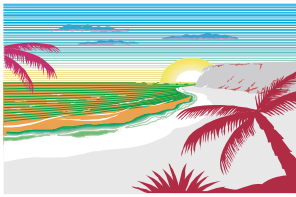


# IMANAKA KUDO & FUJIMOTO



## HAWAII VACATION OWNERSHIP FAXLETTER

An Update on Vacation Ownership Issues in Hawaii

Mitchell A. Imanaka, Editor  
Nina L. Yang, Co-Editor

Vol. 7, No. 1  
January 2007

### UPDATE ON BILLS INTRODUCED IN THE 2006 LEGISLATIVE SESSION

The 2007 Legislative Session has seen the introduction of a number of industry-related measures. The following is a summary of some of the more significant measures, as well as measure before the Maui County Council, but please note that this is not an exhaustive list of all of the proposed measures. A list of all 2007 Legislative bills can be reviewed at [http://www.capitol.hawaii.gov/sessioncurrent/lists/intro\\_listsb.asp](http://www.capitol.hawaii.gov/sessioncurrent/lists/intro_listsb.asp) and [http://www.capitol.hawaii.gov/sessioncurrent/lists/intro\\_listhb.asp](http://www.capitol.hawaii.gov/sessioncurrent/lists/intro_listhb.asp).

### TIME SHARE AND DESTINATION CLUB MEASURES

**Senate Bill 60.** Senate Bill 60 proposes to amend Hawaii Revised Statutes ("HRS") Section 514E-5.5 relating to foreign time share plans to require that contracts for foreign time share plans that are exempt from registration contain a disclosure that the operation of such time share plan is not protected by the laws of Hawaii. On January 19, 2007, this measure was referred to the Commerce, Consumer Protection, and Affordable Housing Committee. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB60\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB60_.htm).

**House Bill 911.** House Bill 911 proposes to amend HRS Section 514E-5 to authorize the counties to establish a time share zoning district and restrict time share units and time share plans in other zoning districts, including areas designated for hotel and resort use. On January 22, 2007 this measure was referred to the Tourism & Culture Committee, Water, Land Ocean Resources & Hawaiian Affairs Committee and the Consumer Protection & Commerce Committee. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB911\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB911_.htm).

**Senate Bill 726.** This measure seeks to amend HRS Chapter 514E to add a provision to require local contact information, including, the name, address and phone number of the sales agent, in Internet advertisements. This measure was referred to the Commerce, Consumer Protection and Affordable Housing Committee on January 24, 2007. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB726\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB726_.htm).

**Senate Bill 697.** Senate Bill 697 proposes to add a chapter to the HRS to require destination clubs to register with the Department of Commerce and Consumer Affairs. The measure defines a "destination club" as a program offered by club operator to its members where (1) members pay a membership deposit and annual dues; (2) the member of club operator may terminate the membership at anytime, subject to the terms and conditions of the membership agreement, and the membership deposit shall be refunded upon such termination; (3) members have the right to the temporary use of accommodations and other club services provided by the club operator; and (4) members receive no ownership interest in either the club operator or the assets of the club operator, and a security interest to secure contractual obligations to members shall not be deemed an ownership interest. The registration would involve completing an application and providing, among other items, the club operator's legal name, the name of the destination club, a description of available club services, a copy of the required disclosure statement and certain certifications by the club operator. On January 24, 2007, this measure was referred to the Tourism and Government Operations and Commerce, Consumer Protection, and Affordable Housing Committees. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB697\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB697_.htm).

### TAX, TRANSIENT ACCOMMODATION AND CONDOMINIUM MEASURES

**House Bill 885/Senate Bill 750.** These measures propose to require the Department of Taxation to coordinate with the Hawaii Tourism Authority regarding the identification of owners operating vacation rentals and bed and breakfast establishments, as well as the collection process for the transient accommodations tax from such operations. House Bill 885 was referred to the Tourism & Culture/Economic Development & Business Concerns Committees and the Finance Committee on January 24, 2007, and Senate Bill 750 was re-referred to the Tourism and Government Operations, Economic Development and Taxation, and the Ways and Means Committees on January 26, 2007. The entire text of these measures can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB885\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB885_.htm) and [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB750\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB750_.htm).

**House Bills 242 and 886/Seante Bill 751.** These measures propose to assess a transient accommodations tax of 7.25% on all gross proceeds derived from the use of each cruise ship cabin multiplied by the percentage of time the cruise ship spends at a port in the State of Hawaii. Senate Bill 751 was referred to the Tourism and Government Operations, Economic Development and Taxation, and the Ways and Means Committees on January 26, 2007. House Bills 886 and 242 were referred to the Transportation, Tourism & Culture/Economic Development & Business Concerns Committees and the Finance Committee on January 22, 2007 and January 26, 2007, respectively. The entire text of these measures can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB242\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB242_.htm), [http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB886\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB886_.htm), and [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB751\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB751_.htm).

**Senate Bill 175.** Senate Bill 175 proposes to amend the method of assessing the conveyance tax for property exchanges to provide that such conveyance tax shall be levied on the net difference in the assessed value of the exchange realty. For the exchange of condominium units in the same condominium, the conveyance tax shall be levied only on the assessed value of the more valuable interest or property. This measure was referred to the Economic Development and Taxation and the Ways and Means Committees on January 22, 2007. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB175\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB175_.htm).

**House Bill 121.** House Bill 121 proposes to exempt the sale of leasehold interests in real property from the general excise tax. This measure has been referred to the Water, Land, Ocean Resources & Hawaiian Affairs and Finance Committees on January 22, 2007. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB121\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB121_.htm).

**House Bill 238.** This measure seeks to amend HRS Section 235-68(b) to increase the tax withheld upon disposition of real property by non-resident sellers by requiring that a non-resident seller must deduct and withhold a tax equal to eight and a quarter percent (8.25%) of the amount realized on the disposition of real property. Currently, non-resident sellers are required to deduct and withhold a tax equal to five percent (5%) of the amount realized on the disposition of real property. This measure was referred to the Finance Committee on January 22, 2007. The entire text for this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB238\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB238_.htm).

**House Bill 572.** House Bill 572 proposes to require the counties to adopt ordinances to require that the development, redevelopment, and renovation of all transient accommodations to be in accordance with the International Building Code, as published by the International Council. The counties must adopt such ordinances within twelve months of the effective date of this measure. This measure has been referred to the Tourism & Culture/Economic Development & Business Concerns Committees and Water, Land, Ocean Resources & Hawaiian Affairs Committee on January 22, 2007. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB572\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB572_.htm).

**Senate Bill 1295.** This measure seeks to establish a maximum number of visitor accommodation units for each county and for the Department of Commerce and Consumer Affairs require licenses for the operation of all visitor accommodation units. This measure was referred to the Tourism and Government Operations/Intergovernmental and Military Affairs Committees and Commerce, Consumer Protection and Affordable Housing Committee on January 26, 2007. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB1295\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB1295_.htm).

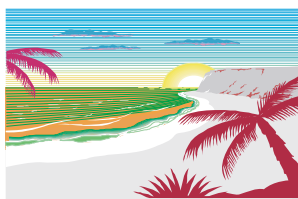
**Senate Bill 234.** This measure proposes to amend HRS Chapters 514A and 515B to require the association of apartment owners to regulate the use, maintenance, repair, replacement, and modification of limited common elements. On January 22, 2007, this measure was referred to the Commerce, Consumer Protection, and Affordable Housing Committee. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB234\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB234_.htm).

**Senate Bill 172.** This measure seeks to prohibit the automatic renewal of consumer contracts unless the consumer is provided with (1) timely notice of the automatic renewal and (2) notice regarding how the automatic renewal can be avoided. On January 22, 2007 this measure was referred

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to the Commerce, Consumer Protection, and Affordable Housing Committee. The entire text of this measure can be obtained at [http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB172\\_.htm](http://www.capitol.hawaii.gov/sessioncurrent/Bills/SB172_.htm).

be approved by council resolution, or donation of improved or unimproved land acceptable to the Director. On December 5, 2006 Bill No. 57 was adopted as Ordinance No. 3418.

### MAUI COUNTY MEASURES

**Hotel Zoning District Amendment.** This measure seeks to eliminate the "stacking" of permitted uses in the hotel district by proposing to revise Section 19.14.020 of the Maui County Code to no longer permit uses permitted in residential and apartment districts in hotel districts. This would impact the development of luxury residential units on hotel-zoned land. On January 2, 2007, the Maui County Council referred this measure to the Planning Committee, and the Planning Committee has not yet scheduled a meeting to review these proposed amendments.

**Affordable Workforce Housing Policy.** This measure seeks to require a developer developing five or more dwelling units, new undeveloped lots, hotel units, or any combination thereof, to comply with certain affordable housing requirements. It would apply to the conversion of hotel units to dwelling units or time share units, as well as any hotel redevelopment or renovation project that would increase the number of lodging or dwelling units in the hotel. This measure would *not* apply to developments that fall into one of the following categories:

- (i) Development subject to an affordable housing requirement evidenced by an executed agreement with the county;
- (ii) Development subject to change in zoning condition that requires affordable or residential workforce housing, unless the condition expressly allowed for the application of such foregoing requirements;
- (iii) Subdivision granted preliminary subdivision approval prior to the effective date of this chapter;
- (iv) Building permit application submitted prior to the effective date of this chapter (sic);
- (v) Family subdivision, for immediate family members, as described in Sections 18.20.280(B)(1) and 18.20.280(B)(2) of the Maui County Code; or
- (vi) Development by a government entity; a project pursuant to Hawaii Revised Statutes §201H-H; a community land trust or an affordable housing project with more than the residential workforce housing units, in-lieu fees, or in-lieu land required by Section 2.96.040 of the Maui County Code, as approved by the director of Housing and Human Concerns ("Director").

If the development does not fall into any of the aforementioned categories, prior to final subdivision approval or issuance of a building permit, the measure requires the developer to enter into a residential workforce housing agreement requiring that a certain percent of dwelling units and/or lots and/or lodging, dwelling or hotel units, as applicable, be sold or rented to residents within a particular income-qualified group. Currently, the requirements are as follows:

- (i) When more than 50% of dwelling units and/or new lots offered for sale for less than \$600,000 then 40% of total number of units and/or lots shall be sold or rented to income-qualified groups;
- (ii) When more than 50% of dwelling units and/or new lots offered for sale for more than \$600,000 the 50% of total number of units and/or new lots shall be sold or rented to income-qualified; and
- (iii) When three or more new lodging, dwelling or time share units in hotel created, then 40% of total number of units shall be sold or rented to income-qualified groups.

The developer may satisfy the foregoing requirements by complying with one or more of the following, as determined by the Director: (i) offer for sale or rent dwelling units within the community plan area; (ii) convey such units to a housing provider subject to the Department of Housing and Human Concerns; and (iii) payment of an in-lieu fee per unit which shall be equal to 30% of the average projected sales price of the market rate dwelling units and/or new lots in the development and such fee must

**West Maui and Kihei-Makena Traffic Impact Fee Proposals.** Bill Nos. 66 and 67 propose to establish a fee schedule for traffic impact fees for Kihei-Makena and West Maui, respectively. For Kihei-Makena, Bill 66 proposes a \$4.625 impact fee per dwelling unit in residential zoned areas and a \$4.303 impact fee per room in hotel zoned areas. For West Maui, Bill 67 proposes a \$8.442 impact fee per dwelling unit in the residential zoned areas and a \$4.303 impact fee per room in hotel zoned areas. Both measures passed first reading and on January 5, 2007, both measures were referred to the Planning Committee.

I ka nānā no a 'ike.  
By observing, one learns.

*The information provided herein is provided without a fee for the use of our clients and does not offer any specific legal advice or counsel on any issue discussed herein.*

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