

McCORRISTON MILLER MUKAI MACKINNON LLP

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March 20, 2013

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Members of the Senate Committee on Ways and Means
Twenty-Seventh Legislature
Regular Session, 2013

Re: H.B. 424, H.D.1, S.D.1
Hearing on Friday, March 22, 2013, 9:00 a.m.
Conference Room 211

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

My name is Charles Pear. I am a partner with McCorriston Miller Mukai MacKinnon. I was the Editor-in-Chief of the Hawai'i Conveyance Manual II and have personally worked on thousands of deeds, leasehold assignments, mortgages and other recordable documents in Hawai'i. I have also worked with the State and other interested parties in revising Hawai'i's Land Court recording system.

I am present today on behalf of Disney Vacation Development, Inc., a Florida corporation ("DVD"). It is the time share arm of the Walt Disney family of companies.

DVD supports the bill.

Currently, deeds signed outside of the United States must go through a cumbersome, and sometimes expensive, process in order to be recorded in Hawai'i. This can prove to be a detriment to Hawai'i property and business. H.B. 424 provides for a person to be appointed as a Commissioner of Deeds, who can authenticate such a document if it is deemed that sufficient assurances exist to reasonably validate the authenticity of the document.

To fulfill this goal, the bill proposes that the State of Hawai'i revive its commissioner of deeds law, formerly Chapter 503, HRS, and limit its application to authentication of documents relating to Hawai'i timeshare plans. This limited application will benefit our visitor industry that continues to drive our economic recovery, while minimizing any risk that may exist with broader use.

Florida has adopted a similar law providing for appointment of commissioners of deeds for Florida timeshare plans. The Florida law is very short. A copy is attached as Exhibit A.

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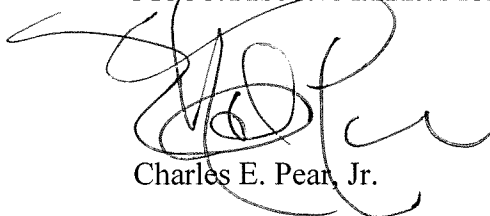
Chair, Vice-Chair and Members,
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Page 2

HRS Chapter 503 is somewhat longer. A copy is attached as Exhibit B. This bill was substantially patterned after HRS Chapter 503, with several updates.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

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Charles E. Peat, Jr.

EXHIBIT A

FLORIDA COMMISSIONER OF DEEDS LAW

721.96 Purpose.—The purpose of this part is to provide for the appointment of commissioners of deeds to take acknowledgments, proofs of execution, and oaths outside the United States in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other agreement, instrument or writing concerning, relating to, or to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state.

History.—s. 14, ch. 98-36; s. 31, ch. 2004-279.

721.97 Timeshare commissioner of deeds.—

(1) The Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states. The term of office is 4 years. Commissioners of deeds shall have authority to take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States. Such acknowledgments, proofs of execution, and oaths must be taken or made in the manner directed by the laws of this state, including but not limited to s. 117.05(4), (5)(a), and (6), Florida Statutes 1997, and certified by a commissioner of deeds. The certification must be endorsed on or annexed to the instrument or writing aforesaid and has the same effect as if made or taken by a notary public licensed in this state.

(2) Any person seeking to be appointed a commissioner of deeds must take and subscribe to an oath, before a notary public in this state or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of such commissioner of deeds. The oath must be filed with the Department of State prior to the person being commissioned.

(3) Official acts performed by any previously appointed commissioners of deeds, between May 30, 1997, and the effective date of this part, are declared valid as though such official acts were performed in accordance with and under the authority of this part.

History.—s. 14, ch. 98-36; s. 18, ch. 98-322; s. 32, ch. 2004-279; s. 13, ch. 2007-75.

721.98 Powers of the division.—The division has no duty or authority to regulate, enforce, or ensure compliance with any provision of this part.

History.—s. 14, ch. 98-36.

EXHIBIT B

503-I

**PROPERTY
CHAPTER 503
COMMISSIONERS OF DEEDS**

SECTION

- 503-1 APPOINTMENT
- 503-2 OATH AND SEAL
- 503-3 POWERS; CHARGES
- 503-4 RECORDS; WHAT SAME SHALL CONTAIN
- 503-5 INSTRUCTIONS TO
- 503-6 CONSTRUCTION OF STATUTES

§503-1 Appointment. The governor may appoint commissioners in the states and territories of the United States, and one or more commissioners in every foreign country, who shall hold office for three years from the date of their respective appointments, unless removed by the governor. [L 1915, c 111, §1; RL 1925, §3184; RL 1935, §5170; RL 1945, §12770; RL 1955, §344-1; HRS §503-1]

§503-2 Oath and seal. A commissioner who is appointed for a state or territory of the United States shall, within three months after the commissioner's appointment, take and subscribe an oath before a justice of the peace or other magistrate of the city or county where the commissioner resides, or before a clerk of a court of record within the state or territory where the commissioner resides, faithfully to perform the duties of the commissioner's office, and shall cause an official seal to be prepared upon which shall appear the commissioner's name, the words: "Commissioner for Hawaii," and the name of the state or territory and city or county in which the commissioner resides. A commissioner who is appointed for a foreign country shall, before performing any duty of the commissioner's office, take and subscribe an oath before a judge or clerk of a court of record of the country in which the commissioner resides or before an ambassador, minister, or consul of the United States appointed to reside in such country, faithfully to perform the duties of the commissioner's office. In each case, a certificate of the commissioner's oath of office and the commissioner's signature and an impression of the commissioner's official seal shall be forthwith transmitted to and filed in the office of the lieutenant governor. [L 1915, c 111, §2; RL 1925, §3185; RL 1935, §5171; RL 1945, §12771; RL 1955, §344-2; am L Sp 1959 2d, c 1, §9; HRS §503-2; am imp L 1984, c 90, §1]

§503-3 Powers; charges. A commissioner may, in the state, territory, or country for which the commissioner is appointed, administer oaths and take depositions, affidavits, and acknowledgments of deeds and other instruments to be used or recorded in the State, and the proof of such deeds, if the grantor refuses to acknowledge the same, which shall be certified by the commissioner under the commissioner's official seal. Charges made by commissioners for services rendered shall be at the rates authorized by statute for similar services rendered by notaries within the jurisdiction in which the services are performed. Duly certified records of the acts performed by a commissioner have the same force and effect as if performed by a notary within the State. [L 1915, c 111, §3; RL 1925, §3186; RL 1935, §5172; RL 1945, §12772; RL 1955, §344-3; HRS §503-3; am imp L 1984, c 90, §1]

Cross References

Commissioners' charges, taxation as costs, see note to §624-35.

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FEDERAL TAX LIEN REGISTRATION

503-1

Rules of Court

Persons before whom depositions may be taken, see HRCF rule 28.

§503-4 Records; what same shall contain. Each commissioner so appointed besides the certificate of acknowledgment endorsed upon the instrument, shall keep a record of every acknowledgment, oath, deposition, and affidavit in a book of records. Each record shall set forth at least the date of acknowledgment, the parties to the instrument, the persons acknowledging, the date, and some memorandum as to the nature of the instrument acknowledged; and, as to oaths, depositions, and affidavits, the name or names of the party or parties making the same, the date and nature of the instrument and date of administering the oath. [L 1915, c 111, §4; RL 1925, §3187; RL 1935, §5173; RL 1945, §12773; RL 1955, §344-4; HRS §503-4]

§503-5 Instructions to. The lieutenant governor shall prepare and forward to each commissioner instructions and forms in conformity with law, and a copy of sections 503-1 to 503-4. [L 1915, c 111, §5; RL 1925, §3188; RL 1935, §5174; RL 1945, §12774; RL 1955, §344-5; am L Sp 1959 2d, c 1, §9; HRS §503-5]

§503-6 Construction of statutes. This chapter shall not be construed as repealing or amending chapter 502. [L 1915, c 111, §6; RL 1925, §3189; RL 1935, §5175; RL 1945, §12775; RL 1955, §344-6; HRS §503-6]

CHAPTER 504 FEDERAL JUDGMENT REGISTRATION

SECTION

504-1 REGISTRATION OF FEDERAL JUDGMENTS

§504-1 Registration of federal judgments. Judgments of United States courts may be registered, recorded, docketed, and indexed in the bureau of conveyances or with the assistant registrar of the land court in the same manner as judgments of the courts of the State. [L 1951, c 295, §1; RL 1955, §347-1; HRS §504-1]

Case Notes

Prior law, see 161 F. 303.

CHAPTER 505 UNIFORM FEDERAL TAX LIEN REGISTRATION ACT(MODIFIED)

SECTION

- 505-1 NOTICES FILED WHERE
- 505-2 INDEX OF LIENS
- 505-3 CERTIFICATES OF RELEASE
- 505-4 FEES

§505-1 Notices filed where. Notices of liens for internal revenue taxes payable to the United States and certificates of release or of partial discharge of such liens may be recorded in the bureau of conveyances. [L 1931, c 220, §1; RL

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

My name is Charles Pear. I am a partner with McCorriston Miller Mukai MacKinnon. 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 supports the bill.

Deeds of timeshare interests in Hawai'i timeshare plans must be notarized in order to be recordable. Typically, this is not a problem for deeds signed in Hawai'i or in other states. However it can pose a problem in jurisdictions outside of the U.S. in which notary publics are not common.

For example, California has a population of about 37 million people and about 170,000 notaries. In contrast, Japan has a population of about 127 million people, but only about 550 notaries. While Hawai'i timeshare projects have proven popular in Japan, dealing with the notary issues has proven cumbersome

This bill revives former chapter 503, HRS, which grants the Governor the authority to appoint "Commissioners of Deeds". Commissioners of Deeds would have the authority to acknowledge execution of timeshare conveyance documents (e.g., deeds, mortgages, etc.) for Hawai'i timeshares outside the United States (e.g., in foreign countries and international waters).

The bill would allow timeshare developers to expeditiously close on the sale of Hawai'i timeshare interests sold in other countries and in international waters (e.g., cruise ships). By

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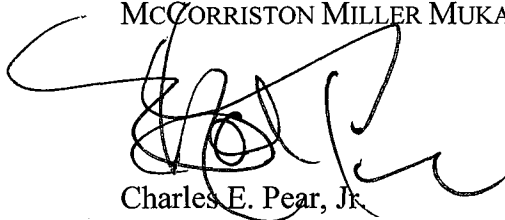
making it easier to sell and close on Hawai'i timeshares in foreign jurisdictions, the State of Hawai'i will potentially benefit from increased foreign tourist dollars

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§505-1 Notices filed where. Notices of liens for internal revenue taxes payable to the United States and certificates of release or of partial discharge of such liens may be recorded in the bureau of conveyances. [L 1931, c 220, §1; RL