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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. 798, S.D. 1, H.D. 1, RELATING TO TIME SHARING**

Chair Nakashima and Members of the Committee:

My name is Lori Beth Van Cantfort, and I am the Time Share Administrator for 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 purpose of this bill are to: (1) require a developer's application for registration or annexation to include a list of projects containing out-of-state time share units and a statement that the developer has verified that those units are in compliance or not prohibited under the laws of the jurisdiction where the units are located; and (2) clarify that a developer is not required to submit evidence of such compliance to register in Hawaii.

For time share plans located in Hawaii, developers are required to provide a Confirmation of County Zoning Regulations form, which is signed by the county and confirms that the property is located in an area properly zoned to allow time share use.

For time share plans located outside the State, the Department currently requires other evidence that the out-of-state property is in an area properly zoned to allow time share use in the property.

The Department has been working with the American Resort Development Association (ARDA) to address each parties' concerns, and the current bill includes language proposed by ARDA, which the Department finds acceptable.

Thank you for the opportunity to testify on this bill.



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: SB 798 SD1 HD1 – RELATING TO TIME SHARING

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 SB 798- RELATING TO TIME SHARING.**

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.

SB 798 imposes an obligation on a developer to ensure out-of-state time share units comply with zoning and land use laws and rules of the jurisdiction where the time share units are located. SB798 further clarifies that a developer is not required to submit evidence of compliance with zoning requirements in other jurisdictions upon registering in Hawaii, as that is inconsistent with the express language in the statute. (See HRS Section 514E-5; 514E-30.)

ARDA Hawaii supports the intent of SB 798 to address ongoing delays of reviews of time share registrations by clarifying the intent of the already existing zoning compliance requirement. Currently, Section 514E-5, HRS prohibits time sharing in areas of Hawaii that are not zoned for

time sharing. It was adopted to protect residential neighborhoods in Hawaii from transient and time share use.

Section 54E-5 applies only to property located in Hawaii and not in other jurisdictions. *In fact, Section 514E-30 specifically exempts out-of-state property from the zoning compliance requirement set forth in Section 514E-5.* Over time, however, the Department has requested governmental confirmation or legal opinions from other jurisdictions that out-of-state time share units comply with the applicable jurisdiction's zoning requirements in order to register such units here in Hawaii. This requirement, which is constitutionally questionable, has resulted in an unnecessary step, which at times is nearly impossible to comply with due to the varying zoning regulations and governmental processes of different countries. Consequently, aside from being in direct contravention of existing law, this requirement has made the registration review of time share projects in Hawaii **slower, more expensive, and in some cases, nearly impossible to achieve.**

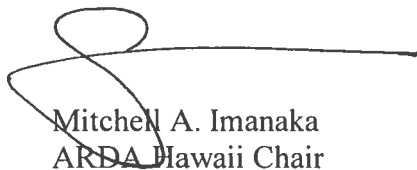
As indicated previously, this requirement is inconsistent with the original intent of the zoning requirement, and can be difficult, expensive, and nearly impossible to comply with. For example, other countries around the world that allow time sharing may not share the same zoning principles we have here in Hawaii and the broader United States. Thus, requiring zoning confirmation, specifically from a foreign government, is an extremely difficult requirement to fulfill and not currently required under Hawaii law. On the other hand, under this measure, developers will be held responsible to assure that these requirements imposed by other jurisdictions are met.

SB 798 seeks to restate and clarify the original intent of the zoning confirmation requirement while maintaining adequate protection for purchasers. Under SB 798, the use of Hawaii property for time sharing would still be subject to written confirmation by the applicable county. As drafted, the measure places responsibility and liability for non-compliance of out-of-state time share units squarely on time share developers.

ARDA Hawaii stands in strong support of SB 798, as it seeks to balance consumer protection with greater efficiency in registering a time share project in order to allow our industry to continue to thrive in Hawaii. We greatly appreciate the work of the previous committee to amend the measure to reflect DCCA and industry consensus. **Accordingly, ARDA Hawaii respectfully recommends that the effective date for the measure be made upon approval.**

Thank you for your consideration.

Respectfully submitted,



Mitchell A. Imanaka
ARDA Hawaii Chair

A BILL FOR AN ACT

RELATING TO TIME SHARING.

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

SECTION 1. The legislature finds that the State's time share law was adopted by the legislature in 1980. At the time, there was considerable concern over where in the State time sharing should be permitted. In particular, there was concern over whether the introduction of time sharing in residential areas such as Hawaii Kai or Kailua was disruptive to the residential character of such neighborhoods.

The legislature further finds that to address this concern, the 1980 time share law required that the counties amend their zoning ordinances to designate areas appropriate for time sharing and transient vacation rentals. The 1980 time share law also prohibited time sharing and transient vacation rentals in areas not zoned for time sharing.

The legislature additionally finds that to enforce the zoning requirements for time sharing and transient vacation

rentals, the regulations adopted by the department of commerce and consumer affairs require that developers submit a written confirmation of county zoning form. This form must be signed by the county where the time share units are located and is intended to confirm that the time share plan meets statutory zoning limitations.

The legislature notes that the State's time share law was intended to address only the zoning of Hawaii property and not apply to time shares outside of the State. The 1980 time share law does not attempt to impose or enforce the zoning requirements applicable to time share units located outside the State, nor does that Act require that developers submit evidence that time share units located outside the State comply with the zoning laws where the time share units are located.

The purpose of this Act is to require that a developer's application for registration or application for annexation include a list of all out-of-state time share units included in the application. The application must also include a statement by the developer stating that the developer has verified that the use of those units for time sharing purposes in the manner contemplated by the developer's time share plan complies with the zoning and land use laws and rules of the jurisdiction where the units are located. In jurisdictions that do not specifically regulate such time sharing use, the developer's

verification must state that use of the out-of-state units for time sharing purposes in the manner contemplated by the developer's time share plan is not prohibited by the zoning and land use laws and regulations of the jurisdiction where the units are located. This Act also establishes that it is not necessary for the developer to submit additional evidence of such compliance as part of the registration process.

SECTION 2. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

"§514E-10 Registration required; developer, acquisition agent, plan manager, and exchange agent; registration

renewal. (a) A developer shall not offer or dispose of a time share unit or a time share interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the time share plan to be offered by the developer is accepted by the director for registration under this chapter. The director shall not accept a developer's time share plan if the developer does not possess a history of honesty, truthfulness, financial integrity, and fair dealing.

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall register under this chapter by filing with the director a statement setting forth the time

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

(c) A plan manager (including the developer if it is also the plan manager) shall register under this chapter by filing with the director a statement setting forth the time sharing plan that it is managing, its principal office address, telephone number, and responsible managing employee. The plan

manager shall furnish evidence that the plan manager is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any default of the plan manager and any of its employees of their duties and responsibilities; provided that the plan manager shall be separately bonded for each time share plan under the management of the plan manager.

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

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

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

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

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

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

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

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

(4) The biennial renewal fee.

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

(1) A financial statement of the developer; or

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

(h) A developer's application for registration or annexation shall include

- 1) A list of the projects containing the time share units that are included in the application and that are located outside of the state; and
- 2) A statement by the developer that it has verified that the use of each of those out-of-state time share units for time sharing purposes in the manner contemplated by the developer's time share plan is either in compliance with or not prohibited by the zoning and land use laws

and regulations of the jurisdiction where the time share units are located.

The developer shall not be required, as part of the developer registration, to submit any other evidence that the use of the out-of-state time share units for time sharing purposes in the developer's time share plan is either in compliance with or not prohibited by the zoning and land use laws and regulations of the jurisdiction where the time share units are located."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

Report Title:

Time Sharing; Time Share; Zoning Requirements for Out-of-State Time Share Units;

Description:

Clarifies that evidence of compliance with zoning and land use laws and rules is not necessary for out-of-state time share units.

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



March 24, 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: Senate Bill 798, SD1 HD1 – Relating to Time Sharing
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 798, SD1 HD1 – Relating to Time Sharing. MVWC is a global leader in the timeshare industry, with five resort properties in Hawaii. Timeshare units are an important and stabilizing part of the tourism industry, and resort development and operations provide thousands of jobs in the islands year after year.

SB 798, SD1 HD1 would provide clarity on the intent of HRS §§ 514E-5 and 514E-30 for a registration in Hawaii. The intent of the zoning confirmation requirement in HRS § 514E-5 was to ensure that Hawaii timeshare properties conformed to local zoning laws. HRS § 514E-30, however, would appear to indicate that the zoning confirmation of HRS § 514E-5 does not apply to time share units located outside of Hawaii. In some instances, however, these provisions have prompted the DCCA to request zoning confirmation for out-of-state time share units. Some modern timeshare trust plans have 50 or more component sites located in a variety of states and local counties. Not all states and counties provide evidence of zoning similar to Hawaii. In addition, such zoning confirmation can cost developers as much as \$30,000 or more to obtain and does nothing to further consumer protection. For example, a resort may have a confirmation of zoning but may not be available due to a variety of other factors. Requiring zoning compliance for out of state properties has served to delay Hawaii’s already long review process. A long review process impacts consumers as key updates to the disclosure statements are delayed from being provided to the consumers while the review is ongoing.

MVWC supports SB 798, SD1 HD1 as a way to streamline the timeshare review process while maintaining the proper level of consumer protection. We have been working with ARDA Hawaii and DCCA’s Timeshare Administrator on proposed amendments. We have attached a copy of the agreed upon amendments as a proposed HD2. MVWC strongly urges the committee to pass SB 798, SD1 HD1 with the proposed 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.

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

SECTION 1. The legislature finds that the State's time share law was adopted by the legislature in 1980. At the time, there was considerable concern over where in the State time sharing should be permitted. In particular, there was concern over whether the introduction of time sharing in residential areas such as Hawaii Kai or Kailua was disruptive to the residential character of such neighborhoods.

The legislature further finds that to address this concern, the 1980 time share law required that the counties amend their zoning ordinances to designate areas appropriate for time sharing and transient vacation rentals. The 1980 time share law also prohibited time sharing and transient vacation rentals in areas not zoned for time sharing.

The legislature additionally finds that to enforce the zoning requirements for time sharing and transient vacation

rentals, the regulations adopted by the department of commerce and consumer affairs require that developers submit a written confirmation of county zoning form. This form must be signed by the county where the time share units are located and is intended to confirm that the time share plan meets statutory zoning limitations.

The legislature notes that the State's time share law was intended to address only the zoning of Hawaii property and not apply to time shares outside of the State. The 1980 time share law does not attempt to impose or enforce the zoning requirements applicable to time share units located outside the State, nor does that Act require that developers submit evidence that time share units located outside the State comply with the zoning laws where the time share units are located.

The purpose of this Act is to require that a developer's application for registration or application for annexation include a list of all out-of-state time share units included in the application. The application must also include a statement by the developer stating that the developer has verified that the use of those units for time sharing purposes in the manner contemplated by the developer's time share plan complies with the zoning and land use laws and rules of the jurisdiction where the units are located. In jurisdictions that do not specifically regulate such time sharing use, the developer's

verification must state that use of the out-of-state units for time sharing purposes in the manner contemplated by the developer's time share plan is not prohibited by the zoning and land use laws and regulations of the jurisdiction where the units are located. This Act also establishes that it is not necessary for the developer to submit additional evidence of such compliance as part of the registration process.

SECTION 2. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

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

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall register under this chapter by filing with the director a statement setting forth the time

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

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

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

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

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

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

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

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

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and regulations of the jurisdiction where the time share units are located.

The developer shall not be required, as part of the developer registration, to submit any other evidence that the use of the out-of-state time share units for time sharing purposes in the developer's time share plan is either in compliance with or not prohibited by the zoning and land use laws and regulations of the jurisdiction where the time share units are located."

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Clarifies that evidence of compliance with zoning and land use laws and rules is not necessary for out-of-state time share units.

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CHARLES E. PEAR, JR., P.A.
ATTORNEY

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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: SB798, SD1, HD1 – Relating to Time Sharing
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. ARDA Hawaii and the Department of Commerce and Consumer Affairs have been working on this bill, and have reached agreement on the bill.

Earlier this session, several House Committees heard testimony on HB84, dealing with zoning for short-term rental properties. I did not attend the oral hearings on that bill but some of the written testimony appears to be very passionate.

In some respects, the passionate testimony on HB84 resembles the impassioned feelings expressed when the Time Share Act was enacted in 1980. The 1980 legislators were very concerned with whether the introduction of time sharing in residential neighborhoods such as Hawaii Kai was disruptive to the residential character of such neighborhoods.

In particular, I believe that the guidance provided by this bill will offer a mandate for the protection of residential lifestyle whether in Waikiki or Hawaii Kai. Remarks of Rep. Ikeda, House Journal P. 914-915, 1980 Legislature.

The legislature intends by this Act that the counties will be guided by the notion that time sharing and transient vacation rental should not be permitted where the lifestyles of the permanent residents will be disrupted in an unreasonable manner. * * * Therefore, it is my understanding that we are voting for this measure in order to protect residents in apartment precincts such as the Waikiki Special Design District, Kahala, Lanikai and all areas where time-sharing may be attempted. Remarks of Rep. Larsen, House Journal P. 916 - 917, 1980 Legislature.

To address this concern, Sections 514E-4 and 5 were adopted by the legislature. Section 514E-4 requires that the counties designate areas appropriate for time sharing using their zoning authority. Section 514E-5 prohibits time sharing in areas not zoned for time sharing.

It is important to note that Sections 514E-4 and 5 address only zoning of Hawaii property. Section 514E-30 makes it clear that these sections do not apply to out-of-state property.

Even so, the DCCA has been requiring time share developers to provide evidence that out-of-state time share units are in compliance with local zoning laws that regulate the use of property in their state or country. This has been done despite the fact that nothing in the statute or regulations authorizes the DCCA to impose this requirement.

Hawaii is unique in requiring this information. No other state requires it. And the Hawaii legislature has not required it.

The Hawaii Time Share Administrator has taken the position that zoning is basic and that it is not unreasonable to require that out-of-state properties are in compliance with applicable zoning laws.

When a time share developer represents that a unit is available for occupancy, it is implied that local zoning laws permit such use, that building permits were obtained, that construction of the unit has been completed, that the unit complies with federal and state health and safety requirements, that a certificate of occupancy has been issued, that the unit is furnished, and that water, electric and other utility services required for occupancy are in place. If any of these things are not in place, the developer would be risking liability for misrepresentation under the Act.

The point here is that while there may be many things that are relevant to determining the availability of out-of-state time share units for occupancy, nothing in our statute or regulation requires it or authorizes the DCCA to require evidence of it.

Moreover, the DCCA is unable to keep up with the things that actually are required by law. More specifically, the DCCA is simply not able to process time share developers' applications for registration in a timely fashion. As a result, time share registrations and amendments can take months, if not years, to process in Hawaii.

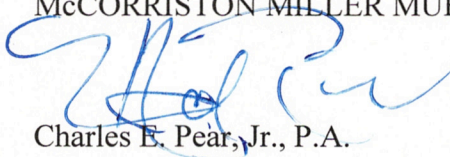
To satisfy the zoning request of the DCCA, the developers typically furnish a legal opinion. Legal opinions can be expensive, especially when a separate opinion may be required for each site (many plans contain dozens of sites). Each time that additional inventory is annexed in a previously approved site, a new opinion of counsel may be required for each affected site. Each such opinion must be reviewed, negotiated, and approved by the DCCA consultant reviewing the application. This further slows the already protracted registration timeline.

Chair, Vice-Chair, and Members of the
Committee on Consumer Protection & Commerce
March 27, 2023
Page 3

In light of the foregoing, fact that (i) there is no legal basis for requiring zoning confirmation for out-of-state time share units, and (ii) the Department is unable to timely review the things that actually are required by law, ARDA respectfully requests that you pass this bill.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP

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

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

Atty CEP/KN