

JAN 28 2009

A BILL FOR AN ACT

RELATING TO LAND COURT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 501, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "DEREGISTRATION

5 §501-A Voluntary deregistration of entire parcel of land.

6 (a) An owner of fee simple title to a parcel of registered land
7 who holds a land court certificate of title for the registered
8 land may withdraw the title and remove the land from the
9 operation and provisions of this chapter by filing a petition
10 with the court. All of the owners of fee simple interests and
11 holders of land court certificates of title for registered land,
12 including all holders of any leasehold interests for which a
13 land court certificate of title is issued shall join in the
14 petition. Upon issuance of an order granting the petition and
15 payment of a fee of \$100, the assistant registrar, without
16 further charge, shall immediately:



- 1 (1) Note on the certificate of title for the registered
2 land described in the order granting the petition all
3 documents and instruments that have been accepted for
4 registration and that have not been noted on the
5 certificate of title as of the time of recording under
6 paragraph (2);
- 7 (2) Record in the bureau of conveyances pursuant to
8 chapter 502 the certificate of title for the
9 registered land described in the order granting the
10 petition; and
- 11 (3) Cancel the certificate of title.
- 12 (b) All persons who may have interests as defined in
13 section 501-82 affecting the registered land which is the
14 subject of the petition shall be cited in the order to show
15 cause for the petition, shall be served with notice of the
16 petition by certified mail, return receipt requested, at their
17 last known address or served by publication if they cannot be
18 found, and shall be given an opportunity to appear and be heard.
- 19 (c) Deregistration of the land shall not constitute a
20 breach of a mortgage or other contract affecting the land, or a
21 violation of any provision of a lease.



1 **§501-B Records of deregistration.** (a) Upon recordation
2 of a certificate of title pursuant to section 501-A, or as soon
3 thereafter as it can practicably be accomplished, the registrar
4 or assistant registrar shall note the recordation and
5 cancellation of the certificate of title in the registration
6 book and in the records of the application for registration of
7 title of the recorded land. The notation shall state:

- 8 (1) The bureau of conveyances document number for the
9 certificate of title recorded;
10 (2) The certificate of title number;
11 (3) The land court application number, map number, and lot
12 number for the land that is the subject of the
13 certificate of title recorded; and
14 (4) In the case of a condominium, the apartment number.

15 (b) Deregistration shall not be invalid by reason of any
16 delay or failure of the registrar or assistant registrar to
17 comply with the requirements of this section.

18 **§501-C Transfers pending deregistration.** (a) After the
19 filing of a petition for deregistration pursuant to section 501-
20 A, the land described therein may be dealt with and instruments
21 relating thereto may be filed or recorded pursuant to this
22 chapter and noted on the certificate of title in the usual



1 manner until the certificate of title is recorded with the
2 bureau of conveyances as described in section 501-A(2).

3 **§501-D Effect of deregistration.** (a) Upon the recordation
4 in the bureau of conveyances of a certificate of title pursuant
5 to section 501-A:

6 (1) The deregistered land shall no longer be registered
7 land for purposes of this chapter;

8 (2) No instruments, documents, or papers relating solely
9 to deregistered land shall be filed or recorded with
10 the assistant registrar pursuant to this chapter, but
11 shall instead be recorded in the bureau of conveyances
12 pursuant to chapter 502; and

13 (3) Except as otherwise expressly provided in this
14 chapter, the requirements of this chapter shall no
15 longer apply to the deregistered land.

16 (b) Recordation of a certificate of title pursuant to
17 section 501-A shall not disturb the effect of any proceedings in
18 the land court where the question of title has been determined.
19 All proceedings had in connection with the registration of title
20 that relate to the settlement or determination of title before
21 that recording, and all provisions of this chapter that relate
22 to the status of the title, shall have continuing force and



1 effect with respect to the period of time that title remained
2 under the land court system. Those provisions giving rise to a
3 right of action for compensation from the State, including but
4 not limited to any limits on and conditions to the recovery of
5 such compensation and the State's rights of subrogation with
6 respect thereto, shall also continue in force and effect with
7 respect to the period of time that title remained under the land
8 court system.

9 **§501-E Chain of title of deregistered land.** (a) A
10 certificate of title recorded pursuant to section 501-A shall
11 constitute a new chain of record title in the registered owner
12 of any estate or interest as shown on the certificate of title
13 so recorded, subject only to the matters described in section
14 501-82(a)(1) to (8), inclusive, and such other matters that may
15 otherwise affect unregistered land subject to the provisions of
16 subsection (c).

17 (b) For purposes of this section, an encumbrance shall be
18 deemed sufficiently noted on a certificate of title if the
19 notation:

20 (1) References a document by name or number which contains
21 an encumbrance; and



1 (2) Indicates that the referenced document contains an
2 encumbrance to which the registered land is subject.

3 (c) All instruments, documents, and papers noted on a
4 certificate of title recorded pursuant to section 501-A shall
5 have the same force and effect as if they had been recorded in
6 the bureau of conveyances pursuant to chapter 502 as of the
7 date, hour, and minute of reception noted on the certificate of
8 title pursuant to section 501-107; provided that:

9 (1) No such instrument, document, or paper shall have any
10 greater or other effect after a certificate of title
11 is recorded pursuant to section 501-A, as constructive
12 notice or otherwise, than it had or acquired at the
13 time it was registered pursuant to this chapter or was
14 made;

15 (2) Any other right or interest that arose prior to the
16 recordation of the certificate in the bureau of
17 conveyances that would have become a lien or
18 encumbrance on the registered land, if it had been
19 unregistered but that did not affect the land when it
20 was registered, shall take effect from and after the
21 time of recordation of the certificate. Any rights or
22 interests shall be subordinate to those matters that



1 affected the registered land immediately prior to the
2 time of recordation of the certificate but shall
3 otherwise be deemed thereafter to have priority in the
4 order of recordation or as may be determined under the
5 laws as applied to unregistered land.

6 (d) Nothing in this part shall be construed as giving any
7 greater or other effect, as constructive notice or otherwise, to
8 any instrument, document, or paper recorded in the bureau of
9 conveyances pursuant to chapter 502 prior to the recordation of
10 the certificate of title pursuant to section 501-A as to any
11 land than was provided by the laws of this State (including this
12 chapter and other laws regarding registered land) in effect at
13 the time the instrument, document, or paper was recorded.

14 **§501-F Dual recording involving deregistered land.**

15 Nothing in this part shall prevent or prohibit the registration
16 of an instrument which conveys, assigns, or affects both
17 registered land and deregistered land.

18 **§501-G Reference to prior recorded instrument.** Any

19 instrument conveying or otherwise dealing with deregistered land
20 and which requires a reference to a prior recorded instrument
21 may satisfy the requirements of section 502-33 by reference to:

22 (1) The land court document number; or



1 (2) The book and page number or the bureau of conveyances
2 document number, in the case of a document recorded
3 pursuant to chapter 502;
4 of the instrument to which reference is made.

5 **§501-H Legal incidents of deregistered land.** Nothing in
6 this part shall be construed to relieve deregistered land or its
7 owners of:

- 8 (1) Any rights incident to the relation of husband and
9 wife;
- 10 (2) Liability to attachment or mesne process or levy on
11 execution;
- 12 (3) Liability to any lien of any description established
13 by law on the deregistered land, or in the interest of
14 the owner in the deregistered land;
- 15 (4) The right to change the laws of descent;
- 16 (5) The rights of partition between coparceners and other
17 cotenants;
- 18 (6) The right to take the same by eminent domain;
- 19 (7) Liability to be recovered by a trustee in bankruptcy
20 under the provisions of law relating to preferences;
21 or



1 (8) Any other rights or liabilities created by law and
2 applicable to the owner of a condominium apartment
3 that is part of a condominium property regime
4 established on registered land and which is not
5 utilized in a time share plan, except as otherwise
6 expressly provided in this part.

7 §501-I Jurisdiction for matters pertaining to deregistered
8 land. (a) The land court shall have jurisdiction over all
9 matters relating to instruments required by this part to be
10 registered pursuant to this chapter. Where any party is in
11 doubt as to whether an instrument must be registered, the
12 question shall be referred to the land court for decision. The
13 court, after notice to all parties and a hearing, shall enter an
14 order determining the question. Notice to the owner of a fee
15 time share interest shall be given notice by mail to the
16 association of time share owners established pursuant to section
17 514E-29, and the association shall represent the owners in any
18 matters and proceedings, without prejudice to the right of any
19 individual owner to appear and be heard as a separate party.
20 Except as expressly otherwise provided in this section, nothing
21 in this part shall deprive the land court of exclusive
22 jurisdiction pursuant to section 501-1 over registered land, or



1 any interest therein, other than registered land that becomes
2 deregistered land.

3 (b) The land court shall have jurisdiction to hear and
4 determine, after notice to all parties in interest, any petition
5 to correct an error, omission, or mistake in a certificate of
6 title recorded pursuant to section 501-A. The land court may
7 require that an amended certificate of title be recorded in the
8 bureau of conveyances pursuant to chapter 502, or may order the
9 entry of a new certificate, the entry or cancellation of a
10 memorandum upon a certificate, or grant any other relief upon
11 such terms and conditions, requiring security if necessary, as
12 it may deem proper. Notice to the owner of a fee time share
13 interest shall be given notice by mail to the association of
14 time share owners established pursuant to section 514E-29, and
15 the association shall represent the owners in any such matters
16 and proceedings, without prejudice to the right of any
17 individual owner to appear and be heard as a separate party.
18 This section shall not be construed to give the court authority
19 to open the original decree of registration. The court shall
20 not order or take any action that impairs the title or other
21 interest of a purchaser of deregistered land for value and in
22 good faith, or the purchaser's heirs or assigns, without the



1 purchaser's or their written consent; provided that in the case
2 of a fee time share interest, the association of time share
3 owners established pursuant to section 514E-29 may provide
4 consent on behalf of all owners of time share interests except
5 for those owners who elect to appear and be heard as a separate
6 party in the matter or proceeding.

7 (c) The circuit court, pursuant to section 603-21.5(a)(3),
8 shall have jurisdiction over:

9 (1) All matters relating to instruments required by this
10 part to be recorded pursuant to chapter 502;

11 (2) All other matters pertaining to deregistered land,
12 except where jurisdiction is vested in the land court
13 pursuant to this section; and

14 (3) All matters as to which jurisdiction would otherwise
15 lie in the land court in part and in the circuit court
16 in part."

17 SECTION 2. Chapter 657, Hawaii Revised Statutes, is amended
18 by adding a new section to part II to be appropriately
19 designated and to read as follows:

20 "§657- Deregistered land. In no event shall the period
21 of limitations provided in this part begin, with respect to land
22 that was registered land under chapter 501 and deregistered



1 pursuant to section 501-A, prior to the recordation of the
2 certificate of title for the deregistered land pursuant to
3 section 501-A."

4 SECTION 3. Section 501-20, Hawaii Revised Statutes, is
5 amended by adding a new definition to be appropriately inserted
6 and to read as follows:

7 "Deregistered land" means any land that is the subject of
8 a certificate of title recorded pursuant to section 501-A."

9 SECTION 4. Section 501-71, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§501-71 Decree of registration; conditional when;
12 quieting title, exceptions; reopened when. If the court, after
13 hearing finds that the applicant, at the time of filing an
14 application, or subsequently, had title, as stated in the
15 application, that the title is proper for registration, and that
16 since filing the application the title of the applicant has not
17 been encumbered in any manner, then a decree of confirmation and
18 registration as prayed for shall be entered.

19 If the court finds that the applicant, at the time of
20 filing an application, or subsequently, had title, as stated in
21 the application, that the title is proper for registration, and
22 that subsequent to the filing of the application, the title has



1 been encumbered, then the title shall be registered subject to
2 the encumbrances so found.

3 If the court finds that the applicant, at the time of
4 filing an application, or subsequently, had title, as stated in
5 the application, that the title is proper for registration, and
6 that subsequent to filing the application, the applicant has
7 conveyed away all or any portion or portions of the premises or
8 interest therein sought to be registered, then a decree of
9 confirmation and registration shall be entered, covering the
10 entire premises, confirming title in the applicant and the
11 person or persons deriving their title through the applicant, to
12 the premises or interest in accordance with the applicant's or
13 their respective true ownership of the whole or any portion or
14 portions thereof or interest therein at the time of filing the
15 decree, and subject to all encumbrances affecting all or any
16 portion thereof.

17 Every decree of registration of absolute title shall bind
18 the land, and quiet the title thereto, subject only to the
19 exceptions stated in section 501-82. It shall be conclusive
20 upon and against all persons, including the State, whether
21 mentioned by name in the application, notice, or citation, or
22 included in the general description "to all whom it may



1 concern[-^u] ". The decree shall not be opened by reason of the
2 absence, infancy, or other disability of any person affected
3 thereby, nor by any proceeding for reversing judgments or
4 decrees[⁻], subject[⁻] to the right of any person deprived of
5 land or of any estate or interest therein by a decree of
6 registration obtained by fraud to file a petition for review
7 within one year after the entry of the decree; and provided that
8 no innocent purchaser for value has acquired an interest. If
9 there is any [~~such~~] purchaser, the decree of registration shall
10 not be opened but shall remain in full force and effect forever,
11 subject only to the right of appeal hereinbefore provided[-]
12 and to sections 501-A to 501-I. Deregistration pursuant to
13 sections 501-A to 501-I shall not alter or revoke the conclusive
14 nature or effect of a decree of registration, which shall
15 continue to quiet the title to the deregistered land as to all
16 claims arising prior to the recording of the certificate of
17 title pursuant to section 501-A, except any claims that would
18 not otherwise be barred under this chapter if the lands were not
19 deregistered. Any person aggrieved by the decree in any case
20 may pursue remedy by action of tort against the applicant or any
21 other person for fraud, in procuring the decree."



1 SECTION 5. Section 501-86, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§501-86 Registration runs with land. The obtaining of a
4 decree of registration, and the entry of a certificate of title,
5 shall be regarded as an agreement running with the land, and
6 binding upon the applicant and all the applicant's successors in
7 title, that the land shall be and forever remain registered
8 land, and subject to this chapter [~~and of all acts in amendment~~
9 ~~hereof.~~], except as provided in sections 501-A to 501-I."

10 SECTION 6. Section 634-51, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§634-51 Recording of notice of pendency of action. (a)
13 In any action concerning real property or affecting the title or
14 the right of possession of real property, the plaintiff, at the
15 time of filing the complaint, and any other party at the time of
16 filing a pleading in which affirmative relief is claimed, or at
17 any time afterwards, may record in the bureau of conveyances a
18 notice of the pendency of the action, containing the names or
19 designations of the parties, as set out in the summons or
20 pleading, the object of the action or claim for affirmative
21 relief, and a description of the property affected thereby.
22 From and after the time of recording the notice, a person who



1 becomes a purchaser or [~~incumbrancer~~] encumbrancer of the
2 property affected shall be deemed to have constructive notice of
3 the pendency of the action and be bound by any judgment entered
4 therein if the person claims through a party to the action;
5 provided that in the case of registered land, [~~section~~] sections
6 501-151 [~~and sections~~], 501-241 to 501-248, and 501-A to 501-I
7 shall govern.

8 (b) This section authorizes the recording of a notice of
9 the pendency of an action in a United States District Court, as
10 well as a state court."

11 SECTION 7. Section 636-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§636-3 Judgment, orders, decrees; lien when. Any money
14 judgment, order, or decree of a state court or the United States
15 District Court for the District of Hawaii shall be a lien upon
16 real property when a copy thereof, certified as correct by a
17 clerk of the court where it is entered, is recorded in the
18 bureau of conveyances. No [~~such~~] lien shall continue beyond the
19 length of time the underlying judgment, order, or decree is in
20 force. Except as otherwise provided, every judgment shall
21 contain or have endorsed on it the Hawaii tax identification
22 number, the federal employer identification number, or the last



1 four digits [~~only~~] of the social security number for persons,
2 corporations, partnerships, or other entities against whom the
3 judgment, order, or decree is rendered. If the debtor has no
4 social security number, Hawaii tax identification number, or
5 federal employer identification number, or if that information
6 is not in the possession of the party seeking registration of
7 the judgment, order, or decree, the judgment, order, or decree
8 shall be accompanied by a certificate that provides that the
9 information does not exist or is not in the possession of the
10 party seeking recordation of the judgment. Failure to disclose
11 or disclosure of an incorrect social security number, Hawaii tax
12 identification number, or federal employer identification number
13 shall not in any way adversely affect or impair the lien created
14 upon recordation of the judgment, order, or decree. When any
15 judgment, order, or decree is fully paid, the creditor or the
16 creditor's attorney of record in the action [~~shall~~], at the
17 expense of the debtor, shall execute, acknowledge, and deliver
18 to the debtor a satisfaction thereof, which may be recorded in
19 the bureau. Every satisfaction or assignment of judgment,
20 order, or decree shall contain a reference to the book and page
21 or document number of the registration of the original judgment.
22 The recording fees for a judgment, order, or decree and for each



1 assignment or satisfaction of judgment, order, or decree shall
2 be as provided by section 502-25.

3 In the case of registered land, [~~section~~] sections 501-102
4 [~~and sections~~], 501-241 to 501-248, and 501A to 501I shall
5 govern."

6 SECTION 8. Section 231-64, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~f~~] **§231-64** [~~]~~ **Tax liens; registered land.** If the land
9 [~~has been~~] is registered in the land court, the state tax
10 collector shall also send by registered mail a notice of the
11 proposed sale to any person holding a mortgage or other lien
12 registered in the office of the assistant registrar of the land
13 court. The notice shall be sent to [~~any such~~] the person at the
14 person's last address as shown by the records in the office of
15 the registrar, and shall be deposited in the mail at least
16 forty-five days prior to the date set for the sale."

17 SECTION 9. Section 246-57, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§246-57** **Same; registered land.** If the land [~~has been~~] is
20 registered in the land court, the tax collector shall also send
21 by registered mail a notice of the proposed sale to any person
22 holding a mortgage or other lien registered in the office of the



1 assistant registrar of the land court. The notice shall be sent
2 to [~~any such~~] the person at the person's last address as shown
3 by the records in the office of the registrar, and shall be
4 deposited in the mail at least forty-five days prior to the date
5 set for the sale."

6 SECTION 10. Section 531-15, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§531-15 Determination of bar to dower or curtesy. The
9 bar to dower and curtesy or to rights by way of dower or curtesy
10 provided by the second paragraph of sections 533-9 and 533-16,
11 respectively, shall not operate except upon determination by
12 order of a court of probate in proceedings for the
13 administration of the estate, or by a court in proceedings for
14 the determination of heirs, of the deceased spouse, and then
15 only if claim of bar is made by a person claiming the estate, or
16 any part thereof, or any interest therein. The spouse sought to
17 be barred shall be notified of the claim and of the hearing
18 thereon either by personal service or by publication of the
19 notice thereof, in the manner provided for, and which may be
20 included in, notice of determination of heirs or devisees or by
21 both such personal and published service, as the court may
22 direct. The order of determination shall be conclusive as to the



1 rights of the surviving spouse, subject only to be reversed, set
2 aside or modified on appeal. A certified copy of the order
3 shall be recorded in the bureau of conveyances, in case the
4 title to land is involved, and if the land affected [~~has been~~]
5 is registered in the land court, a like copy shall be filed in
6 the office of the assistant registrar of the court unless the
7 interest of the deceased spouse in such land consists solely of
8 one or more leasehold time share interests as described in
9 section 501-20."

10 SECTION 11. Nothing in this Act shall terminate,
11 extinguish, diminish, or impair any existing right in or
12 pertaining to any deregistered land, or any right to
13 compensation created by chapter 501, Hawaii Revised Statutes,
14 but any right may be asserted and enforced in the same manner,
15 to the same extent, subject to the same limitations and
16 conditions provided in this Act.

17 SECTION 12. In codifying the new sections added by section
18 1 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.

21 SECTION 13. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 14. This Act shall take effect July 1, 2009.

2

INTRODUCED BY:

R. D. J.
by request



Report Title:

Land Court; Deregistration

Description:

Authorizes the deregistration of land from land court.

