

DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

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DIRECTOR  
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DEPUTY DIRECTOR

PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE  
ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH STATE LEGISLATURE  
REGULAR SESSION, 2017

THURSDAY, FEBRUARY 2, 2017  
3:00 P.M.

TESTIMONY ON HOUSE BILL NO. 650  
RELATING TO REAL PROPERTY

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND TO THE HONORABLE LINDA ICHIYAMA, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 650, Relating to Real Property. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following enforcement-related comments on Section 3 of the bill.

House Bill No. 650 requires time share projects to comply with condominium disclosure requirements. In particular, Section 3 of the bill requires disclosure of

condominium association documents, records, and information to requesting owners within twenty-four hours and be available for download on the internet.

As the agency tasked with enforcing the failure to disclose records within twenty-four hours as provided in House Bill No. 650, RICO has concerns that the time frame provided in the bill is unrealistic and will result in significant noncompliance that will tax RICO's enforcement resources. Requests for records may encompass a range of data, from months to years, and oftentimes require more than twenty-four hours to compile and disclose. If the Committee is inclined to shorten the time within which condominium records are required to be disclosed, RICO respectfully suggests that this Committee consider a disclosure time frame of fifteen calendar days as a reasonable compromise between the time periods in the current law and House Bill No. 650.

Thank you for the opportunity to testify on House Bill No. 650. I will be happy to answer any questions the Committee may have.



DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR

STATE OF HAWAII  
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P.O. BOX 3469  
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CATHERINE P. AWAKUNI COLÓN  
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CELIA C. SUZUKI  
LICENSING ADMINISTRATOR

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

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Thursday, February 2, 2017  
3:00 p.m.

### **TESTIMONY ON HOUSE BILL NO. 650, RELATING TO REAL PROPERTY.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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"). The Department has the following comment regarding SECTION 2 of this bill.

SECTION 2 of House Bill No. 650 seeks to require time share projects that are in mixed use projects to comply with section 514B-154.5 of the condominium law, which requires condominium managing agents to provide condominium documents to its owners. The bill states that "time share projects registered under this chapter . . . shall comply" with section 514B-154.5. However, the bill does not indicate who within the

Testimony on House Bill No. 650  
Thursday, February 2, 2017  
Page 2

time share project, such as the time share plan manager, is responsible for complying with section 514B-154.5. Without that kind of designation, implementation of the measure may not be practically possible given the nature of these mixed use projects.

Thank you for this opportunity to provide testimony on House Bill No. 650.

# McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

CHARLES E. PEAR, JR.  
ATTORNEY AT LAW

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February 1, 2017

Rep. Angus L. K. McKelvey, Chair  
Rep. Linda Ichiyama, Vice Chair  
Members of the House Committee on  
Consumer Protection and Commerce  
Twenty-Ninth Legislature  
Regular Session, 2017

Re: H.B. 650  
Hearing on February 2, 2017, 3:00 p.m.  
Conference Room 329

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 opposes the bill.

Sections 514B-152, 153, 154, and 154.5, HRS, all contain detailed requirements governing the obligation of a condominium owners association to turn over association records to an owner who requests them. These provisions apply to all condominium projects, whether or not the condominium contains a time share plan.

HB650 proposes to clarify that condominium projects that contain a time share plan are subject to the requirements of the Condominium Act. It does not change the list of information required to be provided to an owner. It is just intended to reiterate that these provisions apply to all condominium projects, whether or not they include a time share plan.

ARDA Hawaii has a number of concerns with the proposed bill.

1. HB650 provides a 24-hour window within which a board may either provide a hard copy documents requested by an owner or provide a written justification for refusing to do so. This raises a number of concerns:

- A. As a practical matter, will it be possible for a property manager to contact the board, obtain a decision, either compile the documents or draft a written justification (or maybe both), and send the response to the owner within a 24-hour period?
- B. What happens if the request is filed on a weekend?

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Five Waterfront Plaza, 4<sup>th</sup> Floor • 500 Ala Moana Boulevard • Honolulu, Hawaii 96813  
Telephone: (808) 529-7300 • Fax: (808) 524-8293 • E-mail: info@m4law.com

- C. Is a hard copy of the requested documents deemed “provided” within the 24-hour window if it is deposited in the mail?
- D. If the documents are requested on Saturday and the hard copy is deposited in the mail on Sunday, how does the manager prove that it has satisfied the 24-hour requirement when the post office does not collect mail accumulating over the weekend until Monday?

2. HB650 proposes to make it an unfair and deceptive trade practice to fail to provide the requested documents, or to provide them within a 24-hour window. It is not clear, however, how damages would be calculated.

For example, it seems unlikely that there would be any actual damages, so it would be difficult to administer the treble damages provisions of Chapter 480.

In such a case, it might be appropriate to turn to §480-13(a)(1), HRS, which provides for minimum damages of \$1,000. But would this mean \$1,000 per occurrence or \$1,000 per document that is not provided?

Inclusion of a Chapter 480 remedy would entitle the complaining owner to recover legal fees. But the Condominium Act already allows condominium unit owners to collect legal fees when enforcing the requirements of the Condominium Act. See §514B-157(b).

3. Section 2 of HB650 appears to require that all time share projects comply with the requirements of the Condominium Act. However, not all time share plans are established in a condominium project. Instead, in some time share plans, the buyers receive a deed of an interest in the entire project rather than in a condominium unit. HB 650 would appear to require that these plans, called “UDI projects,” comply with provisions of the Condominium Act even though the UDI project is not a condominium.

4. Section 2 of HB650 proposes to amend the Time Share Act, Chapter 514E, HRS. It provides:

\* \* \* notwithstanding any other provision in the declarations,  
association bylaws, or association rules and regulations, if any, \* \*  
\*

However, it is not clear whether the reference to the declaration, bylaws and rules means the time share documents or the condominium documents.

If it is referring to the time share documents, then the proposed language makes no sense. The time share documents cannot alter the requirements of the Condominium Act.

If it is referring to the condominium documents, then the language should appear in the Condominium Act, not the Time Share Act.

5. Section 3 of HB650 proposes to amend §514B-154.5(g) of the Condominium Act. §514B-154.5(g) currently says that §514B-154.5 applies to all condominium projects. This includes both condominium projects that contain a time share plan and those that do not. There is no need to say anything further.

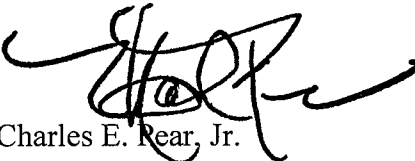
However, the proposed amendments to §514B-154.5(g) introduce the potential for confusion. Specifically:

- Proposed §514B-154.5(g)(1) provides that §514B-154.5 applies to all condominium projects. Again this would cover all condominium projects, whether or not they contain time sharing.
- Proposed §514B-154.5(g)(2) provides that §514B-154.5 applies to all “projects” registered under the Time Share Act. This is really hard to decipher for a number of reasons:
  - The Condominium Act defines “project” to mean a condominium project. §514B-3, HRS.
  - Condominium projects containing time sharing would already be subject to §514B-154.5 both under the existing law and under the newly proposed §514B-154.5(g)(1).
  - The Time Share Act provides for the registration of time share plans, not condominium projects. A condominium project that contains a time share plan must be registered as a condominium under the Condominium Act – in addition to the registration of the time share plan under the Time Share Act.

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 any assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Charles E. Rear, Jr.

CEP:kn

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 27, 2017 1:57 PM  
**To:** CPCtestimony  
**Cc:** richard.emery@associa.us  
**Subject:** Submitted testimony for HB650 on Feb 2, 2017 15:00PM

**HB650**

Submitted on: 1/27/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Comments Only	No

Comments: I support documents should be provided to homeowners as defined in thre statute. Contract need to be clarified to include the association's general manager's, resident manager's, site manager's contract redacted to excoude personal information. Furthermore, 24 hours is totally inadequate. often documwnts are located in off suite storage facilities. 21 days is more appropriate. The matter becomes more complicated when real estate agents or escrow companies are requesting information to complete a sale.

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**COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**  
**HEARING ON FEBRUARY 2, 2017 AT 3 PM**  
**SUPPORT FOR HB650**

**-AMENDED TESTIMONY-**

We support HB650 with these amendments (in bold, and underlined or stricken) to prevent misunderstandings about the cost of these requested documents, whether hard or electronic copies were requested, and how soon these documents should be available:

(c) Notwithstanding any provision in the declaration, bylaws, or house rules providing for another period of time, all documents, records, and information listed under subsection (a), whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be provided **IF REQUESTED** in hard copy format no later than [~~thirty days~~] twenty-four hours after receipt of a unit owner's or owner's authorized agent's written request[, ~~unless a lesser time is provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, and except as provided in subsection (a)-(14)~~].

(d) Any documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, ~~may~~ **SHALL** be made available electronically **NO LATER THAN TWENTY-FOURS HOURS AFTER RECEIPT OF A UNIT OWNER'S OR OWNER'S AUTHORIZED AGENT'S WRITTEN REQUEST** to the unit owner or owner's authorized agent ~~if the owner or owner's authorized agent requests such in writing.~~

(e) An association [~~may~~] shall comply with this section or section 514B-152, 514B-153, or 514B-154 by making the required documents, records, and information available to unit owners or owners' authorized agents for download through an internet site, [~~at the option of each unit owner or owner's authorized agent and~~] at no cost to the unit owner or owner's authorized agent.

(f) Any fee charged to a unit owner or owner's authorized agent to obtain copies of the association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per **PRINTED** page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per **PRINTED** page.

Mahalo.  
Lila Mower of Hui `Oia`i`o

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 27, 2017 3:26 PM  
**To:** CPCtestimony  
**Cc:** kananik@hawaiianprop.com  
**Subject:** Submitted testimony for HB650 on Feb 2, 2017 15:00PM

**HB650**

Submitted on: 1/27/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kanani Kaopua	Individual	Oppose	No

Comments: The 24-hour turn around period is not reasonable. I am all for "reasonable time periods" for obtaining documents. The various types of information or documentation any owner could possibly request for is so vast and far between that it truly takes 14-30 days to gather. If more time is needed, then it should be communicated to the requestor in writing (email is fine), with the reason for delay and new anticipated date for the requestor to receive requested items.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, January 28, 2017 1:46 PM  
**To:** CPCtestimony  
**Cc:** akluvo@gmail.com  
**Subject:** Submitted testimony for HB650 on Feb 2, 2017 15:00PM

**HB650**

Submitted on: 1/28/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Arthur Kluvo	Individual	Oppose	No

Comments: Not sure why this HB650 is even being considered. I serve on three boards of directors and the governing documents such as the Declarations, Bylaws and House Rules are already provided to owners (and tenants in some cases) when the property is purchased. Owners can get additional copies from the managing agent within a few days' time. Some associations already have those documents posted to their web sites. It is unreasonable to require the documents to be made available on the Internet within a 24 hour time limit. Some of the smaller associations might not even use the Internet. When have you ever tried to get copies of personal documents from the government within a one day timeframe? Don't impose unrealistic Internet requirements and time limits to obtain documents that are now readily available using existing business practices. Do not pass frivolous proposals.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, January 28, 2017 10:13 AM  
**To:** CPCtestimony  
**Cc:** mrckima@gmail.com  
**Subject:** \*Submitted testimony for HB650 on Feb 2, 2017 15:00PM\*

**HB650**

Submitted on: 1/28/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Kimura	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 8:20 AM  
**To:** CPCtestimony  
**Cc:** calaug@comcast.net  
**Subject:** Submitted testimony for HB650 on Feb 2, 2017 15:00PM

**HB650**

Submitted on: 1/30/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul Carow	Individual	Comments Only	No

Comments: I feel this measure is unnecessary and would create an undo burden on property owners.

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CPC JUD FIN  
Tuesday, January 31, 2017  
2:00 pm, Capitol Bldg., Rm 329

**To: Representative Angus K.L. McKelvey, Chair and Representative Linda Ichiyama, Vice Chair  
Representative Matthew LoPresti**

From: Dale A. Head (808) 696-4589 home (808) 228-8508 cell sunnymakaha@yahoo.com

**RE: Testimony In Support of HB 650, Relating to Real Property, Requirement to Comply with  
Document Requests**

Aloha:

1. I am testifying in support of House Bill 650.
2. Presently associations and or their 'managing agent' can play a 'hide the documents' game by ignoring requests of owners with full knowledge that there is no penalty for them to do so. This bill also specifies for records to be made available for inspection 'on site'.
3. Previous vague statute language that records be provided at a 'convenient location' was misused to mean at the property management office in town (on Kapiolani Boulevard). On one such visit to examine a Resident Manager contract, the company cleverly produced an old contract which showed a pay scale of \$30,000 per year. Once we fired that company we then found the actual contract which showed pay was for \$100,000 per year, plus two annual bonuses, plus any disputes to be settled by arbitration on the island of Maui, with the association to pay all expenses. It was a real sweet heart contract was concealed from the owners. There was no penalty on the company for their dishonesty.
4. This bill specifies an owner does not incur any administrative fees for the first 8 hours of their deliberation with the managing company. This currently is willfully misinterpreted by most management companies to be a 'total' of 8 hours per association no matter how many owners seek information. This is unfair. For instance with my 456 condo complex, this would work out to just one minute and four seconds per owner. A true perversion of the statute.
5. Please vote in favor of and pass House Bill 650.

Respectfully, **Dale A. Head**

*Owner at Makaha Surfside in Waianae, Unit C-428 since October of 1987*

**Quote** - "When you see something that is not right, not fair, not just, you have a moral obligation to do something – to say something – and not be quiet." "You must have courage, you must be bold, and never ever give up". **U.S. Representative John Lewis.**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 9:57 AM  
**To:** CPCtestimony  
**Cc:** pennym@hmcmtg.com  
**Subject:** Submitted testimony for HB650 on Feb 2, 2017 15:00PM

**HB650**

Submitted on: 1/30/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Penelope Munroe	Individual	Oppose	No

Comments: The bill places a requirement on an Association that they may not wish to have a website, or cannot afford to maintain a website. In addition, every owner is provided a set of document at the time of purchase and it is the owner's responsibility to retain their copy and all others that may be recorded during their ownership tenure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 1:21 PM  
**To:** CPCtestimony  
**Cc:** deborahjwilliams@hawaii.rr.com  
**Subject:** \*Submitted testimony for HB650 on Feb 2, 2017 15:00PM\*

**HB650**

Submitted on: 1/30/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Deborah Williams	Individual	Oppose	No

Comments:

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**TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

**29<sup>th</sup> Legislature, Regular Session of 2017**

**Thursday, February 2nd. 2017 2:00PM**

**TESTIMONY ON HB No. 650, Relating to Real Property**

**To the Honorable Angus L.K. McKelvey; Chair and Members of the Committee**

My names is Scott Sherley, former Vice Chair of the Hawaii Real Estate Commission and former Chair of the Condominium Review Committee and a Real Estate Educator. I appreciate the opportunity to provide testimony on House Bill 650, relating to Real Property

In regards to the Twenty Four Hour “turnaround time” in House Bill #650; previously and recently the statute 514-B HRS was adjusted requiring a 30 day turnaround time for document requests by an owner and/or an owners representative. Personally I felt that that time frame was too long, in this day and age of technology. However taking the timeframe from 30 days to 24 hours is too drastic a measure.

Owners and/or Owners representative are entitled to the documents and I have been a longtime proponent to owners having access to their documents, however 24 hours is just too short a time frame, also consider, is it 24 hours or is 24 business day hours, does it include a request that comes in on say a Friday afternoon at 3:30pm so it must be available by 3:30pm on Sunday. These Issues need to be addressed as well.

I am hoping that the Legislature can come to a happy medium in regards to time frames.

Thank you for the Opportunity to providing testimony opposing House Bill #650

Scott Sherley

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 11:55 AM  
**To:** CPCtestimony  
**Cc:** cporter@hawaiiilegal.com  
**Subject:** Submitted testimony for HB650 on Feb 2, 2017 15:00PM

**HB650**

Submitted on: 1/31/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christian Porter	Individual	Oppose	No

Comments: The current timelines for access to documents are fine, and should not be changed. Thank you.

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**LATE**



P.O. Box 976  
Honolulu, Hawaii 96808

February 1, 2017

Honorable Angus L.K. McKelvey  
Honorable Linda Ichiyama  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: HB 650-OPPOSE

Dear Chair McKelvey, Vice-Chair Ichiyama and Committee Members:

I am a member of the Community Associations Institute Legislative Action Committee. CAI strongly opposes HB 650.

This opposition is based on practical considerations. A twenty-four-hour response time is not commercially reasonable. Such a time frame lacks a business justification and provides no opportunity whatever for an association to perform due diligence.

As an owner's attorney wrote to me this week, "There is no limit to how many times a member can request documents from his or her association." That owner, a disgruntled former board member, now enjoys a hobby of inundating property management with lengthy and vexatious document requests on a regular basis.

HB 650 *obviously* has *profoundly* serious potential for abuse. CAI respectfully requests the committee to consider only commercially reasonable approaches that carefully balance the legitimate operational and governance needs of associations against the more generalized interest of owners to be informed.

If the intent of HB 650 is to move associations towards a more digital platform for document control, then CAI respectfully requests that the committee work with stakeholders to develop an achievable goal for doing that. The costs to consumers associated with substantially increased staffing requirements and technology solutions should be considered in that connection.

Honorable Angus L.K. McKelvey  
Honorable Linda Ichiyama  
February 1, 2017  
Page 2 of 3

Whenever a condominium regulation is considered, it is always useful to keep in mind that: 1) associations are non-profit entities; and 2) the consumers who own condominium units pay 100% of an association's expenses. Condominium budgeting is a zero-sum game.

If an association is to incur an expense, the consumers who own the units pay that expense. It is that simple.

Costs to consumers will increase substantially if more labor and technology intensive approaches to handling, managing, reviewing and classifying the business records of an association are mandated. Thus, the committee should consider the financial impact of regulation upon the consumers who pay the association's bills.

The committee is asked to consider whether financially stressed consumers should be required to pay for an essentially on-demand document production approach in this non-profit setting. The present approach allows a reasonable period for gathering and reviewing material, as well as evaluation for the need to redact personal identifiers and to protect legitimately confidential personal and business information.

The bottom line is that HB 650 would increase costs to consumers. It is reasonable to ask: what marginal gain is to be achieved?

Governance responsibility is properly allocated to elected fiduciaries. So, what cost should consumers bear so that the most intensely *curious* non-fiduciary owner can be *immediately* satisfied? This is an important and significant question because HB 650 would serve no other obvious purpose.

HB 650 would have one other substantially negative *effect*, however. It would expose associations to unfair or deceptive act or practice ("UDAP") liability for no discernible reason. Characterizing the UDAP aspect of HB 650 as immoderate and wildly unreasonable would substantially understate the case.

As noted above, if an association incurs an expense, the consumers who own the units pay that expense. Hit an association with a judgment! **The owners pay.**

Honorable Angus L.K. McKelvey  
Honorable Linda Ichiyama  
February 1, 2017  
Page 3 of 3

HB 650 is of a piece with other punitive proposals. HB 650 would impose UDAP liability upon association members (i.e., consumers) immediately upon approval. HB 650 provides no time to budget for the costs of compliance with an onerous new mandate and HB 650 provides no time to comply.

Please, therefore, hold HB 650.

Community Associations Institute, by

*Philip Nerney*

For its Legislative Action Committee

**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 2, 2017 7:25 AM  
**To:** CPCtestimony  
**Cc:** albertd@hawaiianprop.com  
**Subject:** Submitted testimony for HB650 on Feb 2, 2017 15:00PM

**HB650**

Submitted on: 2/2/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Al Denys	Hawaii CAI LAC & Hawaiian Properties	Oppose	No

Comments: Aloha, I strongly oppose HB650. Currently, all AOAO's provide their owners the requested documents in timely manner and at a reasonable cost and/or at no cost at all. The changes that HB650 will bring about a significant financial hardship on the AOAO's and the their members, the owners who ultimately bare the costs. The system isn't broken and is abused by a small minority of owners. Mahalo. warmest aloha Al Denys

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**LATE**

February 1, 2017

Representative Angus McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
Members of the House Committee on Consumer Protection  
and Commerce  
Twenty-Ninth Legislature  
Regular Session of 2017

**RE: HB 650 Relating to Real Property**  
**Hearing date: February 2, 2017**

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

Mahalo for the opportunity to submit testimony on behalf of Marriott Vacations Worldwide Corporation (“MVWC”) in **STRONG OPPOSITION** to HB 650 Relating to Real Property which would require certain timeshare projects to comply with the document disclosure requirements of Hawaii Revised Statute § 514B-154.5 and would change some of the document disclosure requirements for condominium associations. MVWC is a global leader in the timeshare industry, with five resort properties in Hawaii, and manages both timeshare and condominium associations throughout the state. Like many vacation ownership companies, MVWC is deeply concerned about the significant negative impacts this bill may have on both timeshare and condominium associations, with little benefit to the association members themselves.

As an initial matter, the requirements proposed in HB 650 are unnecessary because the administrative rules applicable to timeshare associations already provide a procedure to contact association members. Currently, HAR § 16-106-12(g) requires plan managers to keep a list of contact information for timeshare association members and vendors under agreements of sale, and provide a mechanism for which timeshare association members may solicit votes, proxies and provide information to other association members. To the extent plan managers do not fulfill this requirement members may seek resolution through the Regulated Industries Complaints Office.

In addition, timeshare unit owners also have a high expectation that their personal information will be kept private which would likely be compromised if the lists were made available. The statutory protections provided are insufficient to protect the thousands of unit owners in each project whose personal information will be at risk of exposure, whether accidentally or otherwise, as more people have access to the data. This could pose a serious liability concern for associations if members’ information is accessed by scam artists or identity thieves. Similarly, these lists contain valuable intellectual property which puts at jeopardy the competitive advantages companies strive hard to preserve.

Section 3 of HB 650 also creates substantial burdens for both timeshare and condominium associations and their management companies for several reasons. First, association boards would be required to comply with certain documents requested by a unit owner or agent within 24 hours, and would be required to provide written authorization or written explanation for refusal within this time period.

Representative Angus McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
Members of the House Committee on Consumer Protection  
and Commerce  
February 1, 2017  
Page 2

Most associations' boards require longer notice to convene and make a decision before responding to the document request than the proposed 24 hour time period would permit. Further, the time limitation is unclear as to whether this limitation applies to weekends and holidays.

Second, information and documents required to be maintained by the association under HRS § 514B-154.5 must be provided in hard copy format within 24 hours of an owner's request, while the current rule allows for a more reasonable 30 day period to respond. Again, the one day time period will be nearly impossible for associations and their management companies to comply with.

Third, HB 650 mandates that such required information and documents must be available for download through an internet site at no cost to the owners. Currently, we have no estimate of the cost and time it would take to build and maintain such an internet website, but would likely be a significant burden for associations. Ultimately, however, the unit owners will pay for the cost of any website and document download capabilities through their association dues.

Simply put, the marginal benefits to timeshare and condominium association members provided in HB 650 are far outweighed by the substantial burden and privacy risks which would likely occur from passing this legislation. Such demanding regulations will also deter unit owners from serving on the association boards. For these reasons, MVWC strongly opposes House Bill 650.

Mahalo for your consideration.

Sincerely,

IMANAKA ASATO LLLC



Kim W. Yoshimoto





February 1, 2017

Representative Angus L.K. McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
Members of the House Committee on Consumer Protection & Commerce  
Twenty-Ninth Legislature  
Regular Session of 2017

**RE: HB 650 Relating to Real Property**  
**Hearing date: February 2, 2017 at 3:00 pm**

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

Thank you for allowing me to submit testimony on behalf of Soleil Management Hawaii, LLC (“Soleil”) in **OPPOSITION** of House Bill 650, Relating to Real Property. Soleil is a condominium association and vacation ownership resort management company providing a full spectrum of management services to customers in Hawaii. Soleil has 17 properties throughout Hawaii and has been doing business in the state for 18 years.

Currently, HRS § 514B provides all owners of a condominium unit, including all owners of those condominium units dedicated to a timeshare plan (a “Timeshare Unit”), with a mechanism for accessing the records maintained by the condominium association. The amendments proposed in House Bill 650 effectively restate/duplicate those rights as they relate to owners of Timeshare Units while, at the same time, making HRS § 514E more confusing. For these reasons, House Bill 650 is unnecessary.

Additionally, House Bill 650 amends 514B-145.5 in such a way so as to place a significant burden on association managers to provide documents within a very short timeline under threat of violating Hawaii’s unfair and deceptive practices laws. Specifically, the amendments require association managers to: (i) comply with or deny document requests within 24 hours; (ii) provide hard copies of documents within 24 hours of a request; and (iii) maintain a website that provides downloadable documents at no cost to the owners. Each of these requirements is nearly impossible to fulfill. Current rules allow 30 days to comply with a document requests which is much more reasonable, especially since compliance decisions often must be approved by the board of directors.

In sum, the provisions proposed in House Bill 650 are duplicative, unrealistic and unduly burdensome. For these reasons, Soleil opposes House Bill 650. Mahalo for your consideration.

Sincerely,

IMANAKA ASATO LLLC

Michael L. Joshua

**LATE**

John A. Morris  
888 Mililani Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96813  
(808) 523-0702

**COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

**Testimony Regarding HB 650**

**DATE:** Thursday, February 2, 2017  
**TIME:** 3:00 PM  
**PLACE:** Conference Room 329

Dear Chair McKelvey and Members of the Committee:

I work as an attorney representing condominiums and other homeowner associations and I am testifying with concerns about HB 650.

It is unclear why this bill is necessary. The Regulated Industries Complaints Office of the Department of Commerce And Consumer Affairs already investigates and enforces every condominium owner's right to review the documents required to be provided by law. Given RICO's considerable experience in this area, it seems that they could provide valuable input on whether this bill is even required.

This bill also sets unreasonable deadlines. For example, it requires an association to provide:

- Documents listed in section 514B-154.5 – which comprise dozens, perhaps even hundreds of documents – in hard copy form, within 24 hours.
- Documents requested by an owner but not listed in section 514B-154.5, unless the board provides a response as to why it will not provide the documents within 24 hours.
- Documents through an Internet site if an owner requests the documents be provided in that manner.

If an association fails to provide those documents within 24 hours, it can be held liable for violating section 480-2, HRS, a section which permits, for example, treble damages and other significant remedies against the violator. Moreover, the 24-hour deadline does not even require that the request be made in writing on a business day. For example, it appears that if an owner were to request documents on Friday afternoon, the association would be required to provide them within 24 hours, even though Saturday is not customarily a business day.

In addition, if an association has no website, the association would be automatically and continuously in violation of section 480-2, HRS, if it fails to immediately create a website so any

owner can download the requested documents for free.

The deadlines in the bill are far shorter than anything the state, any county, or the legislature has to comply with in providing documents, yet the bill contains no preamble with findings as to why such burdensome requirements are justified.

The end result of this bill will be that most, if not all, associations in the state will be in violation of this bill once it passes into law, because they will be unable to meet the deadlines and other requirements of the bill. This, in turn means that those associations will: 1) be subject to lawsuits for violating section 480-2, HRS; and 2) have to start paying treble damages to every owner who makes a request that is not responded to within 24 hours (or if there is no website to download the documents).

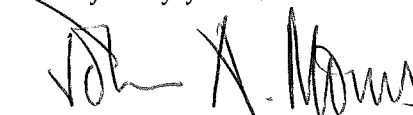
The other owners will then have to start paying additional maintenance fees to fund the treble damage awards against the association. In fact, it seems highly possible that with at least 1,600 large associations in the state, a sharp attorney could make a business of simply suing associations when they fail to: 1) provide the documents within the 24-hour deadline set by this bill or 2) establish a website. Certainly, any documents that have to be recovered from storage or specially prepared (such as sales disclosure documents) will almost certainly trigger a 480-2 violation every time a request is made.

If the managing agents are also sued, the association will almost certainly have to indemnify them. Most managing agent contracts require indemnification unless the association can show willful conduct or gross negligence on the part of a managing agent. It seems unlikely that the association will be able to prove that the managing agent's inability to comply with such short deadlines under the circumstances rises to the level of gross negligence or willful misconduct.

The association's insurance company will undoubtedly become worried if it has to keep defending section 480-2 claims. The insurance company may even decide to drop the association as an insured or exclude any liability for claims brought under this bill if it is enacted into law.

Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris". The signature is written in a cursive style with a large, sweeping initial "J".

John A. Morris

**LATE**

Lourdes Scheibert  
Royal Court Condominium  
920 Ward Ave  
Honolulu, Hawaii 96814

February 1, 2017

Hearing Date: Thursday, February 2, 2017  
Time: 3:00 pm  
Place: Conference Room 329

Committee on Consumer Protection & Commerce  
House of Representative, the 29th Legislature  
Regular Session of 2017

**RE: Testimony supporting HB650**

Dear Chair McKelvey, Vice Chair Ichiyama and Committee members:

I'm a condominium owner who has incurred \$653.13 in attorney's fees for request for documents pursuant to HRS514B-154. I offer this information for your attention to show the frustration of an owner's experience. I received my requested information 62 days after the first request. I believe that the documents were given to me only because an attorney's letter was involved. I also believe, this is a normal practice of Condominium self governance used to discourage owners. Most owners cannot afford to pay an attorney to get documents afforded to them according to HRS514B-154, their Declaration and By-laws.

I offer you this information to demonstrate the effectiveness of the Condominium law HRS514B-154 that has good intent. It only works if my board practices fairness.

I am requesting that written into HRS514B-154 the Association reimburses the owner for failure of the Board of Directors to provide the documents in 30 days or provide the owner the ability to collect owner's attorney fees much the same as the Association's attorney who is privileged by law to collect their fees in priority of payments.

I have been told that if I file in smalls claims court for \$653.13, the Association's attorney will show up and tell the Judge that this claim belongs in Civil Court and now the owner would be responsible for his attorney's fees. If that is the case, I believe this is unfair and deceptive act or practice. Therefore, lets just include owner's attorney's fees incurred due to the Association's default and keep the courts from dealing with this nonsense.

### **HISTORY**

10/22/2016 By email, first request and subsequent reminders followed with no response.

11/22/2016 Sent reminder for request for documents. End of 30 days due to submit

12/6/2016 Referred to my attorney to draft & notarize affidavit for request for same documents.

1/17/2017 Sent email reminder did not receive documents requested on 10/22/2017

1/24/2017 Documents received 1/24/2017.

Thank-you.

Lourdes Scheibert

**LATE**

February 1, 2017

TO: House Committee on Consumer Protection & Commerce  
Representative Angus L.K. McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair

FROM: Glenn T. Stockton II  
Past and Present Board Member  
Various Hawaii Condominium Associations and Timeshare Associations

DATE: Thursday, February 2, 2017  
Conference Room 329  
3:00 p.m.

RE: **HB 650 Relating To Real Property.**

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

This testimony is submitted **IN OPPOSITION** to House Bill 650 for the following reasons:

The amendments proposed in House Bill 650 effectively restate/duplicate the access rights to condominium association records that owners of condominium units dedicated to a timeshare plan already have under HRS 514B while, at the same time, making HRS § 514E more confusing. I say this because HRS § 514B already provides all owners of a condominium unit, which includes all owners of a condominium unit dedicated to a timeshare plan, with a mechanism for accessing the condominium association's records. For these reasons, House Bill 650 is unnecessary

Additionally, when it comes to the specific revisions of HRS 514B-154.5, House Bill 650 seeks to place significant burdens on condominium association managers to provide documents within a very short timeline under threat of violating Hawaii's unfair and deceptive practices laws. Specifically, House Bill 650 requires said managers to (i) comply with or deny document requests within 24 hours, (ii) provide hard copies of documents within 24 hours and (iii) have a website with links to all association documents - all of which requirements are nearly impossible to comply with. Current rules allow thirty (30) days to comply with document requests, which rule is much more reasonable considering that compliance decisions often must be approved by the board of directors.

For the foregoing reasons I ask that House Bill 650 be **DEFERRED**.

Thank you for your consideration.

**LATE**

February 1, 2017

Hearing Date: February 2, 2017

Time: 3:00 PM

Place: Conference Room 325

Committee on Consumer Protection & Commerce  
House of Representatives, the 29<sup>th</sup> Legislature  
Regular Session of 2017

**RE: Testimony for Conditional Support of HB 650** , Submitted by John White Sr.

[jwhite888@gmail.com](mailto:jwhite888@gmail.com)

Aloha, Chair McKelvey, Vice Chair Ichiyama and Committee Members ,

If this bill was expanded to include all associations and managed communities and with a few tweaks it would serve 30% or more of Hawaii's population well.

Currently in Florida they have a 7 day deadline rule for management companies . We are now well into the electronic age and the days of an " ARCANÉ " storage system that necessitated 30 days to be a fair compromise from request to delivery of records is long gone.

Mahalo