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Via email and facsimile

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Members of the Committee on Ways and Means
Twenty-Sixth Legislature
Regular Session, 2012

Re: S.B. 2632
Hearing on February 24, 2012, 9:00 a.m.
Conference Room 211

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.

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.

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.

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

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[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.

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 "deregisration" 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 *prior to* deregistration. Instead, the Land Court will update the certificates of title as and when it can, and then record them in the regular system. However, the fee time share interests will be deregistered as of July 1, 2012 regardless of the date when the certificates of title are recorded. This is intended to alleviate the immediate pressure to update the certificates of title on the assistant registrar of the Land Court while also preserving the integrity of the Land Court system.

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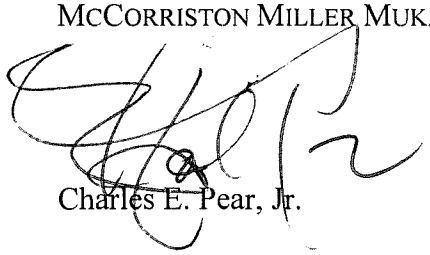
Please do not hesitate to contact us should you have any questions regarding the foregoing or wish to discuss in detail any of the above.

Very Truly Yours,

McCORRISTON MILLER MUKAI MacKINNON LLP



Charles E. Pear, Jr.

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