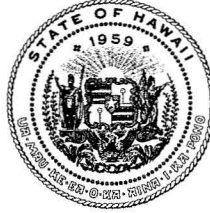


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

On House Bill 3171 – Relating To Land Court System

**BEFORE THE HOUSE COMMITTEE ON
WATER, LAND, OCEAN RESOURCES & HAWAII AFFAIRS**

February 4, 2008

The Department of Land and Natural Resources strongly supports House Bill 3171, an administration bill to remove time share interests from Land Court registration and allows landowners to opt out of Land Court and register their properties in the Regular System at the Bureau of Conveyances.

Past and future increases in the development of time shares cause delays in the recording of these interests in Land Court and increase the man hours required to maintain the records. The Bureau of Conveyances is under tremendous pressure to keep current with the increase in timeshare recordings. The Land Court, established in 1903, was never intended for the purpose of maintaining multiple owners and interests on specific parcels. Administration of recorded instruments in Land Court was impacted with the passage of condominium laws. Time share recordation in Land Court further challenges the bureau's staff and affects the integrity of the system.

Allowing landowners to opt out of Land Court results in minimal exposure for the landowner due to the availability of title insurance that affords protection to landowners against defective title. Land Court was established in 1903, prior to the introduction of title insurance in 1957 in Hawaii.



Testimony to the Twenty -Fourth State Legislature, 2008 Session

House Committee on Water, Land, Ocean Resources & Hawaiian Affairs

The Honorable Ken Ito, Chair

The Honorable Jon Riki Karamatsu, Vice Chair

Monday, February 4, 2008, 8:30 a.m.
State Capitol, Conference Room 312

by

Thomas R. Keller

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 3171, Relating to the Land Court System

Purpose: Removes fee-simple time share transactions from the Land Court System and to provide the option for all landowners to transfer their property from the Land Court System to the Regular System of the Bureau of Conveyances.

Judiciary's Position:

The Judiciary takes no position on this measure but does have comments that it would like to be part of the record.

House Bill No. 3171 is very similar to House Bill No. 1389 that was introduced during the 2007 session. However, there are some significant differences between the two measures that we would like to note.

Whereas, House Bill No. 1389 was entitled, "A Bill for An Act Relating to Time Shares in Land Court," House Bill No. 3171 is entitled, "A Bill for An Act Relating to the Land Court System." The latest version of this bill includes additional language that would affect all owners of Land Court registered land and not only owners of time share interests whose projects are located on registered land. The current measure would essentially allow all owners of registered property to opt out of the Land Court system and effectively deregister their property.



House Bill No. 3171, Relating to the Land Court System
House Committee on Water, Land, Ocean Resources & Hawaiian Affairs
Page 2

The Judiciary notes that the measure is silent with regards to the proposed advantages or benefits that would inure to either the state or the public from these provisions. It should be pointed out that without a clear statement regarding the intended purpose or benefits to be gained by this measure it is difficult to render an opinion as to whether the objectives of this measure can or will be met.

If the intent of the measure is to expedite the current real estate title recording process by allowing owners of registered land to opt out of the Land Court system, the proposal may actually increase the complexity and, therefore, the length of the time involved in the recording process because the withdrawal of an individual interest from the Land Court system not only affects the registered owner, but also persons and parties that have an interest in that parcel, such as mortgagees, owners of easements, and other encumbrances. In its current form, the measure only requires that a seller of a fee simple or leasehold interest file a notarized affidavit stating that they wish to remove his parcel from the Land Court recording system (page 28, Part II, Section 12). Ordinarily, due process would require that all parties who may be affected by the withdrawal of a parcel should be informed of the intent to remove the parcel from Land Court registration and have the opportunity to oppose the withdrawal.

While the Judiciary takes no position on this measure, it would like to note for the record that the Land Court system was originally adopted to avoid the problems inherent with researching title in the Common Law or Regular System of title recordation. Despite the many changes that have occurred since its adoption in 1903, such as the popularity of trusts of all types as vehicles to hold title which increased the legal complexity of real property ownership, and the advent of subdivisions, condominiums, and more recently timeshares that have increased the number of recordable interests to previously unimaginable numbers, the Land Court system has remained an efficient and effective means of recording real property interests.

Thank you for the opportunity to testify on House Bill No. 3171.



TESTIMONY TO THE HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES &
HAWAIIAN AFFAIRS
MONDAY, FEBRUARY 4, 2008, AT 8:30 A.M.
ROOM 312, STATE CAPITOL

RE: H.B. 3171 Relating to Land Court System

Chair Ito, Vice Chair Karamatsu, and Members of the Committee:

My name is Christine H. Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii is in strong support of HB No. 3171.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

H.B. No. 3171 purposes, among other things, to amend Chapter 501 HRS by adding the following:

§501- Voluntary deregistration of land owned in fee simple and leasehold. Upon presentation to the assistant registrar for filing or recording of any instrument, document, or paper, selling the fee simple or leasehold interest in a parcel in which the owner of said parcel presents a notarized affidavit that they wish to voluntarily remove said parcel from the provisions of chapter 501, the assistant registrar shall not register the same, but shall record in the bureau of conveyances, pursuant to chapter 502, the current certificate of title for the registered land.

While there are recognized benefits for protecting one's interest in having property recorded in Land Court, these safeguards and procedures are cumbersome when property is transferred or encumbrances are removed or added to a property. Allowing existing land court property owners the "option" to remove their lands from Land Court and record through the regular system will provide flexibility to allow owners to choose the recordation system that best services their needs.

Thank you for this opportunity to express our views.

February 1, 2008

WLHtestimony@Capitol, hawaii.gov
Committee on Water, Land, Ocean Resources & Hawaiian Affairs
415 South Beretania Street, Room 427
Honolulu, Hawaii 96813

Testifier: Hawaii Land Title Association
Denise M. Kaehu, President

Subject: RE: land court talking points HB 3171 Relating to Land Court
HB 3171 <http://www.capitol.hawaii.gov/session2008/Bills/HB3171_.pdf>
RELATING TO THE LAND COURT SYSTEM.
Removes fee-simple time share transactions from the Land Court System and to provide the option for all landowners to transfer their property from the Land Court System to the Regular System of the Bureau of Conveyances.
Hearing Date: Monday, February 4, 2008
Time: 8:30 a.m.

Representative Ken Ito, Chair and Committee members:

I respectfully submit the following testimony for the removal of fee simple timeshare transactions from the Land Court System for the following reasons:

Time Share Developer documents are packaged and title companies are only allowed to submit document packages of 1-25 documents for pre-check 2 days prior to recordation, 26-50 documents 3 days hours prior to recordation, 50-100 4 days, 100+ special arrangements must be made with the Bureau to schedule for recording. Currently the Bureau can only process these daily amounts due to their inability to process large batches of documents. This causes problems for the developers who have many pending sales and interest accruing on construction loans and/or acquisition loans.

As a practical matter the Land Court System was not created nor designed to be able to handle:

1. multiple ownership conveyances in bulk
2. Fractional interest conveyances
3. Points based conveyances
4. Lease to fee conversions of time share intervals
5. Issuance of Transfer Certificates of Title to fractional/undivided ownership interests

The Timeshare consumers and developers are faced with strict compliance issues in regards to recordation acceptance of Land Court Documents which have unique criteria that must be complied with throughout the documents. The Land Court creates a burden to the consumer when they wish to convey out of title to another person(s) by putting the responsibility of notification to the Land Court of a divorce, death or marriage by way of a legal conforming document that must be put forth before the Land Court Judge for approval prior to a conveyance of title. The average timeshare purchaser does not reside in the State of Hawaii and is therefore unfamiliar with the documentation requirements of our Land Court and our state. This burden is also passed onto the Staff of the Bureau of Conveyances upon receipt of documents by mail/delivery that inevitably will be rejected and returned to the consumer/developer for non-conformance issues due to the lack of available or standardized conveyance forms in the State of Hawaii. This is a waste of consumer time and also that of the Bureau's staff.

With the invention of the points based system of timeshare sales, it has created a literal "nightmare" for the Bureau's staff. The number of Transfer Certificates of Title to be issued per new conveyance has literally increased from one per unit sale to a multitude of 52 + on a per unit basis. Each new Transfer Certificate of Title must also recite any and all encumbrances in addition to the logging of the conveyance document information. Land Court was never set up to be able to keep an accurate and correct accounting of timeshare inventory which is necessary to be able to ascertain whether or not a unit or a whole project has unsold inventory. This places the burden of a monetary liability of keeping a current inventory status on each project in Land Court. Currently the Land Court has only created Transfer Certificates of Title up to October 2006. This means that all conveyances to date are not posted. It is very easy for uneducated staff to mis-post or transpose or incorrectly keep track of fractional interest or points based sales. Multiple conveyances have been the main contributor to thousands of posting entries for the BOC staff, therefore the current backlog.

An additional burden is the conveyance back from an owner back to a developer in Land Court. You cannot return inventory to a developer back to the originating Transfer Certificate of Title per statue. In a deed back or foreclosure situation when the conveyance is recorded the points are not transferred back to the original Certificate, a new Transfer Certificate of Title is created in the Developer's name. Each and every time a new certificate is created and it is from each of these that

eventually you will have to draw points out from. Again, another inventory nightmare for both the developer and the Bureau of Conveyances keeping track of multiple certificates with the same name on them.

It would be in the best interest of the State of Hawaii to cut down on overtime and unnecessary liability. It will also benefit the consumer not be put into a situation with no comprehensible solutions at hand.

Denise M. Kaehu
President
Hawaii Land Title Association
Alakea Corporate Towers
1100 Alakea Street, 5th Floor
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OLD REPUBLIC TITLE & ESCROW OF HAWAII, LTD.

Pacific Guardian Center, 733 Bishop Street, Suite 2700 • Honolulu, HI 96813 • (808) 566-0100

January 31, 2008

Chairman Representative Ken Ito
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

**RE: TESTIMONY FOR CONSIDERATION
HB 3171 – Relating to the Land Court System**

Old Republic Title & Escrow of Hawaii, Ltd., is a title company that currently handles multiple Time Share Projects. Time Share has grown leaps and bounds in just a short period of time and continues this growth throughout the islands.

Old Republic Title & Escrow of Hawaii, Ltd. strongly supports bill HB 3171 as it agrees with the need for deregistration of Fee Simple Time Share interest from the Land Court System. Every day Time Shares are recorded in the Land Court System and many of them are required to be recorded in both systems, which make it a duplicate time consuming process and expensive process for both Real Companies and State Agencies.

When the Land Court Act (Torren System) was first adopted in 1903 it was for a good reason and there was usually one land owner or, on occasion, several land owners that took title together. This Act gave the land owner the legally registered title protection they sought from the State. The Land Court Act, however, was never designed or intended to be applicable for Time Share. Time Share did not exist at the time and the Act does not address the protection some of today's real transactions may have, ie. over 102 owners per one apartment within a multiple apartment complex. From a one person owner to a possibility of over 20,000 owners, the Act just does not encompass Time Share protection needs.

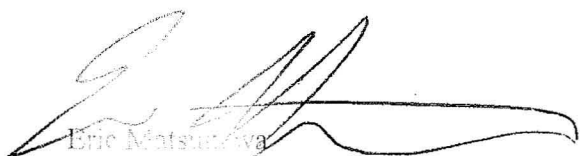
Due to the Torren System, the Act of Registration becomes a VERY important issue, as the submittal of a document for recordation in the Land Court System does not validate a "True Conveyance", even though a TCT is issued. It is only valid at the point the transfer is noted on the Original TCT, which currently is somewhere as far back as 1+ years. So as to the question of "Perfect Title" by the Bureau's issuance of TCTs, I must say it is only as good as the Bureaus ability to turnaround the documents and to post them on the original TCTs.

This is why the type of protection a Time Share owner is seeking when they purchase is not from the State/Bureau, but from the title company. Should an error occur be it on the title search and/or inadvertently missed required data, the title company should be liable for any losses incurred. As even stated in the Bureau's Recovery Fund provision, a claimant must exhaust all other remedies (such as may be available under Title Insurance) before resorting to a contract claim against the State under this provision.

Page Two - Testimony for HB 3171
January 31, 2008

This testimony is given to validate a few of many important issues and concerns regarding Time Shares in the Land Court System and all boil down to this, the Torren System is not designed for Time Share transactions and in fact it has had a tremendous affect on the Bureau's ability to maintain an up to date system, which inevitably falls on the Title Companies.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'Eric Matsunaga', with a long horizontal flourish extending to the right.

Eric Matsunaga
Time Share Manager
Old Republic Title & Escrow of Hawaii



Hilton Grand Vacations Club®

Written Testimony on:
HB 3171 "RELATING TO THE LAND COURT SYSTEM"

Monday, February 4, 2008
8:30 a.m.
Conference Room 312 – State Capitol

Aloha, Chair Ito, Vice Chair Karamatsu and Members of the Committee on Water, Land, Ocean Resources & Hawaiian Affairs. I am Mark Wang, Executive Vice President of Hilton Grand Vacations, Hawaii-Asia Region.

We are in strong support of this measure as it removes fee-simple time share transactions from the Land Court System.

Over the past 6 months a Joint Senate-House Investigative Committee on the Bureau of Conveyances as well as a Department of Land and Natural Resources' working group of Bureau of Conveyance, real estate, title insurance, legal and labor professionals have been studying how to simplify the recording process and improve customer service. Myriad issues and opportunities for improvement were identified by both groups, not the least of which is to implement streamlined procedures as it relates to the already heavily regulated timeshare field.

This conclusion was due in no small part that the existing dual land recordation system in Hawaii is not well suited for today's real estate environment. Having timeshare transactions to be recorded in only the Regular system would greatly alleviate the severe Land Court backlog, which, according to the bill and public reports, is currently 18 months. At the same time, the record-keeping process and purchaser and seller rights/protections would not be disturbed.

This measure will improve the quality and delivery of an important service without adverse financial impact and deserves your support.

Mahalo.

STARWOOD

VACATION OWNERSHIP

9002 San Marco Court
Orlando, Florida 32819
(407) 418-7271

February 4, 2008

To: Hon. Ken Ito, Chair, House Committee on Water, Land, Ocean Resources & Hawaiian Affairs

Fr: Thorp Thomas, Senior Vice President for Starwood Vacation Ownership

Re: **HB 3171 – Relating to the Land Court System – SUPPORT**
House Committee on Water, Land, Ocean Resources & Hawaiian Affairs
Hawai'i State Capitol, Conference Room 312

Aloha Chair Ito and members of the Committee:

My name is Thorp Thomas, Senior Vice President for Starwood Vacation Ownership ("SVO"). I am testifying on behalf of SVO in support of HB 3171, Relating to the Land Court System.

This bill proposes to deregister fee simple time share interests in the Land Court System.

SVO supports eliminating the need to issue a certificate title to each time share owner in favor of the Bureau of Conveyances Regular System, which provides for the protection of ownership with individual title insurance.

Time share projects that are currently required to go through the Land Court Registration System are subjected to additional costs and time delays for the recordation of each timeshare interest. Eliminating the tedious process of issuing a certificate of title for each fee simple timeshare interest, which can range from hundreds to thousands of individual timeshare interests, will provide welcome relief to the Land Court's backlog if this process is allowed to be taken up entirely by the Bureau of Conveyances Regular System.

HB 3171 provides essential streamlining for the recording and tracking of time share interests without compromising consumer protection and it eliminates a costly burden on the Hawai'i Land Court Recorder's office.

Timeshare projects with their high and consistent rates of occupancy and customer satisfaction should not be discouraged, but seen as a vital part of Hawai'i's tourism industry. In addition to providing traditional resort operations jobs similar to hotel projects, timeshare projects add high skilled and high compensated sales and marketing jobs. As such, timeshare projects represent a valuable and diverse component of Hawai'i's important tourism market.

For these reasons, we respectfully request your favorable support of HB 3171 in its present form.

As always, I thank you for the opportunity to share our views on this matter.

HOUSE COMMITTEE ON
WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS

February 4, 2008

HB 3171 Relating to the Land Court System

Chair Ito and members of the House Committee on Water, Land, Ocean Resources and Hawaiian Affairs, I am Rick Tsujimura, representing Marriott International, Inc. (Marriott). Marriott supports House Bill 3171 Relating to the Land Court System.

Developer sales of timeshare are handled by bulk, no more than 25 documents per batch, per project may be recorded in the State of Hawaii.

If timeshares are withdrawn from Land Court and recorded in Regular system only, it would alleviate the backlog currently encountered in recording time share interests.

For these reasons we respectfully request that you pass House Bill 3171. Thank you for the opportunity to present this testimony.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

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February 1, 2008

TO: Representative Ken Ito
Chair, Committee on Water, Land, Ocean Resources & Hawaiian Affairs
Hawaii State Capitol, Room 420
Via Email: WLHtestimony@Capitol.hawaii.gov

FROM: Joanna Markle

RE: H.B. 3171 – Relating to The Land Court System
Hearing Date: Monday, February 4, 2008 @ 8:30 am

Dear Chair Ito and Members of the Committee:

I am Joanna Markle testifying on behalf of Wyndham Worldwide. Wyndham Worldwide offers individual consumers and business-to-business customers a broad suite of hospitality products and services across various accommodation alternatives and price ranges through its portfolio of world-renowned brands. Wyndham Worldwide has substantial interests in Hawaii that include Wyndham Vacation Ownership, with its new resort at Waikiki Beach Walk.

We support H.B. 3171 which removes fee-simple time share transactions from the Land Court System and provides the option for all landowners to transfer their property from the Land Court System to the Regular System of the Bureau of Conveyances. This would eliminate the need to issue a certificate of title for each fee simple time share unit for each owner. The number of owners for a fee simple time share range from hundreds to thousands and each owner has a percentage interest in the time share property. H.B. 3171 would streamline the registration process for fee simple timeshare interests and for this reason, we ask for your favorable support.

Thank you very much for the opportunity to submit testimony.



American Resort Development Association
c/o PMCI Hawaii 84 N. King Street Honolulu, HI 96817 (808) 536-5688

February 4, 2008

TO: Representative Ken Ito, Chair
Representative Jon Riki Karamatsu, Vice-Chair
House Committee on Water, Land, Ocean Resources & Hawaiian Affairs

FROM: ARDA-Hawaii
Contact: Donalyn Dela Cruz, PMCI Hawaii

RE: **House Committee on Water, Land, Ocean Resources & Hawaiian Affairs**
Monday, February 4, 2008
Room 312, 8:30 a.m.
House Bill 3171; Relating to the Land Court System

Dear Chair Ito, Vice-Chair Karamatsu and members of the committee:

ARDA-Hawaii is the local chapter of the national timeshare trade association. Hawaii's timeshare industry currently accounts for over eight percent of the State's lodging inventory.

ARDA-Hawaii **supports HB 3171**, which seeks to deregister fee simple timeshare interest from the Land Court system. Currently every timeshare owner is issued a certificate of title to each timeshare unit owner, which amounts to thousands of individual owners. This measure would streamline the registration process by eliminate that process while maintaining adequate protection of ownership.

Thank you very much for the opportunity to offer favorable testimony on this measure.