

Dear Sarah,

It is my understanding that you review bills enacted by the legislature in connection with their submission to the Governor for his signature. I am writing to let you know that our client, the American Resort Development Association (ARDA), is the proponent behind H.441, which deals with time share interests and which passed both chambers of the legislature last week.

To help you in your review of the bill attached are talking points about it.

Please feel free to contact me if you have any questions or comments.

Thank you—Chuck Storrow

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## **Talking Points re: H.441**

### **Background Information Concerning Timeshare Ownership**

- A timeshare interest is perpetual ownership of the right to use and occupy a condominium unit for a specified period of time, i.e., one week out of a year.
- Ownership includes pro-rata ownership, jointly with other timeshare owners, of commonly used portions of the resort. Stated differently, the timeshare owners collectively own the resort, and individually own a given unit for a specified period of time.
- Timeshare owners become members of an owner's association that operates and manages the resort. The association is managed by an Executive Board. Members of the Executive Board are timeshare owners who are elected by the owner's association's membership.
- The Executive Board develops a budget for operating and managing the resort. The budget is submitted to the association's members for approval.
- Once the budget is approved the owner-members are assessed an annual fee for their pro-rata share of the budget. By statute the owners' association has a lien on an owner-member's ownership interest to secure the owner's obligation to pay the assessment.

- If an owner-member does not pay his or her annual assessment the other owner-members have to, over time, make up the loss of revenue.

#### **H.441**

- Sections 1 and 3 of H.441 would give a timeshare owner's association, upon due notice and an opportunity to cure, the right to deny a timeshare owner access to his or her unit if they fail to pay their annual assessment. Providing this remedy is fair and reasonable for the following reasons:
  - Timeshare ownership is governed by the Vermont Common Interest Ownership Act (VCIOA), which comprises the entirety of Title 27A of the Vermont Statutes Annotated.
  - The VCIOA applies equally to both "whole unit ownership," i.e., exclusive ownership of a residential condominium unit on a continuous, 24 hour/365 day per year basis, and to ownership of a timeshare interest.
  - Current law (27A V.S.A. §3-102(a)(18)) prohibits an owners association from denying a unit owner who does not pay his or her annual assessment from having access to his or her condominium unit. Instead, the only remedy the owners' association currently has is to foreclose on the lien the association has on the member's ownership interest. A foreclosure action can be a time consuming and expensive undertaking.
  - Prohibiting an owners' association from denying access to a unit for nonpayment of the annual assessment is appropriate in situations involving whole unit ownership, since a member may be using their condominium unit as a primary residence.
  - However, prohibiting a timeshare owners' association from being able to deny a timeshare owner access to their unit for failure to pay their annual assessment is excessive and unreasonable. A timeshare owner's interest is much more limited than a whole unit owner's interest, and the amount of their annual assessment is, all other things being equal, typically much less than the amount of a whole unit owner's annual assessment. Given that, limiting the remedy of a time share owners' association to foreclosure is excessive and unreasonable.
  - H.441 would rectify this situation by allowing, after due notice and an opportunity to cure, a timeshare owners' association to deny a timeshare owner access to his or her unit if they fail to pay their annual assessment.
- Section 4 of H.441 would make it clear that if a timeshare owners' association ultimately has to initiate a foreclosure action all of the types of foreclosure actions available under Vermont law are available to the association. This is necessary for the following reasons:

- In order to foreclose on an ownership interest in a “dwelling house” a creditor has to initiate a foreclosure action in Superior Court and obtain a court order allowing the sale of property and payment of the debt due to the creditor from the sales proceeds.
- In situations involving property that is not a “dwelling house” a creditor can use a nonjudicial process that leads to the sale of property and payment of the debt due to the creditor from the sales proceeds or, alternatively, a judicial process called “strict foreclosure” that results in the creditor taking title to the property.
- The foreclosure statutes define “dwelling house” to include condominium units.
- Section 4 of H.441 modifies the definition of “dwelling house” to make it clear that a timeshare interest in a condominium unit is not a “dwelling house.” This is appropriate in light of the fact that by its very nature, i.e., ownership of a unit for a limited period of time, a timeshare cannot be used as a person’s primary dwelling.
- Section 2 of H.441 would modify the obligation of a timeshare owners’ association relative to the dissemination to its members of written materials provided to the association’s Executive Board.
  - Current law requires that the Executive Board make all materials distributed to board members available to the association’s owner-members.
  - In the case of timeshare owners’ association this requirement is unduly burdensome because there can be as many as 52 times more members than in the case of an association of whole unit members.
  - Section 2 of H.441 would allow the Executive Board of a timeshare owners’ association to only make those materials that relate to a matter the board will be acting on available to the association’s owner-members, and thereby greatly reduce the administrative burden on the Executive Board.
- Section 5 of H.441 would allow a probate estate that consists of a timeshare interest to be eligible as a “small estate” if the criteria for treatment as a small estate are otherwise met. This would be beneficial because the small estate probate process is more expeditious and less costly than the “regular” probate process.