the developer; or

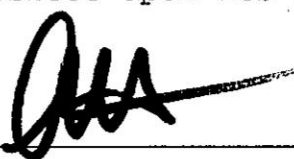


1 (2) A policy of title insurance, a preliminary title
2 report, abstract of title, or certificate of title on
3 the units or time share interests in the time share
4 plan."

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

8

INTRODUCED BY: 

JAN 17 2014



H.B. NO. 2019

Report Title:

Time Share; Disclosure Statement; Electronic Documents; Renewal Registration; Developers

Description:

Allows prospective purchasers of time share interests to receive printed or electronic copies of the disclosure statement on the time share plan. Amends the renewal process for time share registrations by: permitting the developer to disclose either the total number of time share interests or the total number of points in a time share plan; eliminating the requirement that developers provide title insurance and title reports; and eliminating the requirement that developers file a financial statement.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





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 2019 - 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 2019, which allows prospective purchasers of time share interests to receive printed or electronic copies of the disclosure statement on the time share plan, and amends the renewal process for time share registrations.

Many consumers now prefer an option of receiving important documents electronically. This bill modernizes the Hawaii timeshare law by permitting developers to give consumers the option of receiving disclosure documents in electronic or hard copy format. This option is permitted in other states with strict timeshare regulation, such as Florida, California and New York.

In addition, the bill updates and streamlines renewal registration requirements. This change will reduce costs and burdens for both the industry and the Department of Commerce and Consumer Affairs (DCCA) while enhancing consumer protection. We respectfully request that you pass HB 2019.

Thank you.

Robin Suarez
Vice President/Associate General Counsel
Starwood Vacation Ownership

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

DATE: January 28, 2014

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

RE: **H.B. 2019 - Relating to Time Share**
Hearing Date: Wednesday, January 29, 2014 at 2:10 p.m.
Conference Room: 325

Dear Chair McKelvey and Members of the Committee on Consumer Protection and Commerce,

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. 2019, which permits prospective purchasers of time share interests to receive printed or electronic copies of the disclosure statement on the time share plan, and amends the renewal process for time share registrations.

Wyndham supports this measure because it provides a means to streamline industry practices given the advances in technology that are now available. A growing number of consumers now prefer receiving documents electronically. Providing prospective time share purchasers with the option of receiving paper or electronic copies of the disclosure statement allows Wyndham to keep up with consumers' expectations.

Gary M. Slovin
Mihoko E. Ito
Tiffany N. Yajima
Jennifer C. Taylor

1099 Alakea Street, Suite 1400
Honolulu, HI 96813
(808) 539-0840

In addition, amending the renewal requirements for time share registrations by 1) permitting the developer to disclose either the total number of time share interests or the total number of points in a time share plan; 2) eliminating the requirement to furnish title reports on each unit in a time share plan; and 3) eliminating the requirement that developers file a financial statement, streamlines the renewal process.

Many time share plans are moving towards the use of a modern point system while others maintain a more traditional time share interest plan. With either system, these plans can include property in many jurisdictions, and furnishing title reports on each unit in a plan can be time consuming and burdensome when there are already lien protection mechanisms in place for consumers. Furthermore, filing a financial statement for renewal registration provides little to no value to potential purchasers since many developers like Wyndham are subsidiaries of publicly traded companies.

For these reasons, we strongly support this bill and respectfully request that it be passed 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. 2019
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. 2019.

1. Digital Disclosures.

H.B. 2019 modernizes the Hawaii Time Share Act by allowing buyers to choose whether to receive the timeshare disclosure statement on paper or in digital form (CD, email, website download or other digital formats). The Hawaii Condominium Act already permits condominium documents to be provided to buyers in a digital format. So HB 2019 would simply make the Hawaii Timeshare Act consistent with Hawaii Condominium Act.

In this age of the internet, social media, smart phones and instant access, many buyers may prefer electronic media to print versions of the same documents. In addition, providing the disclosure statement and other key documents in a digital format provides a more convenient way for buyers to take their documents home with them when they leave Hawaii without having to carry home a thick package of paper. It has the added benefit of allowing buyers to keep copies on their computers or in cloud storage for future reference and it is environmentally friendly.

It also provides developers a more convenient means of making comprehensive disclosures to buyers. For example a CD might contain not just the disclosure statement but also the time share declaration and bylaws, the articles of incorporation and rules of the time share owners association, the condominium declaration and bylaws, the condominium map, and other documents that may be of interest to the time share buyers.

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

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Under HB 2019, buyers choose the medium in which they receive the documents. If they want paper, they get paper. If they want digital, they get digital. That election must be evidenced by a separate document which must also inform the buyers that they have a 7-day right of cancellation, and that they should read the disclosure statement before the cancellation right ends. If the buyer fails to make an election, the buyer gets paper.

2. Renewal Streamlining.

H.B.2019 also streamlines the biennial renewal process for timeshare developer registrations by (1) allowing developers to describe the sold and unsold inventory in terms of points rather than weeks, (2) eliminating the requirement that developers provide title reports on all unsold inventory, and (3) eliminating the need to file an updated financial statement on the developer.

The current law fails to recognize that many developers now sell points, rather than weeks, and that the developer's unsold inventory should likewise be described in terms of the number of unsold points, not weeks. In addition, where a time share plan uses a points-based system, it may not be possible or helpful to identify the number of weeks remaining for sale. Instead, it is more accurate to describe the unsold inventory in terms of points remaining for sale. H.B. 2019 updates the law to recognize these developments.

H.B. 2019 also eliminates the current requirement that the developer file title reports on unsold inventory. This has proven to be very costly and time-consuming for developers and their title companies, and has little or no benefit to the consumers since the developer has a continuing obligation to disclose all material encumbrances on title in the disclosure statement.

When property is initially registered in a time share plan, title reports are filed with the Department. At that time, the method of protecting purchasers from blanket mortgages and other blanket liens is established. For example, in some time share plans, title is conveyed to a trustee with instructions that the trustee cannot convey or mortgage the units. After the trust is established and title is conveyed to the trustee, there is no point in revisiting the state of title. For deeded time share plans, the escrow agreement typically prohibits escrow from closing the sale of a time share interest unless it is free of any blanket mortgages or other blanket liens. After this mechanism is established, there is no need to revisit title.

However, many time share plans include hundreds of units. Obtaining title reports on each unit containing unsold timeshare interests can be very costly. In addition, points are fungible in some points-based systems, with the result that there is no way of identifying which points relate to which units. As a result, the developer may have to file title reports on dozens or hundreds of units in a single site, and maybe thousands of units spanning multiple sites. H.B. 2019 would eliminate this unnecessary burden and expense.

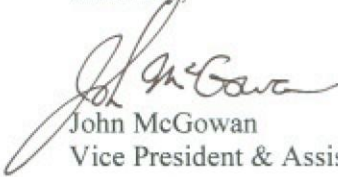
Finally, H.B. 2019 would eliminate the requirement that the developer file a financial statement. Most timeshare developers are now subsidiaries of publicly traded companies. While the parent company

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
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prepares annual financial statements, subsidiary companies do not. As a result, it has been difficult to obtain a financial statement on a timeshare developer that is a subsidiary of a publicly traded company.

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 "John McGowan". The signature is fluid and cursive, with a large initial "J" and "M".

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



Memories for Generations®

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. 2019
Hearing on January 29, 2014, 2:10 p.m.
Conference Room 325

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

My name is Stephen Lin, Executive Vice President of Royal Aloha Vacation Club, representing 8,000 timeshare owners; we are writing to support H.B. 2019.

1. Digital Disclosures.

H.B. 2019 is intended to modernize the Hawaii Time Share Act by allowing buyers to choose whether to receive the disclosure statement on paper or in digital form. This would allow buyers to receive the disclosure statement on a CD, by email, by downloading it from a website, or in other digital formats. In light of the rapid change in technology and the new ways consumers are accessing information, the propose change just makes common sense without sacrificing any protection to the consumers.

2. Renewal Streamlining.

H.B. 2019 is also designed to update and streamline biennial renewals of the developer registrations by (1) allowing developers to describe the sold and unsold inventory in terms of points rather than weeks, (2) eliminating the requirement that developers provide title reports on all unsold inventory, and (3) eliminating the need to file an updated financial statement on the developer.

We believe these changes are necessary in order to update the existing law to reflect the changes in the marketplace. For example, many developers now sell points, rather than weeks. To apply the existing law to these new products may be meaningless, if possible. We believe the proposed changes would make compliance and enforcement of the law more meaningful and effective.

H.B. 2019 also eliminates the current requirement that the developer file title reports on unsold inventory. This has proven to be very costly and time-consuming for developers and their title companies, and has little or no benefit to the consumers since the developer has a continuing obligation to disclose all material encumbrances on title in the disclosure statement. The escrow agreement typically prohibits escrow from closing the sale of a time share interest unless it is free of any blanket mortgages or other blanket liens. After this mechanism is established, there is no need to revisit title. The existing requirement is burdensome and provides no additional protection to the consumers.

Finally, H.B. 2019 would eliminate the requirement that the developer file a financial statement. Protection to the timeshare consumer is not based on the financial condition of the developers; rather, buyers are protected from blanket liens in certain specified ways. In addition, most time share developers are now subsidiaries of publicly traded companies; while the parent company has annual financial statements prepared, obtaining financial statements for individual subsidiary companies could be very difficult.

We respectfully ask for your support of the changes proposed in H.B. 2019.
Thank you.

Aloha,

Royal Aloha Vacation Club

A handwritten signature in black ink, appearing to read "Stephen Lin", written in a cursive style.

Stephen C.W. Lin
Executive Vice President

CHARLES E. PEAR, JR.

DIRECT #S:
PHONE - (808) 223-1212
FAX - (808) 535-8029
E-MAIL - PEAR@M4LAW.COM

January 29, 2014

LATE

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. 2019
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 on behalf of ARDA Hawaii at its legislative counsel.

ARDA Hawaii supports the bill.

1. Digital Disclosures.

H.B. 2019 is intended to modernize the Hawaii Time Share Act by allowing buyers to choose whether to receive the disclosure statement on paper or in digital form. This would allow buyers to receive the disclosure statement on a CD, by email, by downloading it from a website, or in other digital formats.

With the rise of electronic commerce and social media, many buyers may prefer electronic media to print versions of the same documents. In addition, many if not most time share buyers in Hawaii are visitors from the mainland. Providing the disclosure statement and other key documents in a digital format provides a convenient way for buyers to take their documents home with them when they leave Hawaii. It has the added benefit of allowing buyers to keep copies on their computers or in cloud storage for future reference.

It also provides developers a more convenient means of making comprehensive disclosures to buyers. For example a CD might contain not just the disclosure statement but also the time share declaration and bylaws, the articles of incorporation and rules of the time share owners association, the condominium declaration and bylaws, the condominium map, and other documents that may be of interest to the time share buyers.

H.B. 2019 is patterned after provisions of the Hawaii condominium act allowing the condominium documents to be provided to buyers in a digital format. As with the condominium act, buyers can choose whether to receive the documents on paper or in a digital format. That election must be evidenced by a separate document which must also inform the buyers that they have a 7-day right of cancellation, and that they should read the disclosure statement before the cancellation right ends.

2. Renewal Streamlining.

H.B. 2018 is designed to update and streamline biennial renewals of the developer registrations by (1) allowing developers to describe the sold and unsold inventory in terms of points rather than weeks, (2) eliminating the requirement that developers provide title reports on all unsold inventory, and (3) eliminating the need to file an updated financial statement on the developer.

The current law fails to recognize that many developers now sell points, rather than weeks, and that the developer's unsold inventory should likewise be described in terms of the number of unsold points, not weeks. In addition, where a time share plan uses a points-based system, it may not be possible or helpful to identify the number of weeks remaining for sale. Instead, it is more accurate to describe the unsold inventory in terms of points remaining for sale. H.B. 2018 updates the law to recognize these developments.

H.B. 2018 also eliminates the current requirement that the developer file title reports on unsold inventory. This has proven to be very costly and time-consuming for developers and their title companies, and has little or no benefit to the consumers since the developer has a continuing obligation to disclose all material encumbrances on title in the disclosure statement.

When property is registered in a time share plan, title reports are filed with the Department. At that time, the method of protecting purchasers from blanket mortgages and other blanket liens is established. For example, in some time share plans, title is conveyed to a trustee with instructions that the trustee cannot convey or mortgage the units. After the trust is established and title is conveyed to the trustee, there is no point in revisiting the state of title. For deeded time share plans, the escrow agreement typically prohibits escrow from closing the sale of a time share interest unless it is free of any blanket mortgages or other blanket liens. After this mechanism is established, there is no need to revisit title.

However, many time share plans include hundreds of units. Obtaining title reports on each unit containing unsold timeshare interests can be very costly. In addition, points are

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fungible in some points-based systems, with the result that there is no way of identifying which points relate to which units. As a result, the developer may have to file title reports on dozens or hundreds of units in a single site, and maybe thousands of units spanning multiple sites. H.B. 2018 would eliminate this burden and expense.

Finally, H.B. 2018 would eliminate the requirement that the developer file a financial statement. Most time share developers are now subsidiaries of publicly traded companies. While the parent company has annual financial statements prepared, individual subsidiary companies apparently do not. As a result, it has been difficult to obtain a financial statement on a time share developer that is a subsidiary of a publicly traded company.

Thank you for your kind consideration of this legislation. I would be happy to answer any questions.

Very truly yours,

McCORRISTON MILLER MUKAI MACKINNON LLP



Charles E. Pear, Jr.