

SB 2481

Measure Title: RELATING TO TIME SHARES.

Report Title: Time Shares; Disclosure Statement; Nonprofit Entities; Not-for-profit Entities; Foreign Time Share Plans

Description: Eliminates requirement that a manager of a foreign time share plan register in Hawaii as a time share plan manager. Requires disclosure statement for an offering of a time share plan to disclose that the manager of a foreign time share plan is not registered in Hawaii. Recognizes that an association of time share owners may be any kind of nonprofit or not-for-profit entity. Makes housekeeping amendments.

Companion: HB2018

Package: None

Current Referral: CPN

Introducer(s): BAKER, Espero, Ihara, Wakai



NEIL ABERCROMBIE
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**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. 2481, RELATING TO TIME SHARES.

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 takes no position on the intent of S.B. No. 2481 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

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. The parties have agreed to this language.

For the Committee's information, the companion measure, H.B. No. 2018, was heard by the House Committee on Consumer Protection and Commerce on January 29, 2014, and it was passed out with the Department's suggested amendments. On February 6, 2014, H.B. No. 2018 was referred to the House Committee on Finance.

Thank you for this opportunity to provide testimony on S.B. No. 2481.

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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. 2481
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 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

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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.

This bill 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.

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

DATE: February 17, 2014

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

RE: **S.B. 2481 – Relating to Timeshares**
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. 2481, 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 S.B. 2481 for further consideration.

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



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February 19, 2014

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

RE: **SB 2481 - Relating to Time Shares – 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 2481, 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 SB 2481. Thank you.

Robin Suarez
Vice President/General Counsel
Starwood Vacation Ownership