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March 30, 2012

Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair  
Members of the Committee on Finance  
Twenty-Sixth Legislature  
Regular Session, 2012

Re: S.B. 2632, S.D.1  
Hearing on April 2, 2012, 2:00 p.m.  
Conference Room 308

Dear Chair, Vice-Chair and Members of the Committee:


My name is Charles Pear. I represent SVO Pacific, Inc., a Florida corporation. It is a wholly owned subsidiary of Starwood Vacation Ownership, the time share arm of Starwood Hotels and Resorts Worldwide, Inc. It is the developer of various Westin and Sheraton time share plans, including the Westin Ka'anapali Ocean Resort Villas (on Maui), the Westin Ka'anapali Ocean Resort Villas North (also on Maui) and the Westin Princeville Ocean Resort Villas (on Kauai).

SVO Pacific, Inc. supports the bill with certain amendments to be proposed by the American Resort Developers Association ("ARDA").

We have been working with an *ad hoc* Land Court Working Group formed for the purpose of reviewing and revising this bill. The group consisted of representatives of the Bureau, the Judiciary, the Hawaii Land Title Association, and the undersigned on behalf of SVO Pacific, Inc., a constituent member of ARDA. After many drafts, the members of the group appear to have settled on a proposed HD1, a copy of which is attached for your convenience.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Charles E. Pear, Jr.

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# 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.

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)~~ ~~[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           ~~er~~] 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 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       "~~+~~§501-262~~+~~ **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;

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

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[7] or  
19 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 ~~[recordation 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.

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