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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, March 15, 2023
10:00 a.m.
Conference Room 229 and Videoconference

On the following measure:
H.B. 11, H.D. 2, RELATING TO TIME SHARING PLANS

Chair Keohokalole 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.

H.B.11 is the companion bill to S.B. 797 which your Committee has heard previously. 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 when the disclosure of pertinent provisions of condominium project instruments must occur; (3) clarify the manner in which the required disclosure of liens, title defects, or encumbrances on the titles of units may be made; (4) provide that a consultant's review of encumbrances may 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; and (5)

require the Director of the Department to include in the annual time share plan report to the Legislature information regarding developers' certifications.

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),HRS 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 the subject dealt with by these paragraphs.. These paragraphs should not be amended.

Section 3 of the bill (pages 13-14) 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 "may" accept a certification from the developer that the developer has reviewed all encumbrances on title and has determined that the time share interests are being sold free and clear of blanket liens or other material encumbrances that may directly, substantially, 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. The Department has been working with the American Resort Development Association (ARDA), the proponent of this bill, and has agreed that the Department "shall" accept these certifications.

Section 4 of the bill (page 15) seeks to require the Director to include in its annual report the frequency and circumstances under which a developer's certification, required under Section 3 of this bill, was accepted or when it was determined that further review was necessary and the justification for such further review. Because the Department has agreed to accept these certifications, this requirement is no longer needed.

The Department has reviewed ARDA's proposed amended language to the bill that takes into consideration the Department's concerns and the Department finds their proposed language acceptable.

Thank you for the opportunity to testify on this bill.



March 13, 2023

TO: Chair Quinlan
Vice-Chair Hussey-Burdick
Members of the House Committee on
Tourism

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

RE: SB797 SD1 – RELATING TO TIME SHARING PLAN

Hearing date: March 14, 2023, at 10:00 AM

Aloha Chair Quinlan, Vice Chair Hussey-Burdick and members of the House Committee on Tourism.

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 SB797- 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.

SB797 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.)

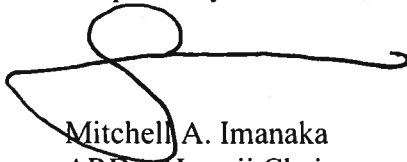
In order to further the purpose of the measure and provide additional clarification, ARDA Hawaii respectfully recommends a few amendments in the attached proposed HD1. In sum, the proposed HD1 makes the following amendment:

1. Removes requirement that "Supplementary plan documents" be listed in the disclosure statement in HRS Section 514E-9(3);
2. Add language to the new Section 514E-9(10), Hawaii Revised Statute, regarding liens and title defects impacting on purchaser's utilization of the property and statement by developer indicating the encumbrances are not to directly, substantially and adversely impact utilization of the property by a purchaser; and
3. Amends effective date to upon approval.

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

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.

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), the 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 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 these 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]~~ 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) 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 upon approval.

Report Title:

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

Description:

Specifies that primary and examples of secondary plan documents be listed in the disclosure statement of a time share plan. Clarifies when the disclosure of pertinent provisions of condominium project instruments must occur. 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 consultant's review of encumbrances shall 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 upon approval. (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

March 13, 2023

Senate Committee on Commerce and Consumer Protection
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Testimony in opposition to HB11_HD2

Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee:

UNITE HERE Local 5 represents working people throughout Hawaii's hotel, timeshare, food service and health care industries. We **oppose the intent of HB11** to deregulate disclosure timeshare requirements.

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" ⁱ
- Arizona Attorney General: \$800,000 Settlement with Diamond Resorts ⁱⁱ
- New York Times: "The Timeshare Hard Sell Comes Roaring Back" ⁱⁱⁱ
- Arizona Republic: "Company convinces Arizona couple, nearly 90 years old, to buy \$150,000 timeshare" ^{iv}

We continue to oppose the intent of HB11 to deregulate disclosure requirements for timeshares. We acknowledge that amendments in HB11_HD2 addressed concerns around DCCA regulatory discretion and the definition of a condominium "owner". HB11_HD2 won't attempt to completely take away DCCA's regulatory authority by allowing it to require disclosure of documents it deems "material". The ambiguous term "direct owner" of a condo unit was changed to "undivided interest in a fee simple or leasehold" condo unit.

However, both changes are still moves toward deregulation.

- The insertion of the term "material" in HRS514E(a)(10) is subjective and could result in inconsistent interpretation of the language. Allowing the DCCA to decide if additional documents are "material" is another invitation to inconsistent or subjective interpretation. A clear, simple, consistent statutory standard should be the rule.
- The amendments defining a condo property "owner" need to consider that many timeshare plans are points-based memberships, not deeded real estate. It's not clear that HB11_HD2 addresses those types of points-based "ownership" scenarios. Timeshare purchasers need to understand the terms of condo regime instruments if they have any stake in them. HB11 allows a "brief description" of pertinent provisions which is a departure from current law that requires disclosing the pertinent provisions.

The best policy is to provide consumers with complete information through consistent, simple statutory requirements and let them decide what they want to read.

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.

This legislation could streamline the review process for new timeshare registrations. This benefits timeshare companies, but before existing timeshare law is changed these basic 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?

HB11_HD2 should not be passed because it is a deregulation of consumer protection rules, but if it does move forward, we propose the following amendments to improve consumer protection:

- 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.
- HB11_HD2 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 chooses to seek consultant acceptance of developer's certification as provided in 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."*

UNITE HERE Local 5 **opposes the intent of HB11**. Thank you for your attention.

ⁱ <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>

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

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

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

March 13, 2023

Chair Keohokalole
Vice Chair Fukunaga
Members of the Senate Committee on
Commerce and Consumer Protection

RE: HOUSE BILL 11, HD2 - RELATING TO TIME SHARING PLAN
Hearing date: March 15, 2023 at 10 a.m.

Aloha Chair Keohokalole, Vice Chair Fukunaga and members of the Committee on Commerce and Consumer Protection,

My name is Thomas Goodman of Hilton Grand Vacations (HGV), and I'm writing on behalf of our company in **strong support of HB11, HD2 - Relating to Time Sharing Plan**. HGV is a leading global timeshare company, with resorts and timeshares units across Hawaii Island, Oahu, Maui, and Kauai. 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, HD2 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 SD1.

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



March 13, 2023

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce
& Consumer Protection
Thirty-Second State Legislature
Regular Session of 2023

RE: HB 11, HD2 – Relating to Time Sharing Plan
Hearing date: March 15, 2023 at 10:00 am

Aloha Chair Keohokalole, Vice-Chair Fukunaga 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, HD2 – 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, HD2 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, HD2 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.



We have been in discussions with DCCA's Timeshare Administrator and ARDA Hawaii regarding a few minor amendments. I have attached the draft proposed by ARDA Hawaii including subsection (a)(3) regarding definition of "supplementary plan documents" and subsection (a)(10) regarding the statement regarding liens. We respectfully request that you pass HB 11, HD2 with these amendments.

Mahalo for your consideration,

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

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.

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), the 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 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 these 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]~~ 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) 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 upon approval.

Report Title:

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

Description:

Specifies that primary and examples of secondary plan documents be listed in the disclosure statement of a time share plan. Clarifies when the disclosure of pertinent provisions of condominium project instruments must occur. 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 consultant's review of encumbrances shall 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 upon approval. (HD1)

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



Maui Hotel & Lodging ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

Senate Committee on Commerce and Consumer Protection

House Bill 11 HD2: Relating to Time Sharing Plans

March 15, 2023, 10:00 am

Conference Room 229

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry for Maui County. We represent over 180 property and allied business members, and 22,000 employees. **MHLA is in support of House Bill 11 HD2**, which specifies that primary and secondary plan documents be listed in the public disclosure statement of a time share plan. Clarifies when the disclosure of pertinent provisions of condominium project instruments must occur. 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 consultant's review of encumbrances may 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. Requires the director of commerce and consumer affairs to include in the annual time share plan report to the legislature information regarding developers' certifications.

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.

There is a concern that if the disclosure statement becomes too long, buyers will not read any of it. The bill addresses that concern. It requires as follows: 1. The disclosure statement must list the primary time share plan documents. This would include, for example, the time share declaration and bylaws. 2. The disclosure statement must also list all supplementary plan documents. "Supplementary plan documents" are used to submit or commit property to the time share plan. Examples would include deeds transferring property to the trustee of a time share plan and documents used to submit property to the time share declaration. Because there may be hundreds, thousands, or even tens of thousands of Supplementary Plan Documents, the stakeholders are currently discussing whether it would be advisable to give the Director the authority to waive the requirement that all such documents be listed in the disclosure statement. As a practical matter, developers and the Director have in the past excluded some such documents from the list of encumbrances. 3. If the buyer will become the co-owner of a condominium unit, the disclosure statement must include a brief description any pertinent provisions of the condominium documents for that particular condominium. 4. The disclosure statement must either (i) list all other material liens, title defects, and encumbrances, or (ii) provide a link or other access to a website listing them and that allows them to be reviewed.



Maui Hotel & Lodging
ASSOCIATION

For the reasons stated above, **MHLA supports House Bill 11 HD2**. Thank you for the opportunity to provide this testimony.