

SB 2632

Measure Title: RELATING TO FEE TIME SHARE INTERESTS.

Report Title: Fee Time Share Interests; Land Court; Bureau of Conveyances; Deregistration

Description: Permits all fee time share interests to be recorded in the regular system rather than the land court. Removes requirement that land court update certificates of title for individual fee time share interests as a condition to deregistration. Allows bureau of conveyances to charge a fee for each recording in the bureau of conveyances and in the office of the assistant registrar of the land court for services rendered by the bureau of conveyances for two years.

Companion:

Package: None

Current Referral: CPN/JDL, WAM

Introducer(s): BAKER, DELA CRUZ, TOKUDA

Sort by Date		Status Text
1/25/2012	S	Introduced.
1/25/2012	S	Passed First Reading.
1/25/2012	S	Referred to WLH/CPN/JDL, WAM.
1/27/2012	S	Re-Referred to CPN/JDL, WAM.
1/30/2012	S	The committee(s) on CPN/JDL has scheduled a public hearing on 02-07-12 9:20AM in conference room 229.

javascript: doPostBack('ctl00\$ContentPlaceHolderCol1\$LinkButtonMeasure', '')

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
COMMERCE AND CONSUMER PROTECTION
and
JUDICIARY AND LABOR**

**Tuesday, February 7, 2012
9:20 A.M.
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 2632
RELATING TO FEE TIME SHARE INTERESTS**

Senate Bill 2632 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. Last, this bill allows the Bureau to charge a transaction fee for recording in the Bureau and the Office of the Assistant Registrar of the Land Court. While the Department of Land and Natural Resources supports the intent of this bill, the Department would however prefer to have language changed to state specific recording fees in the Bureau and the Office of the Assistant Registrar of the Land Court.

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 the deregistration by offering a date that all fee time share interests would be deemed deregistered from Land Court. This action would assist the Bureau in easing the backlog certifying Land Court documents. Further, this measure allows the Bureau to add a transaction fee for recording documents.

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

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

CHARLES E. PEAR, JR.

DIRECT #:
PHONE - (808) 223-1212
FAX - (808) 535-8029
E-MAIL - PEAR@M4LAW.COM

February 3, 2012

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Members of the Committee on Commerce
And Consumer Protection
Twenty-Sixth Legislature
Regular Session, 2012

Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Members of the Committee on Judiciary
And Labor
Twenty-Sixth Legislature
Regular Session, 2012

Re: S.B. 2632
Hearing on February 7, 2012, 9:20 a.m.
Conference Room 229

Dear Chairs, Vice-Chairs and Members of the Committees:

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.

I. **Background.**

The Hawai'i Land Court Act was adopted in 1903. It provided a means to establish clear title to a parcel of land through a court proceeding. Essentially, the court determined the lawful owner of a parcel of real estate, and then issued a certificate of title to that owner. From then on, no encumbrance would affect the title unless it was filed in the Land Court and noted on the certificate of title. Likewise, a deed was not effective to convey title unless it was filed in the Land Court. Upon filing a deed, the Land Court would cancel the old certificate of title and issue a new one to the new owner.

The Land Court system served its intended purpose very well. At the time that the law was adopted, however, there were no condominiums and no time share projects.

The introduction of condominium projects posed certain new issues for the Land Court. In time, a workable system for dealing with Land Court condominiums developed. That system involved bending some of the statutory requirements, and problems continued to surface from time to time.

P. O. Box 2800 • Honolulu, Hawai'i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293 • E-mail: info@m4law.com

Chairs, Vice-Chairs and Members, Senate Committees on
Commerce & Consumer Protection, and Judiciary and Labor
February 3, 2012
Page 2

For example, Section 514A-11 of the Condominium Property Act required that the Bureau of Conveyances establish recording procedures for condominium projects. It provided, and still provides, that "land court certificates of title shall not be issued for apartments."

Despite this, the Land Court has issued separate certificates of title for fee simple condominium apartments.¹ The Land Court probably found it impractical to do otherwise. If a single certificate of title covered all units in, say, a 200 unit condominium, then each owner's interest would have to be noted on a single certificate of title. Each mortgage of an apartment would also have to be noted.

The Land Court's practice of issuing individual certificates of title to each unit owner was a practical, if not entirely authorized response to the problem. It has worked effectively for fee simple condominiums.

In the case of leasehold condominiums, however, a single certificate of title still is issued to the lessor for the entire project. The interest of individual apartment lessees is noted on the certificate of title. No doubt this has proven to be a cumbersome process.

In the 1970's, time sharing showed up on the scene. Some of these time share plans were established in leasehold condominiums. A time share plan may divide the ownership of an individual condominium apartment among 50 or more owners. The result was that the certificate of title for a 200 unit leasehold condominium would now reflect not 200 lessees, but perhaps 10,000 lessees.

After struggling with this for nearly two decades, the Land Court initiated a legislative solution. On behalf of the Land Court, I prepared a bill that provided that all conveyances of leasehold time share interests would be recorded in the "regular system", and that such conveyances would not be noted on the certificate of title. That bill was adopted as Act 219, S.L.H. 1998, and took effect in 1999.

At that point, similar concerns were arising with respect to fee simple time share projects. For example, at about that time, construction began on a time share project, consisting of perhaps 750 units. It is not a condominium. Instead, as I understand it, each purchaser receives an undivided interest in the whole project. If so, there may be perhaps as many as 50,000 co-owners of the land.

¹ Technically, the Land Court issued separate certificates of title for the undivided interest appurtenant to each condominium unit, instead of issuing the certificate of title for the unit itself. The practical effect is that separate certificates were issued with respect to each unit.

Chairs, Vice-Chairs and Members, Senate Committees on
Commerce & Consumer Protection, and Judiciary and Labor
February 3, 2012
Page 3

The Land Court Act provides that when property is owned by two or more co-owners, a single certificate of title will be issued showing the interest of all co-owners.² Upon a conveyance, the Land Court must cancel the existing certificate of title and issue a new one showing the interest of each owner.³

In the project described above, sales are taking place daily. In this context, the existing law might literally require that the Land Court cancel and issue new certificates of title daily.

Following its practical bent toward solving such problems, the Land Court simply began issuing individual certificates of title for each time share interests. Despite this effort, however, various problems remained.

For example, when the declaration for a time share plan is amended, the amendment must be noted on each certificate of title. The Land Court requires that it be provided a list showing all owners and their certificate of title number. In the case of one project, this required a title search for the records of some 12,000 owners. This was a costly and time-consuming process. Moreover, by the time that such a search is completed, additional sales and resales have taken place such that the list is no longer accurate.

In 2002 and 2003, I prepared various drafts of legislation that would effectively withdraw fee simple time share interests from the operation of the Land Court Act. In 2009, a variation of that legislation passed and was enacted as Act 120, 2009 S.L.H. The Act took effect on July 1, 2011.

Act 120 was patterned on legislation adopted in certain other states that terminated their equivalent of the Land Court. It provides that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the Land Court will not file the same in the Land Court. Instead, it provides that the assistant registrar of the Land Court must:

1. Update the certificate of title for all fee time share interests in the time share plan;
2. Record *in the regular system* the updated certificate of title for each fee time share interest in the time share plan;
3. Record *in the regular system* the deed or *other* instrument; and

² Section 501-84 provides: Where two or more persons are registered owners under any tenancy, one certificate shall be issued for the whole land. Any conveyance of fee simple interest in registered land shall be recorded with the assistant registrar, who shall note the same on the certificate, cancel all the certificates affecting the whole land, and issue a new certificate to reflect all the owners of the whole land.

³ See the second sentence in the preceding footnote.

Chairs, Vice-Chairs and Members, Senate Committees on
Commerce & Consumer Protection, and Judiciary and Labor
February 3, 2012
Page 4

4. Cancel the certificate of title for *each* fee time share interest in the time share plan.

Upon recordation of the certificate of title for a fee time share interest, that time share interest is no longer subject to chapter 501, HRS (the Land Court Act). From then on, all deeds and other instruments affecting the fee time share interest must be recorded in the regular system instead of in the Land Court. This process is referred to as "deregistration" of the time share interests.

At the time when Act 120 was drafted, I believe that the Land Court was approximately nine months behind in issuing certificates of title. By that, I mean that if a deed was recorded in the Land Court on January 1, the certificate of title would not be finalized until about September 1. While this may seem like an extended period, in fact the Land Court had previously suffered considerably longer delays and it appeared at the time that the Land Court was well on its way to catching up.

As we all know, however, a historic boom in the real estate industry occurred in the middle of the decade. By the time that Act 120 passed in 2009, the delay between recording a deed and issuing a certificate of title was now approximately three years. Moreover, timesharing had enjoyed a concurrent boom with the result that large numbers of deeds of fee time share interests were recorded between 2002 and 2009.

In short, when Act 120 took effect in July, 2011, the Land Court staff was faced with the virtually impossible task of updating the certificates of title for huge numbers fee time share interests – possibly in excess of 100,000 – within a period of just a few days after the effective date of that Act. Since Act 120 calls for deregistration of all time share interests in a time share plan upon presentation of a deed or other instrument affecting any of them, the Land Court was simply unable to implement the legislation as written.

This bill is intended to alleviate the problem currently faced by the Land Court. It does so by simply declaring that all fee time share interests are no longer subject to the Land Court Act. This occurs automatically for all fee time share interests and does not require that the Land Court update the certificates of title as a condition to deregistration. Conceptually, it is somewhat similar to the provisions Act 219, S.L.H.1998, which simply declared that henceforth, conveyances of leasehold time share interests would be recorded in the regular system instead of in the Land Court. Act 219 appears to have worked successfully to shift recording of transfers of leasehold time share interests from the Land Court to the regular system. While there are important differences between leasehold and fee time share interests, it seems likely that the concepts of Act 219 might successfully be adapted to use in the context of fee time share interests, thereby reducing the enormous pressure on the Land Court.

Chairs, Vice-Chairs and Members, Senate Committees on
Commerce & Consumer Protection, and Judiciary and Labor
February 3, 2012
Page 5

II. Specific Issues.

A. Title of SB 2632.

SB 2632 is entitled "Relating to Fee Time Share Interests." Accordingly, the content of the bill must relate to fee time share interests. In that regard, we note the following:

Section 2 of the bill revises certain definitions. As previously noted, the existing law provides for recording a certificate of title for fee time share interests. The bill contemplates that this will no longer be the case. Accordingly, the definition of "deregistered land" is being revised to reflect that fact.

The existing law also permits voluntary deregistration of Land Court lands not comprised of fee time share interests. Voluntary registrations are still accomplished by recording a certificate of title in the bureau of conveyances. As a result the definition of "deregistered land" must continue to provide for recording a certificate of title in connection with the voluntarily deregistered of land. The proposed definition does so.

The definition of leasehold time share interests is also proposed to be amended. This is intended to clarify the distinction between a fee time share interest and a leasehold time share interest in the context of a deeded estate for years so that the provisions dealing with fee time share interests will be applied only to the property for which they are intended to apply.

Section 3 of the bill splits the existing deregistration provisions into two subsections.

1. The first subsection is intended to preserve the existing law pertaining to the voluntary deregistration of property not comprised of fee time share interests. Essentially, we have deleted the portions of the existing law pertaining to fee time share interests and put them in a separate subsection.

Because the title of the bill is limited to fee time share interests, however, it may be necessary to revise the bill to delete the second sentence of subsection (a)(1). That sentence deals with the manner of establishing the value of land to be voluntarily deregistered and probably cannot pass constitutional muster.

2. The second subsection contains the provisions dealing with fee time share interests.

The changes to Sections 3, 4, and 5 of the bill are intended to reflect that a certificate of title will continue to be recorded in the bureau of conveyances for voluntary deregistrations but not in the case of mandatory deregistrations of fee time share interests. Accordingly, they would appear to have a sufficient nexus to the title of the bill.

Chairs, Vice-Chairs and Members, Senate Committees on
Commerce & Consumer Protection, and Judiciary and Labor
February 3, 2012
Page 6

Section 6 of the bill provides for the imposition of a transaction fee for a two-year period. Since Act 120 took effect on July 1, 2011, the bureau of conveyances has been charging a fee to record the certificates of title for fee time share interests that have been deregistered. The changes in the procedures proposed in S.B. 2632 will mean that the bureau of conveyances will no longer collect a fee for recording the certificates of title for fee time share interests. To offset this loss of revenue, S.B. 2632 provides for a temporary increase in recording fees by way of imposing a "transaction fee." We recommend that the Office of the Attorney General be consulted on whether these circumstances provide a sufficient nexus with the title of S.B. 2632 to pass constitutional muster.

B. Technical Revisions.

We recommend that various technical revisions be made to the bill. For example, it may be advisable:

- ❖ To modify proposed Section 501-261(b)(3) to clarify that the cancellation of the certificate of title for a fee time share interest shall take effect as of July 1, 2012, notwithstanding the fact that the administrative act of cancellation may take place subsequently;
- ❖ To recognize that some fee time share interests have already been deregistered; and
- ❖ To address any uncertainty with respect to fee time share interests that should have been deregistered pursuant to Act 120 but that have not yet been fully deregistered.

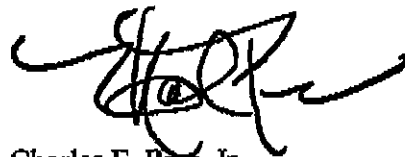
We have been preparing a draft incorporating recommended revisions and would be happy to share it with you should you be inclined to pursue them.

* * *

Please do not hesitate to contact us should you have any questions regarding the foregoing or wish to discuss in detail any of the above.

Very Truly Yours,

McCORRISTON MILLER MUKAI MACKINNON LLP



Charles E. Peat, Jr.



February 6, 2012

TO: SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

FROM: Daniel Dinell
ARDA- Hawaii, Chair

RE: S.B. 2632, Relating to Fee Time Share Interests

Dear Chairs Baker and Hee, and members of the Joint 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 12% of the visitor units throughout the state.

ARDA Hawaii supports S.B. 2632 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.

S.B. 2632 is intended to eliminate this problem by removing all fee time share interests from the land court effective as of July 1, 2012. It eliminates the requirement to update or record the certificates of title prior to such removal.

S.B. 2632 also provides for a temporary increase in recording fees. We understand that the bureau of conveyances intends to increase the recording fees in the future. This temporary increase is intended to maintain the solvency of the bureau until the new fees can take affect.

Thank you for the opportunity to submit these comments.

"Timeshare With Aloha"

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM
GARY M. SLOVIN
MIHOKO E. ITO
CHRISTINE OGAWA KARAMATSU
ANNE T. HORIUCHI

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
meito@goodsill.com
ckaramatsu@goodsill.com
ahoriuchi@goodsill.com

TO: Senator Rosalyn H. Baker
Chair, Committee on Commerce and Consumer Protection
Senator Clayton Hee
Chair, Committee on Judiciary and Labor

Via Email: CPNtestimony@capitol.hawaii.gov

FROM: Gary M. Slovin / Mihoko E. Ito
DATE: February 4, 2012
RE: **S.B. No. 2632 – Relating to Fee Time Share Interests**
Hearing: February 7, 2012 at 9:20 a.m.
Conference Room 229

Dear Chairs Baker and Hee and Members of the Committees:

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, Relating to Fee Time Share Interests, which would permit all fee time share interests to be recorded in the regular system rather than the Land Court. The bill would remove the present requirement that the Land Court update certificates of title for individual fee time share interests as a condition to deregistration. The bill would also allow the Bureau of Conveyances to charge a fee for each recordation with the Bureau and in the office of the Assistant Registrar of the Land Court for services rendered by the Bureau for two years. S.B. 2632 is intended to streamline the present procedures and address the present backlog.

In 2009, the Legislature passed Act 120 to take care of the backlog in Land Court recordings and registrations. 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 with the Bureau. However, this effort has exceeded the capacity of the Land Court.

February 4, 2012
Page 2

S.B. 2632 is intended to eliminate this problem by removing all fee time share interests from the Land Court as of July 1, 2012. It eliminates the requirement that the assistant registrar updates or record the certificates of title prior to such removal.

In addition, since Act 120 took effect, the Bureau of Conveyances has been charging a fee to record the certificates of title. The changes in the procedures under S.B. 2632 will mean that the Bureau of Conveyances will no longer collect a fee for recording certificates of title. To address this, S.B. 2632 provides for a temporary increase in recording fees across the board. We have been advised that the Bureau intends to increase recording fees by a change to the applicable rules. The temporary increase in the bill is intended to maintain the solvency of the Bureau, until these new rules can be adopted.

Wyndham appreciates the opportunity to testify on this matter and supports the passage of S.B. 2632.

February 6, 2012

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Members of the Committee on Commerce
and Consumer Protection
Twenty-Sixth Legislature
Regular Session, 2012

Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Members of the Committee on Judiciary
and Labor
Twenty-Sixth Legislature
Regular Session, 2012

Re: S.B. 2632
Hearing on February 7, 2012, 9:20 a.m.
Conference Room 229

Dear Chairs, Vice-Chairs and Members of the Committees:

My name is Ann Baran. I am the Senior Director of Resort Operations for Trading Places International, the managing agent for the Maui Schooner Resort.

I support the bill.

S.B. 2632 is intended to streamline the removal of fee simple time share interests from the land court system.

In 2009, the Legislature passed Act 120. Act 120 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 existing at the time when Act 120 took effect.

S.B. 2632 is intended to eliminate this problem by removing all fee time share interests from the land court effective as of July 1, 2012. It eliminates the requirement of Act 120 for the assistant registrar to update or record the certificates of title prior to such removal.

Since Act 120 took effect, the bureau of conveyances has been charging a fee to record the certificates of title. The changes in the procedures under S.B. 2632 will mean that the bureau of conveyances will no longer collect a fee for recording the certificates of title. To offset this, S.B. 2632 provides for a temporary increase in recording fees across the board. We

understand that the bureau of conveyances intends to increase the recording fees by a change to the applicable rules. This temporary increase is intended to maintain the solvency of the bureau until the new rules can be adopted.

Thank you for the opportunity to testify before you today.

Sincerely,

Ann Bauson