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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  
House Committee on Consumer Protection & Commerce  
Wednesday, March 1, 2023  
2:00 p.m.  
Conference Room 329 and Videoconference**

**On the following measure:  
H.B. 11, H.D. 1, RELATING TO TIME SHARING PLANS**

Chair Nakashima 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) specify that primary and secondary plan documents be listed in the public disclosure statement of a time share plan; (2) clarify the manner in which the required disclosure of liens, title defects, or encumbrances on the titles of units may be made; and (3) provide that a review of encumbrances be waived upon the certification from the developer that the time share interest is free and clear of blanket liens or that identifies all blanket liens.

Section 1 of the bill (pages 1-3, subsection 3, and page 4, subsection 10) seeks to remove the requirement that all encumbrances listed on a title report be disclosed in the disclosure statement. Instead, only "primary plan documents," "supplementary plan

documents,” and material liens, title defects or encumbrances affecting title would be disclosed. For all other liens, title defects, or encumbrances, a reference would be made to a website where these documents would be listed and made available for review. This change is intended to decrease the length of the disclosure statement, which can exceed 100 pages for multi-site time share plans. While the Department appreciates that many encumbrances may not need to be listed in the disclosure statement and having an excessively long disclosure statement may deter purchasers from actually reading the disclosure statement, the Department should have the discretion to require that certain encumbrances be disclosed. Also, the developer should be required to represent that it has determined that the encumbrances not listed in the disclosure statement are not material.

Section 1 of the bill (page 3, subsection 5) also seeks to clarify that disclosures regarding pertinent provisions in a condominium’s project instruments only need to be disclosed if a purchaser will be a “direct owner” of a unit in the condominium. It is unclear what a “direct owner” of a unit is and the term should be defined or further described.

Section 2 of the bill (pages 7 and 10) seeks to amend paragraphs §514E-10.2(a)(4), Hawaii Revised Statutes (HRS), and §514E-10.2(c)(4), HRS, by changing a cross reference from §514E-9(a)(7), HRS to §514E-9(a)(8), HRS. However, §514E-9(a)(7), HRS, is the correct paragraph that should be referenced. The paragraphs being amended address rescission notices and §514-9(a)(7) provides that the 7-day rescission right must be disclosed. §514E-9(a)(8), HRS, deals with sales made in violation of the law being voidable which is not what these paragraphs deal with. These paragraphs should not be amended.

Section 3 of the bill (page 13) seeks to no longer allow the Department to review all encumbrances to determine that the time share interests are being sold free and clear of blanket liens. Instead, the Department shall accept a certification from the developer that the time share interests are being sold free and clear of blanket liens or other material encumbrances that may materially and adversely impact utilization of the property, or if that is not the case then a certification that identifies the blanket liens or

material encumbrances and either specifies how these encumbrances will be addressed or what impact such encumbrances may have on purchasers. Although the Department is willing to accept such a certification, it should still have the discretion to conduct an encumbrance review should the need arise. If the Department does not have discretion and is required to accept such a certification, then the certification should state the basis for the developer's certification and clearly state that they have reviewed all the encumbrances in determining that there are no blanket liens

The Department has been working with the American Resort Development Association on this measure and will continue to work with them to address the above concerns.

Thank you for the opportunity to testify on this bill.

February 28, 2023

Representative Mark Nakshima, Chair  
Representative Jackson Sayama, Vice Chair  
Members of the Senate Committee on Consumer Protection and Commerce  
Thirty-Second State Legislature  
Regular Session of 2023

**RE: HOUSE BILL 11 - RELATING TO TIME SHARING PLAN**  
**Hearing date: Wednesday, March 1, 2023 at 2 P.M.**

Aloha Chair Nakashima, Vice Chair Sayama and members of the committee:

My name is Thomas Goodman of Hilton Grand Vacations (HGV), and I'm writing on behalf of our company in strong support of **HB11 - Relating to Time Sharing Plan**. HGV is a leading global timeshare company, with resorts and timeshares units across Hawai'i Island, O'ahu, Maui, and Kaua'i. We have a longstanding history of investing in the local communities where our team members and timeshare owners live, work and vacation, including initiatives focused on sustainability, homelessness, youth development, disaster relief and veterans.

HB11 HD1 seeks to provide clarity to government officials when reviewing a time share filing while preserving protections for consumers. The measure specifies the way a required disclosure of liens, title defects, or encumbrances on the titles of units may be made. Further, the measure provides that if an applicant certifies that a timeshare interest is being sold free and clear of blanket liens or other material encumbrances, or that the same are being addressed, the consultant to the State need not review all encumbrances.

Further, under the proposed new Section 514-E-9(a)(9), for all liens, title defects and encumbrances, a reference may be made to a website link where the items shall be disclosed. This amendment eliminates the unnecessary filing of additional **and extremely voluminous** paper documentation while offering consumers quick and easy access to information regarding the status of title of the time share interest. This should serve to decrease review time while still preserving consumer protection and move these types of disclosures into a paperless environment.

HGV also supports the amendment to Section 514E-10.5 allowing for developer certification that a property is free and clear of blanket liens or other material encumbrances. This places the responsibility of guaranteeing a time share interest is

conveyed free and clear of all blanket liens solely on the developer. In turn, the consumer remains protected, as the sale of a timeshare interest to a buyer may not close unless it is conveyed to the buyer free and clear of blanket liens. (See HRS Section 514E-19.)

HGV is also in strong support of the amendments being recommended by ARDA Hawaii in its proposed HD2. These amendments:

1. Add language to the new Section 514E-9(5), Hawaii Revised Statute, to provide additional clarity;
2. Add language to the new Section 514E-9(10), Hawaii Revised Statute, to use specific language consistent with other sections of 514E to determine materiality; and
3. Add language to the new Section 514E-10.5, Hawaii Revised Statute, to provide additional clarity regarding developer's certification of all encumbrances.

Like many companies in the timeshare industry, HGV has awaited approval for new timeshare registration filings for 12 to 15 months and amendments to existing filings for six to nine months. These delays prevent us from submitting all of the filings that we would otherwise pursue, making it difficult to realize the benefits and support our industry can fully provide to the state.

Accordingly, HGV Hawaii stands in strong support of this measure, as it seeks to resolve ongoing review delays while maintaining high levels of protection for consumers. We look forward to working with the Legislature to address the issues this measure seeks to resolve.

Mahalo Nui Loa,

Thomas Goodman  
Vice President, Legal  
Hilton Grand Vacations



CHARLES E. PEAR, JR., P.A.  
ERROR! REFERENCE SOURCE NOT FOUND.

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February 27, 2023

Representative Mark M. Nakashima, Chair  
Representative Jackson D. Sayama, Vice Chair  
House Committee on Consumer Protection  
& Commerce

Re: HB 11 – Relating to Time Sharing Plans  
Hearing on March 1, 2023, at 2:00 PM  
Conference Room 329

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 that started back in 2019. The parties are currently working together on a revised draft. A copy of the most recent ARDA proposal is attached to the testimony by ARDA.

**A. Section 1. Disclosure of Encumbrances.**

The developer of a time share plan must provide a disclosure statement on the plan to each buyer. Under current law, the disclosure statement must list all encumbrances on title to the time share units.

When the Hawaii time share law was first adopted in 1980, most time share plans were confined to a single site. Buyers would typically receive a deed of a 1/51<sup>st</sup> interest in a specific condominium unit together with the right to use that unit for a specific week in every year. Listing the encumbrances for a single condominium project was simple and added maybe a page or two to the disclosure statement. It was also appropriate since the buyer would be a co-owner of a condominium unit in the condominium project.

Modern time share plans frequently involve hundreds of units at dozens of sites. I was recently asked to work on the registration of a project having units in 65 different resorts. The list of encumbrances is likely to add to the disclosure statement perhaps 50 – 75 pages listing things like electrical easements, waterline easements, and other legal documents that are not likely to be of interest to a time share buyer.

In modern time share plans, the buyers do not typically receive a deed of a unit at any given site. Instead, title is lodged in a land trust, and buyers own a beneficial interest in the trust. While it may be nice to list the encumbrances, there is a concern that if the disclosure statement becomes too long, buyers simply will not read any of it.

The most recent joint ARDA and DCCA draft of this bill would address this by dropping the requirement that all encumbrances be listed in the disclosure statement. In its place, the disclosure statement would list only material liens, title defects, or encumbrances on or affecting the title to the units or plan, plus any other lien, title or defect or encumbrance impacting a purchaser's utilization of the property, as the director may require.

The disclosure statement would also include a reference to a website on which buyers can review any other encumbrances on title. The disclosure statement would also include a statement that the developer has determined that such encumbrances are not expected to directly, substantially and adversely impact utilization of the property by a purchaser.

#### **B. Section 2. Correction to Cross Reference.**

Section 2 is not part of the draft prepared by ARDA with the DCCA. It appears, however, to simply correct a cross-reference in the existing law.

#### **C. Section 3. Copies of Encumbrances.**

At present, the developer submits a registration filing to the Director and the Director then appoints a consultant to review the filing. The present practice is to include copies of all encumbrances on title to the time share units in the filing. This bill relieves the consultant of the obligation to review the encumbrances if the developer either:

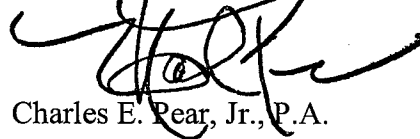
1. Certifies that it has reviewed all encumbrances and has determined that the time share interests are being sold free and clear of blanket liens and other material encumbrances that may directly, substantially and adversely impact utilization of the time share property by a purchaser, or
2. Identifies any blanket liens or other material encumbrances, and either (a) describes how those encumbrances will be addressed, or (b) describes what the impact of such encumbrances may be to the purchaser.

Chair, Vice-Chair, and Members of the  
Committee on Consumer Protection & Commerce  
February 27, 2023  
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ARDA and the DCCA have made substantial progress on this bill over the last 4 years. We are hopeful that a final bill will be agreed upon in the coming weeks. We would be most grateful if you would move this bill ahead during this session.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP

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

Charles E. Pear, Jr., P.A.

CEP:kn





February 28, 2023

TO: Chair Nakashima  
Vice-Chair Sayama  
Members of the House Committee on Consumer  
Protection and Commerce

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION – HAWAII (ARDA-Hawaii)

RE: HB11 HD1 – RELATING TO TIME SHARING PLAN

**Hearing date: March 1, 2023, at 2:00 PM**

Aloha Chair Nakashima, Vice Chair Sayama and members of the House Committee on Consumer Protection and Commerce.

ARDA-Hawaii is the local chapter of the trade association for the timeshare industry. There are currently 98 resorts and more than 15,000 timeshare units throughout Hawaii. ARDA-Hawaii hereby submits testimony in **STRONG SUPPORT of HB11- RELATING TO TIME SHARING PLAN.**

The timeshare industry in Hawaii enjoys **high occupancy levels (90+ percent) during good times and bad**, with visitors staying for an average of 9 days in length every visit. Further, the timeshare industry employs **5,000+ hard working local employees in Hawaii** and is a major economic driver contributing **\$55 million in state and county taxes**. Timeshare is an important and stabilizing part of the tourism industry and Hawaii's economy, supporting economic development and job creation throughout the state. Timeshare owners have made a long-term commitment to our state and are consistent and dependable visitors who bring substantial tax dollars to Hawaii and who continue to visit Hawaii even during periods of economic downturn.

HB11 HD1 seeks to provide clarity to government officials when reviewing a time share filing while preserving protections for consumers. The measure specifies the manner in which a required disclosure of liens, title defects, or encumbrances on the titles of units may be made. Further, the measure provides that if an applicant certifies that a timeshare interest is being sold free and clear of blanket liens or other material encumbrances, or that the same are being addressed, the consultant to the State need not review all encumbrances.

ARDA Hawaii supports this measure which seeks to enhance the efficiency of reviewing disclosure statements and filings for time share plans.

Further, under the proposed new Section 514-E-9(a)(9), for all liens, title defects and encumbrances, a reference may be made to a website link where the items shall be disclosed. This amendment eliminates the unnecessary filing of additional paper documentation while offering consumers quick and easy access to information regarding the status of title of the time share interest. This should serve to decrease review time while still preserving consumer protection, and move these types of disclosures into a paperless environment.

ARDA Hawaii supports the amendment to Section 514E-10.5 allowing for developer certification that a property is free and clear of blanket liens or other material encumbrances. This places the responsibility of guaranteeing a time share interest is conveyed free and clear of all blanket liens solely on the developer. In turn, the consumer remains protected, as the sale of a timeshare interest to a buyer may not close unless it is conveyed to the buyer free and clear of blanket liens. (See HRS Section 514E-19.)

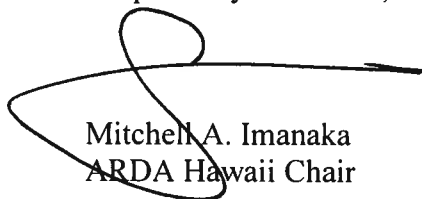
In order to further the purpose of the measure, ARDA Hawaii respectfully recommends several amendments in the attached proposed HD2. In sum, the proposed HD2 makes the following amendments:

1. Add language to the new Section 514E-9(5), Hawaii Revised Statute, to provide additional clarity;
2. Add language to the new Section 514E-9(10), Hawaii Revised Statute, to use specific language consistent with other sections of 514E to determine materiality; and
3. Add language to the new Section 514E-10.5, Hawaii Revised Statute, to provide additional clarity regarding developer's certification of all encumbrances.

Accordingly, ***ARDA Hawaii stands in strong support of this measure, as it seeks to resolve ongoing review delays while maintaining high levels of protection for consumers.*** We look forward to working with the Legislature to address the issues this measure seeks to resolve.

Thank you for your consideration.

Respectfully submitted,



Mitchell A. Imanaka  
ARDA Hawaii Chair

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# A BILL FOR AN ACT

RELATING TO TIME SHARING PLANS.

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

SECTION 1. 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 list of the primary plan documents and supplementary plan documents.

For purposes of this paragraph:

"Primary plan documents" means the constituent documents of the time share plan, including any time share declaration, any trust agreement, the articles of incorporation and bylaws of the association (if the association is a corporation) or the operating agreement or similar organizational 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 documents" does not include the supplementary plan documents.

"Supplementary plan 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 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 (for example, by establishing a new class or category of time share interest having rights that differ from existing time share interests in the time share plan), such documents shall constitute primary plan documents and shall not constitute supplementary plan documents;

~~[(3)]~~ (4) 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)]~~ (5) 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 simple or leasehold condominium unit in the condominium project, a brief description of any pertinent provisions of the project instruments;

~~[(5)]~~ (6) Any restraints on the transfer of the buyer's time share interest in the time share units or plan;

~~[(6)]~~ (7) 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)]~~ (8) A statement that there is a seven-calendar-day period of mutual rescission;

~~[(8)]~~ (9) 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)]~~ (10) Notice of any material liens, title defects, or encumbrances on or affecting the title to the units or plan[;] and any other lien, title or defect or encumbrance impacting a purchaser's utilization of the property, as the director may require. For all other liens, title defects, and encumbrances, in lieu of listing these in the disclosure statement, a reference may be made to a website by way of link or otherwise, wherein such items may be listed and thereby disclosed, and be available for review along with a statement that the developer has determined that these liens, title defects, and encumbrances are not expected to directly, substantially and adversely impact utilization of the property by a purchaser;

~~[(10)]~~ (11) 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)]~~ (12) 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)]~~ (13) 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)]~~ (14) The disclosure statement under subsection (d), if applicable; and

~~[(14)]~~ (15) Other disclosures required by the director, as provided by rules adopted pursuant to chapter 91."

SECTION 2. Section 514E-10.2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer or sale, in this State, of an additional interest in a time share plan to an existing purchaser in the same time share plan; provided that:

(1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration was originally approved or amended within seven years from the date of the offer or disposition, and the registration has not been terminated or withdrawn;

(2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) ~~[above]~~ through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the

offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;

(3) In satisfaction of the disclosure requirements of section 514E-9, the purchaser is provided the time share disclosure documents the purchaser would have received if the purchase had occurred in the state or jurisdiction where the purchaser initially purchased the time share interest;

(4) The contract for purchase signed by the purchaser includes a notice that is the same as or similar to the rescission notice required pursuant to section [~~514E-9(a)(7);~~] 514E-9(a)(8); provided that the rescission period shall be at least seven days;

(5) All funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account in the State. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the State under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this State;

(6) The contract for purchase shall contain the following statement in conspicuous type:

"THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE \_\_\_\_\_ (DEVELOPER OR AFFILIATE'S NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THE TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES."; and

(7) The offer complies with the provisions of sections 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13), and 514E-11.1."

2. By amending subsection (c) to read:

"(c) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer or sale by the developer, in this State, of a time share interest in a time share plan located outside of this State, but within the United States, to an individual who currently owns a time share interest that was purchased from that developer, or from an affiliated entity of that developer; provided that:

(1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration of the developer or an affiliated entity of the developer was originally approved or amended within seven years from the date of the offer or disposition and which registration has not been terminated or withdrawn;

(2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) [~~above~~] through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;

(3) The developer shall provide the purchaser with all time share disclosure documents required to be provided to purchasers as if the offer occurred in the state where the time share plan is located;

(4) The contract for purchase shall include a notice that is the same as or similar to the rescission notice required pursuant to section [~~514E-9(a)(7);~~] 514E-9(a)(8); provided that the rescission period shall be at least seven days;

(5) In satisfaction of section 514E-16, all funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account

in the State. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the State under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this State;

(6) The developer shall provide the purchaser, in writing, either in the disclosure documents or otherwise, all of the following:

- (A) A description of the type of time share plan offered, including the duration and operation of the time share plan;
- (B) A description of the existing or proposed accommodations and amenities in the time share plan;
- (C) A description of the method and timing for performing maintenance on the accommodations;
- (D) If applicable, copies of the declaration, association articles of incorporation, association bylaws, and association rules and regulations; and
- (E) The current annual budget for the time share plan;

(7) The time share plan being offered is registered in the state where the time share plan is located; or in the event registration of the time share plan is not required in the state where the time share plan is located, the time share plan being offered is in compliance with the applicable laws of that state; and

(8) The contract for purchase shall contain the following statement in conspicuous type:



"THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN A TIME SHARE PLAN THAT YOU PURCHASED FROM \_\_\_\_\_ (DEVELOPER OR AFFILIATE'S NAME), AND \_\_\_\_\_ HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THAT TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES. THE TIME SHARE INTEREST YOU ARE PURCHASING REQUIRES CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER FOR YOU TO USE YOUR INTEREST. THESE PROCEDURES MAY BE DIFFERENT FROM THOSE FOLLOWED IN OTHER TIME SHARE PLANS. YOU SHOULD READ AND UNDERSTAND THESE PROCEDURES PRIOR TO PURCHASING."

SECTION 3. Section 514E-10.5, Hawaii Revised Statutes, is amended to read as follows:

**"§514E-10.5 Consultant review of developer filing.** The director may contract with private consultants in connection with the review of the filing required of time share developers pursuant to section 514E-10(a) and [†](e)[†]. The cost of contracting private consultants shall be borne by the developer; provided that the consultant review required under this section shall not affect the scope of the review under section 514E-27 that the director may request for filings that encompass alternative arrangements for purchaser protection. The consultant shall be asked to thoroughly review the filing for

the purpose of examining its compliance with the requirements of this chapter and any rule adopted by the director, including the documentation and other provided materials[-]; provided that in lieu of reviewing copies of all encumbrances on title, the consultant shall accept a certification from the developer that the developer has reviewed all encumbrances on title and has determined that the time share interest being sold is free and clear of blanket liens or other material encumbrances that may directly, substantially and adversely impact utilization of the property by a purchaser, or if that is not the case, identifying the blanket liens or other material encumbrances and either specifying how those encumbrances will be addressed or what the impact of such encumbrances may be to the purchaser. Upon completing the review, the consultant shall provide a written analysis of the filing and an opinion of the nature and extent to which it complies with this chapter and adopted rules. The director may adopt rules pursuant to chapter 91 to further delineate the duties of the consultant in undertaking the review and analysis required pursuant to this section."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 30, 3000.

**Report Title:**

Time Share Plans; Primary and Secondary Plan Documents; Liens; Disclosure

**Description:**

Specifies that primary and secondary plan documents be listed in the public disclosure statement of a time share plan. Clarifies the manner in which the required disclosure of liens, title defects, or encumbrances on the titles of units may be made. Provides that a review of encumbrances be waived upon the certification from the developer that the time share interest is free and clear of blanket liens or that identifies all blanket liens. Effective 6/30/3000. (HD1)

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



February 28, 2023

Representative Mark M. Nakashima, Chair  
Representative Jackson D. Sayama, Vice Chair  
Members of the Committee on Consumer Protection  
& Commerce  
Thirty-Second State Legislature  
Regular Session of 2023

**RE: HB 11, HD1 – Relating to Time Sharing Plan**  
**Hearing date: March 1, 2023 at 2:00 pm**

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

Thank you for allowing me to submit testimony on behalf of Marriott Vacations Worldwide Corporation (“MVWC”) in **STRONG SUPPORT** of HB 11, HD1 – Relating to Time Sharing Plan. MVWC is a global leader in the timeshare industry, with five resort properties in Hawaii. Timeshare resorts are an important and stabilizing part of the tourism industry, and resort development and operations provide thousands of jobs, including high paying sales and marketing jobs, in the islands year after year.

HB 11, HD1 proposes to eliminate the need for developers to list all encumbrances on title to the time share property(ies) in the disclosure statement by allowing the timeshare administrator to accept online links to the encumbrance documents instead for consumers to access. The measure would require the developer to identify key encumbrance documents that are important for consumers to review in the disclosure statement. Allowing for online or electronic links to such documents as opposed to requiring the filing of hard copies with the DCCA is a common-sense approach. Currently consumers receive voluminous lists of encumbrances in the disclosure statement. This listing of encumbrances can stretch over 30 pages and are not closely reviewed by most consumers. Reducing the list of encumbrances to key documents would help decrease the size of disclosure statements and make them more consumer friendly. This bill will also simplify the review process for the DCCA consultants who are charged with reviewing time share developer registrations. It also promotes consumer protection as the documents can be more easily accessed electronically instead of a consumer being required to review the documents at the DCCA office (the majority of timeshare owners are not residents of Hawaii).

HB 11, HD1 would also permit developers to certify that timeshare property is free and clear of blanket liens or other material encumbrances for purposes of registration, thus, placing such responsibility solely on developers as opposed to requiring the DCCA’s consultant to



review such documentation, thus, further expediting the processing time of developer registration reviews by the DCCA consultants. After some discussions with DCCA representatives, we are proposing some amendments to the current bill draft, attached to this testimony.

For these reasons we urge you to pass HB 11, HD1.

Mahalo for your consideration,

Robin Suarez  
Senior Vice President & Associate General Counsel  
Marriott Vacations Worldwide Corporation

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# A BILL FOR AN ACT

RELATING TO TIME SHARING PLANS.

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

SECTION 1. 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 list of the primary plan documents and supplementary plan documents.

For purposes of this paragraph:

"Primary plan documents" means the constituent documents of the time share plan, including any time share declaration, any trust agreement, the articles of incorporation and bylaws of the association (if the association is a corporation) or the operating agreement or similar organizational 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 documents" does not include the supplementary plan documents.

"Supplementary plan 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 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 (for example, by establishing a new class or category of time share interest having rights that differ from existing time share interests in the time share plan), such documents shall constitute primary plan documents and shall not constitute supplementary plan documents;

~~[(3)]~~ (4) 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)]~~ (5) 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 simple or leasehold condominium unit in the condominium project, a brief description of any pertinent provisions of the project instruments;

~~[(5)]~~ (6) Any restraints on the transfer of the buyer's time share interest in the time share units or plan;

~~[(6)]~~ (7) 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)]~~ (8) A statement that there is a seven-calendar-day period of mutual rescission;

~~[(8)]~~ (9) 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)]~~ (10) Notice of any material liens, title defects, or encumbrances on or affecting the title to the units or plan[;] and any other lien, title or defect or encumbrance impacting a purchaser's utilization of the property, as the director may require. For all other liens, title defects, and encumbrances, in lieu of listing these in the disclosure statement, a reference may be made to a website by way of link or otherwise, wherein such items may be listed and thereby disclosed, and be available for review along with a statement that the developer has determined that these liens, title defect, and encumbrances are not expected to directly, substantially and adversely impact utilization of the property by a purchaser;

~~[(10)]~~ (11) 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)]~~ (12) 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)]~~ **(13)** 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)]~~ **(14)** The disclosure statement under subsection (d), if applicable; and

~~[(14)]~~ **(15)** Other disclosures required by the director, as provided by rules adopted pursuant to chapter 91."

SECTION 2. Section 514E-10.2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer or sale, in this State, of an additional interest in a time share plan to an existing purchaser in the same time share plan; provided that:

(1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration was originally approved or amended within seven years from the date of the offer or disposition, and the registration has not been terminated or withdrawn;

(2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) ~~[above]~~ through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the



offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;

(3) In satisfaction of the disclosure requirements of section 514E-9, the purchaser is provided the time share disclosure documents the purchaser would have received if the purchase had occurred in the state or jurisdiction where the purchaser initially purchased the time share interest;

(4) The contract for purchase signed by the purchaser includes a notice that is the same as or similar to the rescission notice required pursuant to section [~~514E-9(a)(7);~~] 514E-9(a)(8); provided that the rescission period shall be at least seven days;

(5) All funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account in the State. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the State under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this State;

(6) The contract for purchase shall contain the following statement in conspicuous type:

"THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE \_\_\_\_\_ (DEVELOPER OR AFFILIATE'S NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THE TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES."; and

(7) The offer complies with the provisions of sections 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13), and 514E-11.1."

2. By amending subsection (c) to read:

"(c) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer or sale by the developer, in this State, of a time share interest in a time share plan located outside of this State, but within the United States, to an individual who currently owns a time share interest that was purchased from that developer, or from an affiliated entity of that developer; provided that:

(1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration of the developer or an affiliated entity of the developer was originally approved or amended within seven years from the date of the offer or disposition and which registration has not been terminated or withdrawn;

(2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) [~~above~~] through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;

(3) The developer shall provide the purchaser with all time share disclosure documents required to be provided to purchasers as if the offer occurred in the state where the time share plan is located;

(4) The contract for purchase shall include a notice that is the same as or similar to the rescission notice required pursuant to section [~~514E-9(a)(7);~~] 514E-9(a)(8); provided that the rescission period shall be at least seven days;

(5) In satisfaction of section 514E-16, all funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account

in the State. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the State under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this State;

(6) The developer shall provide the purchaser, in writing, either in the disclosure documents or otherwise, all of the following:

- (A) A description of the type of time share plan offered, including the duration and operation of the time share plan;
- (B) A description of the existing or proposed accommodations and amenities in the time share plan;
- (C) A description of the method and timing for performing maintenance on the accommodations;
- (D) If applicable, copies of the declaration, association articles of incorporation, association bylaws, and association rules and regulations; and
- (E) The current annual budget for the time share plan;

(7) The time share plan being offered is registered in the state where the time share plan is located; or in the event registration of the time share plan is not required in the state where the time share plan is located, the time share plan being offered is in compliance with the applicable laws of that state; and

(8) The contract for purchase shall contain the following statement in conspicuous type:

"THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN A TIME SHARE PLAN THAT YOU PURCHASED FROM \_\_\_\_\_ (DEVELOPER OR AFFILIATE'S NAME), AND \_\_\_\_\_ HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THAT TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES. THE TIME SHARE INTEREST YOU ARE PURCHASING REQUIRES CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER FOR YOU TO USE YOUR INTEREST. THESE PROCEDURES MAY BE DIFFERENT FROM THOSE FOLLOWED IN OTHER TIME SHARE PLANS. YOU SHOULD READ AND UNDERSTAND THESE PROCEDURES PRIOR TO PURCHASING."

SECTION 3. Section 514E-10.5, Hawaii Revised Statutes, is amended to read as follows:

**"§514E-10.5 Consultant review of developer filing.** The director may contract with private consultants in connection with the review of the filing required of time share developers pursuant to section 514E-10(a) and [†](e)[†]. The cost of contracting private consultants shall be borne by the developer; provided that the consultant review required under this section shall not affect the scope of the review under section 514E-27 that the director may request for filings that encompass alternative arrangements for purchaser protection. The consultant shall be asked to thoroughly review the filing for

the purpose of examining its compliance with the requirements of this chapter and any rule adopted by the director, including the documentation and other provided materials[-]; provided that in lieu of reviewing copies of all encumbrances on title, the consultant shall accept a certification from the developer that the developer has reviewed all encumbrances on title and has determined that the time share interest being sold is free and clear of blanket liens or other material encumbrances that may directly, substantially and adversely impact utilization of the property by a purchaser, or if that is not the case, identifying the blanket liens or other material encumbrances and either specifying how those encumbrances will be addressed or what the impact of such encumbrances may be to the purchaser. Upon completing the review, the consultant shall provide a written analysis of the filing and an opinion of the nature and extent to which it complies with this chapter and adopted rules. The director may adopt rules pursuant to chapter 91 to further delineate the duties of the consultant in undertaking the review and analysis required pursuant to this section."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 30, 3000.

**Report Title:**

Time Share Plans; Primary and Secondary Plan Documents; Liens; Disclosure

**Description:**

Specifies that primary and secondary plan documents be listed in the public disclosure statement of a time share plan. Clarifies the manner in which the required disclosure of liens, title defects, or encumbrances on the titles of units may be made. Provides that a review of encumbrances be waived upon the certification from the developer that the time share interest is free and clear of blanket liens or that identifies all blanket liens. Effective 6/30/3000. (HD1)

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



*Eric W. Gill, Financial Secretary-Treasurer*

*Gemma G. Weinstein, President*

*Cade Watanabe, Senior Vice-President*

February 28, 2023

Committee on Consumer Protection & Commerce  
Representative Nakashima, Chair  
Representative Sayama, Vice Chair

Testimony in opposition of HB11\_HD1

Chair Nakashima, Vice Chair Sayama and Members of the Committee:

UNITE HERE Local 5 represents working people throughout Hawaii's hotel, timeshare, food service and health care industries. Our union has a long history of consumer advocacy. UNITE HERE Local 5 is in **opposition to HB11\_HD1**.

The timeshare industry has a complicated reputation. The following news headlines involved Diamond Resorts (before the company was acquired by Hilton Grand Vacations in 2021):

- Consumer Affairs: "Diamond Resorts still can't explain why it sold \$250,000 worth of timeshare points to an 88-year-old"<sup>i</sup>
- Arizona Attorney General: \$800,000 Settlement with Diamond Resorts<sup>ii</sup>
- New York Times: "The Timeshare Hard Sell Comes Roaring Back"<sup>iii</sup>
- Arizona Republic: "Company convinces Arizona couple, nearly 90 years old, to buy \$150,000 timeshare"<sup>iv</sup>

We believe HD11\_HD1 de-regulates Hawaii's timeshare laws and reduces consumer protections under the guise of "convenience". The state should be strengthening consumer timeshare purchasing rights instead of undermining it.

HB11\_HD1 should not be passed for the following reasons:

- The Hawaii Department of Commerce and Consumer Affairs (DCCA) is an important regulatory body, it will lose powers of discretion to review or require encumbrance disclosures. The DCCA must be allowed to do its job of protecting consumers. The DCCA shared its concerns about the bill in this regard.
- The American Resort Development Association (ARDA) and DCCA worked together to draft this bill. Lawmakers should be wary of any legislation crafted by industry associations collaborating with government regulators, especially if the resulting bill still elicits concerns from the regulatory agency itself.
- This legislation could streamline the review process for new timeshare registrations. This benefits timeshare companies but removing DCCA discretion to review timeshare registrations would not improve consumer protection. These questions should be considered:
  - How many new timeshare plan registrations are submitted to the DCCA in an average year?
  - How long does the DCCA review take?
  - Does the pace of new registrations and the length of review justify altering consumer protection rules?
- There is a concern consumers won't read disclosures if they are too long or that some encumbrances are not "material". The best policy is to provide consumers with complete information through consistent, simple statutory requirements and let them decide what they want to read. Too much discretion could lead to non-uniform disclosures.
- HB11\_HD1 allows a subjective interpretation by the developer of what encumbrances should be considered "material" while reducing the DCCA's regulatory discretion.

- Allowing timeshare plans to list certain encumbrances via website link is the opposite of consumer convenience. If a purchaser is already holding a disclosure document in hand, this provision creates extra steps for the consumer to access information. HB11 should require that an online electronic copy be offered *in addition* to hard copy disclosures.
- Current law requires timeshare plans within a condo project to describe the condo and pertinent provisions of the condo project instruments. HB11\_HD1 would only require “a brief description” of pertinent provisions of condo instruments if a timeshare unit owner would be a “direct owner” in a condo project. This provision has an unclear impact on consumers. Timeshare plans are often sold as points-based memberships instead of deeded real estate interest. The DCCA shared its concerns about the ambiguity around the term “direct owner”.

HB11\_HD1 should not be passed, but if it does move forward, we propose the following amendments to improve consumer protection and clarify ambiguous language:

- Require a copy of Hawaii timeshare registration disclosure reports be filed with DCCA to be placed online and accessible by the general public. When material changes are made to the timeshare plan, filings must be updated with the DCCA. This mechanism for transparency could be modeled after Arizona’s timeshare practices.
- Allow the DCCA to require or review certain disclosures when it deems necessary as suggested by the department’s testimony.
- HB11\_HD1 needs guardrails to promote compliance. HRS514E-11.3 describes remedies for consumers to void sales in cases where they were sold timeshares in violation of chapter 514E. Section 514E-9 should be amended with language to the effect that *“If a developer chooses not to provide copies of all encumbrances on title for department review as described in HRS514E-10.5 and choose the in-lieu options provided by section HRS514E-10.5, a purchaser who relied on the developer’s erroneous certification or erroneous manner of material disclosure pursuant to section 10 may pursue in a court of law the remedies to void a sale as provided by HRS514E-11.3.”*
- Remove the proposed changes to section a(5) regarding “direct owner” of a unit in condo projects. The proposed language weakens consumer protection. This section narrows the conditions when important real estate information must be disclosed.
- The term “a list of” in the beginning of section a(3) should be changed to “a copy of”. This clarifies that providing the document is the intent, not the mere listing of a document’s existence.

Thank you for your consideration.

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<sup>i</sup> <https://www.consumeraffairs.com/news/diamond-resorts-still-cant-explain-why-it-sold-250000-worth-of-timeshare-points-to-an-88-year-old-032919.html>

<sup>ii</sup> <https://www.azag.gov/press-release/attorney-general-brnovich-announces-800000-settlement-diamond-resorts>

<sup>iii</sup> <https://www.nytimes.com/2016/01/24/business/diamond-resorts-accused-of-using-hard-sell-to-push-time-shares.html>

<sup>iv</sup> <https://www.azcentral.com/story/money/business/consumers/2019/03/28/diamond-resorts-convince-elderly-arizona-couple-buy-timeshare-frank-betty-lusk/3282776002/>