
A BILL FOR AN ACT

RELATING TO TIME SHARING.

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

1 SECTION 1. The legislature finds that many time share
2 developers offer short-term products that allow prospective time
3 share buyers to explore the time share experience on a trial
4 basis. The legislature finds that some other states have
5 adopted laws providing a seven-day right of cancellation to
6 short-term product buyers.

7 The legislature further finds that existing time share law
8 requires buyers' funds to be placed in escrow and disbursed from
9 escrow to help the developer pay the costs of construction and
10 development of time share projects. A buyer's funds may also be
11 disbursed prior to the closing and deeding of the property to
12 the buyer.

13 The legislature additionally finds that it is common to
14 include a subordination clause in contracts for the sale of time
15 share interests in a project that has yet to be constructed. In
16 the subordination clause, the buyers subordinate their rights in
17 the project to the lien of the construction lender. As a



1 result, if the developer defaults under the construction loan,
2 the lender may foreclose and acquire title to the project free
3 of any claims of the buyers. This would be true regardless of
4 whether the buyers' funds were used to pay the costs of
5 construction and development.

6 The legislature also finds that some other states have
7 adopted laws permitting a timeshare developer to use buyers'
8 deposits upon posting a bond, thus assuring that the buyers'
9 deposits will be refunded if construction of the project is not
10 completed or the buyers otherwise becomes entitled to a refund.
11 Timeshare developers prefer this approach, and this approach
12 also benefits buyers by providing buyers a remedy in the event
13 that the developer fails to complete construction or defaults
14 under its construction loan.

15 The purpose of this Act is to:

- 16 (1) Provide cancellation rights to persons who contract to
17 buy a short-term product in Hawaii; and
18 (2) Allow disbursement of purchasers' funds to a
19 developer; provided that the developer first posts a
20 bond, letter of credit, or other financial assurance.



1 SECTION 2. Chapter 514E, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§514E-A Short-term product; right to cancel. (a) A
5 person who has entered into a contract to purchase a short-term
6 product shall have the right to cancel the contract until
7 midnight of the seventh calendar day, or a later time as
8 provided in the contract, after the date that the short-term
9 product buyer first signs the contract. A short-term product
10 buyer who exercises the right to cancel under this section shall
11 be entitled to a refund of 100 per cent of the consideration
12 paid under the contract, without deduction. Any provision in
13 the contract that is intended to waive the short-term product
14 buyer's right of cancellation shall be void and unenforceable.

15 (b) A short-term product seller shall disclose the
16 following in conspicuous type, in the contract or otherwise, to
17 all short-term product buyers:

18 (1) If the short-term product buyer is required to request
19 a reservation in order to use the accommodations:

20 (A) That reservations for accommodations under the
21 contract are subject to availability;



1 (B) That there is no guarantee that a short-term
2 product buyer will be able to obtain specific
3 accommodations during a specific time period; and

4 (C) That the earlier the short-term product buyer
5 requests a reservation, the greater the
6 opportunity to receive a confirmed reservation;
7 and

8 (2) If the short-term product is subject to blackout
9 dates:

10 (A) That reservations are subject to blackout dates;
11 and

12 (B) That if there are blackout dates, the short-term
13 product seller shall provide a list or calendar
14 for the current year or the coming year
15 identifying specific blackout dates; provided
16 that the list or calendar provided under this
17 subparagraph shall not be required to be in
18 conspicuous type.

19 (c) The contract to purchase a short-term product under
20 this section shall include the date of the contract and contain



1 the following disclosure in conspicuous type immediately above
2 the space provided for the short-term product buyer's signature:

3 "You have the right to cancel this contract at any time
4 prior to midnight of the seventh (or later) calendar day
5 after the date that you sign this contract. You may
6 exercise your right to cancel by sending a facsimile, or by
7 deposit, first-class postage prepaid, into the United
8 States mail to the following address: (specific contact
9 information). If you properly cancel this contract, you
10 are entitled to receive a full refund of the amount paid by
11 you pursuant to this contract.

12 If you buy a time share interest, you will have any right
13 to cancel your contract to purchase a time share interest
14 provided by the law governing the sale of the time share
15 interest. However, if you cancel your contract to purchase
16 a time share interest, you will not be entitled to a refund
17 of any amounts paid by you pursuant to this contract (or
18 specify an alternate refund policy under these
19 circumstances)."

20 (d) A short-term product buyer may exercise the right to
21 cancel by giving written notice to the short-term product seller



1 pursuant to subsection (c), using a standardized form provided
2 by the short-term product seller. A short-term product seller
3 shall mail or otherwise deliver any deposit given by a short-
4 term product buyer who has exercised the right to cancel
5 pursuant to subsection (a) no later than: fifteen business days
6 following receipt of the short-term product buyer's written
7 notice of cancellation; or fifteen business days following the
8 date upon which any deposit becomes good and immediately
9 available funds, whichever is later.

10 (e) If a short-term product buyer enters into a contract
11 to purchase a time share interest and all or any portion of the
12 amount paid by the short-term product buyer for a short-term
13 product will be applied to or credited against the price of a
14 time share interest then neither the developer nor any other
15 party, including but not limited to the short-term product
16 seller, shall be required to deposit in an escrow account,
17 pursuant to section 514E-16, any amounts received by the short-
18 term product seller under the contract to purchase the short-
19 term product.

20 (f) An action for violation of this section shall be
21 brought: no later than four years after the date that the



1 short-term product buyer first signs the contract to purchase a
2 short-term product; or no later than one year after the term of
3 the short-term product ends, whichever is earlier.

4 (g) Short-term products offered by the developer or an
5 affiliate of the developer of a time share plan registered
6 pursuant to this chapter shall not constitute travel services
7 for purposes of chapter 468L. The offer or sale of short-term
8 products by the developer or an affiliate of the developer of a
9 time share plan registered pursuant to this chapter, or by an
10 employee or agent of the developer or affiliate, shall not be
11 subject to chapter 468L.

12 §514E-B Release of purchaser's funds pursuant to bond,
13 letter of credit, or other financial assurance. (a)
14 Notwithstanding the requirements of sections 514E-16 and 514E-17
15 or chapters 514A and 514B, the developer of a time share plan
16 shall be entitled to the release, prior to closing, of 90 per
17 cent of a time share purchaser's funds from escrow after the
18 expiration of the purchaser's seven-day cancellation period
19 under section 514E-8, if the following conditions have been met:

20 (1) The developer has deposited with the director and the
21 escrow agent either: a surety bond or letter of



1 credit; or any other financial assurance acceptable
2 to, and accepted by, the director;

3 (2) The developer has not chosen to protect the purchaser
4 from blanket liens using a lien payment trust or
5 alternative arrangements that require the purchaser's
6 funds to be disbursed from escrow directly to someone
7 other than the developer upon closing; and

8 (3) After the purchaser's funds are released to the
9 developer, the amount of the bond, letter of credit,
10 or other financial assurance, when added to the amount
11 of the purchaser's funds remaining in escrow, will in
12 the aggregate equal or exceed the amount of
13 purchaser's funds that would otherwise be held in
14 escrow.

15 (b) A surety bond filed with the director pursuant to
16 subsection (a) shall be issued by a bonding company that: is
17 authorized to issue bonds in the State; is not affiliated with
18 the developer; and has a financial rating acceptable to the
19 director; provided that a bonding company that has a current
20 rating for debt securities no lower than the third highest grade
21 conferred by at least two of the national reporting services



1 regularly evaluating insurance companies shall be acceptable to
2 the director.

3 (c) If a developer fails to refund a purchaser's funds
4 pursuant to this chapter, then within ninety days after receipt
5 of a demand by the State or the escrow agent, the surety shall
6 deposit with the escrow agent funds sufficient to pay any
7 refunds due and payable to purchasers that the developer has
8 failed to pay. If the surety disputes: whether the developer
9 has failed to refund a purchaser's funds as required by this
10 chapter; the amount of the refunds due and payable to
11 purchasers; or whether the surety is otherwise obligated to make
12 payment under the bond or the extent to which a payment under
13 the bond shall be made, the surety may, concurrently with the
14 deposit of the funds with the escrow agent, demand that the
15 escrow agent commence an action for interpleader and deposit the
16 disputed bond proceeds with the circuit court; provided that the
17 proceeds of the bond shall not be disbursed to any person other
18 than the court or as directed by order of the court.

19 (d) A letter of credit filed with the director pursuant to
20 subsection (a) shall be:



- 1 (1) Irrevocable; provided that the letter of credit may be
2 amended or canceled with the approval of the director;
3 provided further that the director shall not
4 unreasonably withhold or delay approval;
- 5 (2) Payable at sight upon presentation by the State or the
6 escrow agent; and
- 7 (3) Issued by a financial institution acceptable to the
8 director or by a federally insured bank or savings and
9 loan association.
- 10 (e) If the accommodations of the time share plan are
11 located outside of the State, a bond, letter of credit, or other
12 financial assurance that has been deposited with or accepted by
13 the jurisdiction in which the accommodations are located shall
14 satisfy the requirements of subsection (a) (1); provided that
15 subsections (b) and (c) shall not apply. If the time share plan
16 includes accommodations in more than one jurisdiction and all
17 the accommodations are located outside of the State, a bond,
18 letter of credit, or other financial assurance that has been
19 deposited with or accepted by any foreign jurisdiction
20 acceptable to the director, or by any such jurisdiction in the



1 United States, shall satisfy the requirements of subsection
2 (a) (1).

3 (f) The developer shall deposit with the escrow agent a
4 copy of each purchaser's purchase agreement at the time when the
5 developer is required by section 514E-16 to deposit the
6 purchaser's funds, negotiable instruments, and purchase money
7 contracts.

8 (g) Upon the closing of the escrow for the sale of a time
9 share interest, the remainder of the purchaser's funds held in
10 escrow pursuant to subsection (a) shall be disbursed in
11 accordance with section 514E-18."

12 SECTION 3. Section 514E-1, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By adding five new definitions to be appropriately
15 inserted and to read:

16 "Accommodation" means any apartment, condominium or
17 cooperative unit, cabin, lodge, hotel or motel room, or other
18 real or personal property suitable and intended to provide
19 overnight lodgings for one or more individuals.

20 "Conspicuous type" means type in upper and lower case
21 letters, two point sizes larger than the nearest nonconspicuous



1 type, exclusive of headings, on the page on which it appears and
2 in no less than ten-point type.

3 "Short-term product" means the right to use accommodations
4 on a one-time or recurring basis for a period not to exceed
5 thirty days per stay and for a term of three years or less,
6 inclusive of any extensions or renewals or options to extend or
7 renew, and that includes an agreement that all or a portion of
8 the consideration paid by a person for the short-term product
9 will be applied to or credited against the price of a future
10 purchase of a time share interest or that the cost of a future
11 purchase of a time share interest will be fixed or locked in at
12 a specified price. A short-term product shall not constitute a
13 time share interest.

14 "Short-term product buyer" means an individual who has
15 entered into a contract to purchase a short-term product.

16 "Short-term product seller" means the developer of a short-
17 term product."

18 2. By amending the definition of "notice of time share
19 plan" to read:

20 ""Notice of time share plan" means an instrument executed
21 by the holder of the legal and equitable title to the fee or



1 long-term leasehold interest in a time share unit, and which
 2 provides notice of the existence of the time share plan and of
 3 rights of owners. [~~The notice of time share plan must identify~~
 4 ~~the use period for each time share interest and the name of the~~
 5 ~~initial purchaser thereof.] If the time share unit is located
 6 outside the State, the notice shall be contained in a
 7 declaration of covenants, conditions, and restrictions which
 8 provide that the notice shall, as a matter of covenant, have the
 9 effects described in section 514E-21. The declaration of
 10 covenants, conditions, and restrictions must be prepared so as
 11 to (i) constitute a covenant running with and an equitable
 12 servitude upon the time share units for the duration of the time
 13 share plan, and (ii) have the effects described in section 514E-
 14 21."~~

15 SECTION 4. Section 514E-16, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "§514E-16 Deposit of purchaser's funds, notes, and
 18 contracts into escrow. (a) All funds and any negotiable
 19 instruments and purchase money contracts received before closing
 20 from or on behalf of purchasers or prospective purchasers in
 21 connection with the purchase or reservation of time share



1 interests must be placed in an escrow account. However, the
2 developer or a sales agent may hold, until the expiration of the
3 seven-day-cancellation period provided by section 514E-8 or any
4 longer purchaser cancellation period provided in the sales
5 contract, a negotiable instrument, or purchase money contract
6 made by a purchaser:

7 (1) For which subsequent holders cannot claim holder in
8 due course status within the meaning of article 3 of
9 chapter 490; or

10 (2) Where the payee is:

11 (A) The escrow agent; or

12 (B) The trustee of a lien payment trust.

13 (b) The escrow agent must be a bank, savings and loan
14 association, or a trust company authorized to do business in the
15 State under an escrow arrangement or a corporation licensed as
16 an escrow depository under chapter 449. However, in connection
17 with sales made out of the State for the use of time share units
18 located in the State, the escrow agent may be located in and the
19 purchasers' funds, negotiable instruments, and purchase money
20 contracts may be impounded in the jurisdiction where the sale is
21 made, if the law of such jurisdiction requires it. In such



1 event, the out-of-state escrow agent shall be subject to the
2 approval of the director.

3 (c) The establishment of such an escrow account shall be
4 evidenced by a written escrow agreement between the developer
5 and the in-state or out-of-state escrow agent. The escrow
6 agreement must provide for the handling of purchaser's funds,
7 negotiable instruments, and purchase money contracts as required
8 by this chapter and must contain any provisions required by
9 rules adopted by the director pursuant to chapter 91.

10 (d) A developer or an affiliate of a developer who
11 provides purchase money financing to a time share purchaser
12 shall transfer payments made by the purchaser prior to closing
13 to the escrow agent for deposit into the escrow account
14 established under subsection (a): within seven business days
15 after receipt of the payments by the developer, an affiliate of
16 the developer, or the developer's or affiliate's servicing
17 agent; or within seven business days following the date upon
18 which any payment made prior to closing becomes good and
19 immediately available funds, whichever is later. Thereafter,
20 the payments may be released from escrow; provided that the



1 release is in accordance with section 514E-17, 514E-18, or
2 514E-B."

3 SECTION 5. Section 514E-30, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§514E-30 Scope of chapter. (a) This chapter applies to
6 the offer and sale in Hawaii of time share interests in time
7 share units located in Hawaii. If time share units are located
8 outside of Hawaii, but any offer or sale is made within the
9 State, this chapter, except for sections 514E-3, 514E-4, 514E-5,
10 514E-6, 514E-7, 514E-10(c), and 514E-14, shall apply. As to the
11 offer and sale outside of Hawaii of time share interest in a
12 time share plan which includes time share units located in
13 Hawaii, this chapter, except for sections 514E-2.5, 514E-8,
14 514E-9, 514E-10(b), 514E-11, and 514E-11.1 shall apply.

15 (b) This chapter applies to the offer and sale in Hawaii
16 of short-term products. This chapter does not apply to the
17 offer or sale of short-term products outside of Hawaii,
18 regardless of whether the short-term product buyer shall have
19 the right to use accommodations in Hawaii."

20 SECTION 6. In codifying the new sections added by section
21 2 of this Act, the revisor of statutes shall substitute



H.B. NO. 271

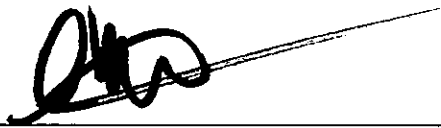
1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on July 1, 2015.

6

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be "DWA", is written over a horizontal line that extends from the "INTRODUCED BY:" text.

JAN 22 2015



H.B. NO. 271

Report Title:

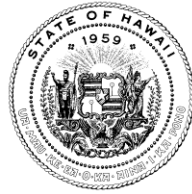
Time Sharing; Time Share; Short-term Product; Right to Cancel;
Purchasers; Developers; Bond; Letter of Credit

Description:

Provides cancellation rights to persons who contract to buy a short-term product in Hawaii. Allows disbursement of purchasers' funds to a developer; provided that the developer first posts a bond, letter of credit, or other financial assurance.

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





DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
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**PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE HOUSE COMMITTEE ON
ECONOMIC DEVELOPMENT & BUSINESS**

**TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015**

**TUESDAY, FEBRUARY 10, 2015
9:00 A.M.**

**TESTIMONY ON HOUSE BILL NO.271
RELATING TO TIME SHARING**

**TO THE HONORABLE DEREK S.K. KAWAKAMI, CHAIR,
AND TO THE HONORABLE SAM SATORU KONG, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 271, Relating to Time Sharing. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on the bill.

House Bill No. 271 grants cancellation rights to persons who contract to purchase short-term products in Hawaii. The bill also allows disbursement of purchasers' funds to a developer under certain conditions.

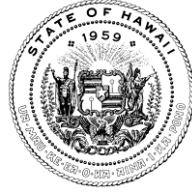
RICO defers to the Department's Time Share Program on the issues of cancellation rights and disbursement of funds, but offers the following comments on enforcement of the new section that gives cancellation rights to purchasers of short-term products in Hawaii:

1. RICO's role in enforcing the new section relating to the sale of short-term products is unclear. House Bill No. 271 specifies that a short-term product shall not constitute a time share interest. As such, none of the consumer protection provisions currently available in Chapter 514E, Hawaii Revised Statutes ("HRS"), would apply or be available to RICO as the enforcing agency.

2. RICO's enforcement role also is ambiguous because the bill allows an action to be brought, presumably by the buyer, for violation of the new section within a certain amount of time. Thus, it is unclear whether RICO is intended to have any authority to enforce the new section.

3. House Bill No. 271 also exempts the offer or sale of short-term products by an employee or agent of the developer or affiliate from the provisions of the travel agency law, Chapter 468L, HRS. RICO believes "agent" could encompass an independent third party contracting with the developer or affiliate, and as such, would be functioning as an intermediary subject to Chapter 468L, HRS.

Thank you for the opportunity to testify on House Bill No. 271. I will be happy to answer any questions the Committee may have.



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

TO THE HOUSE COMMITTEE ON
ECONOMIC DEVELOPMENT & BUSINESS

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Tuesday, February 10, 2015
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 271, RELATING TO TIME SHARING.

TO THE HONORABLE DEREK S.K. KAWAKAMI, 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"). For the reasons set forth below, the Department has strong concerns with aspects of this bill as drafted, and asks for further opportunity to develop this legislation with interested stakeholders to ensure the measure contains adequate consumer protections.

House Bill No. 271 seeks to (1) provide purchasers with a 7-day rescission right when purchasing "short-term products", and (2) allow time share developers to take

purchasers' funds out of escrow prior to closing and prior to completion of the time share project, as long as the developer posts a surety bond or irrevocable letter of credit.

The Department has been in discussions with the proponent of this bill, but there are still concerns as to the level of consumer protection provided by various provisions of this measure.

In practice, short-term products are sold to consumers who decide not to purchase a time share interest. These consumers are then offered to purchase a short stay at a time share property to be used sometime in the future. When they return to vacation at the property, they are solicited to purchase a time share interest again. If they decide to purchase a time share interest at that time, the price they paid for the short-term product is applied towards their time share purchase. Currently, Hawaii Revised Statutes ("HRS") Chapter 514E only provides a 7-day rescission right for the sale of a time share interest. The rescission right does not apply to sales of short-term products. However, many consumers assume the 7-day rescission right applies to their purchase of a short-term product because the short-term product is being sold to them to solicit a time share sale. Some developers already offer a rescission right for short-term products which further confuses consumers because they believe all developers offer a rescission right. Although we support providing a statutory 7-day rescission right for short-term products to reduce confusion and provide better consumer protection, we

have concerns with the definition of “short-term products”, which may include short-term time share plans, which should not be exempt from HRS Chapter 514E.

The Department also has serious concerns about allowing developers to post a surety bond or irrevocable letter of credit instead of requiring purchasers funds remain in escrow prior to closing. The Department questions the level of consumer protection provided by a surety bond and how difficult it will be for consumers to collect on a surety bond when they are entitled to a refund. Developers will be able to take consumers' funds without providing the Department with any proof that the project will be built (e.g. construction contract, performance/completion bond, proof of sufficient funds to complete the project). The Department is concerned that this provision would seriously disadvantage consumers by decreasing the availability/collectability of funds that would otherwise be held in escrow, now leaving consumers to try to recover from surety companies.

The Senate companion measure, Senate Bill No. 754, was heard on February 4, 2015, by the Senate Committee on Tourism and International Affairs. The bill passed with technical amendments.

The Department would appreciate the opportunity to continue working with the Committee and proponents of this measure to develop appropriate legislation with sufficient consumer protections included.

Thank you for this opportunity to provide testimony on House Bill No. 271.



February 10, 2015

TO: COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
Representative Derek S.K. Kawakami, Chair
Representative Sam Satoru Kong, Vice Chair

FR: Henry Perez, President
American Resort Development Association

RE: H.B. 271 Relating to Time Sharing.
Position: Support

Dear Chair Kawakami and Vice Chair Kong and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports HB 271, a bill Relating to Time Sharing. This bill would provide additional consumer protection measures for purchasers of timeshares in Hawaii.

The first provision would establish cancellation rights for purchasers of short-term timeshare products. In our discussions with the DCCA Timeshare Administrator, she identified the sale of these products as a concern. In an effort to improve our industry, we agreed to support legislation to provide a cancellation right for the purchase of short-term products. Although not all of our members offer these products, as an association, we support this effort to increase consumer confidence.

The rest of the bill amends current law to allow for the use of escrow bonds. Under current law, when a buyer purchases a timeshare that is in the development stage, the purchase funds may be placed in escrow and disbursed to the developer to cover construction costs. If the developer defaults, because of the use of subordination clauses in the purchase contract, the buyer's rights are subordinated to the rights of the construction lender. The lender may foreclose and acquire title to the project free of any claims of the buyers. This leaves the buyers without recourse to recover their purchase funds.

To overcome this disadvantage to purchasers of incomplete projects, other states have adopted laws permitting a timeshare developer to use buyer's deposits upon posting a bond or other financial assurance. This provides buyers with a remedy in the event a developer fails to complete construction or defaults on the construction loan. We believe similar protections in Hawaii will serve the consumers well. We have been discussing concerns raised by DCCA and will continue to work with the agency as this bill moves through the process.

Thank you for the opportunity to submit testimony in support of HB 271.

c/o Alston Hunt Floyd & Ing, 1001 Bishop Street, 18th Floor, Honolulu, Hawaii 96813

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February 9, 2015

Rep. Derek S. K. Kawakami, Chair
Rep. Sam Satoru Kong, Vice Chair
Members of the House Committee on
Economic Development & Business
Twenty-Eighth Legislature
Regular Session, 2015



Re: H.B. 271
Hearing on February 10, 2015, 9:00 a.m.
Conference Room 312

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. ARDA is currently working with the DCCA on some technical amendments to the bill.

Last summer, representatives of the Department of Commerce and Consumer Affairs met with representatives of the American Resort Development Association to discuss regulatory issues relating to the time share industry in Hawaii. This legislation is an outgrowth of those discussions.

1. Short-Term Products.

Part of this legislation deals with short-term products, an area that is not currently regulated in the State of Hawaii.

Some people who attend a time share sales presentation would like to have the opportunity to stay in a time share project before they decide whether to make a purchase. Short-term products are intended to allow a potential time share buyer to stay in a time share resort on a trial basis. If the buyer decides to proceed with a purchase, some or all of the amount paid by the buyer for the short-term product typically is credited toward the purchase price of the time share interest.

In some states, certain disclosures must be given to prospective short-term product buyers. In addition, the buyers have a right to rescind a contract to purchase a short-term product for a certain number of days after they sign their contract.

ARDA is prepared to support the provisions of the bill regulating short-term products in recognition of the fact that streamlining the timeshare regulatory environment in Hawaii will require ongoing cooperation and give-and-take between the DCCA and the industry.

2. Escrow Bonds.

In 1982, at the request of the Chairperson of the House Consumer Protection Committee, I drafted comprehensive legislation regulating the financial structure of time share plans and establishing escrow requirements governing the sale of time share interests.

The 1982 amendment requires that the developer establish an escrow account in Hawaii¹ pursuant to a separate written escrow agreement between the developer and an escrow agent.² All funds received from the buyers must be deposited in the escrow account until closing.³

Funds may be released from escrow prior to closing if the buyer cancels his or her purchase during the 7-day rescission period or if the contract is otherwise terminated in accordance with its terms.

Buyers' funds may also be used to pay the costs of constructing and developing a time share project if certain conditions are met.⁴ Those conditions include a requirement that the developer deposit the following with the Director of the Department of Commerce and Consumer Affairs:

- a copy of the executed construction contract;
- a statement showing the costs to complete the project, including the costs to furnish the time share units;
- evidence satisfactory to the Director that there are sufficient funds to pay the costs of constructing, furnishing and completing the project (whether from buyers' funds, the developer's funds, or loan proceeds);
- a copy of executed performance and labor and material payment bonds.

If the foregoing requirements are met, then the buyer's funds may be disbursed to pay the costs of construction (to the extent completed) and the cost of purchasing furnishings and fixtures for the time share units. The Act also permits disbursement of buyers' funds to pay

¹ §514E-16(b), H.R.S.

² §514E-16(c), H.R.S.

³ §514E-16(a), H.R.S.; Rule 16-106-34(c)(1), H.A.R.

⁴ §514E-17(a)(4), H.R.S.

architectural, engineering, interior design, finance, and legal fees. And buyers' funds may be disbursed to pay "other incidental expenses of constructing the time share units or developing the time share plan", although the nature of such expenses is not defined by the Act.

The legislative history is instructive insofar as it indicates the intended purpose of this section:

* * * Subsection (4) parallels section 514A-67 of the Horizontal Property Act which permits the disbursement of buyers funds to pay the costs of construction. A developer will not be permitted to use buyers funds for construction until he files a copy of the executed construction contract and a copy of the executed performance and labor and material payment bonds insuring that all amounts due under the construction contract, including change orders up to 10%, and all other costs of construction will be paid.⁵

Under §514A-67 of the Hawaii condominium law (now Section 514B-92, H.R.S.), buyers' funds may be disbursed to pay the costs of construction (to the extent completed) and also to pay architectural, engineering, finance, and legal fees. (The condominium law does not permit disbursements for furnishings or for interior design fees.) The statute also permits disbursement of purchasers' funds to pay "other incidental expenses of the condominium".

These measures are intended to ensure that the project will be constructed. However, none of these measures protect the buyers' right to a refund in other circumstances. For example:

- If the developer defaults under its construction loan, the lender can foreclose on the project and acquire title free of the rights of the buyers – even though the buyers' funds may have been used to help pay the cost of constructing the project.
- If the developer fails to complete construction *on time*, buyers may have a right to cancel but there may be no money for escrow to refund.
- If there are material differences between the project as represented and the project as actually constructed, buyers have a right to a refund but there may be no money available to be refunded.

In the market downturn of 2007 – 2008, many condominium unit purchasers sought to cancel their sales contracts and obtain a refund of their deposits. My firm was involved in buyer remorse lawsuits covering more than 100 units.

⁵ Conf. Com. Rep. No. 52-82 on H.B. No. 3078-82, 1982 Senate Journal, page 901.

In those cases, construction of the condominium had been completed. Buyers asserted, however, that they were entitled to rescind their purchases for various reasons. We advised the buyers and their counsel that, while they may have claims to rescind their purchases, all of the buyers' deposits had been used to pay construction costs, so there was no money in escrow to refund.

This bill proposes to authorize developers to withdraw funds from escrow upon posting an escrow bond. An escrow bond assures that buyers will receive any refund to which they become entitled. With an escrow bond, buyers can get a refund of their deposits if the lender forecloses, if the developer fails to complete construction, if the developer does not finish construction on time, or if the project is materially different than promised.

This concept is currently used in Florida. ARDA Florida's legislative counsel reports that the Florida regulators have never had to call an escrow bond.

Of course, a bond is only as good as the company that issues it. But buyers funds held in escrow are deposited in a bank. But bonding companies sometimes have higher credit ratings than the banks used to hold funds in escrow. For example, consider these ratings of prominent bonding companies by Moody's:

Federal Insurance Company (Chubb)	Aa2/Stable
Zurich Insurance Company	Aa3/Stable
Traveler's Casualty and Surety Company	Aa2/Stable
Westchester Fire Insurance Company (ACE)	A1/Stable

as compared to the ratings by Moody's of prominent local and national banks:

J.P. Morgan Chase & Co.	A3/ Stable
Bank of America	Baa2/Stable
CitiGroup	Baa2/Stable
Wells Fargo	Aa3/Stable
Bank of Hawaii	Aa3/Stable
First Hawaiian Bank	A2

In addition, bonding programs provide a prequalification process that, in the case of an escrow bond, benefits the buyers. Issuance of a bond means that the bonding company has completed a thorough underwrite on the financial wherewithal of the developer and expects the developer to perform its obligations. By contrast, a bank merely accepts and holds the deposits.

In short, under the current system of releasing funds for construction, consumers could potentially get a half-complete project with a litigating developer and lender. The project could

never be built and consumers could even lose their funds entirely in the case of an eventual liquidation of the project. An escrow bond can help to avoid this.

3. Other Revisions and Updates.

The bill updates certain provisions of Chapter 514B to be consistent with current practice.

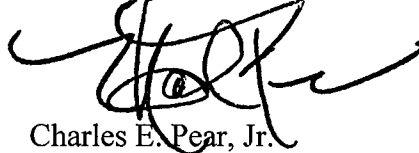
For example, the bill proposes to amend the definition of "notice of time share plan" to delete the requirement that the notice identify the initial use period for each time share interest and the name of the initial purchaser of the time share interest.

When the notice of time share plan concept was introduced in the 1982 legislation, a time share buyer typically purchased the right to use a specific unit for a particular week or "use period." Now, many time share buyers purchase an allotment of "points," which are like frequent flyer miles - you can use them to go a lot of different places, but the number of points required may differ depending on the destination that you choose. As a result, it is no longer practical to identify the use period of a time share interest.

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 some small assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Charles E. Pear, Jr.

CEP:kn

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

LATE

DATE: February 9, 2015

TO: Representative Derek Kawakami
Chair, Committee on Economic Development and Business
Submitted Via EDBtestimony@capitol.hawaii.gov

RE: **H.B. 271 - Relating to Time Sharing**
Hearing Date: Tuesday, February 10, 2015 at 9:00 a.m.
Conference Room 312

Dear Chair Kawakami and Members of the Committee on Economic Development and Business,

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** H.B. 271, which provides a seven day right of cancellation to purchasers of short-term time share products, and allows disbursement of purchasers' funds from escrow to a developer, provided that the developer first posts a bond, letter of credit or other financial assurance to an unaffiliated third party.

Under current Hawaii law, a developer that constructs a time share project must hold a time share buyer's funds in escrow after the seven-day cancellation period has passed, the project is completed, and closing has occurred. There is only one limited circumstance when the developer may remove funds from escrow, and that process is labor and time intensive for both the developer and the DCCA. This means that a significant amount of money – potentially tens of millions of dollars – could remain in escrow for months at a time. H.B. 271 would protect these funds with a third party assurance, give the consumer ample protection if the project was not completed, and would grant the developer access to funds to apply to construction costs.

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This approach has been implemented in Florida and many other jurisdictions around the United States, and has been demonstrated to benefit both time share developers and time share purchasers. If the developer fails to complete a construction project, the consumer would be entitled to a refund of funds where the developer is no longer able to provide one.

In addition, the seven day right of cancellation provided to purchasers of short-term time share products provides consumers the opportunity to explore the time share experience on a trial basis, with the benefit of cancellation after a reasonable amount of time.

For the above reasons we support H.B. 271 and ask for the Committee's favorable consideration of this bill. Thank you for the opportunity to submit testimony.