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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
WATER & LAND

Friday, February 5, 2016
8:30 A.M.
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 2090
RELATING TO LAND COURT

House Bill 2090 proposes to streamline the operations of the Office of the Assistant Registrar of the Land Court by removing the requirement that the Assistant Registrar certify pending certificates of title for fee time share interests. **The Department of Land and Natural Resources supports this measure.**

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
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



The Judiciary, State of Hawai'i

Testimony to the House Committee on Water & Land

Representative Ryan I. Yamane, Chair
Representative Ty J. K. Cullen, Vice Chair

Friday, February 5, 2016 8:30 a.m.
State Capitol, Conference Room 325

by
Calvin Ching
Deputy Chief Court Administrator
Court Operations/Services Division

Bill No. and Title: House Bill No. 2090, Relating to Land Court.

Purpose: Streamlines the operations of the office of the assistant registrar of the land court by removing the requirement that the assistant registrar certify pending certificates of title for fee time share interests.

Judiciary's Position:

The Judiciary takes no position on House Bill 2090 and respectfully offers the following comments.

The adoption of this measure would not directly impact the Land Court Judiciary operations but it may affect the conclusiveness and completeness of Land Court Certificates of Title for deregistered time share interests.

Land Court Certificates of Title issued by the Land Court that are certified are deemed to be reliable, correct and conclusive as to all matters contained therein to the extent that they are deemed to be acceptable as evidence as a matter of law pursuant to HRS § 501-88.

This measure may undermine the reliability and conclusiveness of the Land Court Certificates of Title for de-registered time share interest.

Although time shares were removed from the Land Court system effective as of July 1, 2012, the Assistant Registrar is required to update all time shares Certificate of Title up until this



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date. This measure would eliminate the requirement that Land Court Certificates of Title be certified in order to circumvent the pending certifications and the Office of the Assistant Registrars' backlog.

The elimination of the certification requirement could detrimentally affect all time shares certificates of title by rendering them questionable as to accuracy, correctness and conclusiveness.

Thank you for the opportunity to testify on House Bill 2090.

**Testimony of
Gary M. Slovin / Mihoko E. Ito
on behalf of
Wyndham Vacation Ownership**

DATE: February 4, 2016

TO: Representative Ryan L. Yamane
Chair, Committee on Water & Land
Submitted Via WALTestimony@capitol.hawaii.gov

RE: **H.B. 2090 – Relating to Land Court**
Hearing Date: Friday, February 5, 2016 at 8:30 a.m.
Conference Room: 325

Dear Chair Yamane and Members of the Committee:

We submit this testimony on behalf of Wyndham Vacation Ownership. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham and Shell Vacations brands.

Wyndham **supports** H.B. 2090, which streamlines the operations of the office of the assistant registrar of the land court by removing the requirement that the assistant registrar certify pending certificates of title for time share fee interests.

In 2009, the Legislature acted to deregister time share interests from land court to the regular system (Act 120, Session Laws of Hawaii 2009). Since that time, there has been a significant backlog in completing the deregistration process, due to the procedural requirement that each certificate of title had to be updated. This measure will serve to accomplish the intent of the original 2009 law and to streamline the deregistration process by eliminating the certification requirement.

For these reasons, we support H.B. 2090 and respectfully ask the committee to pass the bill.

Thank you for the opportunity to submit testimony on this measure.

Gary M. Slovin
Mihoko E. Ito
C. Mike Kido
Tiffany N. Yajima

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February 3, 2016

Rep. Ryan I. Yamane, Chair
Rep. Ty J.K. Cullen, Vice Chair
Members of the House Committee on
Water and Land
Twenty-Eighth Legislature
Regular Session, 2016

Re: H.B. 2090
Hearing on February 5, 2016, 8:30 a.m.
Conference Room 325

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am appearing as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports the bill with technical revisions.

The technical revisions are intended to simplify the bill and to improve it. Exhibit A contains the proposed revised draft.

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.

For example, Section 514A-11 of the old 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.

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

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.

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

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 provided that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the Land Court would not file the same in the Land Court. Instead, it required that the assistant registrar of the Land Court:

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
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 would no be longer subject to chapter 501, HRS (the Land Court Act). From then on, all

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.

deeds and other instruments affecting the fee time share interest would have to 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 had increased to 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. As a result, the task of updating and recording the certificates of title for all fee time share interests concurrently exceed the capacity of the Land Court.

To alleviate this problem the legislature adopted Act 121, Session Laws of 2012. This law simply declared that, as of July 1, 2012, all fee time share interests would no longer be subject to the Land Court Act. This occurred automatically for all fee time share interests.

Act 121 did not require that the Land Court update the certificates of title for fee time share interests as a condition to deregistration. Instead, it provided that the deregistration would take place on July 1, 2012, but that the assistant registrar would certify the certificates of title for fee time share interests “in the ordinary course of business.” The idea was that the Land Court would continue to work its way through the backlog of certificates of title until all of them had been certified.

Over the next three and one-half years, the Land Court continued working on certifying the pending certificates of title for fee time share interests. However, the real estate market recovered and apparently the press of current transactions had to be given priority over the process of clearing up older certificates of title.

This bill is intended to clear the backlog of pending time share certificates of title. It does so by:

1. Freeing the Land Court of the obligation to certify pending certificates of title, and
2. Establishing a chain of title for fee time share interests that do not have a certified certificate of title. This chain of title consists of :

A. All of the encumbrances shown on the last certificate of title that was certified by the assistant registrar and that covers the land of the fee time share interest; plus

B. Any encumbrances registered with the Land Court after the date of the last certified certificate of title.

For example, suppose that the last certified certificate of title was issued in 2008 and that it showed that the time share interest was subject to the condominium declaration and to a mortgage. Suppose also that the fee time share interest was deeded to a purchaser in 2011

- If an amendment to the condominium declaration was recorded in the Land Court in 2009, then the purchaser's title to the fee time share interest would be subject to that amendment.
- If the mortgage was released in 2010, then the purchaser's title to the fee time share interest would not be subject to the mortgage.

In short, if the assistant registrar of the Land Court had certified the purchaser's certificate of title, the certificate of title would note the amendment to the condominium declaration but would not note the mortgage.

This bill is intended to produce the same result by (i) looking back to the most recently certified certificate of title to establish a starting point for the chain of title, and (ii) modifying the chain of title by referring to any documents subsequently recorded in the Land Court.

II. Technical Changes.

The technical changes are intended to simplify the bill by minimizing the number of changes made to the existing law. The changes include the following:

1. Section 501-261(1) is not deleted. Rather, it remains, but it authorizes, rather than requires, the assistant registrar to certify pending certificates of title. This simple change eliminates the need for many of the other changes contained in the original version of the bill.

2. The definitions of "certified fee time share interest certificate of title" is modified to refer to a certificate of title that has been updated and approved in the manner described in Section 501-261(1).

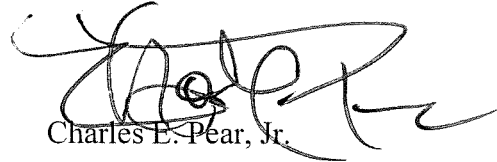
3. The definition of "pending fee time share interest certificate of title" is modified to refer to a certificate of title that has not been updated and approved in the manner described in Section 501-261(1).

Chair, Vice Chair and Members,
House Committee on Water & Land
February 3, 2016
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Thank you for your kind consideration of the foregoing. 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

A handwritten signature in black ink, appearing to read "Charles E. Pear, Jr.", written over a horizontal line.

Charles E. Pear, Jr.

CEP:kn

EXHIBIT A

A BILL FOR AN ACT

RELATING TO LAND COURT.

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

SECTION 1. The joint legislative investigative committee established pursuant to Senate Concurrent Resolution No. 226, regular session 2007, identified serious shortcomings relating to the bureau of conveyances. Act 120, Session Laws of Hawaii 2009, was adopted in response to the findings of the committee. Act 120 was intended to ease the backlog in land court recording and registration by, among other things, transferring fee simple time share interests from the land court system to the regular system.

Act 120 requires that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the land court shall not file the same in the land court. Rather, the assistant registrar shall:

- (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 presented for recording; and

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

Once the certificate of title for a fee time share interest is recorded, that time share interest is no longer subject to the land court pursuant to chapter 501, Hawaii Revised Statutes. From then on, all deeds and other instruments affecting the fee time share interest shall be recorded in the regular system. This process is known as deregistration of fee time share interests.

Through Act 121, Session Laws of 2012, the legislature found that the task of updating and recording the certificates of title for all fee time share interests concurrently had 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 that Act 120 took effect.

Accordingly, Act 121 was adopted to amend the deregistration procedure by removing fee time share interests from the land court system as of July 1, 2012. The assistant registrar was charged with the obligation to certify the certificates of title for all fee time share interests in the ordinary course of business. This was intended to lighten the load of the assistant registrar in the preparation and

certification of the certificates of title for fee time share interests without delaying the removal of the fee time share interests from the land court system.

However, the requirement that the assistant registrar certify all of the then-remaining uncertified fee time share certificates of title remained burdensome in light of resource limitations and the demands of new transactions on the office of the assistant registrar.

The purpose of this Act is to streamline the operations of the office of the assistant registrar of the land court by removing the requirement that the assistant registrar certify pending certificates of title for fee time share interests, all of which were removed from the land court system as of July 1, 2012.

SECTION 2. Section 501-20, Hawaii Revised Statutes, is amended by adding two new definitions, to be appropriately inserted and to read as follows:

“Certified fee time share interest certificate of title” means a certificate of title for a fee time share interest that has been updated and approved by the assistant registrar in accordance with section 501-261(1).”

“Pending fee time share interest certificate of title” means a certificate of title issued for a fee time share

interest that has not been updated and approved by the assistant registrar in accordance with section 501-261(1)."

SECTION 3. Section 501-261, Hawaii Revised Statutes, is amended to read as follows:

"§ 501-261. Deregistration of fee time share interests.

The certificate of title for each fee time share interest shall be canceled effective as of the date and time of deregistration of such fee time share interest. Notwithstanding the provisions of section 501-261 in existence prior to July 1, 2012, a fee time share interest for which a certificate of title was not recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012, shall be deregistered on July 1, 2012, at 12:01 a.m.

(1) ~~[Beginning on]~~ From and after July 1, 2012, ~~[and continuing for so long as shall be reasonably necessary in the ordinary course of business,]~~ the assistant registrar shall be authorized to, but shall not be required to:

(A) Note on the certificate of title for each fee time share interest all documents and instruments affecting the fee time share interest:

(i) That were or are registered as of a date and time prior to the date and time of deregistration of the fee time share interest; and

(ii) That were not yet noted on the certificate of title of the fee time share interest as of the date and time of deregistration thereof; and

(B) Certify each certificate of title.

(2) Section 501-196 shall apply to a certificate of title updated pursuant to paragraph (1) upon approval of the same by the assistant registrar, which approval shall be evidenced by a certification of the assistant registrar endorsed upon the certificate of title. A certificate of title for a fee time share interest, including but not limited to a certificate of title recorded prior to July 1, 2012, pursuant to part II of this chapter 501, shall not be considered completed or approved, and shall be subject to modification by the assistant registrar, at any time prior to certification thereof by the assistant registrar. Subsequent to the certification, the certificate of title for a fee time share interest may only be modified pursuant to section 501-196 or as otherwise provided in this chapter.

(3) Upon certification of the certificate of title for a fee time share interest by the assistant registrar, the assistant registrar shall mark the certificate of title "canceled", note the cancellation of the certificate of title in the registration book, and notify the court and the state surveyor of the cancellation. The registrar shall thereupon be

authorized to file a record of the cancellation in the application or consolidation file, and the state surveyor shall then be authorized to annotate the land court map or maps by identifying thereon the deregistered land and noting thereon the bureau of conveyances document number of the canceled certificate. The assistant registrar is authorized to adopt such procedures, if any, as it may deem appropriate to reflect the cancellation of the pending fee time share interest certificates of title and the state surveyor shall be authorized to annotate the land court map or maps by identifying thereon the deregistration of land covered by pending fee time share certificates of title. Regardless of the date upon which any such administrative acts are performed, the cancellation of the certificate of title for a fee time share interest shall be effective as of the date and time of deregistration of that fee time share interest.

(4) If only part of the land described in the certificate of title consists of a fee time share interest, then upon the petition of the registered owner of that portion of the registered land not constituting a fee time share interest, a new certificate of title shall be issued to such owner for that portion of the registered land not constituting a fee time share interest. If registered land is held in the condominium form of ownership, then for purposes of this subsection each condominium

apartment or condominium unit for which a separate certificate of title has been issued shall be treated as if it were a separate parcel of registered land.

(5) Except as provided in paragraph (4), no order of court shall be required prior to or in connection with the performance of any of the foregoing actions or to reflect or effect the cancellation of the certificate of title for a fee time share interest or otherwise to reflect or effect the withdrawal of the fee time share interest from the operation of this chapter.

SECTION 4. Section 501-262, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Neither voluntary deregistration of land other than a fee time share interest nor the mandatory deregistration of any fee time share interest pursuant to part II of this chapter, whether by recordation of a certificate of title in the bureau of conveyances prior to July 1, 2012, or by operation of law thereafter, shall disturb the effect of any proceedings in the land court where the question of title has been determined. All proceedings had in connection with the registration of title that relate to the settlement or determination of title before ~~[a certificate of title for land other than a fee time share interest is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter or a certificate of title for a fee time share interest is certified]~~ the date and

time of deregistration, and all provisions of this chapter that relate to the status of the title, shall have continuing force and effect with respect to the period of time that title remained under the land court system. Those provisions giving rise to a right of action for compensation from the State, including any limits on and conditions to the recovery of compensation and the State's rights of subrogation with respect thereto, shall also continue in force and effect with respect to the period of time that title remained under the land court system."

SECTION 5. Section 501-263, Hawaii Revised Statutes, is amended by amending subsection (1)(B) to read as follows:

"(B) An agreement of sale for the sale of a fee time share interest or interest in other deregistered land. After the ~~[recordation of the certificate of title]~~ date and time of deregistration of a fee time share interest or interest in other deregistered land, the interest in any deregistered land covered by the [any] agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;"

SECTION 6. Section 501-264, Hawaii Revised Statutes, is amended to read as follows:

§ 501-264. Chain of title of deregistered land.

~~[(a) A certificate of title for land other than a fee time share interest recorded in the bureau of conveyances pursuant to~~

~~chapter 502 and part II of this chapter, or certified by the assistant registrar in the case of a fee time share interest, shall constitute a new chain of record title in the registered owner of any estate or interest as shown on the certificate of title so recorded or certified, subject only to the following:]~~

(a) The chain of record title in the registered owner of any estate or interest in deregistered land shall, as of the date and time of deregistration, be subject only to the following and to the items described in subsection (d):

(1) In the case of land other than a fee time share interest, the estates, mortgages, liens, charges, instruments, documents, and papers noted on the certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter;

(2) In the case of a fee time share interest covered by a certified fee time share interest certificate of title, the estates, mortgages, liens, charges, instruments, documents, and papers noted on the certified fee time share interest certificate of title; or

(3) In the case of a fee time share interest covered by a pending fee time share interest certificate of title, the estates, mortgages, liens, charges, instruments, documents, and papers noted or deemed to be noted on the pending fee time share interest certificate of title, as set forth in subsection (b).

(b) The following shall, for purposes of Part II of this chapter, be deemed to be noted on the pending fee time share interest certificate of title for a given fee time share interest:

(1) The estates, mortgages, liens, charges, instruments, documents, and papers noted in the last certificate of title certified by the assistant registrar for the registered land of that fee time share interest; and

(2) The estates, mortgages, liens, charges, instruments, documents, and papers registered with respect to the registered land of that fee time share interest, which registration occurred:

(A) After the date of certification of the last certified certificate of title for the registered land of the fee time share interest, and

(B) Prior to July 1, 2012.

This includes but is not limited to any estates, liens, charges, covenants, conditions, easements, restrictions, agreements, reservations, limitations, interests, or other continuing provisions contained or reserved in the deed conveying the fee time share interest to the registered owner, whether or not identified in the pending fee time share interest certificate of title.

(c) Nothing in subsection (b) is intended to alter the affect of any instruments, documents, or papers identified in subsection (b)(2) on the items noted in the certificate of title described in subsection (b)(1).

(d) As of the date and time of deregistration, the chain of title for deregistered land shall be subject only to the items described in subsection (a) and, in the case of a fee time share interest covered by a pending fee time share interest certificate of title, in subsection (b), and to the following:

(1) The estates, mortgages, liens, charges, instruments, documents, and papers [~~noted on the certificate of title so recorded or certified~~]:

(A) Noted on the certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, in the case of land other than a fee time share interest;

(B) Noted on the certified fee time share interest certificate of title, in the case of a fee time share interest for which the assistant registrar issued a certified fee time share interest certificate of title; or

(C) Noted or deemed to be noted on the pending fee time share interest certificate of title, in the case of all other fee time share interests;

(2) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting the liens, shall be deemed to fall within this paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505;

(3) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title for the deregistered land [~~as recorded or certified~~], with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by county real property tax ordinance, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale;

(4) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33;

(5) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of the way has been determined;

(6) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed;

(7) Any liability to assessments for betterments, or statutory liability that may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any liability and the lien therefor (other than for labor and material furnished in the improvement of the land, which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of the assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is recorded in the bureau of conveyances pursuant to chapter 502 within the three-year period; and provided further that if there are easements or other rights, appurtenant to a parcel of deregistered land, which for any reason have failed to be deregistered, the easements or rights shall remain so appurtenant notwithstanding the failure, and shall be held to pass with the deregistered land until cut off or extinguished in any lawful manner;

(8) The possibility of reversal or vacation of the decree of registration upon appeal;

(9) Any encumbrance not required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest or leasehold interest in deregistered land; ~~and~~

(10) Child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapter 576D~~[.]~~; and

(11) Money judgments, orders, or decrees of a Hawaii state court or the United States District Court for the District of Hawaii, if the same are recorded in the bureau of conveyances; provided that only the monetary lien created by the recordation shall affect the land; provided further that no other provision of a judgment, order, or decree shall affect the land unless otherwise registered in compliance with this chapter.

~~(b)~~(e) For purposes of this section, an encumbrance shall be deemed sufficiently noted on a certificate of title if the notation:

(1) References a document by name or number that contains an encumbrance; and

(2) Indicates that the referenced document contains an encumbrance to which the deregistered land is subject.

~~(e)~~(f) All instruments, documents, and papers:

(1) Noted on a certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter (in the case of land other than a fee time share interest),

(2) Noted on a certified fee time share interest certificate of title, or

(3) Noted or deemed to be noted on a pending fee time share interest certificate of title, shall have the same force and effect as if they had been recorded in the bureau of conveyances pursuant to chapter 502 as of the date, hour, and minute of reception noted on the certificate of title pursuant to section 501-107 or otherwise entered or required to be entered in the record of the assistant registrar pursuant to section 501-107; provided that:

(1) No instrument, document, or paper shall have any greater or other effect after the certificate of title is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, as constructive notice or otherwise, than it had or acquired at the time it was registered pursuant to this chapter or made; and

(2) Nothing in this part shall be construed as giving any greater or other effect, as constructive notice or otherwise, to any instrument, document, or paper recorded in the bureau of conveyances pursuant to chapter 502 prior to the date and time of deregistration of ~~[recording of the certificate of title in the bureau of conveyances pursuant to chapter 502 and part II of this chapter as to]~~ any registered land, than was provided by the laws of this State (including this chapter and other laws regarding registered land) in effect at the time the instrument, document, or paper was recorded.

~~[(d)]~~(g) If a certificate of title (i) for land other than a fee time share interest is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, or (ii) for a fee time share interest is certified by the assistant registrar, or (iii) for a fee time share interest has not been certified by the assistant registrar, and in the case of either (i), (ii), or (iii), if such certificate of title relates to more than one fee time share interest or more than one interest in other deregistered land, then subsections (a) through and including (d) shall apply to each interest separately and only those items described in subsections (a) through and including (d) that encumbered a particular interest ~~[prior to]~~ as of the date and time of deregistration of that interest ~~[recording of the certificate of title]~~ will continue

to encumber that interest after the date and time of
deregistration [~~recordation~~].

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

SECTION 8. This Act shall take effect on July 1, 2016.

Report Title:

Fee Time Share Interests; Land Court; Bureau of Conveyances;
Deregistration

Description:

Streamlines the operations of the office of the assistant
registrar of the land court by removing the requirement that the
assistant registrar certify pending certificates of title for
fee time share interests.

*The summary description of legislation appearing on this page is
for informational purposes only and is not legislation or
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Deregistration

Description:

Effective July 1, 2016. (SB2632 HD1)

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February 5, 2016

TO: WATER AND LAND COMMITTEE
Representative Ryan Yamane, Chair
Representative Ty Cullen, Vice-Chair

FR: Henry Perez, President – via Blake Oshiro, Executive Director
American Resort Development Association

RE: H.B. 2090 Relating to Land Court
Position: Support with Proposed Amendments

Dear Chair Yamane, Vice Chair Cullen and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports House Bill (HB) 2090 which streamlines the operations of the office of the assistant registrar of the land court by removing the requirement that the assistant registrar certify pending certificates of title for fee time share interests. This certification is no longer necessary since these pending certificates were removed from the land court system as of July 1, 2012.

Attached are proposed amendments which we believe clarifies some of the language in the bill.

The joint legislative investigative committee established pursuant to Senate Concurrent Resolution No. 226, regular session 2007, identified serious shortcomings relating to the bureau of conveyances. Act 120, Session Laws of Hawaii 2009, was adopted in response to the findings of the committee. Act 120 was intended to ease the backlog in land court recording and registration by, among other things, transferring fee simple time share interests from the land court system to the regular system.

Act 120 required that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the land court was to:

- (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 presented for recording; and
- (4) Cancel the certificate of title for each fee time share interest in the time share plan.

Once the certificate of title for a fee time share interest was recorded, that time share interest was no longer subject to the land court. This process is known as deregistration of fee time share interests.

Through Act 121, Session Laws of 2012, the legislature found that the task of updating and recording the certificates of title for all fee time share interests concurrently had 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 that Act 120 took effect. Accordingly, Act 121 was adopted to amend the deregistration procedure by removing fee time share interests from the land court system as of July 1, 2012.

The assistant registrar was charged with the obligation to certify the certificates of title for all fee time share interests in the ordinary course of business. This was intended to lighten the load of the assistant registrar in the preparation and certification of the certificates of title for fee time share interests without delaying the removal of the fee time share interests from the land court system.

However, the requirement that the assistant registrar certify all of the then-remaining uncertified fee time share certificates of title remained burdensome in light of resource limitations and the demands of new transactions on the office of the assistant registrar.

Therefore, ARDA supports HB 2090. We have proposed an attached HD1 for the committee's consideration which we believe clarifies some of the language.

Thank you for the opportunity to submit testimony in support of HB 2090.

A BILL FOR AN ACT

RELATING TO LAND COURT.

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

SECTION 1. The joint legislative investigative committee established pursuant to Senate Concurrent Resolution No. 226, regular session 2007, identified serious shortcomings relating to the bureau of conveyances. Act 120, Session Laws of Hawaii 2009, was adopted in response to the findings of the committee. Act 120 was intended to ease the backlog in land court recording and registration by, among other things, transferring fee simple time share interests from the land court system to the regular system.

Act 120 requires that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the land court shall not file the same in the land court. Rather, the assistant registrar shall:

(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 presented for recording; and

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

Once the certificate of title for a fee time share interest is recorded, that time share interest is no longer subject to the land court pursuant to chapter 501, Hawaii Revised Statutes. From then on, all deeds and other instruments affecting the fee time share interest shall be recorded in the regular system. This process is known as deregistration of fee time share interests.

Through Act 121, Session Laws of 2012, the legislature found that the task of updating and recording the certificates of title for all fee time share interests concurrently had 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 that Act 120 took effect.

Accordingly, Act 121 was adopted to amend the deregistration procedure by removing fee time share interests from the land court system as of July 1, 2012. The assistant registrar was charged with the obligation to certify the certificates of title for all fee time share interests in the ordinary course of business. This was intended to lighten the load of the assistant registrar in the preparation and

certification of the certificates of title for fee time share interests without delaying the removal of the fee time share interests from the land court system.

However, the requirement that the assistant registrar certify all of the then-remaining uncertified fee time share certificates of title remained burdensome in light of resource limitations and the demands of new transactions on the office of the assistant registrar.

The purpose of this Act is to streamline the operations of the office of the assistant registrar of the land court by removing the requirement that the assistant registrar certify pending certificates of title for fee time share interests, all of which were removed from the land court system as of July 1, 2012.

SECTION 2. Section 501-20, Hawaii Revised Statutes, is amended by adding two new definitions, to be appropriately inserted and to read as follows:

"Certified fee time share interest certificate of title" means a certificate of title for a fee time share interest that has been updated and approved by the assistant registrar in accordance with section 501-261(1)."

"Pending fee time share interest certificate of title" means a certificate of title issued for a fee time share

interest that has not been updated and approved by the assistant registrar in accordance with section 501-261(1)."

SECTION 3. Section 501-261, Hawaii Revised Statutes, is amended to read as follows:

"§ 501-261. Deregistration of fee time share interests.

The certificate of title for each fee time share interest shall be canceled effective as of the date and time of deregistration of such fee time share interest. Notwithstanding the provisions of section 501-261 in existence prior to July 1, 2012, a fee time share interest for which a certificate of title was not recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012, shall be deregistered on July 1, 2012, at 12:01 a.m.

(1) ~~[Beginning on] From and after July 1, 2012, [and continuing for so long as shall be reasonably necessary in the ordinary course of business,]~~ the assistant registrar shall be authorized to, but shall not be required to:

(A) Note on the certificate of title for each fee time share interest all documents and instruments affecting the fee time share interest:

(i) That were or are registered as of a date and time prior to the date and time of deregistration of the fee time share interest; and

(ii) That were not yet noted on the certificate of title of the fee time share interest as of the date and time of deregistration thereof; and

(B) Certify each certificate of title.

(2) Section 501-196 shall apply to a certificate of title updated pursuant to paragraph (1) upon approval of the same by the assistant registrar, which approval shall be evidenced by a certification of the assistant registrar endorsed upon the certificate of title. A certificate of title for a fee time share interest, including but not limited to a certificate of title recorded prior to July 1, 2012, pursuant to part II of this chapter 501, shall not be considered completed or approved, and shall be subject to modification by the assistant registrar, at any time prior to certification thereof by the assistant registrar. Subsequent to the certification, the certificate of title for a fee time share interest may only be modified pursuant to section 501-196 or as otherwise provided in this chapter.

(3) Upon certification of the certificate of title for a fee time share interest by the assistant registrar, the assistant registrar shall mark the certificate of title "canceled", note the cancellation of the certificate of title in the registration book, and notify the court and the state surveyor of the cancellation. The registrar shall thereupon be

authorized to file a record of the cancellation in the application or consolidation file, and the state surveyor shall then be authorized to annotate the land court map or maps by identifying thereon the deregistered land and noting thereon the bureau of conveyances document number of the canceled certificate. The assistant registrar is authorized to adopt such procedures, if any, as it may deem appropriate to reflect the cancellation of the pending fee time share interest certificates of title and the state surveyor shall be authorized to annotate the land court map or maps by identifying thereon the deregistration of land covered by pending fee time share certificates of title. Regardless of the date upon which any such administrative acts are performed, the cancellation of the certificate of title for a fee time share interest shall be effective as of the date and time of deregistration of that fee time share interest.

(4) If only part of the land described in the certificate of title consists of a fee time share interest, then upon the petition of the registered owner of that portion of the registered land not constituting a fee time share interest, a new certificate of title shall be issued to such owner for that portion of the registered land not constituting a fee time share interest. If registered land is held in the condominium form of ownership, then for purposes of this subsection each condominium

apartment or condominium unit for which a separate certificate of title has been issued shall be treated as if it were a separate parcel of registered land.

(5) Except as provided in paragraph (4), no order of court shall be required prior to or in connection with the performance of any of the foregoing actions or to reflect or effect the cancellation of the certificate of title for a fee time share interest or otherwise to reflect or effect the withdrawal of the fee time share interest from the operation of this chapter.

SECTION 4. Section 501-262, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Neither voluntary deregistration of land other than a fee time share interest nor the mandatory deregistration of any fee time share interest pursuant to part II of this chapter, whether by recordation of a certificate of title in the bureau of conveyances prior to July 1, 2012, or by operation of law thereafter, shall disturb the effect of any proceedings in the land court where the question of title has been determined. All proceedings had in connection with the registration of title that relate to the settlement or determination of title before [~~a certificate of title for land other than a fee time share interest is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter or a certificate of title for a fee time share interest is certified~~] the date and

time of deregistration, and all provisions of this chapter that relate to the status of the title, shall have continuing force and effect with respect to the period of time that title remained under the land court system. Those provisions giving rise to a right of action for compensation from the State, including any limits on and conditions to the recovery of compensation and the State's rights of subrogation with respect thereto, shall also continue in force and effect with respect to the period of time that title remained under the land court system."

SECTION 5. Section 501-263, Hawaii Revised Statutes, is amended by amending subsection (1)(B) to read as follows:

"(B) An agreement of sale for the sale of a fee time share interest or interest in other deregistered land. After the ~~[recording of the certificate of title]~~ date and time of deregistration of a fee time share interest or interest in other deregistered land, the interest in any deregistered land covered by the [any] agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;"

SECTION 6. Section 501-264, Hawaii Revised Statutes, is amended to read as follows:

§ 501-264. Chain of title of deregistered land.

~~[(a) A certificate of title for land other than a fee time share interest recorded in the bureau of conveyances pursuant to~~

~~chapter 502 and part II of this chapter, or certified by the assistant registrar in the case of a fee time share interest, shall constitute a new chain of record title in the registered owner of any estate or interest as shown on the certificate of title so recorded or certified, subject only to the following:]~~

(a) The chain of record title in the registered owner of any estate or interest in deregistered land shall, as of the date and time of deregistration, be subject only to the following and to the items described in subsection (d):

(1) In the case of land other than a fee time share interest, the estates, mortgages, liens, charges, instruments, documents, and papers noted on the certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter;

(2) In the case of a fee time share interest covered by a certified fee time share interest certificate of title, the estates, mortgages, liens, charges, instruments, documents, and papers noted on the certified fee time share interest certificate of title; or

(3) In the case of a fee time share interest covered by a pending fee time share interest certificate of title, the estates, mortgages, liens, charges, instruments, documents, and papers noted or deemed to be noted on the pending fee time share interest certificate of title, as set forth in subsection (b).

(b) The following shall, for purposes of Part II of this chapter, be deemed to be noted on the pending fee time share interest certificate of title for a given fee time share interest:

(1) The estates, mortgages, liens, charges, instruments, documents, and papers noted in the last certificate of title certified by the assistant registrar for the registered land of that fee time share interest; and

(2) The estates, mortgages, liens, charges, instruments, documents, and papers registered with respect to the registered land of that fee time share interest, which registration occurred:

(A) After the date of certification of the last certified certificate of title for the registered land of the fee time share interest, and

(B) Prior to July 1, 2012.

This includes but is not limited to any estates, liens, charges, covenants, conditions, easements, restrictions, agreements, reservations, limitations, interests, or other continuing provisions contained or reserved in the deed conveying the fee time share interest to the registered owner, whether or not identified in the pending fee time share interest certificate of title.

(c) Nothing in subsection (b) is intended to alter the affect of any instruments, documents, or papers identified in subsection (b)(2) on the items noted in the certificate of title described in subsection (b)(1).

(d) As of the date and time of deregistration, the chain of title for deregistered land shall be subject only to the items described in subsection (a) and, in the case of a fee time share interest covered by a pending fee time share interest certificate of title, in subsection (b), and to the following:

(1) The estates, mortgages, liens, charges, instruments, documents, and papers [~~noted on the certificate of title so recorded or certified~~]:

(A) Noted on the certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, in the case of land other than a fee time share interest;

(B) Noted on the certified fee time share interest certificate of title, in the case of a fee time share interest for which the assistant registrar issued a certified fee time share interest certificate of title; or

(C) Noted or deemed to be noted on the pending fee time share interest certificate of title, in the case of all other fee time share interests;

(2) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting the liens, shall be deemed to fall within this paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505;

(3) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title for the deregistered land [~~as recorded or certified~~], with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by county real property tax ordinance, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale;

(4) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33;

(5) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of the way has been determined;

(6) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed;

(7) Any liability to assessments for betterments, or statutory liability that may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any liability and the lien therefor (other than for labor and material furnished in the improvement of the land, which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of the assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is recorded in the bureau of conveyances pursuant to chapter 502 within the three-year period; and provided further that if there are easements or other rights, appurtenant to a parcel of deregistered land, which for any reason have failed to be deregistered, the easements or rights shall remain so appurtenant notwithstanding the failure, and shall be held to pass with the deregistered land until cut off or extinguished in any lawful manner;

(8) The possibility of reversal or vacation of the decree of registration upon appeal;

(9) Any encumbrance not required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest or leasehold interest in deregistered land; [~~and~~]

(10) Child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapter 576D[~~-~~]; and

(11) Money judgments, orders, or decrees of a Hawaii state court or the United States District Court for the District of Hawaii, if the same are recorded in the bureau of conveyances; provided that only the monetary lien created by the recordation shall affect the land; provided further that no other provision of a judgment, order, or decree shall affect the land unless otherwise registered in compliance with this chapter.

~~(b)~~(e) For purposes of this section, an encumbrance shall be deemed sufficiently noted on a certificate of title if the notation:

(1) References a document by name or number that contains an encumbrance; and

(2) Indicates that the referenced document contains an encumbrance to which the deregistered land is subject.

~~(e)~~(f) All instruments, documents, and papers:

(1) Noted on a certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter (in the case of land other than a fee time share interest),

(2) Noted on a certified fee time share interest certificate of title, or

(3) Noted or deemed to be noted on a pending fee time share interest certificate of title, shall have the same force and effect as if they had been recorded in the bureau of conveyances pursuant to chapter 502 as of the date, hour, and minute of reception noted on the certificate of title pursuant to section 501-107 or otherwise entered or required to be entered in the record of the assistant registrar pursuant to section 501-107; provided that:

(1) No instrument, document, or paper shall have any greater or other effect after the certificate of title is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, as constructive notice or otherwise, than it had or acquired at the time it was registered pursuant to this chapter or made; and

(2) Nothing in this part shall be construed as giving any greater or other effect, as constructive notice or otherwise, to any instrument, document, or paper recorded in the bureau of conveyances pursuant to chapter 502 prior to the date and time of deregistration of ~~[recording of the certificate of title in the bureau of conveyances pursuant to chapter 502 and part II of this chapter as to]~~ any registered land, than was provided by the laws of this State (including this chapter and other laws regarding registered land) in effect at the time the instrument, document, or paper was recorded.

~~[(d)]~~(g) If a certificate of title (i) for land other than a fee time share interest is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, or (ii) for a fee time share interest is certified by the assistant registrar, or (iii) for a fee time share interest has not been certified by the assistant registrar, and in the case of either (i), (ii), or (iii), if such certificate of title relates to more than one fee time share interest or more than one interest in other deregistered land, then subsections (a) through and including (d) shall apply to each interest separately and only those items described in subsections (a) through and including (d) that encumbered a particular interest ~~[prior to]~~ as of the date and time of deregistration of that interest ~~[recording of the certificate of title]~~ will continue

to encumber that interest after the date and time of
deregistration [~~recording~~].

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

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