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OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Thursday, February 20, 2020
9:00 a.m.
State Capitol, Conference Room 229**

**On the following measure:
S.B. 2049, RELATING TO TIME SHARING**

Chair Baker and Members of the Committee:

My name is Lori Beth Van Cantfort, and I am the Time Share Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division. The Department appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) amend the information required to be in a time share disclosure statement, under certain circumstances; (2) amend the information required to be on a developer registration renewal application; (3) expand the information developers are not required to include on a developer registration renewal application; (4) limit the copies of documents developers are required to submit in a developer registration renewal application; (5) require developers to submit copies of supplementary plan documents of the time share plan, or a sampling of such documents; and (6) allow for submission of certain documents in electronic form.

Section 3 of the bill (page 5, subsection 9) seeks to remove the requirement that all encumbrances listed in a title report be disclosed in the disclosure statement. Instead, the disclosure statement would list only primary plan documents and include a disclosure that supplementary plan documents are on file with and can be reviewed at the Department. This change is intended to decrease the length of the disclosure statement, which can exceed 100 pages for multi-site time share plans. The supplementary plan documents are documents required to be recorded to add property to the time plan. These documents are likely not significant to purchasers when deciding whether to purchase.

While the Department agrees that many encumbrances do not need to be listed in the disclosure statement, further discussions with the American Resort Development Association (ARDA) are necessary to address the following:

1. The bill only addresses and defines “primary plan documents” and “supplementary plan documents.” It does not address other encumbrances that do not fall within these two definitions. Clarification is needed as to which of these other encumbrances will be disclosed.
2. The bill should provide the Department with the discretion to require that certain encumbrances be disclosed.
3. The bill requires a disclosure that supplementary plan documents are on file with the Department’s Director and can be reviewed at the Department. The bill should require that developers provide copies of encumbrances for review upon request by purchasers. Purchasers should not be required to come to the Department to review documents.

Section 4 of the bill (pages 10 to 11, subparagraphs (A) and (B)) seeks to simplify the certified statement of inventory submitted with a renewal application. While the Department agrees with the simplified statement, the developer should also: (1) identify the total number of points or time share interests that have been sold; and (2) be required to certify that the information in the statement is not more than 60 days old.

Section 4 of the bill (pages 12 to 13, subsection (i)) also seeks to no longer require a developer to submit copies of certain encumbrances with its applications.

Although the encumbrances identified in the bill may not be material to the time share plan, that cannot be determined if they are not submitted. Hawaii Administrative Rules section 16-106-2.5(c) provides that it is the developer's duty to ascertain and disclose all material facts. Therefore, the developer should certify that it has reviewed all encumbrances and determined that none of the encumbrances omitted are material.

The Department should have the discretion to require copies of any encumbrance it determines to be necessary. The bill currently provides on page 13, lines 13 to 14, that a developer shall not be required to include "(4) copies of such other documents as deemed necessary by the director." This paragraph (4) should be deleted from the bill.

Section 4 of the bill (page 13, subsection (j)) also allows a developer to submit a representative sampling of certain supplementary plan documents. Because multi-site time share plans are continually adding hundreds of individual intervals into the time share plan, documentation of each interval being properly added to the time share plan is very voluminous. Allowing a sampling of the properly recorded documents will help to reduce the size of the filings and save the Department filing space, while still allowing the Department to see that the developer is properly recording the required documents. However, the developer should be required to certify that all required supplementary plan documents not submitted have been properly recorded. Again, the Department should have the discretion to require copies of any supplementary plan documents it determines to be necessary for its review.

The Department has been working with the ARDA on this measure and will continue to work with them to develop appropriate language to address the above concerns.

Thank you for the opportunity to testify on this bill.



Eric W. Gill, Financial Secretary-Treasurer

Gemma G. Weinstein, President

Godfrey Maeshiro, Senior Vice President

January 19, 2020

LATE

Committee on Commerce, Consumer Protection and Health
Testimony in opposition to SB 2049

Chair Baker, Vice Chair Chang and members of the Committee,

UNITE HERE Local 5 represents over 11,500 people working in the hotel, food service and health care industries throughout Hawaii. Local 5 **opposes SB 2049** because its proposal to reduce disclosure requirements is against the interests of consumers. Consumer protection measures in the timeshare industry need to be increased, not decreased. Timeshare sales are immensely profitable for developers, especially for those that do their own financing. There really is no excuse as to why any timeshare company should be allowed to reduce the amount of disclosure they provide to consumers.

Beyond being bad policy generally, there are some of the specific problems with the disclosure reductions listed in the proposed legislation:

- 1) **Eliminating the need for developers to disclose liens, encumbrances or title defects to consumers:** It would be ridiculous to suggest this for any other type of real estate transaction; it would be unwise to ever buy real estate without knowing if there were liens or title defects on it. Removing that requirement is a terrible idea regardless of what liability an individual timeshare owner does or does not have.
- 2) **Condominium instruments:** If the timeshare is part of a condominium property regime, developers are currently required to provide buyers the "project instruments" - the bylaws and declaration of condo property regime. These documents describe things that are and are not allowed on property, voting rights and procedures, common elements, etc. SB 2049 would remove this requirement except where the purchaser would own an undivided interest in a fee or leasehold condominium unit. Whatever incremental value a timeshare company might achieve from not having to include these documents does not outweigh a buyer's interest in having them.
- 3) **Total inventory / unsold inventory:** Timeshare developers would no longer be required to tell consumers how many timeshare interests or points had already been sold at a project as of the registration date. They would also not be required to state in developer registration applications and renewals how many registered units were in the plan, the number of timeshare interests/points, and the number unsold. Among other things, this disclosure should provide some protection against a developer overselling a project. Double-selling timeshare interests is illegal, but if a developer was not required to report this information, it is unclear how anyone would know if the practice had occurred.
- 4) **Attachments to title policies or evidence of title:** It is unclear why this information wouldn't be necessary for a consumer protection agency to have.

Please reject this bill.

Thank you,

Benjamin Sadoski
Research Director
UNITE HERE Local 5



Imanaka Asato
A LIMITED LIABILITY LAW COMPANY



February 19, 2020

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Members of the Senate Committee on Commerce
Consumer Protection, and Health
Thirtieth Legislature
Regular Session, 2020

Re: S.B. 2049
Hearing on February 20, 2020, 9:00 a.m.
Conference Room 229

Dear Chair, Vice Chair and Members of the Committee:

Thank you for the opportunity to testify in **strong support** of Senate Bill (SB) 2049. This bill was the product of long discussions and negotiations during the interim with the Department of Commerce and Consumer Affairs Timeshare Administration office (Timeshare Office). Several hours and several drafts were exchanged, and while ARDA did not prevail on all of the issues brought to the table, ARDA believes it was a fruitful discussion and we thank the Timeshare Office for the time, energy and frank discussion.

SB 2049 was one of two bills we have filed as a product of the interim work, and it reflects an agreement by the parties to streamline an outdated and cumbersome annual renewal process for timeshare registrations. It further allows for the submission of information to the Timeshare Office in electronic form.

While we understand that the Timeshare Office is in conceptual agreement with the bill, we have been advised that it is still reviewing some of the language internally, so it cannot expressly state that it supports the bill outright. However, we are very hopeful that we will be able to secure agreement, and so we respectfully request that you pass this bill forward.

Thank you for your kind consideration of these thoughts.

Very truly yours,

Kimberley W. Yoshimoto, on behalf of
Marriott Vacations Worldwide Corporation, Vistana
Signature Experiences and Aqua-Aston

CHARLES E. PEAR, JR.
ATTORNEY AT LAW

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February 19, 2020



Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Members of the Senate Committee on Commerce
Consumer Protection, and Health
Thirtieth Legislature
Regular Session, 2020

Re: S.B. 2049
Hearing on February 20, 2020, 9:00 a.m.
Conference Room 229

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports the bill.

This bill is the product of a collaborative effort between ARDA Hawaii and the Department of Commerce and Consumer Affairs. SB 2049 is nearly identical to the bill prepared and reviewed by ARDA Hawaii and the DCCA.

ARDA Hawaii proposes that certain technical changes be made to the current draft of S.B. 2049, as shown the revised draft attached hereto as Exhibit A. The location of the changes can be identified by the line in the left margin of the pages of Exhibit A.

You may wish to take note of the following:

We changed line 13 of page 13. This is part of proposed subsection 514E-9(i), which provides that the developer is not required to file certain documents in connection with the developer registrations. Item (i) (4) was intended to give the director discretion to decide whether or not to require that a particular document be filed. The draft prepared by the stakeholders was consistent with that intent. However, SB2049 revised this language in a way that is not consistent with the intent of the stakeholders. Accordingly, we have changed it to comply with the intent and the language of the draft prepared by ARDA Hawaii and the DCCA.

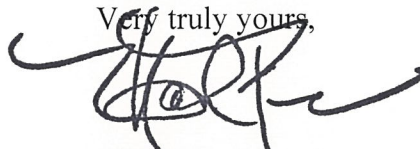
Chair, Vice Chair and Members,
Senate Committee on Commerce
Consumer Affairs and Health
February 19, 2020
Page 2

Under the language in Exhibit A, the director shall have the authority to decide whether particular documents must be filed with the DCCA.

We understand that the DCCA may have some further thoughts about this and about other changes that they may like to see in SB2049. We have prepared a draft addressing such of those thoughts as have been made known to us. Should you so desire, we would be happy to supply a copy of our revised draft.

Thank you for your kind consideration of these thoughts.

Very truly yours,

A handwritten signature in black ink, appearing to read 'CEP', with a stylized flourish extending to the right.

Charles E. Pear, Jr.

CEP:kn

A BILL FOR AN ACT

RELATING TO TIME SHARING.

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

SECTION 1. The legislature finds that under existing law the current process for time share developers to renew their registration is arduous and requires a significant amount of information. The extensive process has caused a backlog for developers to submit their annual renewals for time share registration. The legislature further finds that existing law does not authorize a developer to utilize electronic means, which further exacerbates the extensive process for renewal registration.

Accordingly, the purpose of this Act is to streamline the annual renewals for time share registration by:

- (1) Amending the information required to be included in a time share disclosure statement, under certain circumstances;
- (2) Amending the information required to be included on an application to renew a developer's registration;
- (3) Expanding the information that developers are not required to include on an application to renew their registration;

(4) Requiring developers to submit copies of encumbrances on title using any form of electronic record acceptable;

(5) Limiting the copies that developers are required to submit in an application for renewal registration; and

(6) Requiring developers to submit copies of the supplementary plan documents of the time share plan.

SECTION 2. Section 514E-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Primary plan ~~document~~documents" means the constituent documents of the time share plan, including any time share declaration, any trust agreement, articles of incorporation and bylaws of the association, if the association is a corporation, or the operating agreement or similar organization document, if the association is a limited liability company or other entity, the rules for reserving the use of the time share units, and the rules and regulations governing the occupancy of the time share units. "Primary plan ~~document~~documents" does not include supplementary plan documents.

"Supplementary plan ~~document~~documents" means any declaration of annexation, active property declaration, notice of access, notice of conveyance, notice of activation, deed conveying property to the trustee of a time share plan or to the time share owners association, and other instruments submitting or committing property to the time share plan or removing property from the time share plan. To the extent that any such documents modify the terms and provisions of the time share plan

as established in the existing primary plan documents, including
by establishing but not limited to documents that establish a new
class or category of time share interest having rights that
differ from existing time share interests in the time share
plan, the documents constitute primary plan documents and shall
not constitute supplementary plan documents."

SECTION 3. Section 514E-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any offering of a time sharing plan to the public shall disclose:

- (1) The name and address of the developer and of the time share units;
- (2) The name and address of the plan manager, if any, and a description of the plan manager's responsibilities and authority;
- (3) A description of the time share units, including the developer's schedule for completion of all buildings, units, and amenities and dates of availability;
- (4) If the time share plan is located in a condominium property regime, a description of the project, and if the purchaser will own an undivided interest in a fee or leasehold condominium unit, a brief description of any pertinent provisions of the project instruments;
- (5) Any restraints on the transfer of the buyer's time share interest in the time share units or plan;
- (6) Whether the time share plan is a time share ownership plan or a time share use plan, along with a description of the rights and responsibilities under said plan;
- (7) A statement that there is a seven-calendar-day period of mutual rescission;
- (8) A statement that pursuant to section 514E-11.3, every sale or transfer, made in violation of this chapter is voidable at the election of the purchaser;
- (9) ~~[Notice of any liens, title defects or encumbrances on or affecting the title to the units or plan;]~~ A list of the primary plan documents of the time share plan and a statement indicating that the supplementary plan documents, or representative samples of the supplementary plan documents, are on file with the director for purchaser review;

(10) Notice of any pending or anticipated suits that are material to the time share units or plan, of which the developer has, or should have, knowledge;

(11) The total financial obligation of the purchaser, which shall consist of:

(A) A statement that the purchaser is obligated to pay the initial price stated in the purchaser's purchase agreement; and

(B) A list or description of any additional charges to which the purchaser may be subject;

(12) An estimate of the dues, maintenance fees, real property taxes, and similar periodic expenses, and the method or formula by which they are derived and apportioned;

(13) The ~~disclosure~~-statement ~~under~~[required by](#) subsection (d), if applicable; and

(14) Other disclosures required by the director, as provided by rules adopted pursuant to chapter 91."

SECTION 4. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

"§514E-10 Registration required; developer, acquisition agent, plan manager, and exchange agent; registration renewal. (a) A developer shall not offer or dispose of a time share unit or a time share interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the time share plan to be offered by the developer is accepted by the director for registration under this chapter. The director shall not accept a developer's time share plan if the developer does not possess

a history of honesty, truthfulness, financial integrity, and fair dealing.

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan for which it is providing prospective purchasers, its address, the telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the acquisition agent is not a natural person, the name of the responsible managing employee; provided that an acquisition agent licensed under chapter 467 as a real estate broker shall not be required to register under this chapter. All acquisition agents not licensed under chapter 467 shall be approved by the director. The director shall not approve any acquisition agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The acquisition agent shall furnish evidence that the acquisition agent is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any violation by the acquisition agent of any solicitation ordinance or other regulation governing the use of the premise or premises in which the time share plan is promoted; provided that the acquisition agent shall be separately bonded for each time share plan for which it is providing prospective purchases.

(c) A plan manager (including the developer if it is also the plan manager) shall register under this chapter by filing with the director a statement setting forth the time sharing

plan that it is managing, its principal office address, telephone number, and responsible managing employee. The plan manager shall furnish evidence that the plan manager is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any default of the plan manager and any of its employees of their duties and responsibilities; provided that the plan manager shall be separately bonded for each time share plan under the management of the plan manager.

(d) An exchange agent (including the developer if it is also an exchange agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan for which it is offering exchange services, its principal office address and telephone number, and designate its responsible managing employee.

(e) Any plan manager or developer registration required in this section shall be renewed by December 31 of each even-numbered year, and any acquisition agent or exchange agent registration required in this section shall be renewed on December 31 of each odd-numbered year; provided that this subsection shall not relieve the person required to register from the obligation to notify the director promptly of any material change in any information submitted to the director, nor shall it relieve the developer of its obligation to promptly file amendments or supplements to the disclosure statement, and to promptly supply the amendments or supplements to purchasers of time share interests.

(f) An application for renewal of a developer registration shall be on a form prescribed by the director and shall include:

~~[(1) A current disclosure statement that meets the requirements of section 514E-9 and section 16-106-3, Hawaii Administrative Rules, if not already on file;~~

{2}] (1) A statement that is certified by the developer to be true and correct in all respects and that identifies, as appropriate:

~~[(A) The time share units in the time share plan registered pursuant to this chapter; the total number of time share interests registered for sale in each unit pursuant to this chapter; and the total number of time share interests that have not yet been sold as of the date specified in the developer's certification, which date shall not be more than sixty days prior to the date of the developer's certification; or~~

~~(B) The property in the time share plan registered pursuant to this chapter; the total number of points registered for sale in each property pursuant to this chapter; and the total number of points in the time share plan that have not yet been sold as of the date specified in the developer's certification, which date shall not be more than sixty days prior to the date of the developer's certification;]~~

(A) If points are a component part of the time share ~~interest~~interests in the time share plan, the

total number of points registered for sale as of the date of submittal; or

(B) If points are not a component part of the time share ~~interest~~interests in the time share plan:

(i) The total number of whole time share units registered for sale as of the date of submittal; and

(ii) The total number of time share interests in the time share plan that are registered for sale as of the date of submittal and are not attributable to whole time share units included in the plan;

~~[(3)]~~ (2) If the developer is a corporation, partnership, joint venture, limited liability company, or limited liability partnership, an original certificate of good standing issued by the business registration division of the department of commerce and consumer affairs not more than forty-five days before the date of submission of the renewal application; and

~~[(4)]~~ (3) The biennial renewal fee.

(g) Developers shall not be required to include the following in an application for renewal of a developer registration of a time share plan:

(1) The current disclosure statement, or any proposed amendment to or amended disclosure statement;

(2) Except as otherwise provided in subsection (f)(1)(B), a statement describing the registered units included in the plan, number of time share interests created, and number of time share interests that have been sold or that remain unsold;

~~[(1)]~~ (3) A financial statement of the developer; or

~~[(2)]~~ (4) A policy of title insurance, a preliminary title report, abstract of title, or certificate of title on the units or time share interests in the time share plan.

(h) A developer shall submit copies of encumbrances on title to any time share unit using any form of electronic record acceptable to the director.

For the purposes of this subsection, "electronic record" has the same meaning as defined in section 489E-2.

(i) Unless requested by the director, a developer shall not be required to include copies of the following in any application for a developer registration, application to amend a developer registration, application for renewal of a developer registration, or otherwise:

(1) Copies of any federal, state, or local constitutions, charters, laws, or regulations referred to in any title report, title policy, or other evidence of title;

(2) Copies of any land court maps, subdivision maps, file plans, or any other subdivision plats or plans referred to in any title report, title policy, or other evidence of title;

(3) Copies of any land court certificates of title, land court orders, or other judicial or quasi-judicial determinations or orders referred to in any title report, title policy or other evidence of title; or

(4) Copies of such other documents as ~~deemed necessary by the director~~ shall determine.

(j) A developer shall be required to submit to the director copies of the supplementary plan documents of the time share plan that is the subject of an application for registration or an application for annexation, except to the extent that the director agrees to accept representative samples of such supplementary plan documents."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Time Sharing; Time Share; Developer Applications; Disclosure Statements; Encumbrances; Annual Renewal Registration

Description:

Amends the information required to be in a time share disclosure statement, under certain circumstances. Amends the information required to be on a developer registration renewal application. Expands the information developers are not required to include on a developer registration renewal application. Limits the copies of documents developers are required to submit in a developer registration renewal application. Requires developers to submit copies of supplementary plan documents of the time share plan. Allows for submission of certain document in electronic form.

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



February 18, 2020

TO: Senator Rosalyn H. Baker, Chair Commerce, Consumer Protection, and Health
Senator Stanley Chang, Vice-Chair Commerce, Consumer Protection and Health
Members of the Senate Committee on Commerce, Consumer Protection and Health

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION (ARDA) – HAWAII
Kim Yoshimoto

RE: **S.B. 2049 RELATING TO TIME SHARING - SUPPORT**

Description: Amends the information required to be in a time share disclosure statement, under certain circumstances. Amends the information required to be on a developer registration renewal application. Expands the information developers are not required to include on a developer registration renewal application. Limits the copies of documents developers are required to submit in a developer registration renewal application. Requires developers to submit copies of supplementary plan documents of the time share plan. Allows for submission of certain document in electronic form.

Dear Chair Baker, Vice-Chair Chang and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill (SB) 2049. This bill was the product of long discussions and negotiations during the interim with the Department of Commerce and Consumer Affairs Timeshare Administration office (Timeshare Office). Several hours and several drafts were exchanged, and while ARDA did not prevail on all of the issues brought to the table, ARDA believes it was a fruitful discussion and we thank the Timeshare Office for the time, energy and frank discussion.

SB 2049 was one of two bills we have filed as a product of the interim work, and it reflects an agreement by the parties to streamline an outdated and cumbersome annual renewal process for timeshare registrations.

While we understand that the Timeshare Office is in conceptual agreement with the bill, we have been advised that it is still reviewing some of the language internally, so it cannot expressly state that it supports the bill outright. However, we are very hopeful that we will be able to secure agreement, and so we respectfully request that you pass this bill forward. If given a bit more time prior to decision making, we may be able to craft specific amendments to SB 2049 with the Timeshare Office for the Committee's consideration.