

**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the**  
**House Committee on Consumer Protection & Commerce**  
**Tuesday, March 28, 2023**  
**2:00 p.m.**  
**Conference Room 329 and Videoconference**

**On the following measure:**  
**S.B. 799, 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 offers comments on this bill.

The purposes of this bill are to not require additional title reports to be submitted when, for the time share plans that use: (1) title-holding trusts to protect buyers from future blanket liens, the developer has already submitted a title report evidencing that the title is vested in the trustee; (2) a notice of time share plan to protect buyers from future blanket liens, the developer has already submitted a title report showing that the notice of time share plan has been recorded on title to the time share property; and (3) recorded documents as part of alternative arrangements intended to protect buyers from future blanket liens, the developer has already submitted a title report showing the recordation of all documents require to be recorded as part of the alternative arrangements.

The Department agrees that another title report should not be required for the purpose of showing protections against future blanket liens if a title report showing this has already been submitted. However, there may be other reasons the Department needs to see an updated title report. This bill appears to prohibit the Department from asking for another title report for any reason, and not just to show protection against future blanket liens.

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

Thank you for the opportunity to testify on this bill.



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: SB799 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 SB799 SD1 HD1- 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.

SB799 SD1 seeks to streamline the review of timeshare registration filings while continuing to maintain high levels of consumer protection.

Currently, the sale of a time share interest may only close if the buyers are protected from the foreclosure of blanket liens (for example, mortgages) that could result in the loss of a timeshare interest owned by a buyer. This includes both existing blanket liens as well as blanket liens that may arise in the future. An escrow for the sale of a timeshare interest may only close if buyers are protected from blanket liens. (See HRS Section 514E-19.)

Recently, the time share industry has seen widespread adoption of title-holding trusts, particularly by several large companies. Under these trusts, a trustee holds the title to the time

share property for the benefit of the owners and is obligated to operate in their best interests. The developer is also a beneficiary as to any unsold time share interests. These trusts are intended to protect the rights of the time share buyer to use the time share unit from blanket liens that may arise in the future.

When registering a time share plan, the developer must submit a title report or title policy showing that title has been conveyed to the trustee. If it does not, then prior to acceptance of the registration by the DCCA, the developer must submit an updated title report evidencing that title is held by the trustee. **Subsequently, title report updates currently being required by the DCCA are unnecessary since blanket lien protections will be fully in place upon the initial registration of the time share project.** Accordingly, SB799 SD1 provides clarity with regard to title report requirements, helps to expedite the review of filings, and, if enacted, will serve to avoid unnecessary filings and delay.

Further, SB799 SD1 seeks to eliminate unnecessary subsequent title updates for time share plans that use a notice of time share plan to protect purchasers. In such cases, an initial title report showing that the notice of time share plan has been recorded should be submitted. If it has not been submitted, then the developer must file an updated title report showing the notice. **Thereafter, subsequent title reports are unnecessary since, by law (See HRS Section 514E-21), the filing of the notice of time share plan protects buyers from future blanket liens.** Accordingly, SB799 SD1 seeks to reduce unnecessary title report updates, and will serve to reduce delays in the review of time share filings.

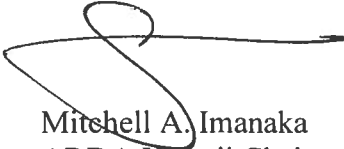
Finally, under this bill, the developer must submit a title report reflecting the recordation of all documents required to protect the buyers' rights to use the time share property. If it has not been submitted, the developer must file an updated title report showing such recordation. **Thereafter, subsequent updates to title reports are not necessary, as buyers are already protected against blanket liens.** Again, we support an amendment of this type to help expedite reviews and eliminate unnecessary filings.

*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.* Removal of duplicative and unnecessary reports will hopefully *achieve both greater review efficiency for time share projects while maintaining proper disclosures for buyers.*

Accordingly, ARDA Hawaii respectfully *recommends that the measure be amended to reflect the SD1 with the effective date for the measure being made upon approval as provided in the attached proposed HD2.*

Thank you for your consideration.

Respectfully submitted,



Mitchell A. Imanaka  
ARDA Hawaii Chair

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# A BILL FOR AN ACT

RELATING TO TIME SHARING PLANS.

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

1. SECTION 1. The legislature finds that the sale of a time  
2 share interest may only close if the buyers are protected from  
3 the foreclosure of blanket liens, such as mortgages, existing at  
4 the time of the closing or which may be placed on the property  
5 after the closing. For example, if a time share unit is subject  
6 to a mortgage at the time of the closing and the developer fails  
7 to pay the mortgage, the lender may then foreclose and  
8 extinguish the rights of the time share owners to use the time  
9 share unit. Existing law requires that the use rights of buyers  
10 be protected from existing blanket liens such as this.

11 The rights of buyers must also be protected from blanket  
12 liens that may arise in the future. For example, consider a  
13 situation where the buyer and developer enter into a contract  
14 providing that the developer will retain title to a hotel but  
15 that the buyer may use a room each year for the next forty  
16 years. Even if the property is free of any mortgage at the time  
17 of the sale, the developer could mortgage the property in the

1 future. If the developer does not pay the mortgage, the lender  
2 could foreclose and extinguish the rights of the time share  
3 owners to use the time share unit. Existing law provides that  
4 an escrow may close only if the buyers are protected from both  
5 present and future blanket liens using one of the statutorily  
6 approved methods.

7         The legislature further finds that in many time share  
8 plans, title to the time share units is conveyed into a title  
9 holding trust. Under the trusts, a trustee holds title for the  
10 benefit of the owners, the association of time share owners, or  
11 both. Among other things, .a title holding trust is intended to  
12 protect the right of the time share buyer to use the time share  
13 unit from blanket liens that may arise after the buyer's  
14 purchase. To accomplish this, the trust instrument typically  
15 restricts the ability of the trustee to submit the time share  
16 units to new blanket liens.

17         Developers must submit a title report or other evidence of  
18 title as part of the application for registration of a time  
19 share plan. The title report will identify any existing blanket  
20 liens.

1 If the time share plan uses a title holding trust to  
2 protect buyers from future blanket liens, the title report  
3 should also show that title has been conveyed to the trustee.

4 If it does not, then upon conveyance of the time share property  
5 to the trustee, the developer should be required to submit an  
6 update to the title report showing title is vested in the  
7 trustee before the registration is accepted. After the  
8 developer has submitted the title report, however, there is no  
9 need to submit additional title reports since the blanket lien  
10 protections are fully in place.

11         The legislature also finds that existing law allows  
12 developers to protect buyers from blanket liens that may arise  
13 in the future by recording a notice of time share plan. When a  
14 notice of time share plan is recorded, the rights of the time  
15 share owners to use the property are, by statute, protected from  
16 claims against the developer and anyone else who signed the  
17 notice of time share plan.

18         If the time share plan uses a notice of time share plan to  
19 protect buyers from future blanket liens, the title report  
20 should show that the notice of time share plan has been  
21 recorded. If it does not, then upon recordation of the notice

1 of time share plan, the developer should be required to submit  
2 an update to the title report showing the recordation before the  
3 registration is accepted. After the developer has submitted the  
4 title report, however, there is no need to submit additional  
5 title reports on the property subject to the notice of time  
6 share plan since the blanket lien protections are fully in  
7 place.

8           The legislature further finds that many modern time share  
9 plans include time share units from other states or even other  
10 countries. In recognition of the impossibility or  
11 impracticability of a proposed time share plan satisfying some  
12 of the requirements of the previously discussed methods because  
13 of factors over which the developer has little or no control,  
14 the director of commerce and consumer affairs may accept  
15 alternative arrangements for the protection of the use rights of  
16 purchasers.

17           Some alternative arrangements may require that various  
18 documents be recorded in the State or in the recording systems  
19 of other jurisdictions. If the alternative arrangements require  
20 the recordation of documents to protect buyers from blanket  
21 liens, the title report should reflect the recordation of the



1 documents. If it does not, then upon recordation of the  
2 documents, the developer should be required to submit an update  
3 to the title report showing the recordation before the  
4 registration is accepted. After the developer has submitted the  
5 title report, however, there is no need to submit additional  
6 title reports on the property since the blanket lien protections  
7 are fully in place.

8           Accordingly, the purpose of this Act is to bolster the  
9 protections provided for buyers of time share units by:

- 10           (1) For time share plans that use a title holding trust to  
11                 protect buyers from future blanket liens, requiring  
12                 the developer to submit a title report showing that  
13                 title to the time share property is vested in the  
14                 trustee, but it is not thereafter necessary to submit  
15                 additional title reports on that time share property;
- 16           (2) For time share plans that use a notice of time share  
17                 plan to protect buyers from future blanket liens,  
18                 requiring the developer to submit a title report  
19                 showing that the notice of time share plan has been  
20                 recorded on title to the time share property, but it

1 is not thereafter necessary to submit additional title  
2 reports on that time share property; and

3 (3) For time share plans that use recorded documents as  
4 part of alternative arrangements intended to protect  
5 buyers from future blanket liens, requiring the  
6 developer to submit a title report showing the  
7 recordation of all documents required to be recorded  
8 as part of the alternative arrangements, but it is not  
9 thereafter necessary to submit additional title  
10 reports on that time share property.

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

13 **"§514E-10 Registration required; developer, acquisition  
14 agent, plan manager, and exchange agent; registration  
15 renewal; title report; title holding trusts. (a) A.**

16 developer shall not offer or dispose of a time share unit or a  
17 time share interest unless the disclosure statement required by  
18 section 514E-9 is filed with the director pursuant to the time  
19 specified in this chapter, or the development is exempt from  
20 filing, and the time share plan to be offered by the developer  
21 is accepted by the director for registration under this chapter

1 The director shall not accept a developer's time share plan if  
2 the developer does not possess a history of honesty,  
3 truthfulness, financial integrity, and fair dealing.

4 (b) An acquisition agent (including the developer if it is  
5 also the acquisition agent) shall register under this chapter by  
6 filing with the director a statement setting forth the time  
7 sharing plan for which it is providing prospective purchasers,  
8 its address, the telephone number, other information required by  
9 the director as provided by rules adopted pursuant to chapter  
10 91, and, if the acquisition agent is not a natural person, the  
11 name of the responsible managing employee; provided that an  
12 acquisition agent licensed under chapter 467 as a real estate  
13 broker shall not be required to register under this chapter.  
14 All acquisition agents not licensed under chapter 467 shall be  
15 approved by the director. The director shall not approve any  
16 acquisition agent who is not of good character and who does not  
17 possess a reputation for honesty, truthfulness, and fair  
18 dealing. The acquisition agent shall furnish evidence that the  
19 acquisition agent is bonded as required by rules adopted by the  
20 director pursuant to chapter 91 to cover any violation by the  
21 acquisition agent of any solicitation ordinance or other

1 regulation governing the use of the premise or premises in which  
2 the time share plan is promoted; provided that the acquisition  
3 agent shall be separately bonded for each time share plan for  
4 which it is providing prospective purchases.

5 (c) A plan manager (including the developer if it is also  
6 the plan manager) shall register under this chapter by filing  
7 with the director a statement setting forth the time sharing  
8 plan that it is managing, its principal office address,  
9 telephone number, and responsible managing employee. The plan  
10 manager shall furnish evidence that the plan manager is bonded  
11 as required by rules adopted by the director pursuant to chapter  
12 91 to cover any default of the plan manager and any of its  
13 employees of their duties and responsibilities; provided that  
14 the plan manager shall be separately bonded for each time share  
15 plan under the management of the plan manager.

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

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

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

- 15           (1) A current disclosure statement that meets the:  
16                 requirements of section 514E-9 and section 16-106-3,  
17                 Hawaii Administrative Rules, if not already on file;
- 18           (2) A statement that is certified by the developer to be  
19                 true and correct in all respects and that identifies,  
20                 as appropriate:

1 (A) The time share units in the time share plan  
2 registered pursuant to this chapter; the total  
3 number of time share interests registered for  
4 sale in each unit pursuant to this chapter; and  
5 the total number of time share interests that  
6 have not yet been sold as of the date specified  
7 in the developer's certification, which date  
8 shall not be more than sixty days prior to the  
9 date of the developer's certification; or  
10 (B) The property in the time share plan registered  
11 pursuant to this chapter; the total number of  
12 points registered for sale in each property  
13 pursuant to this chapter; and the total .number of  
14 points in the time share plan that have not yet  
15 been sold as of the date specified in the  
16 developer's certification, which date shall not  
17 be more than sixty days prior to the date of the  
18 developer's certification;  
19 (3) If the developer is a corporation, partnership, joint  
20 venture, limited liability company, or limited  
21 liability partnership, an original certificate of good

1 standing issued by the business registration division  
2 of the department of commerce and consumer affairs not  
3 more than forty-five days before the date of  
4 submission of the renewal application; and

5 (4) The biennial renewal fee.

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

9 (1) A financial statement of the developer; or

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

14 (h) To the extent that a time share plan utilizes a title  
15 holding trust to protect the rights of purchasers to use the  
16 time share property from blanket liens that may arise subsequent  
17 to the closing of the sale of a time share interest:

18 (1) The developer shall submit a title report:

19 (A) Showing that title to the time share units or  
20 time share interest to be protected by a title

1                   holding trust has been conveyed to the trustee;  
2                   and

3                   (B) Showing the recordation of any documents required  
4                   to be recorded for the purpose of protecting the  
5                   rights of purchasers to use the time share  
6                   property from blanket liens that will remain on  
7                   title subsequent to the closing; and

8                   (2) The developer shall not thereafter be required to  
9                   submit additional title reports on property covered by  
10                   a title report that meets the requirements of  
11                   paragraph (1).

12                   (i) To the extent that a time share plan utilizes a notice  
13 of time share plan to protect the rights of purchasers to use  
14 the time share property from blanket liens that may arise  
15 subsequent to the closing of the sale of a time share interest:

16                   (1) The developer shall submit a title report:

17                   (A) Showing that a notice of time share plan has been  
18                   recorded on title to the time share units or time  
19                   share interests to be so protected; and

20                   (B) Showing the recordation of any documents required  
21                   to be recorded for the purpose of protecting the



1           rights of purchasers to use the time share  
2           property from blanket liens that will remain on  
3           title subsequent to the closing; and

4           (2) The developer shall not thereafter be required to  
5           submit additional title reports on property covered by  
6           a title report that meets the requirements of  
7           paragraph (1).

8           (j) To the extent that a time share plan utilizes  
9 alternative arrangements to protect the rights of purchasers to  
10 use the time share property from blanket liens:

11           (1) The developer shall submit a title report showing the  
12           recording of all documents that, as part of the  
13           alternative arrangements accepted by the director, are  
14           required to be recorded for the purpose of protecting  
15           the rights of purchasers to use the time share  
16           property from blanket liens; and

17           (2) The developer shall not thereafter be required to  
18           submit additional title reports on property covered by  
19           a title report that meets the requirements of  
20           subsection (1)."

1           SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 4. This Act shall take effect upon approval.

**Report Title:**

Time Share Plans; Title Reports; Blanket Liens

**Description:**

For time share plans that use title-holding trusts, requires the developer to submit a title report evidencing that the title is vested in the trustee. For time share plans that use a notice of time share plan, requires the recordation of the notice and its submission. For time share plans that use alternative arrangements, requires the recordation of any alternative arrangement documents. Effective upon approval.

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



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: Senate Bill 799, 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 799, SD1 HD1 – Relating to Time Sharing Plans. MVWC is a global leader in the timeshare industry, with five resort properties in Hawaii. Timeshare is an important and stabilizing part of the tourism industry, and resort development and operations provide thousands of jobs in the islands year after year.

Currently under HRS §514E-19, the sale of a time share interest may only close if buyers are protected against blanket liens such as a mortgage. MVWC’s time share programs are structured as a title-holding land trusts. Most trust structures, including MVWC’s, convey title to the timeshare inventory to a trustee who holds title for the benefit of the owners’ association and its members or its timeshare owners. The terms of the trust instruments preclude the imposition of any blanket liens on the time share inventory once submitted to the time share trustee. Significantly, any liens or other matters of title would be subordinate to the interests of the owners. Accordingly, once property is put into the trust, there is no need for title evidence thereafter to confirm that the property in the trust is free from blanket liens.

Under the current version of HRS §514E, subsequent title reports for inventory are required each time a registration is renewed. However, because the title report evidences that the property has been conveyed to the trust, further evidence of conveyance is not needed. SB 799 would help to streamline future registrations and avoid duplicative paperwork by eliminating the need to continue to provide additional title reports, once the time share property has been conveyed into the title-holding trust. This bill is important in that it modernizes the provisions of 514E-19 to reflect the evolution of timeshare plans. We strongly urge you to support SB 799, SD1 HD1.

Mahalo for your consideration,

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



CHARLES E. PEAR, JR., P.A.  
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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: SB799, 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.

Section 16-106-4(a)(4), HAR, requires that a developer application for registration must include a title report or policy on each unit to be registered. Section 16-106-4.1(a)(5), HAR, imposes the same requirement for units to be annexed. In both cases:

- The title report must show the status of ownership of the unit and all liens and encumbrances affecting the unit.
- The title report must not be more than 60 days old at the time of submission.

Neither the Act nor the Rules require that the developer submit any further title reports after the initial report.

The Time Share Act requires that the rights of time share owners be protected from blanket liens. “Blanket liens” are things like mortgages and so on, that could be used to deprive the time share owners of the use of the time share units. For example, foreclosure of a mortgage could cause the time share owners to lose their occupancy rights.

Frequently, the developer must record certain legal documents on title to the time share units to put the blanket lien protections in place. However, these documents may not have been recorded when the initial title report was prepared. Neither the Time Share Act nor the Time Share Rules require that the developer furnish an updated title report after these documents have been recorded.

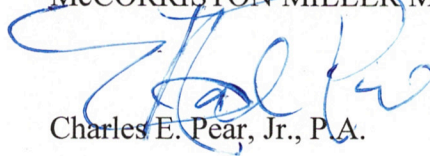
Chair, Vice-Chair, and Members of the  
Committee on Consumer Protection & Commerce  
March 27, 2023  
Page 2

This bill requires that the developer furnish an updated title search showing that the blanket lien protections are fully in place. After the developer has submitted such a title report, however, there is no need to submit additional title reports on such property since the rights of the purchasers to use the property are now fully protected. This bill prohibits the DCCA from requesting any additional title reports.

For the foregoing reasons, ARDA Hawaii respectfully requests that this Committee pass this bill.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP



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

Atty CEP/KN