

DAVID Y. IGE
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**STATE OF HAWAII
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 Judiciary
Tuesday, February 25, 2020
12:30 p.m.
State Capitol, Conference Room 016**

**On the following measure:
S.B. 2273, S.D. 1, RELATING TO TIME SHARING**

WRITTEN TESTIMONY ONLY

Chair Rhoads 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) provide time share purchasers with rescission rights if there is a material change to the information contained in the disclosure statement; and (2) require developers to provide a notice to purchasers regarding any pertinent or material change made to the disclosure statement.

Currently, a developer must submit any proposed changes to its disclosure statement to the Department for review and acceptance prior to providing the amended disclosure statement to purchasers. Purchasers who have entered into binding contracts, but whose sales have not yet closed, are not aware of these material

changes while the Department is reviewing the amended disclosure statement. Therefore, sales could close while the Department is still reviewing the material changes, and purchasers would not be aware of those changes. The Department appreciates that this bill seeks to provide purchasers with current information and a new rescission right, should any material changes exist prior to closing.

However, the Department requests amending Hawaii Revised Statutes (HRS) section 514E-B, subsection (a) on page 4 of the bill to be consistent with HRS section 514E-A, subsection (b) on page 2. Page 4, lines 15 to 16 should provide: "In all other cases, the notice of change shall be provided by certified mail." The notice of change should be delivered by certified mail so that it can be easily determined when the purchaser received the notice of change. This is necessary because the purchaser will have seven days after receiving a notice of material change to rescind the contract.

Thank you for the opportunity to testify on this bill.

SB-2273-SD-1

Submitted on: 2/22/2020 8:48:14 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Stephanie P. Donoho	Testifying for Kohala Coast Resort Association	Support	No

Comments:



February 25, 2020

TO: Senator Karl Rhoads, Chair Judiciary Committee
Senator Jarrett Keohokalole, Vice-Chair Judiciary Committee
Members of the Senate Judiciary Committee

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION (ARDA) -HAWAII
Blake Oshiro, Executive Director

RE: **SB2273 SD1 - RELATING TO TIME SHARING. – SUPPORT with proposed amendments**
Provides purchasers of time shares with rescission rights if there is a material change to the information contained in the disclosure statement. Requires developers to provide notice to the purchaser regarding any pertinent or material change made to the disclosure statement.

Dear Chair Rhoads, Vice-Chair Keohokalole, and Members of the Committee:

Thank you for the opportunity to testify on SB2273 SD1. This bill was the product of long discussions and negotiations held 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.

The purpose of SB2273 SD1 is to refine the process of notification to potential purchasers to distinguish material changes from pertinent to changes.

A “material change” is defined as one that “directly, substantially, and adversely affects the use or value of a purchaser’s time share interest or [unit]”. Other changes that are less important and do not affect value or use would be considered “pertinent.”

This approach to distinguishing these changes comes from the condominium law. Haw. Rev. Stat. 514B-87.

The prior committee amended the bill in order to address some of the concerns brought up by the DCCA during its testimony. We support those changes in order to clarify the purchasers’ notice and rights, but we would like to propose an amendment to allow for other recognized reliable mailing service in addition to certified mail, the bill allow deliver by “by personal delivery, by registered or certified mail, or by courier service.” ARDA’S attorney Charles Pear, Esq. has provided testimony and a proposed draft and we support those amendments.

Thank you.

CHARLES E. PEAR, JR.
ATTORNEY AT LAW

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February 24, 2020

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary
Thirtieth Legislature
Regular Session, 2020

Re: S.B. 2273, S.D.1
Hearing on February 25, 2020, 12:30 p.m.
Conference Room 016

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 with changes.

Background

The Time Share Act, Chapter 514E, HRS, was adopted in 1980. At that time, most time share plans consisted of condominium units in a single condominium project. Buyers purchased the right to use a specific week in a given unit in each year.

Over the next 40 years, the time sharing industry evolved repeatedly. Modern time share plans may now include hundreds or even thousands of units in dozens of real estate projects located in Hawaii, other states, and even other countries. This is intended to give the owners more vacation opportunities when making their vacation plans.

While this enhances the product for the consumer, it also burdens the developer and the regulators in various locales where the timesharing plans are situated or offered. For example, each time that a unit is added to the plan, the developer must amend each registration in every state or country. Each time that a new site is added, the developer also must amend each registration in every state or country. Preparation and review of such amendments can be tedious and time-consuming work for both the developer and the regulators.

Unfortunately, this may result in delays in filing and processing updates to the Hawaii time share disclosure statement. This can lead to circumstances where the plan has changed

before the buyer's sale closes, but the buyer is unaware of the change. Moreover, even if the buyer is made aware of the change, the buyer has no new statutory right of rescission.

The old version of the Condominium Law, Chapter 514A, HRS, required that developers suspend sales of condominium units while an application to amend the public report was pending. This requirement proved to be unworkable. The legislature recognized this when it adopted the new Condominium Act, Chapter 514B. Under Chapter 514B, it is not necessary for a developer suspend sales while an application to amend a registration is pending. Specifically, §514B-56(b), HRS, provides:

(b) The submission of an amendment to the developer's public report or an amended developer's public report **shall not require the developer to suspend sales** * * * provided that the developer shall * * * disclose to purchasers any change in the information contained in the developer's public report pending the issuance of an effective date for any amendment to the developer's public report or amended developer's public report; * * * [Emphasis added.]

This bill is intended to adopt a similar approach for use with the Time Share Act, Chapter 514E, HRS. The operative provisions of the bill are based on the approach set forth in Section 514B-87 of the Condominium Act. The bill works like this:

1. If there is a change to the information contained in the Time Share Disclosure Statement, the developer must provide a notice of the change to each buyer who has signed a purchase agreement but whose sale has not yet closed.
2. The notice must be provided using a notice of change form approved by the Director of the DCCA.
3. The developer may continue to sell time share interests.
4. New buyers must be given the notice of change at the same time that they are given a copy of the current disclosure statement. The notice of change must be personally delivered, mailed or sent by courier to buyers who have already received the disclosure statement (i.e., for pending but unclosed sales).
5. If the change is a material change, buyers have a new 7-day right of rescission starting from the date of delivery of the notice of change.
6. The developer cannot close a pending sale until five days after the buyer's new 7-day rescission period has expired. This is intended to allow time for the mails to clear.

ARDA Hawaii believe that this bill provides new and important rights to time share purchasers while also providing a path for developers to continue to sell their product, and to keep purchasers updated on any changes to the product, while the DCCA is reviewing the developer's application to amend the disclosure statement.

Proposed Changes to S.D. 1

ARDA Hawaii proposes that the current draft of S.B. 2273 S.D. 1, be revised as shown on Exhibit A attached hereto. The location of the changes can be identified by the line in the left margin of the pages of Exhibit A. These changes can be summarized as follows:

Senate Draft 1 requires that the notice of change be given by certified mail. ARDA-Hawaii believes that other forms of delivery should be authorized, as follows:

1. Personal Delivery. When the developer enters into a contract with a buyer, the developer must provide to the buyer a copy of the most recent disclosure statement accepted by the DCCA.

If there has been a change to the plan, the developer would also be required to deliver a copy of the Notice of Change. This would be given by personal delivery to the buyer at the time of sale.

It would not make sense to require that the disclosure statement be given to the buyer at the time of sale but that the notice of change be mailed to the buyer.

2. Registered Mail. The developer may prefer to send a notice of change to the purchaser by registered mail, which allows the developer to track the delivery process, particularly in other countries such as Canada.
3. Courier Service. Many developers prefer to send materials to the consumers via FedEx or other courier service.

The rescission period starts when the purchaser receives the notice of change and rescission form, and it ends 7 days after receipt. The ARDA-Hawaii draft provides that the buyer will be deemed to have received the notice of change and rescission form as follows:

1. Personal Delivery. This is sort of obvious. The buyer will be deemed to receive it when it is personally delivered to the buyer.
2. Delivery by Mail or Courier. Under current law, buyers have the right to rescind their sales contract within seven days after they sign it or receive the disclosure statement. If the buyer mails the rescission notice on the 7th day, it will take some time to arrive at the office of the developer.

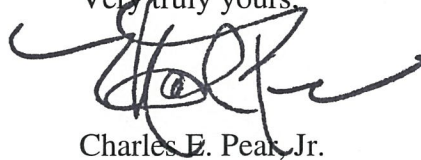
Chair, Vice Chair and Members,
Senate Committee on Judiciary
February 24, 2020
Page 4

For nearly forty years now, developers have allowed a 5-day period for the mails to clear. This means that the developer cannot close a sale until 5 days after the buyer's 7-day rescission expires. This approach was established with the concurrence of the DCCA at that time, and it is adopted in the current version of S.D.1 (See subsection (f) at the top of page 4 at line 1 of SB2273, S.D.1).

The ARDA-Hawaii proposal adopts the same approach for delivery of the forms to the buyers. It provides that buyers will be deemed to have received the forms 5 days after they are deposited in the mail or deposited with a courier. This provides a convenient way to administer the application of the rescission period rule.

Thank you for your kind consideration of these thoughts.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Charles E. Peak, Jr.', written over the typed name below.

Charles E. Peak, 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 while existing law provides purchasers of condominiums with the protection of rescission rights when material changes have been made to the condominium public reports after a sales contract becomes binding, there are no laws that provide purchasers of time share interests with the protection of rescission rights under similar circumstances.

Accordingly, the purpose of this Act is to:

- (1) Require developers to provide a notice to purchasers of time share interests of any material change or pertinent change in the information in the current disclosure statement; and
- (2) Provide purchasers of time share interests rescission rights for material changes made to the disclosure statement.

SECTION 2. Chapter 514E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§514E-A Rescission due to a material change; sales

contract. (a) Purchasers shall have a seven calendar day right to rescind a sales contract for the purchase of a time share interest from a developer if, prior to closing, there is a material change in the time share plan. This rescission right shall not apply in the event of any additions, deletions, modifications, and reservations, including but not limited to the merger, addition, or phasing of a plan, made pursuant to the terms of the time share instruments.

(b) The developer shall deliver to a purchaser ~~by certified mail~~ a description of the material change on a notice of change form, and a rescission form, each in a form prescribed by the director ~~in addition to a rescission form~~. The notice of change and rescission form shall be delivered by personal delivery, by registered or certified mail, or by courier service. The rescission period shall end seven calendar days after the purchaser's receipt of the notice of ~~material change~~.—change and rescission form. The purchaser will be deemed to have received the notice of change and rescission form upon personal delivery or five calendar days after deposit in the mail or with a courier service. The purchaser may let the seven-day rescission period expire without exercising the purchaser's right of rescission in accordance with subsection (c), in which case the rescission right shall be terminated.

(c) In order to be valid, a rescission form must be signed by all purchasers of the affected time share interest and postmarked no later than midnight of the seventh calendar day

after the date that the purchaser received the rescission form from the developer. In the event of a valid exercise of a purchaser's right of rescission pursuant to this section, the purchasers shall be entitled to a prompt and full refund of any moneys paid; provided that the developer may withhold up to \$25 in the event the purchaser does not return all materials to the developer.

(d) The rescission form obtained by the developer under this section shall be kept on file in possession of the developer and shall be subject to inspection at a reasonable time by the director or the director's staff or agents, for a period of three years from the date the receipt or return receipt was obtained.

(e) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a time share interest or any applicable common law remedies.

(f) A purchaser's sale may be closed when the escrow agent receives a statement from the developer stating that at least five days have passed since the purchaser's rescission period under subsection (a) has expired, and the developer has not received from the purchaser a rescission form validly exercising the purchaser's right of rescission pursuant to subsection (c).

§514E-B Notice of change. (a) In the event of a pertinent change or a material change to the information required by section 514E-9, until such time as the director accepts an amended disclosure statement disclosing the change,

the developer shall provide to each purchaser of a time share interest whose purchase has not yet closed a notice of any such change on a form prescribed by the director. For new sales, the notice of change may be provided with the most recently accepted disclosure statement. In all other cases, the notice of change shall be provided by personal delivery ~~or by~~, mail, or courier service.

(b) The developer may continue to sell and to close the sale of time share interests in the time share plan; provided that if the notice of change discloses a material change, the sale may close only when the requirements of section 514E-A(f) have been met."

SECTION 3. Section 514E-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Material change" means any change to the information required by section 514E-9 and that directly, substantially, and adversely affects the use or value of a purchaser's time share interest or the time share units in the time share plan.

"Pertinent change" means a change, other than a material change, to the information required by section 514E-9. Without limiting the foregoing, the following shall constitute "pertinent changes" and shall not constitute material changes:

(1) The annexation of fully constructed time share units located in a component site that has previously been accepted by the director for registration in the time share plan;

(2) Any change to the address or telephone number of the developer;

(3) Any change to the name, address, or telephone number of the escrow agent, plan manager, any sales agent, any acquisition agent, or any exchange agent;

(4) Any change to the name, address, or telephone number of any officers, directors, employees, or agents, including but not limited to responsible managing employees, and agents for service of process, of the developer, escrow agent, plan manager, sales agent, acquisition agent, or exchange agent; and

(5) The dismissal of any litigation disclosed in the disclosure statement."

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. New statutory material is underscored.

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

Report Title:

Time Sharing; Notice of Material ~~Change~~Changes; Purchaser Right to Cancel

Description:

Provides purchasers of time shares with rescission rights if there is a material change to the information contained in the disclosure statement. Requires developers to provide notice to the purchaser regarding any pertinent or material change made to the disclosure statement. (SD1)

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

videnr



Imanaka Asato
A LIMITED LIABILITY LAW COMPANY

LATE

February 24, 2020

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice-Chair
Members of the Senate Committee on Judiciary
Thirtieth Legislature
Regular Session, 2020

RE: SENATE BILL 2273 RELATING TO TIME SHARING – SUPPORT
Hearing Date: February 25, 2020 at 9:00 a.m.

Dear Chair Rhoads, Vice-Chair Keohokalole, and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill (SB) 2273 on behalf of Marriott Vacations Worldwide Corporation (“MWVC”). This bill was the product of long discussions and negotiations held during the interim with the Department of Commerce and Consumer Affairs Timeshare Administration Office (Timeshare Office).

SB2273 was one of two bills introduced as a product of the interim work, and it reflects an agreement between the parties as to an approach for the process of notification to potential purchasers to distinguish material changes from pertinent changes to the timeshare registration.

A "material change" is defined as one that “directly, substantially, and adversely affects the use or value of a purchaser's time share interest or [unit]”. Other changes that are less important and do not affect value or use would be considered “pertinent.”

This approach to distinguishing these changes comes from the condominium law. Haw. Rev. Stat. 514B-87.

The prior committee amended the bill in order to address some of the concerns brought up by the DCCA during its testimony. We support those changes in order to clarify purchasers’ notice and rights, and also support the proposed additional amendments provided in the testimony of Charles Pear, Esq., the attorney for the American Resort Development Association, of which MVWC is a member.

Mahalo,

Kimberley W. Yoshimoto, on behalf of
Marriott Vacations Worldwide Corporation

SB-2273-SD-1

Submitted on: 2/22/2020 1:07:10 PM

Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Individual	Support	No

Comments:

I support SB2273.

Mike Golojuch, Sr.

LATE

SB-2273-SD-1

Submitted on: 2/25/2020 12:27:52 PM

Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne	Individual	Support	No

Comments: