

SB2477



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

and

Senate Committee on Commerce and Consumer Protection

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, vice Chair

Tuesday, February 11, 2014, 9:31 a.m.
State Capitol, Conference Room 229

by

Calvin Ching
Deputy Chief Court Administrator
First Circuit

Bill No. and Title: Senate Bill No. 2477, Relating to Land Court.

Purpose: Authorizes the use of a master certificate of title for common interest communities to simplify and streamline the operation of the land court.

Judiciary's Position:

The Judiciary respectfully takes no position on Senate Bill No. 2477, however would like to provide comments. Under the current land court system, any amendments to documents governing a condominium or planned community must be noted on the certificate of title for each unit. This is to ensure that there is continuous chain of title.

This Judiciary would like point to a number of issues which are of concern:

1. Senate Bill No. 2477 creates confusion in the undivided interest for condominium units should the undivided interest change for units;



Senate Bill No. 2447, Relating to Land Court
Senate Committee on Judiciary and Labor
Senate Committee on Commerce and Consumer Protection
Tuesday, February 11, 2014
Page 2

2. Section 2, subsection (c) states that the association of a common interest may petition the court for issuance of a master certificate of title however, it is not clear what court would approve a petition and what that process would be.

Although the Judiciary does not take a position on the policy decision, in lieu of adding a new section, HRS§ 501-75 should be amended to add a (a) New Transfer Certificate of Title to identify the project name Homeowners.

Thank you for the opportunity to testify on Senate Bill No. 2477.

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February 10, 2014

Sen. Clayton Hee, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair
Members of the Committee on Judiciary and Labor
Twenty-Seventh Legislature
Regular Session, 2014

Sen. Rosalyn H. Baker, Chair
Sen. Brian T. Taniguchi, Vice Chair
Members of the Committee on Commerce
and Consumer Protection
Twenty-Seventh Legislature
Regular Session, 2014

Re: S.B. 2477
Hearing on February 11, 2014, 9:31 a.m.
Conference Room 229

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

My name is Charles Pear. I am a partner at McCorrison Miller Mukai MacKinnon. Intermittently over the past 15 years or so I have been working with the Bureau of Conveyances to streamline recordings of Land Court property. Some of this work has been done on behalf of my clients and other work (as with today) on a pro bono basis.

I support the bill.

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.

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.

Chair, Vice-Chair and Members,
Senate Committee on Judiciary and Labor
Senate Committee on Commerce and Consumer Protection
February 10, 2014
Page 2

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 generally worked effectively for condominiums.

When the declaration for a condominium is amended, however, the amendment must be noted on the certificate of title for each unit. The Land Court requires that it be provided a list showing all owners and their certificate of title number. In some cases, this may require a title search for hundreds of condominium units. This is a costly and time-consuming process. Moreover, by the time that such a search is completed, additional sales and resales may have taken place such that the list is no longer accurate.

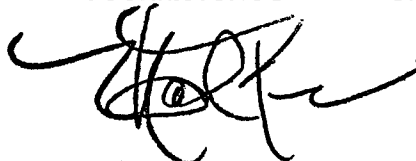
This bill will authorize the use of a master certificate of title. The condominium documents for a condominium project will be noted on the master certificate of title. The certificates of title for each of the individual condominium units will simply cross reference the master certificate.

Under this system, when the declaration for a condominium is amended, the amendment need only be noted on the master certificate of title. It will no longer be necessary to note the amendment on the certificate of title for each individual unit. This will save a great deal of time and effort, both for property owners and the State of Hawaii.

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 some small assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', with a stylized flourish extending to the right.

Charles E. Pear, Jr.