

STAND. COM. REP. NO. **2288**

Honolulu, Hawaii

FEB 17 2012

RE: S.B. No. 2632
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committees on Commerce and Consumer Protection and
Judiciary and Labor, to which was referred S.B. No. 2632 entitled:

"A BILL FOR AN ACT RELATING TO FEE TIME SHARE INTERESTS,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require all fee time share interests to be recorded in the regular system of the Bureau of Conveyances, rather than the Land Court;
- (2) Remove the requirement that the Land Court update the certificates of title for individual fee time share interests as a condition to deregistration; and
- (3) Allow the Bureau of Conveyances to charge a transaction fee for recording in the Bureau of Conveyances and the Office of the Assistant Registrar of the Land Court.

Your Committees received testimony in support of this measure from the Department of Land and Natural Resources; the Judiciary; SVO Pacific, Inc.; American Resort Development Association - Hawaii; Wyndham Vacation Ownership, Inc.; Title Guaranty of Hawaii, Inc.; and one individual. Your Committees received testimony in opposition to this measure from the Department of the Attorney General.



Your Committees find that Act 120, Session Laws of Hawaii 2009, was intended to alleviate some of the backlog in Land Court recordings and registration by transferring fee simple time share interests from the Land Court system to the regular system. However, updating and recording the certificates of title for all fee time share interests, as required by Act 120, has exceeded the capacity of the Land Court, particularly in light of the approximately three-year backlog of Land Court recordings and registration.

This measure is intended to ease the current backlog in Land Court recordings and registration by declaring that all fee time share interests are no longer subject to the Land Court. This measure also eliminates the requirement that the Assistant Registrar of the Land Court update or record certificates of title prior to removal.

Your Committees further find that since Act 120 took effect, the Bureau of Conveyances has been charging a fee to record the certificates of title. This measure changes procedures associated with the collection of these fees. To maintain the solvency of the Bureau, this measure allows the Bureau of Conveyances to charge a temporary fee until new rules relating to recording fees can be adopted.

Your Committees have amended this measure by:

- (1) Amending the definition of "deregistered land" to recognize the different categories of land and different methods of deregistration, including voluntary deregistration of land not constituting fee time share interests, involuntary deregistration of fee time share interests, and deregistration by operation of law;
- (2) Amending the definition of "fee time share interest" to clarify that the term applies to all time share interests that include an undivided interest in registered land on or after July 1, 2011, and that those time share interests that include an undivided interest in an estate for years in registered land shall be treated as leasehold time share interests, rather than as fee time share interests;
- (3) Deleting the language that would have amended the definition of "leasehold time share interest";



- (4) Deleting the language that would have addressed the acceptable manner in which the value of land to be voluntarily deregistered could be established, as the language could have been interpreted as beyond the scope of this measure's title;
- (5) Amending the language declaring that fee time share interests no longer constitute registered land to conform to existing statute and to clarify when fee time share interests with a certificate of title recorded prior to July 1, 2012, were deregistered;
- (6) Clarifying that the Registrar or Assistant Registrar is required to note on the certificate of title for each fee time share interest all pertinent documents and instruments accepted for registration prior to July 1, 2012;
- (7) Clarifying that certificates of title that were recorded but not yet certified by the Assistant Registrar prior to July 1, 2012, may be modified at any time prior to their certification, even if the certification occurs after the certificate of title is recorded;
- (8) Requiring a copy of each certificate of title for a fee time share interest to be recorded in the regular system upon completion of the certification process;
- (9) Adding language that provides that the cancellation of a certificate of title will be deemed to take place as of July 1, 2012, even though the certificate of title may be recorded subsequent to that date;
- (10) Amending the existing statute relating to the effect of deregistration to reflect the distinction between land voluntarily deregistered, fee time share interests deregistered prior to July 1, 2012, and fee time share interests that will be removed from the Land Court system by operation of law on or after July 1, 2012;
- (11) Adding an amendment to section 501-71, Hawaii Revised Statutes, to reflect the three different recordation or effective dates that correspond to the three different categories of deregistered land;



- (12) Amending language to require the Department of Land and Natural Resources to assess a transaction fee on the recordation of deeds of time share interests recorded in the Bureau of Conveyances for a limited period of time;
- (13) Amending the purpose section to reflect the amended purpose of the measure;
- (14) Inserting an effective date of July 1, 2020, to allow for further discussion; and
- (15) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committees note that the amended version of this measure removes the reference to "leasehold time share interest" and limits the authorization of the Bureau of Conveyances to assess a transaction fee on fee time share interests. These amendments address all title concerns previously raised by the Department of the Attorney General.

Your Committees note that interested stakeholders continue to work on this measure, and a general consensus has been reached between parties. Ongoing discussions have been focused on two issues. The first issue concerns whether a time share interest comprised in whole or in part of an estate for years should be treated as a fee time share interest or a leasehold time share interest. The stakeholders agree that all time share conveyances should be recorded in the regular system of the Bureau of Conveyances, rather than the Land Court. However, discussions continue in light of the common law characteristics of an estate for years and theoretical issues regarding whether separate certificates of title should be issued to the holder of the estate for years and to the holder of the fee revision in the same parcel of land.

The second ongoing issue pertains to the best method to establish the chain of title for a fee time share interest. Under the amended measure, all fee time share interests will be deregistered as of July 1, 2012, but the certificates of title for those fee time share interests will not necessarily be recorded in the regular system of the Bureau of Conveyances and then cancelled on the records of the Land Court until some future date. A question has arisen as to whether passage of this measure is

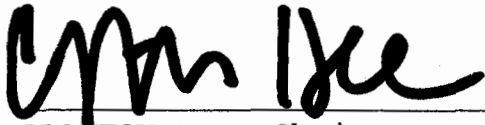


sufficient to place interested persons on notice that title to all fee time share interests has moved from the Land Court to the regular system as of July 1, 2012, or upon the earlier recordation of a certificate of title in the regular system.

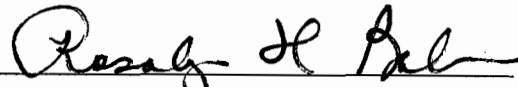
Your Committees are encouraged by the collaborative efforts of all interested parties, but find that continuing discussion on this measure is necessary.

As affirmed by the records of votes of the members of your Committees on Commerce and Consumer Protection and Judiciary and Labor that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2632, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2632, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Commerce and
Consumer Protection and
Judiciary and Labor,



CLAYTON HEE, Chair



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2632	CPN/JDL,WAM	2/14/10		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les				✓
SLOM, Sam				✓
TOTAL	3			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes