

Honolulu, Hawaii

February 17, 2017

RE: H.B. No. 650
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 650 entitled:

"A BILL FOR AN ACT RELATING TO REAL PROPERTY,"

begs leave to report as follows:

The purpose of this measure is to clarify document, record, and information disclosure requirements for condominium associations.

Specifically, this bill:

- (1) Applies these requirements to registered time share projects that contain time share units, transient vacation rentals, and private residential units;
- (2) Sets a time limit and electronic posting requirements for fulfilling unit owner requests for condominium association documents, records, and information; and
- (3) Makes it an unfair or deceptive act or practice to fail to make these documents, records, and information available as statutorily required.

Hui 'Oia'i'a and several individuals testified in support of this measure. The American Resort Development Association-Hawaii, Hawaii Chapter Community Associations Institute Legislative Action Committee, Hawaiian Properties, Marriot Vacations Worldwide



Corporation, Soleil Management Hawaii, LLC, and several concerned individuals testified in opposition to this bill. The Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office, Associa, and two individuals provided comments.

Your Committee finds that registered condominium time share projects that contain a combination of unit types including private residential units were never envisioned when Hawaii's condominium laws were enacted. As such, your Committee finds that imposing certain document and information requirements on time share projects may be premature at this time.

Your Committee further finds that while the imposition of penalties for noncompliance with document, information, and record disclosure requirements is necessary, classifying this noncompliance as an unfair or deceptive act or practice may be extreme. Rather, your Committee finds that a more suitable penalty would be to consider such action to be a breach of a board's fiduciary duty, which would make boards squarely responsible for making disclosure decisions and prevent boards from relying on their managing agents to handle such disclosure requests. Additionally, it is your Committee's understanding that insurance carriers will not defend board members who are in breach of their fiduciary duty.

Your Committee has amended this measure by:

- (1) Deleting the provision requiring registered condominium time share projects containing a combination of time share units, transient vacation rentals, and private residential units to comply with the document, record, and information disclosure requirements under the State's condominium laws;
- (2) Changing the timeframe for the required provision of hard copies of condominium association documents, records, and information from within twenty-four hours to within fifteen days of the request;
- (3) Requiring financial documents and association meeting minutes to be available for examination at a manager's office located on the property, in electronic format via e-mail, or in hard copy format via mail, rather than at a convenient place determined by the board;



- (4) Specifying that the failure to produce required documentation shall be a breach of a board's fiduciary duty, rather than an unfair or deceptive practice;
- (5) Changing its effective date to July 1, 2112, to facilitate further discussion; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 650, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 650, H.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ANGUS L.K. MCKELVEY, Chair



