

STAND. COM. REP. NO. 761

Honolulu, Hawaii

MAR 06 2015

RE: S.B. No. 754
S.D. 2

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which
was referred S.B. No. 754, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TIME SHARING,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Provide cancellation rights to persons who contract to
buy a short-term product in Hawaii; and
- (2) Allow disbursement of purchasers' funds to a developer;
provided that the developer first posts a bond, letter
of credit, or other financial assurance.

Your Committee received testimony in support of this measure
from the American Resort Development Association Hawaii, Starwood
Vacation Ownership, and Wyndham Vacation Ownership. Your
Committee received comments on this measure from the Regulated
Industries Complaints Office of the Department of Commerce and
Consumer Affairs and Professional and Vocational Licensing
Division of the Department of Commerce and Consumer Affairs.

Your Committee finds that short-term products are intended to
allow a potential time share buyer the opportunity to stay in a
time share resort on a trial basis. If the buyer decides to
proceed with a purchase, some or all of the amount paid by the
buyer for the short-term product is typically credited toward the
purchase price of the time share interest. Under existing law,



there is a seven-day rescission right for the sale of a time share interest, but this rescission right does not apply to sales of short-term products. This measure proposes cancellation rights for persons who contract to buy a short-term product in Hawaii.

Your Committee further finds that under existing law, when a buyer purchases a time share that is in the development stage, the purchase funds may be placed in escrow and disbursed to the developer to cover construction costs. However, if the developer defaults, due to the use of subordination clauses in the purchase contract, the buyer's rights are subordinated to the rights of the construction lender. To overcome this disadvantage, other states have adopted laws permitting a time share developer to use buyer deposits upon posting a bond, letter of credit, or other financial assurance. Similarly, this measure allows disbursement of purchasers' funds to a developer if the developer first posts a bond, letter of credit, or other financial assurance.

However, your Committee has heard the concerns raised by the Regulated Industries Complaints Office regarding certain provisions of this measure that give cancellation rights to purchasers of short-term products in Hawaii. Your Committee has also heard the concerns raised by the Professional and Vocational Licensing Division regarding the language in this measure that would allow developers to post a surety bond, irrevocable letter of credit, or other financial assurance instead of requiring purchasers' funds to remain in escrow prior to closing.

In response to these concerns, your Committee notes that interested stakeholders have collaborated on compromise language that ensures additional consumer protections related to the sale of short-term products in Hawaii. Amendments to this measure are therefore necessary to reflect this consensus language.

Accordingly, your Committee has amended this measure by:

- (1) Clarifying what a short-term product seller must disclose to all short-term product buyers, including specific blackout dates if the short-term product is subject to blackout dates and a requirement to pay transient accommodations tax for the occupancy of transient accommodations in Hawaii, if applicable;



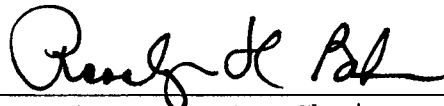
- (2) Clarifying the contents and placement of the disclosure that must be included in the contract to purchase a short-term product;
- (3) Clarifying the process for the right to cancel that a short-term product buyer may exercise;
- (4) Removing language that would have limited action on violations related to short-term products to four years;
- (5) Removing language that stated the offer of sale of short-term products by the developer or an affiliate of the developer would not be subject to chapter 468L, Hawaii Revised Statutes;
- (6) Removing all language and references that would have allowed disbursement of purchasers' funds to a developer if the developer first posts a letter of credit or other financial assurance;
- (7) Clarifying that the developer of a time share plan may be entitled to the release of a time share purchaser's funds from escrow prior to closing and after the seven-day cancellation period; provided that the developer has first deposited a surety bond;
- (8) Clarifying the requirements for a surety bond filed with the Director of Commerce and Consumer Affairs;
- (9) Lowering the time period in which the surety must deposit funds with an escrow agent from ninety days to thirty days;
- (10) Removing language regarding a bond, letter of credit, or other financial assurances for accommodations of a time share plan located outside the State;
- (11) Specifying that the amount of refund a purchaser may be entitled to receive shall not be reduced to pay the cost of any surety bond deposited by the developer;
- (12) Specifying the additional contents of a disclosure statement that must be included if an escrow agreement permits the release of purchasers' funds;



- (13) Specifying that a sales contract for the sale of a time share interest must include a deadline by which the closing of the sale must occur and permitting a purchaser to exercise a right to cancel the sales contract at any time after the specified closing date, if the closing date does not occur on or before the closing deadline;
- (14) Clarifying the definitions of "conspicuous type" and "short-term product";
- (15) Clarifying requirements for a developer or an affiliate of a developer to deposit into escrow all loan payments made by the purchaser prior to closing;
- (16) Inserting an effective date of July 1, 2115, to encourage further discussion, and inserting a five-year sunset date for certain amendments proposed by this measure; and
- (17) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 754, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 754, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
Twenty-Eighth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* SB 754 SD1	Committee Referral: TSI, CPN	Date: 3/4/15		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
KAHELE, Gilbert				✓
KIDANI, Michelle N.	✓			
NISHIHARA, Clarence K.				✓
WAKAI, Glenn	✓			
SLOM, Sam				✓
TOTAL	4	0	0	3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes