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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 7, 2023
9:15 a.m.
Conference Room 229 and Videoconference

On the following measure:
S.B. 797, RELATING TO TIME SHARING PLANS

Chair Keohokalole 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) specify that primary and supplementary plan documents be listed in the public disclosure statement of a time share plan; (2) require a disclosure of pertinent provisions of a condominium's project instruments only if the purchaser will be a direct owner of a unit in the condominium; (3) clarify the manner in which the required disclosure of liens, title defects, or encumbrances on the titles of units may be made; and (4) provide that a review of encumbrances be waived upon the certification from the developer that the time share interest is free and clear of blanket liens or that identifies all blanket liens.

Section 1 of the bill (pages 1-3, subsection 3, and page 4, subsection 10) seeks to remove the requirement that all encumbrances listed on a title report be disclosed in the disclosure statement. Instead, only “primary plan documents,” “supplementary plan documents,” and material liens, title defects or encumbrances affecting title would be disclosed. For all other liens, title defects, or encumbrances, a reference would be made to a website where these documents would be listed and made available for review. This change is intended to decrease the length of the disclosure statement, which can exceed 100 pages for multi-site time share plans. While the Department appreciates that many encumbrances may not need to be listed in the disclosure statement and having an excessively long disclosure statement may deter purchasers from actually reading the disclosure statement, the Department should have the discretion to require that certain encumbrances be disclosed. Also, the developer should be required to represent that it has determined that the encumbrances not listed in the disclosure statement are not material.

Section 1 of the bill (page 3, subsection 5) also seeks to clarify that disclosures regarding pertinent provisions in a condominium’s project instruments only need to be disclosed if a purchaser will be a “direct owner” of a unit in the condominium. It is unclear what a “direct owner” of a unit is and the term should be defined or further described.

Section 3 of the bill (page 13) seeks to no longer allow the Department to review all encumbrances to determine that the time share interests are being sold free and clear of blanket liens. Instead, the Department shall accept a certification from the developer that the time share interests are being sold free and clear of blanket liens or other material encumbrances that may materially and adversely impact utilization of the property, or if that is not the case then a certification that identifies the blanket liens or material encumbrances and either specifies how these encumbrances will be addressed or what impact such encumbrances may have on purchasers. Although the Department is willing to accept such a certification, it should still have the discretion to conduct an encumbrance review should the need arise. If the Department does not have discretion and is required to accept such a certification, then the certification should state the basis

Testimony of DCCA

S.B. 797

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for the developer's certification and clearly state that they have reviewed all the encumbrances in determining that there are no blanket liens

The Department has been working with the 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.



February 6, 2023

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce
& Consumer Protection
Thirty-Second State Legislature
Regular Session of 2023

RE: Senate Bill 797 – Relating to Time Sharing Plans
Hearing date: February 7, 2023 at 9:15 am

Aloha Chair, Vice-Chair 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 797 – Relating to Time Sharing Plans. MVWC is a global leader in the timeshare industry, with five resort properties in Hawaii. Timeshare resorts are an important and stabilizing part of the tourism industry, and resort development and operations provide thousands of jobs, including high paying sales and marketing jobs, in the islands year after year.

SB 797 proposes to eliminate the need for developers to list all encumbrances on title to the time share property(ies) in the disclosure statement by allowing the timeshare administrator to accept online links to the encumbrance documents instead for consumers to access. The measure would require the developer to identify key encumbrance documents that are important for consumers to review in the disclosure statement. Allowing for online or electronic links to such documents as opposed to requiring the filing of hard copies with the DCCA is a common-sense approach. Currently consumers receive voluminous lists of encumbrances in the disclosure statement. This listing of encumbrances can stretch over 30 pages and are not closely reviewed by most consumers. Reducing the list of encumbrances to key documents would help decrease the size of disclosure statements and make them more consumer friendly. This bill would also simplify the review process for the DCCA consultants who are charged with reviewing time share developer registrations. Finally, the bill promotes consumer protection as the documents can be more easily accessed electronically instead of a consumer being required to review the documents at the DCCA office (the vast majority of timeshare owners are not residents of Hawaii).



SB 797 would also permit developers to certify that timeshare property is free and clear of blanket liens or other material encumbrances for purposes of registration, thus, placing such responsibility solely on developers as opposed to requiring the DCCA's consultant to review such documentation, thus, further expediting the processing time of developer registration reviews by the DCCA consultants.

For these reasons we urge you to pass SB 797.

Mahalo for your consideration,

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

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

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February 6, 2023

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re: SB 797 – Relating to Time Sharing Plans
Hearing on February 7, 2023, at 9:15 AM
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.

This bill is the product of a collaborative effort between ARDA Hawaii and the Department of Commerce and Consumer Affairs that started back in 2019.

A. Section 1. Disclosure of Encumbrances.

The developer of a time share plan must provide a disclosure statement on the plan to each buyer. Under current law, the disclosure statement must list all encumbrances on title to the time share units.

When the Hawaii time share law was first adopted in 1980, most time share plans were confined to a single site. Buyers would typically receive a deed of a 1/51st interest in a specific condominium unit together with the right to use that unit for a specific week in every year. Listing the encumbrances for a single condominium project was simple and added maybe a page or two to the disclosure statement. It was also appropriate since the buyer would be a co-owner of a condominium unit in the condominium project.

Modern time share plans frequently involve hundreds of units at dozens of sites. I was recently asked to work on the registration of a project having units in 65 different resorts. The list of encumbrances is likely to add to the disclosure statement perhaps 50 pages listing things like electrical easements, waterline easements, and other legal documents that are not likely to be of interest to a time share buyer.

In modern time share plans, the buyers do not typically receive a deed of a unit at any given site. Instead, title is lodged in a land trust, and buyers own a beneficial interest in the trust. While it may be nice to list the encumbrances, there is a concern that if the disclosure statement becomes too long, buyers simply will not read any of it.

The bill addresses that concern. It requires as follows:

1. The disclosure statement must list the primary time share plan documents. This would include, for example, the time share declaration and bylaws.
2. The disclosure statement must also list all supplementary plan documents.

“Supplementary plan documents” are used to submit or commit property to the time share plan. Examples would include deeds transferring property to the trustee of a time share plan and documents used to submit property to the time share declaration.

Because there may be hundreds, thousands, or even tens of thousands of Supplementary Plan Documents, the stakeholders are currently discussing whether it would be advisable to give the Director the authority to waive the requirement that all such documents be listed in the disclosure statement. As a practical matter, developers and the Director have in the past excluded some such documents from the list of encumbrances.

3. If the buyer will become the co-owner of a condominium unit, the disclosure statement must include a brief description any pertinent provisions of the condominium documents for that particular condominium.
4. The disclosure statement must either (i) list all other material liens, title defects, and encumbrances, or (ii) provide a link or other access to a website listing them and that allows them to be reviewed.

B. Section 2. Correction to Cross Reference.

Section 2 is not part of the draft prepared by ARDA with the DCCA. It appears, however, to simply correct a cross-reference in the existing law.

C. Section 3. Copies of Encumbrances.

At present, the developer submits a registration filing to the Director and the Director then appoints a consultant to review the filing. The present practice is to include copies of all encumbrances on title to the time share units in the filing. This bill relieves the consultant of the obligation to review the encumbrances if the developer either:

1. Certifies that the time share interest being sold is free and clear of blanket liens or other material encumbrances that may materially and adversely impact utilization of the property by a purchaser, or
2. Identifies any blanket liens or other material encumbrances, and describes either (a) how those encumbrances will be addressed, or (b) what the impact of such encumbrances may be to the purchaser.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP

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

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

CEP:kn



February 6, 2023

LATE

TO: Chair Keohokalole
Vice-Chair Fukunaga
Members of the Senate Committee on Commerce
And Consumer Protection

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION – HAWAII (ARDA-Hawaii)

RE: SB797 – RELATING TO TIME SHARING PLAN

Hearing date: February 7, 2023, at 9:15 AM

Aloha Chair Keohokalole, Vice Chair Fukunaga and members of the Senate Committee on Commerce and Consumer Protection

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 SB797- 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.

SB797 seeks to provide clarity to government officials when reviewing a time share filing while preserving protections for consumers. The measure specifies the manner in which a required disclosure of liens, title defects, or encumbrances on the titles of units may be made. Further, the measure provides that if an applicant certifies that a timeshare interest is being sold free and clear of blanket liens or other material encumbrances, or that the same are being addressed, the consultant to the State need not review all encumbrances.

ARDA Hawaii supports this measure which seeks to enhance the efficiency of reviewing disclosure statements and filings for time share plans.

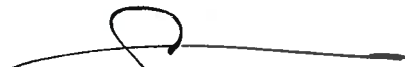
Further, under the proposed new Section 514-E-9(a)(9), for all liens, title defects and encumbrances, a reference may be made to a website link where the items shall be disclosed. This amendment eliminates the unnecessary filing of additional paper documentation while offering consumers quick and easy access to information regarding the status of title of the time share interest. This should serve to decrease review time while still preserving consumer protection, and move these types of disclosures into a paperless environment.

Lastly, ARDA Hawaii supports the amendment to Section 514E-10.5 allowing for developer certification that a property is free and clear of blanket liens or other material encumbrances. This places the responsibility of guaranteeing a time share interest is conveyed free and clear of all blanket liens solely on the developer. In turn, the consumer remains protected, as the sale of a timeshare interest to a buyer may not close unless it is conveyed to the buyer free and clear of blanket liens. (See HRS Section 514E-19.)

Accordingly, ***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.*** We look forward to working with the Legislature to address the issues this measure seeks to resolve.

Thank you for your consideration.

Respectfully submitted,



Mitchell A. Imanaka
ARDA Hawaii Chair

LATE

February 5, 2023

TO: Chair Keohokalole
Vice-Chair Fukunaga
Members of the Senate Committee on Commerce and Consumer Protection

FR: Hilton Grand Vacations

RE: SB797 – RELATING TO TIME SHARING PLANS

Hearing date: Tuesday, February 7, 2023, at 9:15 AM

Aloha Chair Keohokalole, Vice Chair Fukunaga and members of the Senate Committee on Commerce and Consumer Protection,

On behalf of Hilton Grand Vacations (HGV), I'm writing in **strong support of SB797 – Relating to Time Sharing Plans**. HGV is a leading global timeshare company, and with a presence across the state, we've been deeply invested in Hawai'i. For more than 20 years, we've committed ourselves to making a positive difference in the communities where our team members and owners live and work.

SB797 will be integral to streamlining the timeshare review process, as it clarifies the manner in which the required disclosure of liens, title defects or encumbrances on the title of units may be made. The measure also provides that a review of encumbrances be waived upon the certification from the developer that the timeshare interest is free and clear of blanket liens or that identifies all blanket liens.

At HGV, we typically seek three to four new or amended filings per year. However, limited capacity and resources, as well as delays, prohibit us from submitting the full number of filings we would like to advance. In short, **SB797 will do much to improve the process, which ultimately allows us to deliver added value to the community faster. Further, this measure will not decrease substantive consumer protection for buyers.**

Our HGV timeshares ensure we can create nearly 1,700 jobs throughout the state, including on Hawai'i Island, O'ahu, Maui and Kaua'i. From 2016 to 2022, we generated approximately \$88M in annual taxes and, annually, we support more than 540 local

farmers, fishers, florists, chefs, landscapers and other small local businesses. Through HGV Serves, our CSR platform, we also have a long-standing history of supporting Hawai'i's communities. HGV Serves is driven by key efforts to support and elevate our society, including investing in efforts and organizations focused on sustainability, homelessness, youth development, disaster relief and veterans. Timeshare is a powerful economic driver for the state and allows us to make meaningful contributions to ensure our communities thrive.

In summation, **Hilton Grand Vacations strongly supports SB797**, as it seeks to resolve ongoing review delays while maintaining high levels of protection for consumers and pushes Hawai'i on a positive track forward.

Thank you for your consideration.

Respectfully submitted,

Thomas Goodman
Vice President, Legal
Hilton Grand Vacations