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# 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 permits  
9 buyers' funds to be disbursed from escrow to help the developer  
10 pay the costs of construction and development of time share  
11 projects. A buyer's funds may be disbursed for such purposes  
12 prior to the closing and deeding of the property to 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  
18 result, if the developer defaults under the construction loan,



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

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

14 The purpose of this Act is to:

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



1 SECTION 2. Chapter 514E, Hawaii Revised Statutes, is  
2 amended by adding three 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 after the date that the  
8 short-term product buyer first signs the contract or the  
9 expiration of any longer cancellation period expressly provided  
10 in the contract. A short-term product buyer who exercises the  
11 right to cancel under this section shall be entitled to a refund  
12 of one hundred per cent of the consideration paid under the  
13 contract, without deduction. Any provision in the contract that  
14 is intended to waive the short-term product buyer's right of  
15 cancellation shall be void and unenforceable.

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

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



- 1           (A) That reservations for accommodations under the  
2           contract are subject to availability;
- 3           (B) That there is no guarantee that a short-term  
4           product buyer will be able to obtain specific  
5           accommodations during a specific time period; and
- 6           (C) That the earlier the short-term product buyer  
7           requests a reservation, the greater the  
8           opportunity to receive a confirmed reservation;
- 9           (2) Specific blackout dates if the short-term product is  
10           subject to blackout dates; and
- 11           (3) That the short-term product buyer will be required to  
12           pay transient accommodations tax for the occupancy of  
13           transient accommodations in Hawaii; provided that this  
14           paragraph shall apply only if the short-term product  
15           buyer will be required to pay transient accommodations  
16           tax in addition to the purchase price of the short-  
17           term product.
- 18           (c) The contract to purchase a short-term product under  
19           this section shall include the date of the contract and contain  
20           the following disclosure in conspicuous type on the same page as  
21           the short-term product buyer's signature:



1       "YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT AT ANY TIME  
2       PRIOR TO MIDNIGHT OF THE SEVENTH [the short-term product  
3       seller may substitute a greater number of days] CALENDAR  
4       DAY AFTER THE DATE THAT YOU SIGN THIS CONTRACT. You may  
5       exercise your right to cancel by sending the seller a  
6       written notice that you are cancelling your contract either  
7       by faxing it to [insert facsimile number] or by depositing  
8       it into the United States mail, first-class postage  
9       prepaid, addressed as follows: [insert specific contact  
10       information]. If you properly cancel this contract, you  
11       are entitled to receive a full refund of the amount paid by  
12       you pursuant to this contract.

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



1 The preceding disclosure is not required to be repeated on any  
2 addendum to the contract.

3 (d) A short-term product buyer may exercise the right to  
4 cancel by giving written notice to the short-term product seller  
5 in the manner described in subsection (c). A short-term product  
6 seller shall cause any deposit given by a short-term product  
7 buyer who has exercised the right to cancel pursuant to  
8 subsection (a) to be mailed or otherwise delivered to the short-  
9 term product buyer no later than the last to occur of: fifteen  
10 business days following receipt of the short-term product  
11 buyer's written notice of cancellation; or fifteen business days  
12 following the date upon which any deposit becomes good and  
13 immediately available funds.

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



1 term product seller under the contract to purchase the short-  
2 term product.

3 (f) Short-term products offered by the developer or an  
4 affiliate of the developer of a time share plan registered  
5 pursuant to this chapter shall not constitute travel services  
6 for purposes of chapter 468L.

7 §514E-B Release of purchaser's funds pursuant to bond.

8 (a) Notwithstanding the requirements of sections 514E-16 and  
9 514E-17 or chapters 514A and 514B, the developer of a time share  
10 plan may be entitled to the release, prior to closing and after  
11 the expiration of the purchaser's seven-day cancellation period  
12 under section 514E-8, of ninety per cent of a time share  
13 purchaser's funds from escrow; provided that the following  
14 conditions have been met:

15 (1) The developer has deposited with the director and the  
16 escrow agent a surety bond;

17 (2) The developer has not chosen to protect the purchaser  
18 from blanket liens using a lien payment trust or  
19 alternative arrangements that require the purchaser's  
20 funds to be disbursed from escrow directly to someone  
21 other than the developer upon closing; and



1       (3) After the purchaser's funds are released to the  
2       developer, the amount of the bond, when added to the  
3       amount of the purchaser's funds remaining in escrow,  
4       will in the aggregate equal or exceed the amount of  
5       purchaser's funds that would otherwise be held in  
6       escrow.

7       (b) A surety bond filed with the director pursuant to  
8       subsection (a) shall be issued by a bonding company that is  
9       authorized to do business in the State and is not affiliated  
10      with the developer.

11      (c) A surety bond filed with the director pursuant to  
12      subsection (a) shall provide that where the developer has failed  
13      to refund deposits as required by this chapter or agreements  
14      with purchasers or has failed to transfer deposits into the  
15      escrow agent's escrow account when required under the escrow  
16      agreement, either the director or the escrow agent may declare  
17      the bond in default and the surety shall be required to refund  
18      deposits that are due and payable to purchasers of time share  
19      interests or transfer deposits which are to be transferred into  
20      the escrow account as required, within thirty days by the surety  
21      as a debt to the director or the escrow agent.





1       (d) If a developer fails to refund a purchaser's funds  
2 pursuant to this chapter including but not limited to a refund  
3 due pursuant to section 514E-8, 514E-11, 514-E-11.1, 514E-11.3,  
4 or 514E-17, then within thirty days after receipt of a demand by  
5 the State or the escrow agent, the surety shall deposit with the  
6 escrow agent funds sufficient to pay any refunds due and payable  
7 to purchasers that the developer has failed to pay. If the  
8 surety disputes: whether the developer has failed to refund a  
9 purchaser's funds as required by this chapter; the amount of the  
10 refunds due and payable to purchasers; or whether the surety is  
11 otherwise obligated to make payment under the bond or the extent  
12 to which a payment under the bond shall be made, the surety may,  
13 concurrently with the deposit of the funds with the escrow  
14 agent, demand that the escrow agent commence an action for  
15 interpleader and deposit the disputed bond proceeds with the  
16 circuit court. In the event that the surety demands an  
17 interpleader action, the disputed proceeds of the bond shall not  
18 be disbursed to any person other than the court or as directed  
19 by order of the court.

20       (e) The developer shall deposit with the escrow agent a  
21 copy of each purchaser's purchase agreement at the time when the



1 developer is required by section 514E-16 to deposit the  
2 purchaser's funds, negotiable instruments, and purchase money  
3 contracts into escrow.

4 (f) Upon the closing of the escrow for the sale of a time  
5 share interest, the remainder of the purchaser's funds held in  
6 escrow pursuant to subsection (a), if any, shall be disbursed in  
7 accordance with section 514E-18.

8 (g) If a purchaser is entitled to receive a refund of the  
9 purchaser's deposits pursuant to this chapter, including but not  
10 limited to a refund due pursuant to section 514E-8, 514E-11,  
11 514-E-11.1, 514E-11.3, or 514E-17, then the amount of such  
12 refund shall not be reduced to pay the cost of any surety bond  
13 that the developer has deposited with the director and the  
14 escrow agent pursuant to subsection (a).

15 (h) If the escrow agreement permits the release of  
16 purchasers' funds pursuant to subsection (a), the disclosure  
17 statement required by section 514E-9 shall contain the following  
18 disclosure:

19 "Important Notice Regarding Your Deposits: Deposits that  
20 you make under your sales contract for the purchase of a  
21 time share interest may be disbursed before closing of your



1 purchase. Disbursed funds are not required to be used to  
2 pay for costs of construction and development of your time  
3 share units or your time share plan. The escrow agent  
4 cannot disburse your deposits unless the developer has  
5 deposited a surety bond with the escrow agent. A surety  
6 bond provides for the deposit of funds into the escrow  
7 account if the developer fails to deposit any funds  
8 required to pay any refund that the developer is required  
9 to make to you under Hawaii's time sharing law, chapter  
10 514E, Hawaii Revised Statutes. IF THE SURETY BOND IS NOT  
11 HONORED, THERE IS A RISK THAT YOUR DEPOSITS WILL NOT BE  
12 REFUNDED TO YOU. You should carefully consider this risk in  
13 deciding whether to proceed with your purchase."

14 §514E-C Closing deadline; right to cancel. A sales  
15 contract for the sale of a time share interest shall specify a  
16 deadline by which the closing of the sale must occur. The  
17 closing deadline may be a specific date or the expiration of a  
18 period of time after the sales contract is signed or becomes  
19 binding. The closing deadline shall not exceed twenty-four  
20 months from the date that the sales contract is signed unless a  
21 longer period is approved by the director. The purchaser may



1 cancel the sales contract at any time after the specified  
2 closing deadline, if the closing does not occur on or before the  
3 closing deadline. A purchaser may exercise the right to cancel  
4 pursuant to this section by mailing or delivering a written  
5 notice to the developer that the purchaser is cancelling the  
6 contract. The written notice shall be sent to the developer at  
7 the address specified on the contract, or at such other address  
8 as the developer may designate by written notice to the  
9 purchaser in accordance with the notice provisions of the sales  
10 contract. The developer shall send written notice to the  
11 purchaser of any change in the developer's address and the  
12 purchaser shall send written notice to the developer of any  
13 change in the purchaser's address, each in accordance with the  
14 notice provisions of the sales contract."

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

17 1. By adding five new definitions to be appropriately  
18 inserted and to read:

19 "Accommodation" means any apartment, condominium or  
20 cooperative unit, cabin, lodge, hotel or motel room, or other



1 real or personal property suitable and intended to provide  
2 overnight lodgings for one or more individuals.

3 "Conspicuous type" means type in upper and lower case  
4 letters, two point sizes larger than the surrounding type,  
5 exclusive of headings, on the page on which it appears and in no  
6 less than ten-point type.

7 "Short-term product" means a contract that: provides the  
8 buyer a one-time allotment of use nights or points that must be  
9 used within a period not to exceed three years; and includes an  
10 agreement that all or a portion of the consideration paid by a  
11 person for the short-term product will be applied to or credited  
12 against the price of a future purchase of a time share interest  
13 or that the cost of a future purchase of a time share interest  
14 will be fixed or locked in at a specified price. A short-term  
15 product shall not constitute a time share interest.

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

18 "Short-term product seller" means the developer of a short-  
19 term product."

20 2. By amending the definition of "notice of time share  
21 plan" to read:



1        "Notice of time share plan" means an instrument executed  
2 by the holder of the legal and equitable title to the fee or  
3 long-term leasehold interest in a time share unit, and which  
4 provides notice of the existence of the time share plan and of  
5 rights of owners. [~~The notice of time share plan must identify~~  
6 ~~the use period for each time share interest and the name of the~~  
7 ~~initial purchaser thereof.] If the time share unit is located  
8 outside the State, the notice shall be contained in a  
9 declaration of covenants, conditions, and restrictions which  
10 provide that the notice shall, as a matter of covenant, have the  
11 effects described in section 514E-21. The declaration of  
12 covenants, conditions, and restrictions must be prepared so as  
13 to (i) constitute a covenant running with and an equitable  
14 servitude upon the time share units for the duration of the time  
15 share plan, and (ii) have the effects described in section 514E-  
16 21."~~

17        SECTION 4. Section 514E-10.2, Hawaii Revised Statutes, is  
18 amended as follows:

19        1. By amending subsection (a) to read:

20        "(a) Notwithstanding any other provision of this chapter,  
21 the director may issue a limited permit to a developer



1 permitting the offer or sale, in this State, of an additional  
2 interest in a time share plan to an existing purchaser in the  
3 same time share plan; provided that:

4 (1) The developer or an affiliated entity of the developer  
5 has a time share plan currently registered with the  
6 director; provided that the registration was  
7 originally approved or amended within seven years from  
8 the date of the offer or disposition, and the  
9 registration has not been terminated or withdrawn;

10 (2) The developer has not, during the two-year period  
11 preceding the time of the offer, had a time share  
12 registration suspended, restricted, or revoked in any  
13 state or been convicted of an offense involving fraud  
14 or dishonesty. In the event the developer satisfies  
15 the requirement of paragraph (1) above through an  
16 affiliated entity, the developer has not, during the  
17 twenty-year period preceding the time of the offer,  
18 had a time share registration suspended, restricted,  
19 or revoked in any state or been convicted of an  
20 offense involving fraud or dishonesty;



- 1           (3) In satisfaction of the disclosure requirements of  
2           section 514E-9, the purchaser is provided the time  
3           share disclosure documents the purchaser would have  
4           received if the purchase had occurred in the state or  
5           jurisdiction where the purchaser initially purchased  
6           the time share interest;
- 7           (4) The contract for purchase signed by the purchaser  
8           includes a notice that is the same as or similar to  
9           the rescission notice required pursuant to section  
10          514E-9(a)(7); provided that the rescission period  
11          shall be at least seven days;
- 12          (5) All funds and any negotiable instruments received  
13          during the seven-day rescission period shall be placed  
14          in an escrow account in the State. The escrow agent  
15          shall be a bank, savings and loan association, or  
16          trust company authorized to do business in the State  
17          under an escrow arrangement or a corporation licensed  
18          as an escrow depository under chapter 449. The funds  
19          or negotiable instruments may be released from escrow;  
20          provided that the release is in accordance with  
21          section 514E-17 [~~o~~], 514E-18 [~~r~~], or 514E-B. Any





1 escrow account established for any out-of-state time  
 2 share plan offered under this subsection may be  
 3 maintained in the state where the time share plan is  
 4 located after the seven-day rescission period has  
 5 expired; provided that the escrow agent submits to  
 6 personal jurisdiction in this State;

7 (6) The contract for purchase shall contain the following  
 8 statement in conspicuous type:

9 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR  
 10 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY  
 11 OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE  
 12 \_\_\_\_\_ (DEVELOPER OR AFFILIATE'S  
 13 NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH  
 14 THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF  
 15 APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE  
 16 SELLER AS THE TERM IS DEFINED IN CHAPTER 514E, HAWAII  
 17 REVISED STATUTES."; and

18 (7) The offer complies with the provisions of sections  
 19 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13),  
 20 and 514E-11.1."

21 2. By amending subsection (c) to read:



1           "(c) Notwithstanding any other provision of this chapter,  
2 the director may issue a limited permit to a developer  
3 permitting the offer or sale by the developer, in this State, of  
4 a time share interest in a time share plan located outside of  
5 this State, but within the United States, to an individual who  
6 currently owns a time share interest that was purchased from  
7 that developer, or from an affiliated entity of that developer;  
8 provided that:

9           (1) The developer or an affiliated entity of the developer  
10 has a time share plan currently registered with the  
11 director; provided that the registration of the  
12 developer or an affiliated entity of the developer was  
13 originally approved or amended within seven years from  
14 the date of the offer or disposition and which  
15 registration has not been terminated or withdrawn;

16           (2) The developer has not, during the two-year period  
17 preceding the time of the offer, had a time share  
18 registration suspended, restricted, or revoked in any  
19 state or been convicted of an offense involving fraud  
20 or dishonesty. In the event the developer satisfies  
21 the requirement of paragraph (1) above through an



1 affiliated entity, the developer has not, during the  
2 twenty-year period preceding the time of the offer,  
3 had a time share registration suspended, restricted,  
4 or revoked in any state or been convicted of an  
5 offense involving fraud or dishonesty;

6 (3) The developer shall provide the purchaser with all  
7 time share disclosure documents required to be  
8 provided to purchasers as if the offer occurred in the  
9 state where the time share plan is located;

10 (4) The contract for purchase shall include a notice that  
11 is the same as or similar to the rescission notice  
12 required pursuant to section 514E-9(a)(7); provided  
13 that the rescission period shall be at least seven  
14 days;

15 (5) In satisfaction of section 514E-16, all funds and any  
16 negotiable instruments received during the seven-day  
17 rescission period shall be placed in an escrow account  
18 in the State. The escrow agent shall be a bank,  
19 savings and loan association, or trust company  
20 authorized to do business in the State under an escrow  
21 arrangement or a corporation licensed as an escrow



1           depository under chapter 449. The funds or negotiable  
2           instruments may be released from escrow; provided that  
3           the release is in accordance with section 514E-17  
4           [~~o~~], 514E-18 [-], or 514E-B. Any escrow account  
5           established for any out-of-state time share plan  
6           offered under this subsection may be maintained in the  
7           state where the time share plan is located after the  
8           seven-day rescission period has expired; provided that  
9           the escrow agent submits to personal jurisdiction in  
10          this State;

11          (6) The developer shall provide the purchaser, in writing,  
12          either in the disclosure documents or otherwise, all  
13          of the following:

14           (A) A description of the type of time share plan  
15           offered, including the duration and operation of  
16           the time share plan;

17           (B) A description of the existing or proposed  
18           accommodations and amenities in the time share  
19           plan;

20           (C) A description of the method and timing for  
21           performing maintenance on the accommodations;



1 (D) If applicable, copies of the declaration,  
 2 association articles of incorporation,  
 3 association bylaws, and association rules and  
 4 regulations; and

5 (E) The current annual budget for the time share  
 6 plan;

7 (7) The time share plan being offered is registered in the  
 8 state where the time share plan is located; or in the  
 9 event registration of the time share plan is not  
 10 required in the state where the time share plan is  
 11 located, the time share plan being offered is in  
 12 compliance with the applicable laws of that state; and

13 (8) The contract for purchase shall contain the following  
 14 statement in conspicuous type:

15 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR  
 16 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY  
 17 OWN AN INTEREST IN A TIME SHARE PLAN THAT YOU  
 18 PURCHASED FROM \_\_\_\_\_ (DEVELOPER OR  
 19 AFFILIATE'S NAME), AND \_\_\_\_\_ HAS A  
 20 TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF  
 21 HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE)



1 (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS  
 2 THAT TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED  
 3 STATUTES. THE TIME SHARE INTEREST YOU ARE PURCHASING  
 4 REQUIRES CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER  
 5 FOR YOU TO USE YOUR INTEREST. THESE PROCEDURES MAY BE  
 6 DIFFERENT FROM THOSE FOLLOWED IN OTHER TIME SHARE  
 7 PLANS. YOU SHOULD READ AND UNDERSTAND THESE  
 8 PROCEDURES PRIOR TO PURCHASING."

9 SECTION 5. Section 514E-16, Hawaii Revised Statutes, is  
 10 amended to read as follows:

11 **"§514E-16 Deposit of purchaser's funds, notes, and**  
 12 **contracts into escrow.** (a) All funds and any negotiable  
 13 instruments and purchase money contracts received before closing  
 14 from or on behalf of purchasers or prospective purchasers in  
 15 connection with the purchase or reservation of time share  
 16 interests must be placed in an escrow account. However, the  
 17 developer or a sales agent may hold, until the expiration of the  
 18 seven-day-cancellation period provided by section 514E-8 or any  
 19 longer purchaser cancellation period provided in the sales  
 20 contract, a negotiable instrument, or purchase money contract  
 21 made by a purchaser:



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

4 (2) Where the payee is:

5 (A) The escrow agent; or

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

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

18 (c) The establishment of such an escrow account shall be  
19 evidenced by a written escrow agreement between the developer  
20 and the in-state or out-of-state escrow agent. The escrow  
21 agreement must provide for the handling of purchaser's funds,



1 negotiable instruments, and purchase money contracts as required  
2 by this chapter and must contain any provisions required by  
3 rules adopted by the director pursuant to chapter 91.

4 (d) A developer or an affiliate of a developer who  
5 provides purchase money financing to a time share purchaser  
6 shall deposit into the escrow account established under  
7 subsection (a) all loan payments made by the purchaser prior to  
8 closing. The deposit shall be made no later than the last to  
9 occur of: seven business days after receipt of the payment by  
10 the developer, an affiliate of the developer, or the developer's  
11 or affiliate's servicing agent; or seven business days following  
12 the date upon which any payment made prior to closing becomes  
13 good and immediately available funds. Thereafter, the payments  
14 may be released from escrow in accordance with section 514E-17,  
15 514E-18, or 514E-B."

16 SECTION 6. Section 514E-30, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§514E-30 Scope of chapter.** (a) This chapter applies to  
19 the offer and sale in Hawaii of time share interests in time  
20 share units located in Hawaii. If time share units are located  
21 outside of Hawaii, but any offer or sale is made within the



1 State, this chapter, except for sections 514E-3, 514E-4, 514E-5,  
2 514E-6, 514E-7, 514E-10(c), and 514E-14, shall apply. As to the  
3 offer and sale outside of Hawaii of time share interest in a  
4 time share plan which includes time share units located in  
5 Hawaii, this chapter, except for sections 514E-2.5, 514E-8,  
6 514E-9, 514E-10(b), 514E-11, and 514E-11.1 shall apply.

7 (b) This chapter applies to the offer and sale in Hawaii  
8 of short-term products. This chapter does not apply to the  
9 offer or sale of short-term products outside of Hawaii,  
10 regardless of whether the short-term product buyer shall have  
11 the right to use accommodations in Hawaii."

12 SECTION 7. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 8. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect on July 1, 2115;  
19 provided that sections 514E-B and 514E-C, Hawaii Revised  
20 Statutes, established pursuant to section 2 of this Act, and  
21 sections 4 and 5 of this Act shall be repealed on July 1, 2120.



**Report Title:**

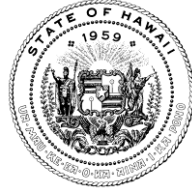
Time Sharing; Time Share; Short-term Product; Right to Cancel;  
Purchasers; Developers; Bond

**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. Effective 07/01/2115. (SD2)

*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  
LT. GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
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DEPUTY DIRECTOR

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

TO THE HOUSE COMMITTEE ON  
ECONOMIC DEVELOPMENT & BUSINESS

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Tuesday, March 24, 2015  
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 754, S.D. 2, RELATING TO TIME SHARING.**

TO THE HONORABLE DEREK KAWAKAMI, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Lori Beth Van Cantfort, Time Share Administrator of the Professional and Vocational Licensing Division, 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 but has been working with the proponent of the bill to ensure the measure contains adequate consumer protections.

Senate Bill No. 754, S.D. 2, 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.

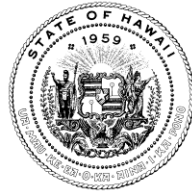
In practice, short-term products are sold to consumers who decide not to purchase a time share interest. These consumers are then offered to purchase a short stay at a time share property to be used sometime in the future. When they return to vacation at the property, they are solicited to purchase a 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, Chapter 514E, Hawaii Revised Statutes ("HRS"), 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. Providing a statutory 7-day rescission right for short-term products will eliminate any confusion and provide better consumer protection.

Although the Department supports providing a 7-day rescission right for short-term products, it has concerns whether the consumer protection provisions provided under Chapter 514E, HRS, would be available to our enforcement agency, the Regulated Industries Complaints Office, because a short-term product would not be considered a time share interest.

The Department also has serious concerns about allowing developers to post a surety bond 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 Department has been working with the proponent of this bill to address these concerns and is continuing its discussions.

For the Committee's information, the House companion measure, House Bill No. 271, was heard by this Committee on February 10, 2015. The House Committee on Consumer Protection & Commerce then passed that bill with an H.D. 2. The Department prefers the language found in House Bill No. 271, H.D. 2, but is still working with the proponent of the bill on unresolved issues. The Department would appreciate the opportunity to continue working with the Committee and proponent of this measure to develop appropriate legislation with sufficient consumer protections included.

Thank you for this opportunity to provide testimony on Senate Bill No. 754, S.D. 2.



DAVID Y. IGE  
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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, MARCH 24, 2015  
9:00 A.M.

TESTIMONY ON  
SENATE BILL NO. 754 S.D.2  
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 Senate Bill No. 754 S.D.2, 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.

Senate Bill No. 754 S.D.2 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 and has a defective effective date.

RICO notes that this Committee heard the companion bill, House Bill No. 271, and passed out that bill with a defective effective date. Subsequently, the House Committee on Consumer Protection and Commerce passed the bill out with amendments. The House and Senate bills differ primarily in that Senate Bill No. 754 S.D.2 allows a developer to use disbursements for any purpose, while House Bill No. 271 H.D.2 only permits disbursements for costs associated with time share development in Hawaii. Senate Bill No. 754 S.D.2 also requires a developer to obtain a surety bond prior to disbursement; House Bill No. 271 H.D.2 requires a developer to deposit either a surety bond or a letter of credit with the Director and escrow agent.

RICO defers to the Department's Time Share Program on the issues of cancellation rights and disbursement of funds, but has concerns on enforcement of the new section that gives cancellation rights to purchasers of short-term products in Hawaii. RICO's role in enforcing the new section relating to the sale of short-term products is unclear. Senate Bill No. 754 S.D.2 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.

Senate Bill No. 754 S.D.2 also exempts the offer or sale of short-term products by a developer or affiliate of the developer from the provisions of the travel agency law, Chapter 468L, HRS. RICO believes "affiliate" could encompass

Testimony on Senate Bill No. 754 S.D.2

March 24, 2015

Page 3

an independent third party contracting with the developer, and as such, would be functioning as an intermediary subject to Chapter 468L, HRS.

RICO and the Department's Time Share Administrator have been working with the proponent of the bill on amendments that would provide sufficient consumer protections and would appreciate the opportunity to continue our efforts.

Thank you for the opportunity to testify on Senate Bill No. 754 S.D.2. I will be happy to answer any questions the members of the Committee may have.





IMANAKA ASATO

A LIMITED LIABILITY LAW COMPANY

March 23, 2015

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

**RE: SB 754, SD2 Relating to Time Sharing**  
**Hearing date: Tuesday, March 24, 2015**  
**9:00 am, Conference Room 312**

Aloha Chair, Vice-Chair and Members of the Committee,

Thank you for allowing me to submit testimony on behalf of Marriott Vacations Worldwide Corporation (“MVWC”) in **SUPPORT OF SENATE BILL 754, SD2 RELATING TO TIME SHARING**. MVWC is a global leader in the timeshare industry, with five resort properties in Hawaii. Timeshare units are a significant and stabilizing part of the tourism industry, and resort development provides thousands of construction jobs in the islands year after year.

This bill addresses an important concern in resort development. Under current Hawaii law, after a new timeshare unit is sold, the purchasers’ funds are placed in escrow and disbursed to developers to help pay for the costs of construction and development. This often occurs prior to the closing and deeding of the property. If the developer defaults and the purchaser’s lien is subordinate to the construction lender’s rights, the purchaser may be in jeopardy of losing both his property and deposit.

SB 754, SD 2 would remedy this concern by requiring the developer to first post a surety bond issued by a bonding company authorized to do business in Hawaii before the purchasers’ funds are released. Additionally, the developer would be required to show that the sum of the bond and the purchaser’s funds remaining in escrow is at least equal to the amount of funds that would have remained in escrow without the bond and that there is no lien payment trust or similar device employed by the developer.

Discussions with the DCCA regarding the specific language of the bill are ongoing, but MVWC supports SB 754, SD2 as a mechanism for resort developers to access purchasers’ funds needed to complete construction, while still protecting the purchaser from loss of his deposit if the project is not completed.



IMANAKA ASATO

A LIMITED LIABILITY LAW COMPANY

Representative Derek S.K. Kawakami, Chair  
Representative Sam Satoru Kong, Vice Chair  
Members of the House Committee on Economic  
Development and Business  
March 23, 2015  
Page Two

For these reasons, MVWC **supports** Senate Bill 754, SD2. Mahalo for your consideration.

Sincerely,

IMANAKA ASATO LLLC

Michael L. Iosua

MLI:tmoh

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

DATE: March 23, 2015

TO: Representative Derek Kawakami  
Chair, Committee on Economic Development and Tourism  
*Submitted Via [EDBtestimony@capitol.hawaii.gov](mailto:EDBtestimony@capitol.hawaii.gov)*

RE: **S.B. 754 S.D.2 - Relating to Time Sharing**  
**Hearing Date: Tuesday, March 24, 2015 at 9:00 a.m.**  
**Conference Room 312**

---

Dear Chair Kawakami and Members of the Committee,

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, WorldMark by Wyndham and Shell Vacations Club brands.

Wyndham **strongly supports** S.B. 754 S.D.2, 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. S.B. 754 S.D.2 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.

---

Gary M. Slovin  
Mihoko E. Ito  
C. Mike Kido  
Tiffany N. Yajima

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Honolulu, HI 96813  
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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.

Wyndham notes that the S.D.2 version of the bill includes language that raises concern, but also notes that stakeholders have been discussing this measure to try to reach agreement. As such, Wyndham respectfully asks the Committee to move the bill forward to allow the discussions to continue. Thank you for the opportunity to submit testimony on this measure.

# McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

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March 23, 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: S.B. 754, SD 2  
Hearing on March 24, 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 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.

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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 Hawaii<sup>1</sup> pursuant to a separate written escrow agreement between the developer and an escrow agent.<sup>2</sup> All funds received from the buyers must be deposited in the escrow account until closing.<sup>3</sup>

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.<sup>4</sup> 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

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<sup>1</sup> §514E-16(b), H.R.S.

<sup>2</sup> §514E-16(c), H.R.S.

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

<sup>4</sup> §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.<sup>5</sup>

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. Our firm was involved in buyer remorse lawsuits covering more than 100 units.

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<sup>5</sup> 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. 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.

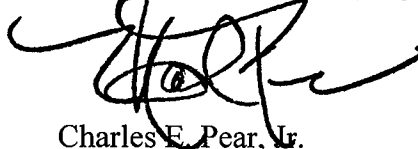
For example, the bill proposes to amend the definition of "notice of time share plan" to delete the requirement that the notice identify the initial use period for each time share interest and the name of the initial purchaser of the time share interest.

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



March 24, 2015

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

FR: Henry Perez, President ARDA Hawaii (via its Executive Director, Blake Oshiro)

RE: S.B. 754 SD2 Relating to Time Sharing.  
**Position: Support with Some Concerns**

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports SB754 SD2, although we do have some concerns with the specific language in the SD2. It is our understanding that this language was recommended by the Department of Commerce and Consumer Affairs (DCCA). ARDA-Hawaii defers to its attorney, Charlie Pear, on the particulars of the concerns and comments. But, we would like to respectfully request that the Committee pass this bill so that we can continue our discussion with DCCA.

The first part of the bill establishes cancellation rights for purchasers of short-term timeshare products. Based on discussions with the DCCA Timeshare Administrator, the sale of these products raised some concerns. Thus, in an effort to improve our industry, ARDA agreed to support legislation that regulates the purchase of short-term products and we support this effort to increase consumer confidence.

The remainder 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.

This law was first enacted in 1985 and since that time, the law has not changed despite changes to the industry, changes to the operations and financing of timeshares, and the fact that several publicly traded hospitality brands that are now associated with timeshares. Thus, ARDA supports amending the law similar to 15 other states' laws that permit 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.

ARDA is engaged in discussions with DCCA and remain hopeful that we will be able to come up with agreeable language very soon. Thank you for the opportunity to submit testimony in support of SB754 SD2.

c/o Alston Hunt Floyd & Ing \* 1001 Bishop Street, 18th Floor \* Honolulu, Hawai'i 96813



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Orlando, Florida 32819  
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March 24, 2015

To: Honorable Derek Kawakami, Chair  
Honorable Sam Kong, Vice Chair  
House Committee on Economic Development & Business

RE: **SB 754 SD2 – Relating to Time Sharing – In Support**  
Conference Room 312; 9:00 AM

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

Starwood Vacation Ownership (“Starwood”) appreciates the opportunity to offer testimony in support of SB 754 SD2. This measure permits the use of purchaser funds upon the posting of a letter of credit, bond or other financial assurance and provides enhanced consumer protection by regulating the sale and offer of timeshare short-term products. This measure ensures proper disclosure, and a recession period is given to the consumer purchasing a short term product and continues the modernization of Hawaii’s timeshare act.

Permitting funds to be withdrawn from escrow upon the posting of a letter of credit, bond or other financial assurance is beneficial to developers by assisting with cash flow in large resort construction projects, which often take two to three years to complete. It is beneficial to consumers because it guarantees them a refund of all purchase funds if the project is not timely completed. Currently, purchaser funds may be released to reimburse a developer for construction expenditures. This procedure could result in an incomplete project and insufficient funds remaining to complete the project.

For over two years, the industry has worked with the Department of Commerce and Consumer Affairs (DCCA) on this measure. There have been numerous meetings where industry leaders have travelled to Hawaii to meet staff members in person to discuss the merits of this valuable bill. Several modifications have been made as a result of working with DCCA. While there is currently language in the bill that needs to be updated, we are optimistic that these issues can be addressed successfully. We strongly ask for your support of SB 754 SD2 as it enhances consumer protection while encouraging the development of new accommodations in Hawaii.

Thank you for the opportunity to testify on SB 754 SD2.

Robin Suarez  
Vice President/General Counsel  
Starwood Vacation Ownership