

STAND. COM. REP. NO.

563

Honolulu, Hawaii

MAR 02 2017

RE: S.B. No. 306
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 306 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify that projects that contain a combination of time share units, transient vacation rentals, and private residential units located in the same project are required to comply with the document, record, and information disclosure requirements under the State's condominium statutes;
- (2) Require hard copies of condominium association documents, records, and information to be provided to requesting owners within twenty-four hours and available for download through an internet site; and
- (3) Specify that failure to make association documents, records, and information available is an unfair or deceptive act or practice.

Your Committee received testimony in support of this measure from Hui 'Oia'i'o, Associa, Concerned Sands of Kahana Vacation Club Owners, and fifty-four individuals. Your Committee received



testimony in opposition to this measure from the American Resort Development Association - Hawai'i; Soleil Management Hawaii, LLC; RCI, LLC; Marriott Vacations Worldwide Corporation; Wyndham Vacation Ownership; ILG; and three individuals. Your Committee received comments on this measure from the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs, Hawaii Council of Associations of Apartment Owners, and one individual.

Your Committee finds that it is important for time share unit owners to be active and engaged owners within their time share projects. However, according to testimony received by your Committee, some time share unit owners have experienced difficulties receiving appropriate information, in particular documents that would enable an owner to sell the owner's time share unit. Your Committee further finds that ensuring time share owners have an opportunity for representation on a board of directors for a time share association or vacation club enables owners to maintain an independent voice, oversee increases in expenditures that directly affect all members of a time share project, and effectively communicate with other owners. Amendments to this measure are therefore necessary to ensure that owners who belong to a time share owners association or vacation club are able to access appropriate information regarding elections for a board of directors.

Your Committee additionally finds that this measure requires specific documents to be produced in a hard copy format within twenty-four hours of receiving a request. Your Committee has heard the concerns raised in testimony that this time frame may result in significant noncompliance. Your Committee notes that requests for records may encompass a range of data, which may require far more than twenty-four hours to compile and disclose. Your Committee has also heard testimony that boards of directors should be responsible for a decision to produce documents or comply with any other mandatory provisions of the State's condominium laws. An amendment to this measure is therefore necessary to clarify that compliance with mandatory provisions of the condominium laws is part of the fiduciary duty a board of directors owes to its association. Clearly outlining this duty in statute prevents a board from relying on its managing agent to handle owner requests for documents.



Your Committee has amended this measure by:

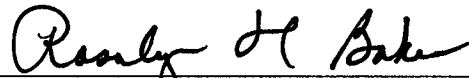
- (1) Clarifying that projects that contain a combination of time share units, transient vacation rentals, and private residential units located in the same project are required to provide basic documents that will enable an owner to sell the owner's time share unit within forty-eight hours of a request and removing language that required these projects to comply with the document, record, and information disclosure requirements specified in the State's condominium statute;
- (2) Clarifying that an owner of a time share unit has the right to receive a list of all time share owners, including contact information, for purposes directly related to the business of a time share owners association or vacation club;
- (3) Specifying that a management company of a time share owners association or vacation club board of directors must provide specific information to owners regarding candidates for election to the board of directors within thirty days prior to the election;
- (4) Specifying that no representative of a management company shall have a controlling interest on a board of directors for a time share owners association or vacation club;
- (5) Clarifying that any violation of a mandatory provision of the State's condominium law by a board or its officers and members is a per se violation of the board's fiduciary duty, but providing a safe harbor provision for a board member who votes for compliance during a board meeting;
- (6) Deleting language that would have required hard copies of condominium association documents, records, and information to be provided to requesting owners within twenty-four hours and available for download through an internet site;



- (7) Deleting language that would have made a failure to make required association documents, records, and information available an unfair or deceptive act or practice; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 306, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 306, S.D. 1, and be placed on the calendar for Third Reading.

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



ROSALYN H. BAKER, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:* <p style="text-align:center; font-size: 1.2em;">SB306</p>	Committee Referral: <p style="text-align:center; font-size: 1.2em;">CPH</p>	Date: <p style="text-align:center; font-size: 1.2em;">2/23/17</p>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
NISHIHARA, Clarence K. (VC)				✓
CHANG, Stanley	✓			
ESPERO, Will	✓			
IHARA, Jr., Les	✓			
KIDANI, Michelle N.				✓
RUDERMAN, Russell E.				✓
TOTAL	4	0	0	3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes