



The Judiciary, State of Hawai'i

Testimony to the House Committee on Finance

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair

Monday, April 2, 2012, 2:00 p.m.
State Capitol, Conference Room 308

by
Calvin C. Ching
Deputy Chief Court Administrator
First Circuit

Bill No. and Title: Senate Bill No. 2632, S.D. 1, Relating to Fee Time Share Interests

Purpose: Ease the backlog in land court recording and registration by:

- (1) Requiring all fee time share interests to be recorded in the regular system rather than the land court, as of the effective date of this Act;
- (2) Streamlining the procedure for the office of the assistant registrar to update the certificates of title for all remaining fee time share interests as part of the deregistration process; and
- (3) Allowing the bureau of conveyances to charge a transaction fee for each deed of a time share interest recorded in the bureau of conveyances pursuant to chapter 502, Hawaii Revised Statutes. This is intended to offset to decline in recording fee revenue that may result from the changes in recording procedures established by this Act.

Judiciary's Position:

The Judiciary supports the intent of Senate Bill No. 2632, S.D. 1, Relating to Fee Time Share Interests, which seeks to ease the backlog in land court recording and registration.

The Judiciary is supportive of the transfer of fee simple time share interests from the land court to the regular system. And, from an operational perspective, the Judiciary is aware and understanding of the desire to ease the backlog in land court recording and registration.



Senate Bill No. 2632, S.D. 1, Relating to Fee Time Share Interests
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For purposes of discussion of this bill, the Judiciary has been meeting throughout this legislative session with representatives from the Office of the Assistant Registrar, Bureau of Conveyances, and industry representatives from the time share and title industries with the intent to provide this Legislature with an efficient and workable solution that will benefit both the government agencies as well as the public. From the Judiciary's perspective, we are in consensus with what was proposed (see attached SB 2632, S.D. 1, Proposed H.D. 1) out of our group meetings with the understanding that the proposed bill takes into account the existing backlog of fee time share interest documents at the Office of the Assistant Registrar, Bureau of Conveyances. The Judiciary would support amending SB 2632, S.D. 1 as reflected in the attached proposed H.D. 1 version of this bill.

The proposed H.D. 1 version of the bill addresses the Judiciary's previous concerns related to deregistration of fee time share interest chain of title issues, treatment of an estate for years time share interest and treatment of previously recorded time share fee interest documents, which are part of the backlog that will be existing on the effective date of this act. The Judiciary notes that Section 4 of the proposed H.D. 1 version requires that the registered owner (who may be an uninvolved party to the fee time share deregistration), rather than the time share interest owner, assume the expense and responsibility to file the petition for a new certificate of title. Aside from noting this issue, the Judiciary takes no position with respect to who should bear the expense and responsibility as to who should file this petition.

Thank you for the opportunity to testify on this measure.

A BILL FOR AN ACT

RELATING TO FEE TIME SHARE INTERESTS.

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

1 SECTION 1. The joint legislative investigative committee
2 established pursuant to Senate Concurrent Resolution No. 226,
3 adopted during the regular session of 2007, identified serious
4 shortcomings relating to the bureau of conveyances. Act 120,
5 Session Laws of Hawaii 2009, was adopted in response to the
6 findings of the committee. Act 120 was intended to ease the
7 backlog in land court recording and registration by, among other
8 things, transferring fee simple time share interests from the
9 land court system to the regular system.

10 Act 120 requires that, upon presentation of a deed or any
11 other instrument affecting a fee time share interest, the
12 assistant registrar of the land court shall not file the same in
13 the land court. Rather, the assistant registrar shall:

14 (1) Update the certificate of title for all fee time share
15 interests in the time share plan;

1 (2) Record in the regular system the updated certificate
2 of title for each fee time share interest in the time
3 share plan;

4 (3) Record in the regular system the deed or other
5 instrument presented for recording; and

6 (4) Cancel the certificate of title for each fee time
7 share interest in the time share plan.

8 Once the certification of title for a fee time share
9 interest is recorded, that time share interest is no longer
10 subject to the land court pursuant to chapter 501, Hawaii
11 Revised Statutes. From then on, all deeds and other instruments
12 affecting the fee time share interest shall be recorded in the
13 regular system. This process is known as deregistration of time
14 share interests.

15 The legislature finds that the task of updating and
16 recording the certificates of title for all fee time share
17 interests concurrently has exceeded the capacity of the land
18 court, particularly in light of the approximately three-year
19 backlog of land court recordings and registration existing at
20 the time when Act 120 took effect.

1 Accordingly, the purpose of this Act is to ease the backlog
2 in land court recording and registration by:

3 (1) Requiring all fee time share interests to be recorded
4 in the regular system rather than the land court, as
5 of the effective date of this Act; and

6 (2) Streamlining the procedure for deregistering all
7 remaining fee time share interests.

8 SECTION 2. Section 501-20, Hawaii Revised Statutes, is
9 amended:

10 1. By adding a new definition to be appropriately inserted
11 and to read as follows:

12 "Date and time of deregistration" means:

13 (1) The date and time when a certificate of title for
14 land, other than a fee time share interest, is
15 recorded pursuant to section 501-261;

16 (2) The date and time, if prior to July 1, 2012, when a
17 certificate of title for a fee time share interest was
18 recorded in the bureau of conveyances pursuant to
19 chapter 502 and part II of this chapter, whether such
20 certificate of title was or is certified by the

1 assistant registrar prior to, subsequent to, or on
2 July 1, 2012;

3 (3) July 1, 2012 at 12:01 a.m. for all other fee time
4 share interests then in existence and for which a
5 certificate of title was not recorded in the
6 bureau of conveyances pursuant to chapter 502 and
7 part II of this chapter prior to July 1, 2012; and

8 (4) For all fee time share interests not yet in existence
9 as of July 1, 2012 at 12:01 a.m., the date and time of
10 recordation of the declaration, declaration of
11 annexation, or other document or instrument
12 establishing such fee time share interest."

13 2. By amending the definitions of "deregistered land" and
14 "fee time share interest" to read as follows:

15 ""Deregistered land" means [~~land that is the subject of a~~
16 ~~certificate of title recorded pursuant to section 501-261.~~];

17 (1) Land, other than a fee time share interest, that is
18 the subject of a certificate of title recorded
19 pursuant to section 501-261;

20 (2) A fee time share interest that is the subject of a
21 certificate of title recorded in the bureau of

1 conveyances pursuant to chapter 502 and part II of
2 this chapter prior to July 1, 2012, whether such
3 certificate of title is certified by the assistant
4 registrar on, before, or after July 1, 2012; and
5 (3) All other fee time share interests.

6 "Fee time share interest" means a time share interest,
7 other than a leasehold time share interest, that [~~consists~~], at
8 any time on or after July 1, 2011, consists or consisted of, or
9 includes [~~a present,~~] or included, an undivided interest in
10 registered land, including but not limited to an undivided
11 interest in one or more fee simple condominium apartments or
12 units established in whole or in part on registered land."

13 SECTION 3. Section 501-71, Hawaii Revised Statutes, is
14 amended by amending subsection (e) to read as follows:

15 "(e) Deregistration pursuant to sections 501-261 to
16 501-269 shall not alter or revoke the conclusive nature or
17 effect of a decree of registration, which shall continue to
18 quiet the title to the deregistered land as to all claims
19 arising prior to the [~~recording of the certificate of title~~
20 ~~pursuant to section 501-261,~~] date and time of deregistration of

1 such land, except claims as would not otherwise be barred under
2 this chapter if the lands were not registered."

3 SECTION 4. Section 501-261, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§501-261[+] **Deregistration of fee interests.** (a) The
6 registered owner of the fee interest in registered land may
7 submit a written request to the assistant registrar to
8 deregister the land under this chapter.

9 (1) Any written request for deregistration shall include
10 proof of title insurance in the amount of the value of
11 the land to be deregistered and a written waiver of
12 all claims against the State relating to the title to
13 the land arising after the date of deregistration.

14 (2) Upon presentation to the assistant registrar [~~for~~
15 ~~filing or recording of any instrument, document, or~~
16 ~~paper conveying or encumbering a fee time share~~
17 ~~interest or any interest therein, or upon the] of a
18 written request [under subsection (d) of the] for
19 deregistration by the registered owner of the fee
20 interest in registered land, the assistant registrar
21 shall not register the same, but shall:~~

1 ~~[-1-]~~ (A) Record in the bureau of conveyances, pursuant to
2 chapter 502, the current certificate of title for
3 the fee interest in the registered land ~~[or the~~
4 ~~registered land in which the fee time share~~
5 ~~interest includes an undivided interest]~~;
6 provided that~~+~~

7 ~~(A)~~ (A) ~~[Prior]~~ prior thereto, the assistant registrar
8 shall note on the certificate of title all
9 documents and instruments that have been accepted
10 for registration and that have not yet been noted
11 on the certificate of title~~;~~ and] for the
12 registered land;

13 ~~[-(B)-~~ ~~If separate certificates of title have been~~
14 ~~issued for individual fee time share interests in~~
15 ~~the time share plan, the assistant registrar~~
16 ~~shall record in the bureau of conveyances,~~
17 ~~pursuant to chapter 502, the certificate of title~~
18 ~~for each fee time share interest in the time~~
19 ~~share plan;~~

20 ~~[-2-]~~ (B) Record in the bureau of conveyances, pursuant to
21 chapter 502, the ~~[instrument, document, paper,~~

1 ~~ex]~~ written request for deregistration presented
2 to the assistant registrar for filing or
3 recording. The [~~instrument, document, paper, or~~]
4 request shall be recorded immediately after the
5 certificate or certificates of title; and

6 [~~(3)~~] (C) Cancel the certificate of title.

7 [~~(b)~~] (3) The registrar or assistant registrar shall note
8 the recordation and cancellation of the certificate of
9 title in the registration book and in the records of
10 the application for registration of the land that is
11 the subject of the certificate of title. The notation
12 shall state the bureau of conveyances document number
13 for the certificate of title so recorded, the
14 certificate of title number, and the land court
15 application number, map number, and lot number for the
16 land that is the subject of the certificate of title
17 so recorded.

18 [~~(e)~~] (4) No order of court shall be required prior to or
19 in connection with the performance of any of the
20 foregoing actions.

1 ~~[(d) The registered owner of the fee interest in~~
2 ~~registered land may submit a written request to the assistant~~
3 ~~registrar to deregister the land under this chapter. Any written~~
4 ~~request for deregistration shall include proof of title~~
5 ~~insurance in the amount of the value of the land to be~~
6 ~~deregistered and a written waiver of all claims against the~~
7 ~~State relating to the title to the land arising after the date~~
8 ~~of deregistration.]~~

9 (b) The certificate of title for each fee time share
10 interest is cancelled effective as of the date and time of
11 deregistration of such fee time share interest. Notwithstanding
12 the provisions of section 501-261 in existence prior to July 1,
13 2012, a fee time share interest for which a certificate of title
14 was not recorded in the bureau of conveyances pursuant to
15 chapter 502 and part II of this chapter prior to July 1, 2012
16 shall not have been deregistered prior to July 1, 2012 at 12:01
17 a.m.

18 (1) Beginning on July 1, 2012, and continuing for so long
19 as shall be reasonably necessary in the ordinary
20 course of business, the assistant registrar shall:

1 (A) Note on the certificate of title for each fee
2 time share interest all documents and instruments
3 affecting the fee time share interest:

4 (i) That were or are registered as of a date and
5 time that is prior to the date and time of
6 deregistration of such fee time share interest;
7 and

8 (ii) That were not yet registered and noted on
9 the certificate of title of such fee time share
10 interest as of the date and time of
11 deregistration thereof; and

12 (B) Certify each such certificate of title.

13 (2) Section 501-196 shall apply to a certificate of title
14 updated pursuant to paragraph (1) upon approval of the
15 same by the assistant registrar, which approval shall
16 be evidenced by the certification of the assistant
17 registrar endorsed upon the certificate of title. A
18 certificate of title for a fee time share interest,
19 including but not limited to a certificate of title
20 recorded prior to July 1, 2012 pursuant to part II of
21 this chapter, shall not be considered completed or

1 approved, and shall be subject to modification by the
2 assistant registrar, at any time prior to
3 certification thereof by the assistant registrar.

4 Subsequent to such certification, the certificate of
5 title for a fee time share interest may only be
6 modified pursuant to section 501-196 or as otherwise
7 provided in this chapter.

8 (3) Upon certification of the certificate of title for a
9 fee time share interest by the assistant registrar,
10 the assistant registrar shall mark the certificate of
11 title "cancelled", note the cancellation of the
12 certificate of title in the registration book, and
13 notify the court of such cancellation. Regardless of
14 the date upon which such administrative acts are
15 performed, the cancellation of the certificate of
16 title for a fee time share interest shall be effective
17 as of the date and time of deregistration of that fee
18 time share interest.

19 (4) If only part of the land described in a single
20 certificate of title consists of a fee time share
21 interest, then upon the petition of the registered

1 owner of that portion of the registered land not
2 constituting a fee time share interest, a new
3 certificate of title shall be issued to such owner for
4 that portion of the registered land not constituting a
5 fee time share interest. In the event that registered
6 land is held in the condominium form of ownership,
7 then for purposes of this subsection (4) each unit for
8 which a separate certificate of title has been issued
9 shall be treated as if it were a separate parcel of
10 registered land.

11 (5) Except as provided in subsection paragraph (4), no
12 order of court shall be required prior to or in
13 connection with the performance of any of the
14 foregoing actions."

15 SECTION 5. Section 501-262, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~§~~501-262~~§~~] **Effect of deregistration.** (a) [~~Upon the~~
18 ~~recordation in the bureau of conveyances of a certificate of~~
19 ~~title pursuant to section 501-261:] From and after the date and
20 time of deregistration of registered land:~~

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

3 (2) No instruments, documents, or papers relating solely
4 to deregistered land shall be filed or recorded with
5 the assistant registrar pursuant to this chapter, but
6 shall instead be recorded in the bureau of conveyances
7 pursuant to chapter 502; and

8 (3) Except as otherwise expressly provided in this
9 chapter, chapter 502 shall apply to the deregistered
10 land.

11 (b) ~~[Recordation of a certificate of title]~~ Neither
12 voluntary deregistration of land other than a fee time share
13 interest pursuant to section 501-261 nor the mandatory
14 deregistration of any fee time share interest pursuant to part
15 II of this chapter, whether by recordation of a certificate of
16 title in the bureau of conveyances prior to July 1, 2012, or by
17 operation of law thereafter, shall ~~[not]~~ disturb the effect of
18 any proceedings in the land court where the question of title
19 has been determined. All proceedings had in connection with the
20 registration of title that relate to the settlement or
21 determination of title before ~~[that recording,]~~ a certificate of

1 title for land other than a fee time share interest is recorded
2 pursuant to section 501-261 or a certificate of title for a fee
3 time share interest is certified, and all provisions of this
4 chapter that relate to the status of the title, shall have
5 continuing force and effect with respect to the period of time
6 that title remained under the land court system. Those
7 provisions giving rise to a right of action for compensation
8 from the State, including any limits on and conditions to the
9 recovery of compensation and the State's rights of subrogation
10 with respect thereto, shall also continue in force and effect
11 with respect to the period of time that title remained under the
12 land court system."

13 SECTION 6. Section 501-264, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) A certificate of title recorded pursuant to section
16 501-261 in the case of land other than a fee time share
17 interest, or certified by the assistant registrar in the case of
18 a fee time share interest, shall constitute a new chain of
19 record title in the registered owner of any estate or interest
20 as shown on the certificate of title so recorded[7] or
21 certified, subject only to the following:

- 1 (1) The estates, mortgages, liens, charges, instruments,
2 documents, and papers noted on the certificate of
3 title so recorded[+] or certified;
- 4 (2) Liens, claims, or rights arising or existing under the
5 laws or Constitution of the United States, which the
6 statutes of this State cannot require to appear of
7 record in the registry; provided that notices of liens
8 for internal revenue taxes payable to the United
9 States, and certificates affecting the liens, shall be
10 deemed to fall within this paragraph only if the same
11 are recorded in the bureau of conveyances as provided
12 by chapter 505;
- 13 (3) Unpaid real property taxes assessed against the land
14 and improvements covered by the certificate of title
15 as recorded, with interest, penalties, and other
16 additions to the tax, which, unless a notice is filed
17 and registered as provided by county real property tax
18 ordinance, shall be for the period of three years from
19 and after the date on which the lien attached, and if
20 proceedings for the enforcement or foreclosure of the
21 tax lien are brought within the period, until the

1 termination of the proceedings or the completion of
2 the tax sale;

3 (4) State tax liens, if the same are recorded in the
4 bureau of conveyances as provided by section 231-33;

5 (5) Any public highway, or any private way laid out under
6 the provisions of law, when the certificate of title
7 does not state that the boundary of the way has been
8 determined;

9 (6) Any lease, coupled with occupancy, for a term not
10 exceeding one year; provided that the priority of the
11 unrecorded lease shall attach only at the date of the
12 commencement of the unrecorded lease and expire one
13 year from the date or sooner if so expressed;

14 (7) Any liability to assessments for betterments, or
15 statutory liability that may attach to land as a lien
16 prior to or independent of, the recording or
17 registering of any paper of the possibility of a lien
18 for labor or material furnished in the improvement of
19 the land; provided that the priority of any liability
20 and the lien therefor (other than for labor and
21 material furnished in the improvement of the land,

1 which shall be governed by section 507-43) shall cease
2 and terminate three years after the liability first
3 accrues unless notice thereof, signed by the officer
4 charged with collection of the assessments or
5 liability, setting forth the amount claimed, the date
6 of accrual, and the land affected, is recorded in the
7 bureau of conveyances pursuant to chapter 502 within
8 the three-year period; and provided further that if
9 there are easements or other rights, appurtenant to a
10 parcel of deregistered land, which for any reason have
11 failed to be deregistered, the easements or rights
12 shall remain so appurtenant notwithstanding the
13 failure, and shall be held to pass with the
14 deregistered land until cut off or extinguished in any
15 lawful manner;

16 (8) The possibility of reversal or vacation of the decree
17 of registration upon appeal;

18 (9) Any encumbrance not required to be registered as
19 provided in sections 501-241 to 501-248 and relating
20 to a leasehold time share interest or leasehold
21 interest in deregistered land; and

1 (10) Child support liens that are created pursuant to order
2 or judgment filed through judicial or administrative
3 proceeding in this State or in any other state, the
4 recording of which shall be as provided by chapter
5 576D."

6 SECTION 7. Section 502-33, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§502-33 Identification of reference to registration of**
9 **original.** [The] (a) If the owner of a fee time share interest
10 acquired title thereto pursuant to a deed or other instrument
11 filed or recorded in the land court pursuant to chapter 501,
12 then the registrar need not accept for recording any deed,
13 mortgage, or other voluntary instrument purporting to convey or
14 affect title to such fee time share interest unless such deed,
15 mortgage, or other voluntary instrument contains a reference to
16 the certificate of title number by which the owner of such fee
17 time share interest acquired title thereto. The term "fee time
18 share interest" has the meaning ascribed to it in section
19 501-20.

20 (b) Except as otherwise provided in subsection (a), the
21 registrar shall not record any instrument requiring a reference

1 to a prior recorded instrument, unless the same contains a
2 reference to the book and page or document number of the
3 registration of the original recorded instrument or a statement
4 that the original instrument is unrecorded, as the case may be.
5 Except as otherwise provided, every judgment shall contain or
6 have endorsed on it the State of Hawaii general excise taxpayer
7 identification number, the federal employer identification
8 number, or the last four digits only of the social security
9 number for persons, corporations, partnerships, or other
10 entities against whom the judgment is rendered. If the judgment
11 debtor has no social security number, State of Hawaii general
12 excise taxpayer identification number, or federal employer
13 identification number, or if that information is not in the
14 possession of the party seeking registration of the judgment,
15 the judgment shall be accompanied by a certificate that provides
16 that the information does not exist or is not in the possession
17 of the party seeking registration of the judgment. Failure to
18 disclose or disclosure of an incorrect social security number,
19 State of Hawaii general excise taxpayer identification number,
20 or federal employer identification number shall not in any way
21 adversely affect or impair the lien created upon registration of

1 the judgment. No amendment, continuation statement, termination
2 statement, statement of assignment, or statement of release
3 relating to security interests in goods which are or are to
4 become fixtures shall be filed unless it complies with the
5 requirements of part 5 of Article 9 of the Uniform Commercial
6 Code. This section does not apply to any document mentioned
7 herein executed prior to April 13, 1915.

8 The party seeking registration of a judgment shall redact
9 the first five digits of any social security number by blocking
10 the numbers out on the copy of the judgment to be filed or
11 recorded."

12 SECTION 8. Section 657-33.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 ~~[+]§657-33.5[+]~~ **Deregistered land.** In no event shall the
15 period of limitations provided in this part begin prior to the
16 ~~[recording of the certificate of title]~~ date and time of
17 deregistration for deregistered land. The terms "date and time
18 of deregistration" and "deregistered land" have the meanings
19 ascribed to them in section 501-20."

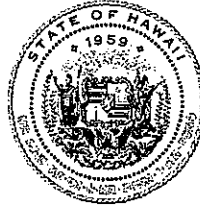
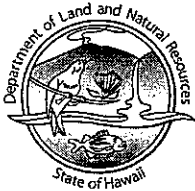
20 SECTION 9. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

S.B. NO.

2632
S.D. 1
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1 SECTION 10. This Act shall take effect on July 1, 2012.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
FINANCE

Monday, April 2, 2012
2:00 P.M.

State Capitol, Conference Room 308

In consideration of
SENATE BILL 2632, SENATE DRAFT 1
RELATING TO FEE TIME SHARE INTERESTS

Senate Bill 2632, Senate Draft 1 proposes to permit fee time share interests to be recorded in the regular system of the Bureau of Conveyances (Bureau) rather than the Land Court. Further, this bill removes the requirement that the certificate of title be updated prior to deregistration of the time share interests. While The Department of Land and Natural Resources (Department) appreciates the intent of this bill as presently drafted, the Department is aware that the American Resort Development Association will be offering amendments to this measure. The proposed draft was developed and agreed to by representatives of the Bureau, the Judiciary, the Hawaii Land Title Association and the American Resort Development Association. As such, the Department supports the amendments proposed by the American Resort Development Association.

Act 120, Session Laws of Hawaii 2009, required fee time share interests to be deregistered from Land Court upon the presentation for recording of any instrument conveying or encumbering a fee time share interest. This bill would simplify deregistration by offering a date that all fee time share interests would be deemed deregistered from Land Court.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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TO: Representative Marcus R. Oshiro
Chair, Committee on Finance
Hawaii State Capitol, Room 306
Via Capitol Web Page

FROM: Gary M. Slovin / Mihoko E. Ito

DATE: April 1, 2012

RE: **S.B. No. 2632, SD1 – Relating to Fee Time Share Interests**
Hearing: Monday, April 2, 2012 at 2:00 p.m. Conference Room 308,
Agenda #1

Dear Chair Oshiro and Members of the Committee on Finance:

Wyndham Vacation Ownership offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **supports** S.B. 2632, SD1, Relating to Fee Time Share Interests, which would require all fee time share interests to be recorded in the regular system rather than the land court, streamlines the procedure for the office of the assistant registrar to update the certificates of title for all remaining fee time share interests as part of the deregistration process, and allows the bureau of conveyances to charge a transaction fee for each deed of a time share interest recorded in the bureau of conveyances pursuant to chapter 502, Hawaii Revised Statutes.

We understand there is proposed draft language that the parties who have been working on this have come to agreement on. We would support this language, and appreciate that the issue was fully considered and analyzed by the interested stakeholders.

Wyndham appreciates the opportunity to submit comments on this matter and supports the passage of S.B. 2632, SD1.



March 30, 2012

TO: HOUSE COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

FROM: Daniel Dinell
ARDA-Hawaii, Chair

RE: SB 2632, SD1 Relating to Fee Time Share Interests
Position: Support

Dear Chair Oshiro, Vice Chair Lee, and members of the Committee:

ARDA-Hawaii is the local chapter of the American Resort Development Association, the national timeshare trade association, comprising of over 20 local members with 45 properties statewide. In the aggregate the timeshare industry comprises approximately 13% of the visitor units throughout the state.

ARDA Hawaii supports SB 2632, SD1 which is intended to streamline the removal of fee simple time share interests from the land court system.

In 2009, the Legislature passed Act 120 which was intended to ease the backlog in land court recordings and registrations by, among other things, transferring fee simple time share interests from the land court system to the regular system.

To accomplish this, Act 120 requires that the assistant registrar update the certificate of title for each fee time share interest and then record that certificate of title in the bureau of conveyances. However, updating and recording the certificates of title for all fee time share interests concurrently has exceeded the capacity of the land court, particularly in light of the approximately three-year backlog of land court recordings and registration.

SB 2632, SD1 is intended to eliminate this problem by removing all fee time share interests from the land court effective as of July 1, 2012

This bill has been a work in progress through this session. However the Land Court Working Group recently met and agreed to a proposed draft which has been submitted to this committee. ARDA Hawaii supports this consensus draft and requests the committee pass it out as a House Draft 1.

Thank you for the opportunity to submit these comments.

"Timeshare With Aloha"



Title Guaranty of Hawaii, Inc.

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April 1, 2012

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
Members of the House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

Re: Senate Bill 2632, S.D.1 Relating To Fee Time Share Interests
Hearing Date: April 2, 2012, 2:00 p.m.

Dear Representative Oshiro, Representative Lee, and Members of the House Committee on Finance:

My name is Lorrin Hirano and I am a Sr. Vice President and Legal Counsel for Title Guaranty of Hawaii, Inc. Thank you for allowing us to submit testimony on Senate Bill 2632, S.D.1. During the 2012 Legislative Session, we have supported the intent of Senate Bill 2632, which is to clarify and improve upon the process for deregistration from the Land Court of fee time share interests. Over the past several weeks, an ad hoc group of which I am a member has been working on proposed amendments to S.D.1. Attached to this testimony is a version of the amendments that we support and respectfully request that your Committee approve for passage.

The proposed amendments to S.D.1 clarify and improve on the present deregistration procedure, as set forth in Hawaii Revised Statutes Sections 501-261, et seq. Among other things, they set a date certain (July 1, 2012) at which time all remaining registered fee time share interests will be deregistered without the requirement of recording a transfer certificate of title, and it clarifies that previously-deregistered fee time share interests for which a transfer certificate of title was recorded and canceled will be considered deregistered even if the last transfer certificate of title has not yet been certified. It retains the requirement that the assistant registrar update and certify the last certificates but allows them to do this in the ordinary course of business.

While the attached proposed amendments represent in our view an improvement of Act 120, 2009 Session Laws, they do not in and of themselves solve the backlog which is one of the motivations behind SB2632. Achieving and maintaining up-to-date land title records is critically important not only to title insurance companies but also the general public who relies on the stability of land titles. This should continue to be a priority and we appreciate the ongoing efforts of the bureau of conveyances towards this goal.

Thank you again for this opportunity to testify.

Very truly yours,

Lorrin Hirano
Sr. Vice President & Legal Counsel

A BILL FOR AN ACT

RELATING TO FEE TIME SHARE INTERESTS.

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

1 SECTION 1. The joint legislative investigative committee
2 established pursuant to Senate Concurrent Resolution No. 226,
3 adopted during the regular session of 2007, identified serious
4 shortcomings relating to the bureau of conveyances. Act 120,
5 Session Laws of Hawaii 2009, was adopted in response to the
6 findings of the committee. Act 120 was intended to ease the
7 backlog in land court recording and registration by, among other
8 things, transferring fee simple time share interests from the
9 land court system to the regular system.

10 Act 120 requires that, upon presentation of a deed or any
11 other instrument affecting a fee time share interest, the
12 assistant registrar of the land court shall not file the same in
13 the land court. Rather, the assistant registrar shall:

14 (1) Update the certificate of title for all fee time share
15 interests in the time share plan;

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1 (2) Record in the regular system the updated certificate
2 of title for each fee time share interest in the time
3 share plan;

4 (3) Record in the regular system the deed or other
5 instrument presented for recording; and

6 (4) Cancel the certificate of title for each fee time
7 share interest in the time share plan.

8 Once the certification of title for a fee time share
9 interest is recorded, that time share interest is no longer
10 subject to the land court pursuant to chapter 501, Hawaii
11 Revised Statutes. From then on, all deeds and other instruments
12 affecting the fee time share interest shall be recorded in the
13 regular system. This process is known as deregistration of time
14 share interests.

15 The legislature finds that the task of updating and
16 recording the certificates of title for all fee time share
17 interests concurrently has exceeded the capacity of the land
18 court, particularly in light of the approximately three-year
19 backlog of land court recordings and registration existing at
20 the time when Act 120 took effect.

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1 Accordingly, the purpose of this Act is to ease the backlog
2 in land court recording and registration by:

- 3 (1) Requiring all fee time share interests to be recorded
- 4 in the regular system rather than the land court, as
- 5 of the effective date of this Act; and
- 6 (2) Streamlining the procedure for deregistering all
- 7 remaining fee time share interests.

8 SECTION 2. Section 501-20, Hawaii Revised Statutes, is
9 amended:

10 1. By adding a new definition to be appropriately inserted
11 and to read as follows:

12 "Date and time of deregistration" means:

- 13 (1) The date and time when a certificate of title for
- 14 land, other than a fee time share interest, is
- 15 recorded pursuant to section 501-261;
- 16 (2) The date and time, if prior to July 1, 2012, when a
- 17 certificate of title for a fee time share interest was
- 18 recorded in the bureau of conveyances pursuant to
- 19 chapter 502 and part II of this chapter, whether such
- 20 certificate of title was or is certified by the

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1 assistant registrar prior to, subsequent to, or on
2 July 1, 2012;
3 (3) July 1, 2012 at 12:01 a.m. for all other fee time
4 share interests then in existence and for which a
5 certificate of title was not recorded in the
6 bureau of conveyances pursuant to chapter 502 and
7 part II of this chapter prior to July 1, 2012; and
8 (4) For all fee time share interests not yet in existence
9 as of July 1, 2012 at 12:01 a.m., the date and time of
10 recordation of the declaration, declaration of
11 annexation, or other document or instrument
12 establishing such fee time share interest."

13 2. By amending the definitions of "deregistered land" and
14 "fee time share interest" to read as follows:

15 "Deregistered land" means [~~land that is the subject of a~~
16 ~~certificate of title recorded pursuant to section 501-261.~~]:

- 17 (1) Land, other than a fee time share interest, that is
18 the subject of a certificate of title recorded
19 pursuant to section 501-261;
20 (2) A fee time share interest that is the subject of a
21 certificate of title recorded in the bureau of

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1 conveyances pursuant to chapter 502 and part II of
2 this chapter prior to July 1, 2012, whether such
3 certificate of title is certified by the assistant
4 registrar on, before, or after July 1, 2012; and

5 (3) All other fee time share interests.

6 "Fee time share interest" means a time share interest,
7 other than a leasehold time share interest, that ~~[consists]~~, at
8 any time on or after July 1, 2011, consists or consisted of, or
9 includes ~~[a present,]~~ or included, an undivided interest in
10 registered land, including but not limited to an undivided
11 interest in one or more fee simple condominium apartments or
12 units established in whole or in part on registered land."

13 SECTION 3. Section 501-71, Hawaii Revised Statutes, is
14 amended by amending subsection (e) to read as follows:

15 "(e) Deregistration pursuant to sections 501-261 to
16 501-269 shall not alter or revoke the conclusive nature or
17 effect of a decree of registration, which shall continue to
18 quiet the title to the deregistered land as to all claims
19 arising prior to the ~~[recording of the certificate of title~~
20 pursuant to section 501-261,] date and time of deregistration of

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1 such land, except claims as would not otherwise be barred under
2 this chapter if the lands were not registered."

3 SECTION 4. Section 501-261, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[f]~~ §501-261 ~~[f]~~ Deregistration of fee interests. (a) The
6 registered owner of the fee interest in registered land may
7 submit a written request to the assistant registrar to
8 deregister the land under this chapter.

9 (1) Any written request for deregistration shall include
10 proof of title insurance in the amount of the value of
11 the land to be deregistered and a written waiver of
12 all claims against the State relating to the title to
13 the land arising after the date of deregistration.

14 (2) Upon presentation to the assistant registrar [~~for~~
15 ~~filing or recording of any instrument, document, or~~
16 ~~paper conveying or encumbering a fee time share~~
17 ~~interest or any interest therein, or upon the] of a
18 written request [under subsection (d) of the] for
19 deregistration by the registered owner of the fee
20 interest in registered land, the assistant registrar
21 shall not register the same, but shall:~~

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1 ~~{1}~~ (A) Record in the bureau of conveyances, pursuant to
2 chapter 502, the current certificate of title for
3 the fee interest in the registered land ~~{or the~~
4 ~~registered land in which the fee time share~~
5 ~~interest includes an undivided interest};~~
6 provided that~~{-~~

7 ~~(A)~~ (A) ~~[Prior]~~ prior thereto, the assistant registrar
8 shall note on the certificate of title all
9 documents and instruments that have been accepted
10 for registration and that have not yet been noted
11 on the certificate of title~~{, and}~~ for the
12 registered land;

13 ~~{(B)}~~ ~~If separate certificates of title have been~~
14 ~~issued for individual fee time share interests in~~
15 ~~the time share plan, the assistant registrar~~
16 ~~shall record in the bureau of conveyances,~~
17 ~~pursuant to chapter 502, the certificate of title~~
18 ~~for each fee time share interest in the time~~
19 ~~share plan;~~

20 ~~{2}~~ (B) Record in the bureau of conveyances, pursuant to
21 chapter 502, the ~~[instrument, document, paper,~~

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1 ex] written request for deregistration presented
2 to the assistant registrar for filing or
3 recording. The [~~instrument, document, paper, or~~]
4 request shall be recorded immediately after the
5 certificate or certificates of title; and

6 [~~(3)~~] (C) Cancel the certificate of title.

7 [~~(b)~~] (3) The registrar or assistant registrar shall note
8 the recordation and cancellation of the certificate of
9 title in the registration book and in the records of
10 the application for registration of the land that is
11 the subject of the certificate of title. The notation
12 shall state the bureau of conveyances document number
13 for the certificate of title so recorded, the
14 certificate of title number, and the land court
15 application number, map number, and lot number for the
16 land that is the subject of the certificate of title
17 so recorded.

18 [~~(e)~~] (4) No order of court shall be required prior to or
19 in connection with the performance of any of the
20 foregoing actions.

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1 ~~[(d) The registered owner of the fee interest in~~
2 ~~registered land may submit a written request to the assistant~~
3 ~~registrar to deregister the land under this chapter. Any written~~
4 ~~request for deregistration shall include proof of title~~
5 ~~insurance in the amount of the value of the land to be~~
6 ~~deregistered and a written waiver of all claims against the~~
7 ~~state relating to the title to the land arising after the date~~
8 ~~of deregistration.]~~

9 (b) The certificate of title for each fee time share
10 interest is cancelled effective as of the date and time of
11 deregistration of such fee time share interest. Notwithstanding
12 the provisions of section 501-261 in existence prior to July 1,
13 2012, a fee time share interest for which a certificate of title
14 was not recorded in the bureau of conveyances pursuant to
15 chapter 502 and part II of this chapter prior to July 1, 2012
16 shall not have been deregistered prior to July 1, 2012 at 12:01
17 a.m.

18 (1) Beginning on July 1, 2012, and continuing for so long
19 as shall be reasonably necessary in the ordinary
20 course of business, the assistant registrar shall:

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1 (A) Note on the certificate of title for each fee
2 time share interest all documents and instruments
3 affecting the fee time share interest:

4 (i) That were or are registered as of a date and
5 time that is prior to the date and time of
6 deregistration of such fee time share interest;
7 and

8 (ii) That were not yet registered and noted on
9 the certificate of title of such fee time share
10 interest as of the date and time of
11 deregistration thereof; and

12 (B) Certify each such certificate of title.

13 (2) Section 501-196 shall apply to a certificate of title
14 updated pursuant to paragraph (1) upon approval of the
15 same by the assistant registrar, which approval shall
16 be evidenced by the certification of the assistant
17 registrar endorsed upon the certificate of title. A
18 certificate of title for a fee time share interest,
19 including but not limited to a certificate of title
20 recorded prior to July 1, 2012 pursuant to part II of
21 this chapter, shall not be considered completed or

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1 approved, and shall be subject to modification by the
2 assistant registrar, at any time prior to
3 certification thereof by the assistant registrar.

4 Subsequent to such certification, the certificate of
5 title for a fee time share interest may only be
6 modified pursuant to section 501-196 or as otherwise
7 provided in this chapter.

8 (3) Upon certification of the certificate of title for a
9 fee time share interest by the assistant registrar,
10 the assistant registrar shall mark the certificate of
11 title "cancelled", note the cancellation of the
12 certificate of title in the registration book, and
13 notify the court of such cancellation. Regardless of
14 the date upon which such administrative acts are
15 performed, the cancellation of the certificate of
16 title for a fee time share interest shall be effective
17 as of the date and time of deregistration of that fee
18 time share interest.

19 (4) If only part of the land described in a single
20 certificate of title consists of a fee time share
21 interest, then upon the petition of the registered

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1 owner of that portion of the registered land not
2 constituting a fee time share interest, a new
3 certificate of title shall be issued to such owner for
4 that portion of the registered land not constituting a
5 fee time share interest. In the event that registered
6 land is held in the condominium form of ownership,
7 then for purposes of this subsection (4) each unit for
8 which a separate certificate of title has been issued
9 shall be treated as if it were a separate parcel of
10 registered land.

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11 (5) Except as provided in paragraph (4), no order of court
12 shall be required prior to or in connection with the
13 performance of any of the foregoing actions."

14 SECTION 5. Section 501-262, Hawaii Revised Statutes, is
15 amended to read as follows:

16 ~~"[f]§501-262[f] Effect of deregistration. (a) [Upon the~~
17 ~~recording in the bureau of conveyances of a certificate of~~
18 ~~title pursuant to section 501-261.]~~ From and after the date and
19 time of deregistration of registered land:

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

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1 (2) No instruments, documents, or papers relating solely
2 to deregistered land shall be filed or recorded with
3 the assistant registrar pursuant to this chapter, but
4 shall instead be recorded in the bureau of conveyances
5 pursuant to chapter 502; and

6 (3) Except as otherwise expressly provided in this
7 chapter, chapter 502 shall apply to the deregistered
8 land.

9 (b) [~~Recordation of a certificate of title~~] Neither
10 voluntary deregistration of land other than a fee time share
11 interest pursuant to section 501-261 nor the mandatory
12 deregistration of any fee time share interest pursuant to part
13 II of this chapter, whether by recordation of a certificate of
14 title in the bureau of conveyances prior to July 1, 2012, or by
15 operation of law thereafter, shall [~~not~~] disturb the effect of
16 any proceedings in the land court where the question of title
17 has been determined. All proceedings had in connection with the
18 registration of title that relate to the settlement or
19 determination of title before [~~that recording,~~] a certificate of
20 title for land other than a fee time share interest is recorded
21 pursuant to section 501-261 or a certificate of title for a fee

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1 time share interest is certified, and all provisions of this
 2 chapter that relate to the status of the title, shall have
 3 continuing force and effect with respect to the period of time
 4 that title remained under the land court system. Those
 5 provisions giving rise to a right of action for compensation
 6 from the State, including any limits on and conditions to the
 7 recovery of compensation and the State's rights of subrogation
 8 with respect thereto, shall also continue in force and effect
 9 with respect to the period of time that title remained under the
 10 land court system."

11 SECTION 6. Section 501-264, Hawaii Revised Statutes, is
 12 amended by amending subsection (a) to read as follows:

13 "(a) A certificate of title recorded pursuant to section
 14 501-261 in the case of land other than a fee time share
 15 interest, or certified by the assistant registrar in the case of
 16 a fee time share interest, shall constitute a new chain of
 17 record title in the registered owner of any estate or interest
 18 as shown on the certificate of title so recorded[~~r~~] or
 19 certified, subject only to the following:

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- 1 (1) The estates, mortgages, liens, charges, instruments,
2 documents, and papers noted on the certificate of
3 title so recorded[?] or certified;
- 4 (2) Liens, claims, or rights arising or existing under the
5 laws or Constitution of the United States, which the
6 statutes of this State cannot require to appear of
7 record in the registry; provided that notices of liens
8 for internal revenue taxes payable to the United
9 States, and certificates affecting the liens, shall be
10 deemed to fall within this paragraph only if the same
11 are recorded in the bureau of conveyances as provided
12 by chapter 505;
- 13 (3) Unpaid real property taxes assessed against the land
14 and improvements covered by the certificate of title
15 as recorded, with interest, penalties, and other
16 additions to the tax, which, unless a notice is filed
17 and registered as provided by county real property tax
18 ordinance, shall be for the period of three years from
19 and after the date on which the lien attached, and if
20 proceedings for the enforcement or foreclosure of the
21 tax lien are brought within the period, until the

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- 1 termination of the proceedings or the completion of
- 2 the tax sale;
- 3 (4) State tax liens, if the same are recorded in the
- 4 bureau of conveyances as provided by section 231-33;
- 5 (5) Any public highway, or any private way laid out under
- 6 the provisions of law, when the certificate of title
- 7 does not state that the boundary of the way has been
- 8 determined;
- 9 (6) Any lease, coupled with occupancy, for a term not
- 10 exceeding one year; provided that the priority of the
- 11 unrecorded lease shall attach only at the date of the
- 12 commencement of the unrecorded lease and expire one
- 13 year from the date or sooner if so expressed;
- 14 (7) Any liability to assessments for betterments, or
- 15 statutory liability that may attach to land as a lien
- 16 prior to or independent of, the recording or
- 17 registering of any paper of the possibility of a lien
- 18 for labor or material furnished in the improvement of
- 19 the land; provided that the priority of any liability
- 20 and the lien therefor (other than for labor and
- 21 material furnished in the improvement of the land,

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1 which shall be governed by section 507-43) shall cease
2 and terminate three years after the liability first
3 accrues unless notice thereof, signed by the officer
4 charged with collection of the assessments or
5 liability, setting forth the amount claimed, the date
6 of accrual, and the land affected, is recorded in the
7 bureau of conveyances pursuant to chapter 502 within
8 the three-year period; and provided further that if
9 there are easements or other rights, appurtenant to a
10 parcel of deregistered land, which for any reason have
11 failed to be deregistered, the easements or rights
12 shall remain so appurtenant notwithstanding the
13 failure, and shall be held to pass with the
14 deregistered land until cut off or extinguished in any
15 lawful manner;
16 (8) The possibility of reversal or vacation of the decree
17 of registration upon appeal;
18 (9) Any encumbrance not required to be registered as
19 provided in sections 501-241 to 501-248 and relating
20 to a leasehold time share interest or leasehold
21 interest in deregistered land; and

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1 (10) Child support liens that are created pursuant to order
2 or judgment filed through judicial or administrative
3 proceeding in this State or in any other state, the
4 recording of which shall be as provided by chapter
5 576D."

6 SECTION 7. Section 502-33, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§502-33 Identification of reference to registration of
9 original. [The] (a) If the owner of a fee time share interest
10 acquired title thereto pursuant to a deed or other instrument
11 filed or recorded in the land court pursuant to chapter 501,
12 then the registrar need not accept for recording any deed,
13 mortgage, or other voluntary instrument purporting to convey or
14 affect title to such fee time share interest unless such deed,
15 mortgage, or other voluntary instrument contains a reference to
16 the certificate of title number by which the owner of such fee
17 time share interest acquired title thereto. The term "fee time
18 share interest" has the meaning ascribed to it in section
19 501-20.

20 (b) Except as otherwise provided in subsection (a), the
21 registrar shall not record any instrument requiring a reference

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1 to a prior recorded instrument, unless the same contains a
2 reference to the book and page or document number of the
3 registration of the original recorded instrument or a statement
4 that the original instrument is unrecorded, as the case may be.
5 Except as otherwise provided, every judgment shall contain or
6 have endorsed on it the State of Hawaii general excise taxpayer
7 identification number, the federal employer identification
8 number, or the last four digits only of the social security
9 number for persons, corporations, partnerships, or other
10 entities against whom the judgment is rendered. If the judgment
11 debtor has no social security number, State of Hawaii general
12 excise taxpayer identification number, or federal employer
13 identification number, or if that information is not in the
14 possession of the party seeking registration of the judgment,
15 the judgment shall be accompanied by a certificate that provides
16 that the information does not exist or is not in the possession
17 of the party seeking registration of the judgment. Failure to
18 disclose or disclosure of an incorrect social security number,
19 State of Hawaii general excise taxpayer identification number,
20 or federal employer identification number shall not in any way
21 adversely affect or impair the lien created upon registration of

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1 the judgment. No amendment, continuation statement, termination
 2 statement, statement of assignment, or statement of release
 3 relating to security interests in goods which are or are to
 4 become fixtures shall be filed unless it complies with the
 5 requirements of part 5 of Article 9 of the Uniform Commercial
 6 Code. This section does not apply to any document mentioned
 7 herein executed prior to April 13, 1915.

8 The party seeking registration of a judgment shall redact
 9 the first five digits of any social security number by blocking
 10 the numbers out on the copy of the judgment to be filed or
 11 recorded."

12 SECTION 8. Section 657-33.5, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 ~~[H]§657-33.5{}~~ Deregistered land. In no event shall the
 15 period of limitations provided in this part begin prior to the
 16 ~~[recording of the certificate of title]~~ date and time of
 17 deregistration for deregistered land. The terms "date and time
 18 of deregistration" and "deregistered land" have the meanings
 19 ascribed to them in section 501-20."

20 SECTION 9. Statutory material to be repealed is bracketed
 21 and stricken. New statutory material is underscored.

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1 SECTION 10. This Act shall take effect on July 1, 2012.