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

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Tuesday, January 28, 2020  
9:00 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 2273, RELATING TO TIME SHARING**

Chair Baker and Members of the Committee:

My name is Lori Beth Van Cantfort, and I am the Time Share Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division. The Department appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) provide time share purchasers with rescission rights if there is a material change to the information contained in the disclosure statement; and (2) require developers to provide a notice to purchasers regarding any pertinent or material change made to the disclosure statement.

Currently, a developer must submit any proposed changes to its disclosure statement to the Department for review and acceptance prior to providing the amended disclosure statement to purchasers. Purchasers who have entered into binding contracts, but whose sales have not yet closed, are not aware of these material changes while the Department is reviewing the amended disclosure statement.

Therefore, sales could close while the Department is still reviewing the material changes, and purchasers would not be aware of those changes. The Department appreciates that this bill seeks to provide purchasers with current information and a new rescission right, should any material changes exist prior to closing.

However, the Department requests amending the bill for the following reasons:

1. The bill should explicitly require the developer to provide a rescission form to the purchaser with the notice of change form. Developers must provide a rescission form at the same time a notice of change form is provided, or the purchaser will not be able to rescind within seven days.
2. The bill is not clear when a purchaser's seven-day rescission right ends if a notice of change is mailed to the purchaser. The bill provides that the rescission period ends seven days after the notice of change form is received. How will it be determined when a notice of change is received if it is mailed to the purchaser?
3. The bill provides that a purchaser is entitled to a full refund if the purchaser rescinds during the seven-day rescission right. This conflicts with Hawaii Administrative Rules section 16-106-20(b), which allows developers to withhold up to \$25 if the purchaser does not return all materials.

The Department has been working with the American Resort Development Association (ARDA) on this measure and will continue to work with ARDA to develop appropriate language.

Thank you for the opportunity to testify on this bill.



January 28, 2020

TO: Senator Rosalyn Baker, Chair Commerce, Consumer Protection, and Health  
Senator Stanley Chang, Vice-Chair Commerce, Consumer Protection, and Health  
Members of the Senate Commerce, Consumer Protection, and Health Committee

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION (ARDA) -HAWAII  
Blake Oshiro, Executive Director

RE: **SB2273 RELATING TO TIME SHARING. – SUPPORT**

Description: Provides purchasers of time shares with rescission rights if there is a material change to the information contained in the disclosure statement. Requires developers to provide notice to the purchaser regarding any pertinent or material change made to the disclosure statement.

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

Thank you for the opportunity to testify on Senate Bill (SB) 2273. This bill was the product of long discussions and negotiations held during the interim with the Department of Commerce and Consumer Affairs Timeshare Administration Office (Timeshare Office). Several hours and several drafts were exchanged, and while ARDA did not prevail on all of the issues brought to the table, ARDA believes it was a fruitful discussion and we thank the Timeshare Office for the time, energy and frank discussion.

SB2273 was one of two bills we have filed as a product of the interim work, and it reflects an agreement between the parties as to an approach for the process of notification to potential purchasers to distinguish material changes from pertinent to changes.

A “material change” is defined as one that “directly, substantially, and adversely affects the use or value of a purchaser’s time share interest or [unit]”. Other changes that are less important and do not affect value or use would be considered “pertinent.”

This approach to distinguishing these changes comes from the condominium law. Haw. Rev. Stat. 514B-87.

It is our understanding that the Timeshare Office is in conceptual agreement with the bill, but is still reviewing some of the language internally, so it cannot expressly state that it supports the bill outright. However, we are hopeful that we will be able to secure agreement, and so we respectfully request that you pass this bill forward.

**SB-2273**

Submitted on: 1/26/2020 7:26:11 PM

Testimony for CPH on 1/28/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Blake Oshiro	Testifying for American Resort Development Assn	Support	Yes

Comments:

# McCORRISTON MILLER MUKAI MACKINNON LLP

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January 27, 2020

Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair  
Members of the Senate Committee on Commerce  
Consumer Protection, and Health  
Thirtieth Legislature  
Regular Session, 2020

**LATE**

Re: S.B. 2273  
Hearing on January 28, 2020, 9:00 a.m.  
Conference Room 229

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.

The Time Share Act, Chapter 514E, HRS, was adopted in 1980. At that time, most time share plans consisted of condominium units in a single condominium project. Buyers purchased the right to use a specific week in a given unit in each year.

Over the next 40 years, the time sharing industry evolved repeatedly. Modern time share plans may now include hundreds or even thousands of units in dozens of real estate projects located in Hawaii, other states, and even other countries. This is intended to give the owners more vacation opportunities when making their vacation plans.

While this enhances the product for the consumer, it also burdens the developer and the regulators in various locales where the timesharing plans are situated or offered. For example, each time that a unit is added to the plan, the developer must amend each registration in every state or country. Each time that a new site is added, the developer also must amend each registration in every state or country. Preparation and review of such amendments can be tedious and time-consuming work for both the developer and the regulators.

Unfortunately, this may result in delays in filing and processing updates to the Hawaii time share disclosure statement. This can lead to circumstances where the plan has changed before the buyer's sale closes, but the buyer is unaware of the change.

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The old version of the Condominium Law, Chapter 514A, HRS, required that developers suspend sales of condominium units while an application to amend the public report was pending. This requirement proved to be unworkable. The legislature recognized this when it adopted the new Condominium Act, Chapter 514B. Under Chapter 514B, it is not necessary for a developer suspend sales while an application to amend a registration is pending. Specifically, §514B-56(b), HRS, provides:

(b) The submission of an amendment to the developer's public report or an amended developer's public report **shall not require the developer to suspend sales** \* \* \* provided that the developer shall \* \* \* disclose to purchasers any change in the information contained in the developer's public report pending the issuance of an effective date for any amendment to the developer's public report or amended developer's public report; \* \* \* [Emphasis added.]

This bill is intended to adopt a similar approach for use with the Time Share Act, Chapter 514E, HRS. The operative provisions of the bill are based on the approach set forth in Section 514B-87 of the Condominium Act. The bill works like this:

1. If there is a change to the information contained in the Time Share Disclosure Statement, the developer must provide a notice of the change to each buyer who has signed a purchase agreement but whose sale has not yet closed.
2. The notice must be provided using a notice of change form approved by the Director of the DCCA.
3. The developer may continue to sell time share interests.
4. New buyers must be given the notice of change at the same time that they are given a copy of the current disclosure statement. The notice of change must be mailed or personally delivered to buyers who have already received the disclosure statement (i.e., for pending but unclosed sales).
5. If the change is a material change, buyers have a new 7-day right of rescission starting from the date of delivery of the notice of change.
6. The developer cannot close a pending sale until five days after the buyer's new 7-day rescission period has expired. This is intended to allow time for the mails to clear.

ARDA Hawaii believe that this bill provides new and important rights to time share purchasers while also providing a path for developers to continue to sell their product, and to

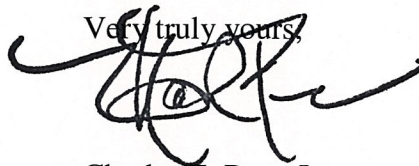
Chair, Vice Chair and Members,  
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keep purchasers updated on any changes to the product, while the DCCA is reviewing the developer's application to amend the disclosure statement.

ARDA Hawaii proposes that the current draft of S.B. 2273 be revised as shown on the revised draft attached hereto as Exhibit A. The location of the changes can be identified by the line in the left margin of the pages of Exhibit A.

Thank you for your kind consideration of these thoughts.

Very truly yours,

A handwritten signature in black ink, appearing to read 'CEP', with a stylized flourish extending to the right.

Charles E. Pear, Jr.

CEP:kn



## EXHIBIT A

SECTION 1. The legislature finds that while existing law provides purchasers of condominiums with the protection of rescission rights when material changes have been made to the ~~disclosure statement~~condominium public reports after a sales contract becomes binding, there are no laws that provide purchasers of time share interests with the protection of rescission rights under similar circumstances.

Accordingly, the purpose of this Act is to:

- (1) Require developers to provide a notice to purchasers of time share interests of any material change or pertinent change in the information in the current disclosure statement; and
- (2) Provide purchasers of time share interests rescission rights for material changes made to the disclosure statement.

SECTION 2. Chapter 514E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§514E-A Rescission due to a material change; sales contract.** (a) Purchasers shall have a seven calendar day right to rescind a sales contract for the purchase of a time share interest from a developer if, prior to closing, there is a material change in the plan. This rescission right shall not apply in the event of any additions, deletions, modifications, and reservations, including but not limited to the merger, addition, or



phasing of a plan, made pursuant to the terms of the time share instruments.

(b) Upon the developer's delivery to a purchaser of a description of the material change on a form prescribed by the director ~~from the developer~~, the purchaser may let the seven-day rescission period expire without exercising the purchaser's right of rescission in accordance with subsection (c), in which case the rescission right shall be terminated.

(c) In order to be valid, a rescission form must be signed by all purchasers of the affected time share interest and postmarked no later than midnight of the seventh calendar day after the date that the purchaser received the rescission form from the developer. In the event of a valid exercise of a purchaser's right of rescission pursuant to this section, the purchasers shall be entitled to a prompt and full refund of any moneys paid.

(d) The rescission form obtained by the developer under this section shall be kept on file in possession of the developer and shall be subject to inspection at a reasonable time by the director or the director's staff or agents, for a period of three years from the date the receipt or return receipt was obtained.

(e) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a

contract for the sale of a time share interest or any applicable common law remedies.

(f) A purchaser's sale may be closed when the escrow agent receives a statement from the developer stating that at least five days have passed since the purchaser's rescission period under subsection (a) has expired, and the developer has not received from the purchaser a rescission form validly exercising the purchaser's right of rescission pursuant to subsection (c).

**§514E-B Notice of change.** (a) In the event of a pertinent change or a material change to the information required by section 514E-9, until such time as the director accepts an amended disclosure statement disclosing the change, the developer shall provide to each purchaser of a time share interest whose purchase has not yet closed a notice of any such change on a form prescribed by the director. For new sales, the notice of change may be provided with the most recently accepted disclosure statement. In all other cases, the notice of change shall be provided by personal delivery or by mail.

(b) The developer may continue to sell and to close the sale of time share interests in the time share plan; provided that if the notice of change discloses a material change, the sale may close only when the requirements of section 514E-A(f) have been met."



SECTION 3. Section 514E-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Material change" means any change to the information required by section 514E-9 and that directly, substantially, and adversely affects the use or value of a purchaser's time share interest or the time share units in the time share plan.

"Pertinent change" means a change, other than a material change, to the information required by section 514E-9. Without limiting the foregoing, the following constitute "pertinent changes" and do not constitute material changes may include but is not limited to:

(1) The annexation of fully constructed time share units located in a component site that has previously been accepted by the director for registration in the time share plan;

(2) Any change to the address or telephone number of the developer;

(3) Any change to the name, address, or telephone number of the escrow agent, plan manager, any sales agent, any acquisition agent, or any exchange agent;

(4) Any change to the name, address, or telephone number of any officers, directors, employees, or agents, including but not limited to responsible managing employees, and agents for service of process, of the developer, escrow agent, plan manager, sales agent, acquisition agent, or exchange agent; and

(5) The dismissal of any litigation disclosed in the disclosure statement."

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. New statutory material is underscored.

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