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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
Tuesday, March 28, 2023
2:00 p.m.
Conference Room 329 and Videoconference

On the following measure:
S.B.797, S.D. 1, 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 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 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.

Section 1 of the bill (pages 1-3, subsection 3, and page 3, 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," 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. The H.D. 1 does not include a definition of “supplementary plan documents”, which was included in the original bill. The definition of “supplementary plan documents” specifically provides that if the supplementary plan documents modify the terms and provisions of the time share plan, then it shall constitute primary plan documents and, therefore, must also be disclosed. This definition should be included in this section to ensure such documents are included in the disclosure statement.

Section 1 of the bill (page 2, 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.

The Department has been working with the American Resort Development Association on this measure and has reviewed its 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 28, 2023

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

RE: SB 797, SD1 HD1 – Relating to Time Sharing Plans
Hearing date: March 28, 2023 at 2:00 pm

Aloha Chair Nakashima, Vice-Chair Sayama 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 SB 797, SD1 HD1 – Relating to Time Sharing Plans. 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.

SB 797, SD1 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 would also simplify the review process for the DCCA consultants who are charged with reviewing time share developer registrations. Finally, the bill 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 vast majority of timeshare owners are not residents of Hawaii).

SB 797, SD1 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.

We have been in discussions with the Timeshare Administrator and ARDA Hawaii regarding a few minor amendments. I have attached the draft HD2 proposed by ARDA Hawaii. We respectfully request that you pass SB 797, SD1 HD1 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.



March 26, 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: SB797 SD1 HD1 – RELATING TO TIME SHARING PLAN

Hearing date: March 28, 2023, at 2:00 PM

Aloha Chair Nakashima, Vice Chair Sayama and members of the House Committee 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 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.)

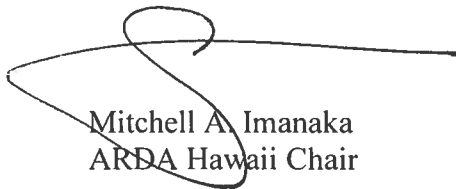
In order to further the purpose of the measure and provide additional clarification, ARDA Hawaii respectfully recommends a few amendments in the attached proposed HD1. In sum, the proposed HD2 makes the following amendment:

1. Inserts definition of "Supplementary plan documents"
2. Add language to the new Section 514E-10.5 Hawaii Revised Statute, regarding developer certification that the developer has reviewed all blanket liens or other material encumbrances may 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.



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March 27, 2023

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

Re: SB797, SD1, HD1 – Relating to Time Sharing Plans
Hearing on March 28, 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 stakeholders have reached agreement on the bill.

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 1/51st 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 of things like electrical easements, waterline easements, and other legal documents that are not likely to be of interest to a person who is trying to decide whether to purchase a time share interest.

In many 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 trust, and buyers have a direct or indirect 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.

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 all primary plan documents. These are the constituent documents of the plan. They do not include supplementary plan documents, which are largely administrative documents such as documents submitting property to the plan or transferring property to the trustee of a plan. A sample page of a list of supplementary plan documents is attached. The full list for this project could add perhaps 200 pages to the disclosure statement while providing no information having real value to consumers and potentially discouraging them from reading any of the disclosure statement.
- Notice of all other material liens, title defects, or encumbrances on or affecting the title to the units or plan.
- Notice of 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 simply corrects some cross-references.

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 provides that a consultant will not 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 or other material encumbrances that may directly, substantially and adversely impact utilization of the time share property by a purchaser, or

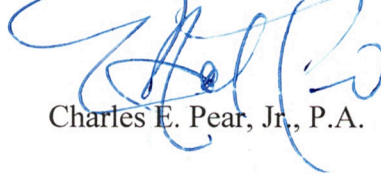
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2. Identifies any blanket liens or other material encumbrances, and either (a) describes how those encumbrances will be addressed, or (b) describes what the impact of such encumbrances may be to the purchaser.

ARDA and the DCCA have spent years working on this bill over the last 4 years. We would be most grateful if you would pass it.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP



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

Atty CEP/KN



CHICAGO TITLE
 INSURANCE COMPANY

18	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	F	[REDACTED]
19	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
20	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
21	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
22	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
23	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
24	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Corrective	Contribution Deed	September 16, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
25	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
26	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
27	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
28	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
29	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
30	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
31	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
32	Contribution Deed	June 9, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
33	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
34	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
35	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
36	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
37	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
38	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
39	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
40	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
41	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
42	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
43	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
44	Contribution Deed	August 12, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
45	Contribution Deed	October 21, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
46	Contribution Deed	January 7, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
47	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
48	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
49	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
50	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
51	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
52	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
53	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
54	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
55	Contribution Deed	February 25, 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]