

SB 2480

Measure Title: RELATING TO TIME SHARE.

Report Title: Time Share; Disclosure Statement; Electronic Documents; Renewal Registration; Developers

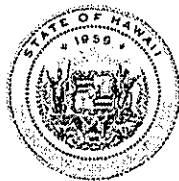
Description: Allows prospective purchasers of time share interests to receive printed or electronic copies of the disclosure statement on the time share plan. Amends the renewal process for time share registrations by: permitting the developer to disclose either the total number of time share interests 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.

Companion: HB2019

Package: None

Current Referral: CPN

Introducer(s): BAKER, Chun Oakland, Espero, Ige, Kidani



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
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

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

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

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

**TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014**

Wednesday, February 19, 2014
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2480, RELATING TO TIME SHARE.

**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 ("PVL"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department supports S.B. No. 2480, 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 S.B. No. 2480 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 S.B. No. 2480 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. The parties have agreed to this language.

Section 3 of S.B. No. 2480 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. The parties have agreed to the amended language attached to my testimony.

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.

For the Committee's information, the companion measure, H.B. No. 2019, was heard by the House Committee on Consumer Protection and Commerce on January 29, 2014, and it was passed out with amendments. Although the parties had submitted the agreed upon language, H.B. No 2019, H.D. 1, did not track the agreed upon language. H.B. No 2019, H.D. 1 was referred to the House Committee on Finance ("FIN") on

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Wednesday, February 19, 2014
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February 7, 2014. The parties will be requesting that FIN make the same amendments to H.B. No 2019, H.D. 1 that are attached to my testimony.

Thank you for this opportunity to provide testimony supporting S.B. No. 2480 with amendments.

JAN 17 2014

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 in each unit 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 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: Rosely de Bob

Amir y Jy
Ermano Chun Arland

Will Eyo
Michelle Sidani



Proposed

S.B. NO. 2480

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.



McCORRISTON MILLER MUKAI MACKINNON LLP
ATTORNEYS AT LAW

CHARLES E. PEAR, JR.

DIRECT #S:
PHONE - (808) 223-1212
FAX - (808) 335-8029
E-MAIL - PEAR@m4LAW.COM

February 18, 2014

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Members of the Committee on Commerce
And Consumer Protection
Twenty-Seventh Legislature
Regular Session, 2014

Re: S.B. 2480
Hearing on February 19, 2014, 9:00 a.m.
Conference Room 229

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 with the revisions proposed by the Department of Commerce and Consumer Affairs (copy attached).

1. Digital Disclosures.

This bill 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.

P. O. Box 2800 • Honolulu, Hawai'i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293 • E-mail: info@m4law.com

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.

This bill 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.

This bill 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.

This bill 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.

Chair, Vice-Chair and Members,
Senate Committee on Commerce &
Consumer Protection
February 18, 2014
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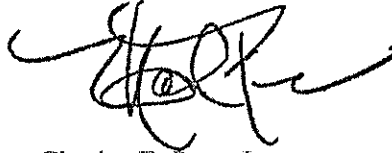
However, many time share plans include hundreds of units. Obtaining title reports on each unit containing unsold timeshare interests can be very costly. In addition, points are fungible in some points-based systems, with the result that there is no way of identifying which points relate to which units. 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. This bill would eliminate this burden and expense.

Finally, the bill 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

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', written in a cursive style.

Charles E. Pear, Jr.

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



**Testimony of
Gary M. Slovin / Mihoko E. Ito
on behalf of
Wyndham Vacation Ownership**

DATE: February 17, 2014

TO: Senator Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection
Submitted Via CPNtestimony@capitol.hawaii.gov

RE: **S.B. 2480 - Relating to Time Share**
Hearing Date: Wednesday, February 19, 2014 at 9:00 a.m.
Conference Room: 229

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

We submit this testimony 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 a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **strongly supports** S.B. 2480, 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.

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

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

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

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.

STARWOOD
VACATION OWNERSHIP

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

February 19, 2014

To: Honorable Rosalyn Baker, Chair
Senate Committee on Commerce and Consumer Protection

RE: **SB 2480 - Relating to Time Share – In Support**
Conference Room 229, 9:00 AM

Chair Baker, Vice Chair Taniguchi and members of the committee:

Starwood Vacation Ownership (“Starwood”) appreciates the opportunity to offer testimony in support of SB 2480, 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 SB 2480. Thank you.

Robin Suarez
Vice President/Associate General Counsel
Starwood Vacation Ownership