OUTLINE OF TESTIMONY REGARDING S.214

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On Behalf of the American Resort Development Association

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1. **General Overview**

    a. Time shares involve ownership of the right to occupy and use a residential unit within a larger development for a period of time. The time divisions can be weekly, biweekly or seasonal. They can be fixed or rotating.

    b. The commonly used features of a time share development are maintained and managed by an owner's association. Usually there is a contract with a management company who does all the work. The cost of managing the commonly used features is borne by the unit owners, who pay annual assessments.

2. **Legal framework for time shares interests**

    a. Time shares are type of condominium interest.

    b. Ownership interests in condominium developments are governed by Title 27A, which is based on the Uniform Law Commission's model "Condominium Interest Ownership Act."

    c. 27A V.S.A. §1-105(a)(1) provides that an ownership interest in a condominium unit is a deeded interest in real estate whereby one acquires ownership of a specific unit along with an undivided ownership interest in commonly used amenities at the condominium property, e.g., hallways, lobbies, parking areas, recreational facilities (both inside and outside), etc.

    d. 27A V.S.A. § 1-103(29) defines "time share" as a "time share estate" as that term is defined in 32 V.S.A. § 3619(a). That statute defines a time share estate as "a right to occupy a unit or any of several units in a time-share project during separated time periods coupled with a freehold estate or an estate for years in a time-share property or a specified portion thereof."

3. **Property Taxation of Time Share Units**

    a. Under 32 V.S.A. § 3619(b) each owner of a time share interest is liable for the property taxes attributable to their interest. However, the statute provides that instead of having to bill each owner of a timeshare interest the owners' association (or other entity that manages the common elements), is the agent of the time share owners, and towns can assess the entire time share development to the managing entity and submit one bill. The managing entity then assesses the individual unit owners for their property taxes along with their share of the costs of maintaining the commonly owned elements.

b. In *Jackson Gore Inn, Adams House v. Town of Ludlow,* 2020 VT 11, 228 A.2d 643 (2020) the Vermont Supreme Court rejected the town's assertion that under 32 V.S.A. § 3619(b) the profit made by the entity that manages a time share development's common elements is taxable, under the income approach to determining fair market value, to the owners of time share interests in the development. The Court pointed out that section 3619(b) simply provides that as a matter of administrative efficiency towns can bill the timeshare owners via the managing entity with one bill.

c. The Court went on to say that how a time share interest should be appraised is to be determined by the "fair market value" of the interest which, per 32 V.S.A. § 3481(1)(A), is defined as "the price that the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition that combine to give property a market value."

4. S.214 Unfairly Requires Disregarding the Fair Market Value of Time Share Units

a. S.124 requires towns to determine the FMV of each time share unit as if the ownership structure of the entire time share development is not based on time share ownership. In other words, S.214 would require towns to treat time share projects like either condominium units that are owned on a year round basis or hotels. This is contrary to appraisal methodology, as reflected in 32 V.S.A. § 3481(1)(A), which requires consideration of all factors that bear on a property's FMV.

b. In the case of time share interest one of the elements that bears on the interest's fair market value is the fact that it is a time share, and not a year-round condominium unit or part of a hotel under single ownership. S.214 would require that that element-ownership as a time share-be ignored.

c. Doing so would be manifestly unfair. Time share interests should be assessed at fair market value as time share interests based on the prices they command in the market, no more no less. To do otherwise may unfairly inflate the assessed valuation of a time share interest.