

JAN 22 2016

A BILL FOR AN ACT

RELATING TO LAND COURT REGISTRATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 501, Hawaii Revised Statutes, is
2 amended by amending part I, subpart entitled "Leasehold Time
3 Share Interests", to read as follows:

4 "LEASEHOLD [~~TIME SHARE~~] INTERESTS

5 §501-240 Definitions. As used in this part, unless the
6 context otherwise requires:

7 "Leasehold interest" includes leasehold time share
8 interest, as defined in section 501-20, and leasehold
9 condominium interest.

10 §501-241 Leasehold [~~time share~~] interests. (a) Except as
11 otherwise expressly provided in this part, the requirements of
12 chapter 502 shall apply to a leasehold [~~time share~~] interest and
13 the requirements of this chapter shall not apply to [~~such~~] the
14 leasehold [~~time share~~] interest.

15 (b) Without limiting the generality of subsection (a), the
16 following instruments need not be registered pursuant to this
17 chapter to be effective and shall be recorded in the bureau of



1 conveyances pursuant to chapter 502:

2 (1) An assignment or other instrument transferring a
3 leasehold [~~time-share~~] interest;

4 (2) A mortgage or other instrument granting a lien on a
5 leasehold [~~time-share~~] interest;

6 (3) An agreement of sale for the sale of a leasehold [~~time~~
7 share] interest. Any [~~such~~] agreement under this
8 paragraph of sale shall be subject to section 502-85
9 and shall not be subject to section 501-101.5;

10 (4) A lien or notice of lien pertaining to a leasehold
11 [~~time-share~~] interest in favor of a time share owners
12 association, an association of owners under chapter
13 514A or 514B, or a similar homeowner's association;

14 (5) A judgment, decree, order of court, attachment, writ,
15 or other process against a leasehold [~~time-share~~]
16 interest;

17 (6) A mechanic's or materialman's lien or other lien upon
18 a leasehold [~~time-share~~] interest;

19 (7) A lis pendens or notice of pendency of action, notice,
20 affidavit, demand, certificate, execution, copy of
21 execution, officer's return, or other instrument



1 relating to a leasehold [~~time-share~~] interest and
2 otherwise required or permitted to be recorded or
3 registered in connection with the enforcement or
4 foreclosure of any lien, whether by way of power of
5 sale pursuant to chapter 667 or otherwise;

6 (8) A power of attorney given by the owner of a leasehold
7 [~~time-share~~] interest or the vendor or vendee under an
8 agreement of sale for the sale of a leasehold [~~time~~
9 ~~share~~] interest, a mortgagee or other lienor having a
10 mortgage or lien upon a leasehold [~~time-share~~]
11 interest, or another party holding a claim or
12 encumbrance against or an interest in a leasehold
13 [~~time-share~~] interest; or

14 (9) An instrument assigning, extending, continuing,
15 dissolving, discharging, releasing in whole or in
16 part, reducing, canceling, extinguishing, or otherwise
17 modifying or amending any of the foregoing
18 instruments.

19 (c) Every conveyance, lien, attachment, order, decree,
20 instrument, or entry affecting a leasehold [~~time-share~~] interest
21 which would, if registered, filed, or recorded, or entered in



1 the office of the assistant registrar pursuant to this chapter,
2 affect the leasehold [~~time-share~~] interest to which it relates,
3 if recorded, filed, or entered in the bureau of conveyances
4 pursuant to chapter 502, shall be notice to all persons from the
5 time of [~~such~~] the recording, filing, or entering in the bureau
6 of conveyances.

7 (d) The assistant registrar shall not be required to make
8 a memorandum or other note upon the certificate of title for
9 registered land subject to a leasehold [~~time-share~~] interest of
10 any conveyance, lien, attachment, order, decree, instrument, or
11 entry recorded, filed, or entered solely in the bureau of
12 conveyances against the leasehold [~~time-share~~] interest.

13 (e) Notwithstanding subsections (a), (b), and (c), the
14 following instruments shall be registered by recording the
15 instrument with the assistant registrar and by a brief
16 memorandum thereof made by the assistant registrar upon the
17 certificate of title, and signed by the assistant registrar:

18 (1) The apartment or unit lease, and any amendments
19 thereto, and any cancellation or extinguishment
20 thereof;

21 (2) Any deed or other instrument conveying the fee



1 interest in registered land and any other instrument
2 encumbering or otherwise dealing with the fee interest
3 in registered land including but not limited to a
4 mortgage of the fee interest, an assignment of the
5 lessor's interest in a lease, or the designation,
6 grant, conveyance, transfer, cancellation, relocation,
7 realignment, or amendment of any easement encumbering
8 the fee interest;

9 (3) If the apartment or unit lease is a sublease, any
10 assignment or other conveyance of the sublessor's
11 estate or any other leasehold estate [~~which~~] that is
12 superior to the apartment or unit lease, and any other
13 instrument mortgaging, encumbering, or otherwise
14 dealing with the sublessor's estate or any other
15 estate [~~which~~] that is prior and superior to the
16 leasehold [~~time-share~~] interest;

17 (4) Any other instrument assigning, modifying, canceling,
18 or otherwise dealing with an interest in registered
19 land [~~which~~] that is:

20 (A) Less than an estate in fee simple; and

21 (B) Prior or superior to the lessee's interest in a



1 leasehold [~~time share~~] interest;

2 (5) The declaration of condominium property regime or
3 similar declaration by whatever name denominated, the
4 bylaws of the association of owners under chapter 514A
5 or 514B, the condominium map, any declaration of
6 annexation or deannexation, any declaration of merger
7 and any instrument effecting a merger, and any
8 amendments to any of the foregoing and any
9 cancellation or extinguishment thereof; and

10 (6) Any declaration of covenants, conditions, and
11 restrictions, or similar instrument, by whatever name
12 denominated, encumbering the fee, the bylaws of any
13 homeowners association, any declaration of annexation
14 or deannexation, any amendments and supplements
15 thereto, and any cancellation or extinguishment
16 thereof[+]

17 ~~(7) Any declaration of covenants, conditions,~~
18 ~~restrictions, or similar instrument, by whatever name~~
19 ~~denominated, establishing the time share plan, the~~
20 ~~bylaws of the time share owners association, any~~
21 ~~declaration of annexation or deannexation, any~~



1 ~~amendments and supplements thereto, and any~~
2 ~~cancellation or extinguishment thereof; and~~
3 ~~(8) Any notice of time share plan, any declaration of~~
4 ~~annexation or deannexation, any amendments thereto,~~
5 ~~and any cancellation or extinguishment thereof].~~

6 (f) The execution or joinder of the lessees of the
7 leasehold [~~time share~~] interests shall not be required for the
8 registration or notation of instruments [~~which~~] that must be
9 registered and noted pursuant to subsection (e); provided,
10 however, an instrument amending, canceling, or extinguishing an
11 apartment lease shall not be registered unless [~~such~~] the
12 instrument is:

13 (1) Required to be registered by order of a court of
14 competent jurisdiction;

15 (2) Executed by officers of the [~~time share~~] owners
16 association pursuant to any registered [~~time share~~]
17 instrument or power of attorney [~~which~~] that
18 authorizes the [~~time share~~] owners association, its
19 board, or its officers, to deal with issues arising
20 under the apartment lease; or

21 (3) Accompanied by an affidavit of an officer of any title



1 insurer or underwritten title company, as defined in
2 section 431:20-102, stating that based upon a search
3 of the records of title to the apartment lease, the
4 parties who executed and acknowledged the instrument
5 amending, canceling, or extinguishing the apartment
6 lease are the owners of the leasehold [~~time share~~]
7 interests in [~~such~~] the apartment [~~and/or~~] or their
8 duly authorized attorney(s)-in-fact[~~-~~], or both. In
9 the event that the affidavit is incorrect and the
10 title insurer or underwritten title company acted with
11 gross negligence or in bad faith in making the
12 affidavit, the title insurer or underwritten title
13 company shall be liable to the owners of the leasehold
14 [~~time share~~] interests for treble damages and
15 reasonable attorneys' fees and costs.

16 This section shall not alter the rights of the parties to any
17 such instrument.

18 **[+]§501-242[+] Status of leasehold [~~time share~~] interest**
19 **as real property.** Nothing in this part shall affect the status
20 of a leasehold [~~time share~~] interest as real property.



1 [+]§501-243[+] Dual recording involving leasehold [~~time~~
2 ~~share~~] interests. Nothing in this part shall prevent or
3 prohibit the registration of an instrument [~~which~~] that assigns
4 or affects both:

- 5 (1) One or more leasehold [~~time-share~~] interests; and
- 6 (2) One or more interests in registered land other than a
7 leasehold [~~time-share~~] interest.

8 [+]§501-244[+] Assignment of leasehold [~~time-share~~]
9 interest. Any instrument [~~which~~] that first assigns or
10 otherwise conveys a leasehold [~~time-share~~] interest shall refer
11 to the land court document number of the apartment lease, if
12 applicable, or the most recent assignment of the whole thereof,
13 whichever is later. Any subsequent instrument of assignment or
14 conveyance shall refer to the book and page or bureau of
15 conveyances document number of the prior instrument of
16 assignment or conveyance for the leasehold [~~time-share~~] interest
17 acquired.

18 [+]§501-245[+] Reference to recorded instruments
19 pertaining to leasehold [~~time-share~~] interests. Any instrument
20 assigning, conveying, or otherwise dealing with a leasehold
21 [~~time-share~~] interest and [~~which~~] that requires a reference to a



1 prior recorded instrument may satisfy the requirements of
2 section 502-33 by reference to the land court document number
3 (in the case of a document recorded pursuant to [~~chapter 501~~]
4 this chapter) or to the book and page or bureau of conveyances
5 document number (in the case of a document recorded pursuant to
6 chapter 502) of the instrument to which reference is made.

7 [+]§501-246[+] Legal incidents of a leasehold [~~time share~~]
8 interest. A leasehold [~~time share~~] interest, and ownership
9 therein, shall in all respects be subject to the same burdens
10 and incidents [~~which~~] that attach by law to the lessee's
11 interest in a leasehold apartment that is part of a condominium
12 property regime established on unregistered land [~~and which is~~
13 ~~not utilized~~], whether or not it is used in a time share plan.

14 Nothing in this part [~~shall~~], in any way, shall be
15 construed to relieve a leasehold [~~time share~~] interest or the
16 owners thereof:

- 17 (1) From any rights incident to the relation of husband
18 and wife;
- 19 (2) From liability to attachment or mesne process or levy
20 on execution;



- 1 (3) From liability to any lien of any description
2 established by law on the leasehold [~~time-share~~]
3 interest, or in the interest of the owner in the
4 leasehold [~~time-share~~] interest;
- 5 (4) To change the laws of descent;
- 6 (5) The rights of partition between coparceners and other
7 cotenants;
- 8 (6) The right to take the same by eminent domain;
- 9 (7) To relieve [~~such~~] the leasehold [~~time-share~~] interest
10 from liability to be recovered by a trustee in
11 bankruptcy under the provisions of law relating to
12 preferences; or
- 13 (8) To change or affect in any way any other rights or
14 liabilities created by law and applicable to the
15 lessee's interest in a leasehold apartment [~~which~~]
16 that is part of a condominium property regime
17 established on unregistered land [~~and which is not~~
18 utilized], whether or not it is used in a time share
19 plan; except as otherwise expressly provided in this
20 part.



1 [+]§501-247[+] Voluntary dealing with a leasehold [~~time~~
2 ~~share~~] interest. (a) Except as otherwise provided in this
3 part, an owner of a leasehold [~~time-share~~] interest may convey,
4 mortgage, sublease, charge, or otherwise deal with the same as
5 if the condominium to which it pertains was established on
6 unregistered land. The owner may use forms of assignments,
7 mortgages, or other voluntary instruments like those now in use
8 and sufficient in law for the purpose intended.

9 (b) Notwithstanding subsection (a) and section 502-83, no
10 assignment, mortgage, or other voluntary instrument (except a
11 will, a lease for a term not exceeding one year, or an
12 instrument required by this part to be registered in the land
13 court and [~~which~~] that is so registered) purporting to assign or
14 affect a leasehold [~~time-share~~] interest, shall take effect as a
15 conveyance or bind the leasehold [~~time-share~~] interest, but
16 shall operate only as a contract between the parties, and as
17 evidence of authority to the registrar or assistant registrar.
18 The act of recordation pursuant to chapter 502 shall be the
19 operative act to assign or affect the leasehold [~~time-share~~]
20 interest.



1 [+]§501-248[+] Jurisdiction for matters pertaining to
2 leasehold [~~time-share~~] interests. The land court shall have
3 jurisdiction over all matters relating to instruments required
4 by this part to be registered pursuant to this chapter. Where
5 any party is in doubt as to whether an instrument must be
6 registered, the question shall be referred to the land court for
7 decision; and the court, after notice to all parties and a
8 hearing, shall enter an order determining the question. Except
9 as expressly otherwise provided in this section, nothing in this
10 part shall deprive the land court of exclusive jurisdiction
11 pursuant to section 501-101 over registered land, or any
12 interest therein, which is prior or superior to the interest of
13 the lessee of a leasehold [~~time-share~~] interest. The circuit
14 court shall have jurisdiction, pursuant to section [+]603-
15 21.5(a)(3) [+], over:

16 (1) All matters relating to instruments required by this
17 part to be recorded pursuant to chapter 502;

18 (2) All other matters pertaining to a leasehold [~~time~~
19 ~~share~~] interest (except those in which jurisdiction is
20 vested in the land court pursuant to this section);

21 and



1 (3) All matters as to which jurisdiction would otherwise
 2 lie in the land court in part and in the circuit court
 3 in part."

4 SECTION 2. This Act does not affect rights and duties that
 5 matured, penalties that were incurred, and proceedings that were
 6 begun before its effective date.

7 SECTION 3. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

10

INTRODUCED BY:

~~SC Sixth Agm~~
 Michelle Sudani
 [Signature]
 [Signature]
 Chenna Vishikhan
 [Signature]
 [Signature]



S.B. NO. 2436

Report Title:

Condominium Leasehold Interests; Land Court

Description:

Requires condominium leasehold interests and leasehold time share interests to be recorded only in the Bureau of Conveyances. Deletes the requirement for registration in the Land Court.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

