



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Wednesday, March 12, 2014
2:10 p.m.

TESTIMONY ON SENATE BILL NO. 2481, S.D.1, RELATING TO TIME SHARES.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lori Beth Van Cantfort, Time Share Administrator of the Professional and Vocational Licensing Division ("PVL"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department takes no position on the intent of S.B. No. 2481, S.D.1, which seeks to amend Hawaii Revised Statutes Chapter 514E to (1) no longer require plan managers of time share plans located outside of Hawaii to register, and (2) allowing time share owners associations to be registered as any type of nonprofit entity.

The Department requests that should the bill pass, all references to "foreign time share plan" in the purpose section of the bill be changed to "time share plan located

outside of Hawaii". The bill seeks to exempt plan managers of time share plans located outside of Hawaii from having to register. "Foreign time share plan" is defined under Hawaii Revised Statutes §514E-5.5(g) as a time share use plan containing time share interests in Hawaii, but offered and sold solely outside the jurisdictional limits of the United States. Foreign time share plans are not time share plans located outside of Hawaii and are already exempt from Chapter 514E.

For the Committee's information, the companion measure, H.B. No. 2018, was heard by this committee on January 29, 2014, and was passed out with an H.D.1 which included the same disclosure language found on page 5, lines 11-15, with the exception of the word "REGISTERING" in place of "REGISTRATION". On February 25, 2014, the House Committee on Finance passed the bill with an H.D.2 which included non-substantive changes. The Department prefers the language found in S.B. No. 2481, S.D.1.

Thank you for this opportunity to provide testimony on S.B. No. 2481, S.D.1.

**Testimony of
Gary M. Slovin / Mihoko E. Ito
on behalf of
Wyndham Vacation Ownership**

DATE: March 11, 2014

TO: Representative Angus McKelvey
Chair, Committee on Consumer Protection and Commerce
Submitted Via CPCtestimony@capitol.hawaii.gov

RE: **S.B. 2481 S.D.1 – Relating to Timeshares**
Hearing Date: Wednesday, March 12, 2014 at 2:10 p.m.
Conference Room 325

Dear Chair McKelvey and members of the Committee on Consumer Protection and Commerce,

We submit this testimony on behalf of Wyndham Vacation Ownership. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **strongly supports** S.B. 2481 S.D.1, which would exempt an out-of-state time share plan manager from filing a disclosure statement in the State. Wyndham develops projects all over the world, and its managers may or may not conduct business in the State. The requirement that managers of out-of-state time share plans register in Hawaii is no longer practical, and this bill adapts the practice to the evolving nature of the time share business. We believe that consumer protection concerns are also provided for in the bill by requiring a disclosure statement that the manager is not registered in Hawaii.

Wyndham also supports the amendments the bill makes to HRS Chapter 514E. The time share law was amended in 1982 to require that an association of timeshare owners be formed as a non-profit entity in the state of Hawaii or elsewhere. However, this requirement has become obsolete because today, new types of business organizations

Gary M. Slovin
Mihoko E. Ito
Tiffany N. Yajima
Jennifer C. Taylor

1099 Alakea Street, Suite 1400
Honolulu, HI 96813
(808) 539-0840

have been created to reflect changing business models. Wyndham supports the changes to Chapter 514E to reflect the current practices for the industry.

Wyndham notes that the S.D.1 was amended to clarify in the disclosure statement for time share units located outside of the State that plan managers are only exempt from registering under Hawaii's Time Share Law. Wyndham supports S.B. 2481 S.D.1 as amended, and respectfully requests that the Committee pass it for further consideration.

Thank you for the opportunity to submit testimony on this measure.

LATE



March 12, 2014

TO: HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Representative Angus McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

FROM: Henry Perez, Chair
ARDA-Hawaii

RE: SB 2481 SD1, Relating to Time Shares
Position: Support

Dear Chair McKelvey, Vice Chair Kawakami and members of the Committee:

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports SB 2481 SD1, Relating to Time Shares. The bill makes several changes to the current timeshare law to reflect changes in the timeshare industry as a result of the growth of the industry. We support the bill as amended to address concerns raised by the Time Share Administrator.

As the timeshare industry has grown, the ownership and management of timeshare developments has diversified. Hawaii law requires that managers of foreign timeshare plans register in Hawaii as a timeshare plan manager despite not doing business in Hawaii. This bill would eliminate that requirement and provide as an added measure of consumer information, a disclosure that the manager of a foreign timeshare is not registered in Hawaii.

When our timeshare law was created, nonprofit corporations were the most appropriate corporate structure for timeshare associations. However, new types of business organizational structures have been developed that are similarly appropriate for governance of an association. This law would allow for the use of other corporate structures creating an entity organized on a non-profit or not-for-profit basis, or that qualifies under federal law as a homeowners association.

Finally, the bill would make corrections to internal references to maintain consistency.

Thank you for the opportunity to submit this testimony in support.

McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

CHARLES E. PEAR, JR.

DIRECT #S:
PHONE - (808) 223-1212
FAX - (808) 535-8029
E-MAIL - PEAR@m4LAW.COM

March 11, 2014

LATE

Rep. Angus L. K. McKelvey, Chair
Rep. Derek S. K. Kawakami, Vice Chair
Members of the Committee on Consumer
Protection & Commerce
Twenty-Seventh Legislature
Regular Session, 2014

Re: S.B. 2481, S.D. 1
Hearing on March 12, 2014, 2:10 p.m.
Conference Room 325

Dear Chair, Vice-Chair and Members of the Committee:

My name is Charles Pear. I am appearing as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports the bill. We propose that certain technical, non-substantive changes be made to the bill as shown in the attachment hereto.

1. Form of Time Share Owners Association.

In 1982, at the request of the Chairperson of the House Consumer Protection Committee, I drafted legislation requiring, among other things, that each time share plan must have an association of time share owners. The statute provides:

§ 514E-29. Association; lien for delinquent assessments.

(a) All time share plans shall have an association which shall be a nonprofit corporation. Each owner shall be a member of the association.

The 1982 amendment dealt primarily with the establishment of escrow and blanket lien safeguards to protect the consuming public. Some of those safeguards require the presence of an association of time share owners as part of the system of check and balances intended to protect the consuming public

For example, § 514E-22(4), dealing with lien payment trusts, requires that the association be made a third party beneficiary of the trust. The purpose of this requirement is to give the association standing to enforce the trust agreement on behalf of the owners. Enforcement of the trust is critical in that the statutory scheme prohibits the trustee from conveying or encumbering

P. O. Box 2800 • Honolulu, Hawai'i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293 • E-mail: info@m4law.com

units held in trust, thus protecting purchasers from blanket liens. By making the association and express third-party beneficiary, the owners have a practical means of enforcing the trust through the association. This is better than requiring individual owners to file separate lawsuits because the costs of such a suit would substantially exceed the investment of any single owner but, when shared via an association, the costs become manageable.

In addition, § 514E-22(6), requires that any amendment to the trust be approved by the association of time share owners. In this capacity, the association serves an oversight function in ensuring that the developer does not modify the trust instrument in a manner that adversely impacts the rights of owners unless the owners concur in the modification.

§ 514E-22 deals with time share plans which utilize a trust as a means to protect purchasers from blanket liens. Purchasers may also be protected from blanket liens via another method, called the “pledged equity election.” This little-known and never-used mechanism is contained in § 514E-25. Essentially, it is a permitted permutation of the lien payment trust concept. Under § 514E-25, the association again serves an oversight function on behalf of the owners. In addition, it receives title to a mortgage as security for the obligations of the developer.

Basically, the inclusion of these two provisions in the 1982 amendments to the Act made it necessary to require that each time share plan have an association of timeshare owners. As a result, I included what is now § 514E-29(a).

In the intervening years, it has become common for time share developers to offer for sale in Hawaii time share interests in time share plans located in other states or countries. In some cases, the time share associations have been established as a not-for-profit corporation, a nonprofit limited liability company, or perhaps in some other form.

The statutory purposes of having a time share owners association are fully served regardless of whether the association is established as a nonprofit corporation, a not-for-profit corporation, a nonprofit limited liability company, or some other kind of entity. The establishment of an association in any format provides a vehicle through which the owners and collectively protect themselves as a group from blanket liens and provide oversight functions on behalf of the owners.

This bill is intended to recognize this and to expressly authorize the use of other forms of entities to serve as the time share owners association.

2. Registration of Plan Managers of Foreign Time Share Plans.

The 1982 amendment also adopted Section 514E-30. Among other things, §514E-30 established the applicability of the Hawaii Time Share Act to time share plans not located in Hawaii, stating as follows:

§ 514E-30. Scope of chapter.

This chapter applies to the offer and sale in Hawaii of time share interests in time share units located in Hawaii. If time share units are located outside of Hawaii, but any offer or sale is made within the State, this chapter, except for sections 514E-3, 514E-4, 514E-5, 514E-6, 514E-7, and 514E-14, shall apply. As to the offer and sale outside of Hawaii of time share interest in a time share plan which includes time share units located in Hawaii, this chapter, except for sections 514E-2.5, 514E-8, 514E-9, 514E-10(b) and (c), 514E-11, and 514E-11.1 shall apply. [Emphasis added.]

The 1982 legislation was adopted in response to the collapse of the Paradise Palms Vacation Club. At the time, a few states had adopted time share legislation, but many others had not yet done so. As a result, the 1982 amendment was purposely drawn to be as broadly applicable as possible in order to protect time share buyers and, frankly, the time share industry.

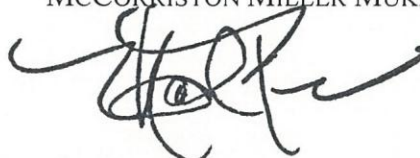
From time to time during the ensuing 31 years, a question has arisen as to whether the State of Hawaii has jurisdiction to regulate the manager of a time share plan if all of the property of the time share plan is located entirely outside of the State of Hawaii, and if the manager has no contacts with the State of Hawaii. In addition, during the past three decades, most states have adopted laws or regulations governing the establishment, management, offer and sale of time share plans. In light of the foregoing, it is appropriate to leave the regulation of out-of-state property managers to the governance of the jurisdictions in which they are actually managing property.

The proposed bill exempts managers of foreign time share plans from the plan manager registration requirements of the Hawaii Time Share Act. The bill also requires that the Hawaii Disclosure Statement provide notice to prospective time share buyers that the plan manager is not required to be registered under Hawaii law.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', with a stylized flourish at the end.

Charles E. Pear, Jr.

A BILL FOR AN ACT

RELATING TO TIME SHARES.

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

SECTION 1. The legislature finds that time share developers frequently develop projects in more than one state or country. Hawaii law requires that a developer register a ~~foreign~~ time share plan ^{located outside of Hawaii} prior to offering and selling time share interests in Hawaii, which is appropriate because the offer and sale of the time share interests in a ~~foreign~~ time share plan ^{an out-of-state} take place in Hawaii. However, managers of ~~foreign~~ time share plans ^{located outside of Hawaii} do not conduct business in Hawaii. Requiring these managers to register in Hawaii may raise difficult questions, including whether these managers should acquire a Hawaii real estate license, even though they have no presence and conduct no business in the State. Amendments to address managers of ~~foreign~~ time share plans ^{located outside of Hawaii} are therefore necessary.

The legislature finds that chapter 514E, Hawaii Revised Statutes, was amended in 1982 to establish a comprehensive scheme to protect the rights of time share purchasers from blanket liens that might deprive the purchasers of the right to use the property of a time share plan. These amendments



1 required that an association of time share owners be established
2 as a nonprofit corporation, whether in Hawaii or elsewhere.
3 However, since that time new kinds of business organizations
4 have been created. Amendments to modernize chapter 514E, Hawaii
5 Revised Statutes, are therefore necessary.

6 Accordingly, the purpose of this Act is to:

7 (1) Eliminate the requirement that a manager of ~~a foreign~~ an out-of-state
8 time share plan register in Hawaii as a time share
9 plan manager;

10 (2) Require the disclosure statement for an offering of a
11 time share plan to disclose that the manager of a
12 ~~foreign~~ time share plan located outside of Hawaii is not registered under
13 Hawaii's time share law;

14 (3) Recognize that an association of time share owners may
15 be any kind of nonprofit or not-for-profit entity; and

16 (4) Make housekeeping amendments.

17 SECTION 2. Section 514E-9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§514E-9 Disclosure statement.** (a) Any offering of a
20 time sharing plan to the public shall disclose:

21 (1) The name and address of the developer and of the time
22 share units;



- 1 (2) The name and address of the plan manager, if any, and
2 a description of the plan manager's responsibilities
3 and authority;
- 4 (3) A description of the time share units, including the
5 developer's schedule for completion of all buildings,
6 units, and amenities and dates of availability;
- 7 (4) If the time share plan is located in a condominium
8 property regime, a description of the project and any
9 pertinent provisions of the project instruments;
- 10 (5) Any restraints on the transfer of the buyer's time
11 share interest in the time share units or plan;
- 12 (6) Whether the time share plan is a time share ownership
13 plan or a time share use plan, along with a
14 description of the rights and responsibilities under
15 said plan;
- 16 (7) A statement that there is a seven-calendar-day period
17 of mutual rescission;
- 18 (8) A statement that pursuant to section 514E-11.3, every
19 sale or transfer, made in violation of this chapter is
20 voidable at the election of the purchaser;
- 21 (9) Notice of any liens, title defects or encumbrances on
22 or affecting the title to the units or plan;



1 (10) Notice of any pending or anticipated suits that are
2 material to the time share units or plan, of which the
3 developer has, or should have, knowledge;

4 (11) The total financial obligation of the purchaser, which
5 shall consist of:

6 (A) A statement that the purchaser is obligated to
7 pay the initial price stated in the purchaser's
8 purchase agreement; and

9 (B) A list or description of any additional charges
10 to which the purchaser may be subject;

11 (12) An estimate of the dues, maintenance fees, real
12 property taxes, and similar periodic expenses, and the
13 method or formula by which they are derived and
14 apportioned; ~~and~~

15 (13) The disclosure ~~statement~~ under subsection (d), if
16 applicable; and

17 ~~[(13)]~~ (14) Other disclosures required by the director, as
18 provided by rules adopted pursuant to chapter 91.

19 (b) The requirements of this section shall not apply to
20 the following transactions:

21 (1) Any transaction pursuant to order of any court;



(2) Any disposition by a government or governmental agency;

(3) Normal hotel operations; or

(4) Any gratuitous transfer.

(c) A developer or sales agent shall promptly amend or supplement the disclosure statement to report any material change in the information required by this section.

(d) If all the time share units are located outside the State, the disclosure statement shall contain the following statement:

"BECAUSE THE TIME SHARE UNITS OF THIS TIME SHARE PLAN ARE LOCATED OUTSIDE OF THE STATE OF HAWAII, THE PLAN MANAGER IS EXEMPT FROM REGISTRATION UNDER HAWAII'S TIME SHARE LAW AND HAWAII'S TIME SHARE LAW PROVIDES NO PROTECTIONS TO PURCHASERS WITH RESPECT TO THE PLAN MANAGER." ."

SECTION 3. Section 514E-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All time share plans shall have an association which shall be a nonprofit or not-for-profit corporation[-], a nonprofit or not-for-profit limited liability company, or any other entity organized on a nonprofit or non-for-profit basis, or that qualifies as a homeowners association under title 26



1 United States Code section 528. Each owner shall be a member of
2 the association."

3 SECTION 4. Section 514E-30, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§514E-30 Scope of chapter.** This chapter applies to the
6 offer and sale in Hawaii of time share interests in time share
7 units located in Hawaii. If time share units are located
8 outside of Hawaii, but any offer or sale is made within the
9 State, this chapter, except for sections 514E-3, 514E-4, 514E-5,
10 514E-6, 514E-7, 514E-10(c), and 514E-14, shall apply. As to the
11 offer and sale outside of Hawaii of time share interest in a
12 time share plan which includes time share units located in
13 Hawaii, this chapter, except for sections 514E-2.5, 514E-8,
14 514E-9, 514E-10(b) [~~and (c)~~], 514E-11, and 514E-11.1 shall
15 apply."

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Time Shares; Disclosure Statement; Nonprofit Entities; Not-for-profit Entities; Foreign Time Share Plans

Description:

Eliminates requirement that a manager of a foreign time share plan register in Hawaii as a time share plan manager. Requires the disclosure statement for an offering of a time share plan to disclose that the manager of a foreign time share plan is not registered under Hawaii's time share law. Recognizes that an association of time share owners may be any kind of nonprofit or not-for-profit entity. Makes housekeeping amendments. (SD1)

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





LATE

9002 San Marco Court
Orlando, Florida 32819
(407) 418-7271

March 12, 2014

To: Honorable Angus McKelvey, Chair
Honorable Derek Kawakami, Vice Chair
House Committee on Consumer Protection & Commerce

RE: **SB 2481 SD1 - Relating to Time Shares – In Support**
Conference Room 325, 2:10 PM

Chair McKelvey, Vice Chair Kawakami and members of the committee:

Starwood Vacation Ownership (“Starwood”) appreciates the opportunity to offer testimony in support of SB 2481 SD1, which eliminates the requirement that a manager of a foreign time share plan register in Hawaii as a time share plan manager, requires disclosure that the manager of the foreign time share plan is not registered under Hawaii’s time share law and recognizes that an association of time share owners may be any kind of nonprofit entity.

Starwood supports this bill because it updates and streamlines Hawaii time share law. When the Hawaii law regulating plan managers was created, it was broadly worded and required all time share plan managers to register with the Department of Commerce and Consumer Affairs (DCCA). Today, many out of state time share plans are registered in Hawaii and the managers of these out of state plans (which are regulated in their state of operation) are required to register as Hawaii managers. These managers do not conduct business in Hawaii, therefore, this requirement should be eliminated as it creates unnecessary regulatory burdens on the DCCA and the industry and does not further consumer protection. The bill also provides clarification that a time share association can be any kind of nonprofit entity. This update modernizes the statute, recognizing that owners associations, especially in out of state plans, may take different forms.

For the aforementioned reasons, we respectfully request that you pass SB 2481 SD1. Thank you.

Robin Suarez
Vice President/General Counsel
Starwood Vacation Ownership