

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY**

**Thursday, March 21, 2019
2:05 PM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 898, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO LAND RECORDATION**

Senate Bill 898, Senate Draft 1, House Draft 1 proposes to specify that the data requirements for land recordation by the Bureau of Conveyances (Bureau), on land other than fee simple timeshare interests deregistered by the land court, shall include a map and description prepared by a licensed surveyor. **The Department of Land and Natural Resources appreciates the intent of this measure and offers the following comments.**

The Bureau understands and supports the need for better map data for deregistered land parcels as we continue our discussions with the Hawaii Land Surveyors Association about this bill. There may also be further discussions with some public stakeholders that are warranted to ensure that some recently raised legal questions can be adequately answered.

Thank you for the opportunity to comment on this measure.

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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



March 20, 2019

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice-Chair
Members of the House Committee on Judiciary

**Re: Testimony in Opposition to SB 898 Relating to Land Recordation
Hearing on March 21, 2019 2:05 p.m. Conf. Room 325**

Dear Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

Please do not advance SB 898. The premise of the Bill is mistaken and the burden the Bill would create is unnecessary.

I am a real estate attorney in practice since 1973. I am familiar with the issues of Land Court de-registration and have processed several de-registrations for clients. In no case has there been a need for further legal description.

De-registered property is described by its former Land Court nomenclature. This information is transmitted to and recorded in the "Regular System" and becomes the starting point for future activity. If the owner simply holds the property as is, the detailed and State-approved description originating in the Land Court and now recorded in the Bureau of Conveyances is absolutely adequate. If the owner wishes to further subdivide or consolidate the property, the former Land Court description is the baseline from which new County-approved subdivisions will proceed. Upon approval, a new County approved subdivision will supersede the former Land Court description. None of my clients nor the professional land surveyors with whom I work has had any problem with this.

The Bill would create another obstacle to exiting the Land Court. It would do so without discernible benefit to the public or the consumer. Owners are leaving the Land Court because of its complexities and inability to keep pace with the thousands of documents submitted to it every year. Creation of a new hurdle is counterproductive.

I have heard file plans called "Poor Man's Land Court." As in the Land Court, property descriptions using file plan properties refer to a map (a file plan) and a lot. Anyone wanting the metes and bounds (courses and distances) of the boundaries, must refer to the file plan and lot number just as s/he would have referred to the Land Court map and lot number. The Bill merely replaces one mapping system for another.

Owners are obliged to secure title insurance before leaving the Land Court. The title insurers act on the Land Court record and the Land Court-described property. If new descriptions are generated, the insurers will be compelled to verify that the new description and the existing Land Court description are identical. The existing Land Court records are not destroyed. The Land Court history is still vitally important. A new map will not change that.

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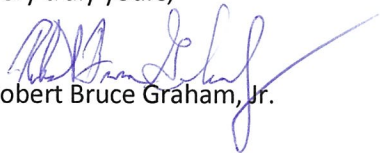
First Hawaiian Center / 999 Bishop Street, Suite 1400 / Honolulu, HI 96813

T 808 539 0400 / F 808 533 4945 / E atty@awlaw.com / www.ashfordwriston.com

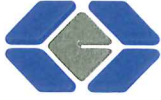
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice-Chair
Members of the House Committee on Judiciary
March 20, 2019
Page 2

I respectfully submit that the Bill is a solution in search of a problem. If members of the surveyor community think otherwise, I suggest that a mixed-discipline study of the matter is more appropriate than a rush to legislation. I have been an honorary member of the Hawaii Land Surveyors Association and a frequent speaker at its annual meetings. I am not a surveyor and do not presume to speak for the surveyors but I suggest that discussion among surveyors, the bar, and the title companies is necessary before the Bill should be considered for passage.

Very truly yours,



Robert Bruce Graham, Jr.



March 20, 2019

The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary
State House of Representatives
State Capitol
Honolulu, HI 96813

RE: **S.B. 898, S.D. 1, H.D.1 Relating to Land Recordation**
Hearing: March 21, 2019, 2:05 p.m., Conference Room 325

Dear Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

My name is N. Kaliko Siu. I am the legal coordinator for Gentry Homes, testifying in **strong opposition to S.B. 898**, as amended.

I frequently work with land that has been removed (“deregistered”) from the Land Court system and have found the deregistration process to be an effective means of streamlining the land recordation process. S.B. 898 would essentially undo the currently streamlined process by imposing what I believe to be an unnecessary requirement. As a condition to deregistration, the owner would now be required to have a surveyed map prepared and recorded in the Bureau of Conveyances prior to deregistration.

The stated rationale for this bill is that “there are no clear requirements or standards for the mapping and describing of deregistered lands.” In my experience, that rationale is incorrect. The legal description is not “lost” when a parcel becomes deregistered because the Transfer Certificate of Title is recorded in the Bureau of Conveyances, thus providing all of the information needed to identify the parcel being described. While preparing development and conveyance related documents of deregistered lands, I have never had an issue whereby any of the involved parties (including surveyors, title companies, and utility companies) have had problems with mapping or describing deregistered lands.

Imposing this new requirement would not solve an existing problem, and in fact, would cause significant cost increases and additional regulatory delays on landowners seeking to deregister their lands. In addition, the proposed process will cause added pressure on the State Surveyor’s Office, which is already overburdened and understaffed.

For these reasons, I respectfully request that the Committee not advance this bill.

Sincerely,

GENTRY HOMES, LTD.



N. Kaliko Siu
Legal Coordinator

The Honorable Representative Chris Lee, Chair
The Honorable Representative, Vice Chair
House Committee on Judiciary

Re: Hearing Date: Friday, March 21, 2019 at 2:05pm
Testimony in support of Senate Bill 898, SD1

From: Karl Nishio, President, Hawaii Land Surveyors Association

This testimony is a still in support of S.B. 898, S.D. 1. for the same reasons stated in the previous ones. It will allow a means to rectify some of the inadequacies set forth in HRS 501-261.5, helping provide more oversight and a check of correctness of information when de-registering Land Court properties. It provides a means for the State Survey office to have a current status of the lands as they are the purveyors of such information for registered lands.

Our members of the association have been opposed to de-registration at its onset but have accepted it is the current state of being although it presents challenges to the land surveying profession. As it appears now, more burden has been placed upon the survey professional to ascertain title/ownership of a subject property and complicates matters in mapping and descriptions.

This bill will help keep the information necessary for land matters in an organized and traceable manner to be more beneficial for the public and professional community.

Thank you for your time and consideration with this.

Karl Nishio
President
Hawaii Land Surveyors Association

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Committee on the Judiciary
SB898 SD1 HD1 HSCR 1355

Relating to Land Recordation

Testimony by Joanne Williamson, LPLS

Affiliations: Hawaii Licensed Professional Land Surveyor
National Society of Professional Surveyors, Hawaii Director
Senior Land Surveyor, Hawaiian Electric Company
(808) 436-6725

March 21, 2019
2:05 PM
Room 325

Thank you for allowing my testimony in strong support of SB898 SD1

My name is Joanne Williamson and I am a Licensed Professional Land Surveyor and Land Court Land Surveyor, having been in the surveying profession for the past twenty-five (25) years in the State of Hawaii.

Surveyors are tasked with mapping and writing property descriptions based on their professional expertise in discerning the boundaries, as well as identifying the land titles, of the land being described. The surveying profession requires a working knowledge of Hawaiian land history, current legislation and regulatory processes. Additionally the mandate of a professional surveyor to guard the integrity of land boundaries for the public which we serve.

Clear, accurate mapping and descriptions clearly support the public interest in what is often the *most substantial investment most of us will ever make*. This version of SB 898 refines the deregistration process by requiring that a regular system map (File Plan) be required as part of the process of deregistration. The difference between the Land Court Map and the File Plan is that the *original land titles* are required to be mapped and the land described. This corrects an inherent ambiguity inadvertently created by the original deregistration legislation in that no map or description were required for the now deregistered lands. It assures the continuity of Hawaiian land title moving forward and clearly identifies the original status of deregistered lands.

The following list is in answer to misconceptions about this version of the bill:

- The File Plan map is not a new “survey”; it is only a map that is nominally (albeit importantly) different from the Land Court map in that it depicts source title and a land description.
- Utilizing the existing File Plan mapping process and recording it at the Bureau of Conveyance saves both time *and* expense for future owners of these lands.
- File Plan mapping of 100% interest is a process that is possible to both track and enforce.
- The deregistration process is voluntary and the mapping should be completed by the deregistering owner; File Plan mapping is necessary to complete the process of deregistration.
- Mapping does not change, or imply anything regarding the rights or claims stemming from the land title. The actual rights are a matter of the courts. Mapping only clearly identifies the original titles.

Thank you for your consideration.

SB-898-HD-1

Submitted on: 3/20/2019 1:47:07 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
clayton kaneshiro	Individual	Support	Yes

Comments:

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Thank you for allowing me to submit testimony supporting SB898 SD1. I am a licensed surveyor and licensed to perform Land Court surveys in the State of Hawaii. I have been in the surveying profession for over 28 years. 17 of those years were with the State Land Survey Division. I feel SB898 proposes a necessary procedure to ensure the welfare of the property owner. Once an owner deregisters the property from Land Court, it is no longer guaranteed clear title and is recorded in the "regular" system. In doing so, the original land title should be identified, as the Land Court does not create nor replace original land titles. This bill will address the ambiguity created by the original deregistration process and ensure the continuity of land title to the property and provides a process which will allow continuity of the recordation of the deregistered land.

Thank you,

Clayton Kaneshiro, LPLS

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

Committee On Judiciary

From: Meyer Cummins, LPLS

Date: Wednesday, March 21, 2019

Subject: In Favor of SD 898 SD 1 HD1 HSCR 1355 relating to Land Recordation

Honorable Representative Chris Lee, Chair, Honorable Representative Joy A. San Buenaventura, Vice Chair, and members of the Committee On Judiciary

Thank you for allowing me to testify in favor of SD 898 SD 1 HD1 HSCR 1355 relating to Land Recordation.

My name is Meyer Cummins and I am a land surveyor licensed to practice in the State of Hawaii. I am also the Vice President of the Hawaii Land Surveyors Association which represents a majority of the licensed land surveyors in the State.

When Land Court Deregistration legislation was passed it created a myriad of problems by not addressing items like the resurrection of original land titles, how to provide accurate deed descriptions and maps for deregistered lands, how Land Court easements affect registered lands and deregistered lands, how to note deregistered lands on Land Court Maps, and clarification on whether a deregistered undivided interest would benefit from Land Court title protections affecting the Land Court lot. These issues, our association believes, should have been considered before Land Court Deregistration was made law and many of the answers can only be decided by the courts.

SD 898 SD 1 HD1 HSCR 1355 is a bill intended to correct one aspect of deregistration that directly impacts land owners who wish to voluntarily remove their lands from the land court registration system. It is designed to protect land owners by providing for a new map and legal description of their deregistered land which will be recorded in the public record.

Some parties who may oppose this bill do so on the grounds that it delays the expediency of the current deregistration process. However, the current process does not ensure that land owners have the proper and applicable documentation outlining the rights and encumbrances associated with their land after it has been removed from the Land Court system. Haste at the cost of diligence will ultimately lead to unforeseen problems, like those that arose from Land Court Deregistration, for the land owner and the surveying and title professions alike. If there is to be any real delay, it may ultimately be at the time that an owner wishes to convey, subdivide or consolidate their property and discover that they do not possess the information a

proper map and description would have provided after deregistration should this bill not become law.

Current deregistration legislation also provides a vehicle for undivided interests to deregister from the land court. HLSA and the surveyors we represent, along with title professionals that work with us hand in hand believe this is an error that resulted from the original legislation that will only serve to complicate title issues and recording procedures. We have revised our original bill's language to bar undivided interests from deregistering unless that undivided interest represents the entire remaining interest in registered land so as to provide land owners, surveyors and title professionals a clear picture of the land titles associated with their lands and a clean transition from the Land Court to the Regular System.

Mahlo nui for this opportunity to testify. Should you have any questions, I can be reached at (808)294-3051 and will make myself available for questions.

Meyer Cummins, LPLS

McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

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March 20, 2019

Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary
Thirtieth Legislature
Regular Session, 2019

Re: S.B. 898, S.D.1, H.D.1.
Hearing on March 21, 2019, 2:05 p.m.
Conference Room 325

Dear Chair, Vice Chair and Members of the Committee:

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

ARDA Hawaii opposes the bill. ARDA Hawaii simply does not agree with the justifications advanced for S.B. 898 nor perceive any net benefit to the consuming public.

However, House Draft 1 exempts condominiums and time share plans from the operation of this bill for the most part. This eliminates some of ARDA Hawaii's key objections.

Accordingly, if the Committee is inclined to pass this measure, ARDA Hawaii urges the adoption of HD1, but with some drafting corrections. Exhibit A, attached, is a proposed HD2 containing suggested revisions.

S.B. 898 bill requires a landowner who wishes to voluntarily deregister their lot to hire a surveyor to prepare and submit a new plan of the Land Court lot *already shown on the Land Court Map*. The new plan would be recorded as a file plan in the Bureau of Conveyances and a new legal description would be prepared.

ARDA Hawaii feels that the imposition of a new survey for deregistration of land is not necessary and will result in increased costs and delays for landowners seeking to deregister their land.

At the present, owners who deregister their Land Court land simply refer to the land by Land Court Lot, Map, and Application number, but add to it the recording information for the certificate of title recorded in the Bureau of Conveyances as part of the deregistration process.

P. O. Box 2800 • Honolulu, Hawai'i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293 • E-mail: info@m4law.com

Chair, Vice Chair and Members,
House Committee on Judiciary
March 20, 2019
Page 2

We are comfortable with this legal description. Our members have made thousands of conveyances using this kind of legal description. Title insurance companies have issued thousands of title policies based on this kind of legal description.¹

This approach to describing the title relies on the Land Court system to establish the parcel boundaries and encumbrances on title. The State of Hawaii guarantees that the Land Court description and list of encumbrances are correct.

This approach also avails the owner and all subsequent owners of the benefits of the Land Court, once described as follows:

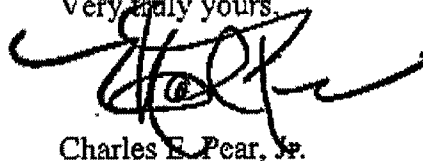
We have followed the evolution of the definition of boundaries of lands from ancient times to * * * the Land Court system by which any one can come into court and have his title to land quieted for all times, guaranteed by the government and at the same time have his boundaries precisely defined by the most modern methods of surveying.

Hawaiian Land Titles by Robert D. King, Principal Cadastral Engineer, Territory of Hawaii.

We think that the Land Court description of the land is fine. We see no need to add another layer beyond this.

Thank you for your kind consideration of these thoughts.

Very truly yours,

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

Charles E. Pear, Jr.

CEP:kn

¹ To our knowledge, no title company has come forth in support of SB898. Informally, we are aware of one or more title companies that believe SB898 to be unnecessary but they do not feel compelled to take a position on it since they are willing to insure title whether or not a new survey is prepared.

A BILL FOR AN ACT

RELATING TO LAND RECORDATION.

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

SECTION 1. In 2009, because of the overwhelming volume of timeshare transactions, the legislature enacted Act 120, Session Laws of Hawaii 2009, to remove fee simple timeshare transactions from the land court. In 2013, the legislature provided for the voluntary deregistration of fee simple, non-timeshare land.

The land court provides a systemic and logical process for the mapping and indexing of land and the recording of transactions and encumbrances on land titles, such as mortgages, liens, leases, claims, and taxes. The land court system, however, was designed to process single, consecutive ownership interests and not multiple, simultaneous interests in a single parcel of land. An unanticipated consequence of the enacted legislation is that there are no clear requirements or standards for the mapping and describing of deregistered lands.

The purpose of this Act is to clarify the data requirements for land recordation in the bureau of conveyances for transactions that do not involve time shares, condominiums,

planned communities, or deregistration of an undivided interest in registered land to require submission of a map and description of the relevant land prepared by a licensed professional surveyor.

SECTION 2. Section 501-261.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§501-261.5[+]~~ **Deregistration of registered land other than fee time share interests.** ~~[The]~~ (a) To voluntarily deregister land under this chapter, the registered owner of the fee interest in registered land [may] shall submit [a written request] the following to the assistant registrar [to deregister the land under this chapter.]:

(1) ~~[Any]~~ A written request [for deregistration shall include] to deregister the registered land, proof of title insurance in the amount of the value of the land to be deregistered, and a written waiver of all claims against the State relating to the title to the land arising after the date of deregistration[.]; and

(2) A plan of the parcel or parcels sought to be deregistered that includes a map and description prepared by a licensed professional surveyor prepared pursuant to sections 502-17, 502-18, and 502-19; provided that a plan shall not be required for:

(A) Deregistration of land that is part of a condominium property regime subject to chapter 514B, a time share plan subject to chapter 514E, or a planned community subject to chapter 421J;

or

(B) Deregistration of [the]-an undivided interest in registered land.

~~[+2)]~~ (b) If a plan is required to be submitted pursuant to section (a)(2), then upon [Upon] [presentation to the assistant registrar of a

~~written request for deregistration by the registered owner of the fee interest in registered land,]~~ satisfactory submission of the documents required pursuant to subsection (a), the assistant registrar shall [not register the same, but shall:] refer the map and description of the parcel or parcels sought to be deregistered to the state land surveyor in the department of accounting and general services for approval after being checked as to form and mathematical correctness but not on the ground.

(c) Upon satisfactory submission of the documents required pursuant to subsection (a)(1) and, if a plan is required to be submitted pursuant to section (a)(2), upon notification of approval of such plan by the state land surveyor, the assistant registrar shall:

~~[(A)]~~ (1) Record in the bureau of conveyances, pursuant to chapter 502, the current certificate of title for the fee interest in the registered land; provided that prior thereto, the assistant registrar shall note on the certificate of title all documents and instruments that have been accepted for registration and that have not yet been noted on the certificate of title for the registered land;

~~[(B)]~~ (2) Record in the bureau of conveyances, pursuant to chapter 502, the written request for deregistration presented to the assistant registrar for filing or recording[~~-The request~~], which shall be recorded immediately after the certificate or certificates of title; and

~~[(C)]~~ (3) Cancel the certificate of title[~~-;~~]; and

(4) If a plan is required to be submitted pursuant to section (a)(2), record [Record] in the bureau of conveyances, pursuant to chapter 502, a plan of the parcel or parcels sought to be deregistered, prepared pursuant to sections 502-17, 502-18, and 502-19.

~~[-(3)-]~~ (d) The [registrar ~~or~~] assistant registrar shall note the recordation and cancellation of the certificate of title in the registration book and in the records of the

application for registration of the land that is the subject of the certificate of title. The notation shall state ~~[the]~~:

(1) The bureau of conveyances document number for the certificate of title ~~[se]~~ recorded ~~[-the]~~;

(2) The certificate of title number ~~[,]~~; and ~~[the]~~

(3) The land court application number ~~[,]~~ or consolidation number, map number, and lot number for the land that is the subject of the certificate of title ~~[se]~~ recorded.

~~[-(4)]~~ (e) The assistant registrar shall transmit the notation of the recordation and cancellation to the registrar of the land court and state land surveyor.

(f) No order of court shall be required prior to or in connection with the performance of any of the foregoing actions."

SECTION 3. Section 502-11, Hawaii Revised Statutes, is amended to read as follows:

"§502-11 **Entry record.** The registrar shall make and keep in such form and manner as is prescribed by the board of land and natural resources a permanent record of the receipt of every deed and instrument left for record, every copy left as a caution, ~~[and]~~ every plan filed, every plan of the parcel or parcels of land deregistered pursuant to section 501-261.5, and shall note on the record, in addition to a description sufficient to identify the document and the date and time of its receipt, ~~[such]~~ other facts as are prescribed by the board of land and natural resources. Every ~~[such]~~ document shall be considered as recorded at the time ~~[se]~~ noted."

SECTION 4. Section 502-17, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) The registrar shall accept and file in the registrar's office, upon the payment of the fee as provided in section 502-25, any plan of land prepared in the manner prescribed by this section. Every ~~such~~ plan shall contain ~~(a)~~:

(1) A short name of the tract; ~~the~~

(2) The name of the ahupuaa or ili, district, and island; ~~such data~~

(3) Data concerning the original title of the land as may be known, together with the name of the last owner of record and the owner's address; ~~the~~

(4) The signature and address of the licensed professional surveyor ~~and the surveyor's address~~; ~~the~~

(5) The signature and address of the maker ~~and the maker's address~~;

(6) The date of survey, scale, the meridian line, area, the true azimuths and lengths of principal lines; ~~and the~~

(7) The names of all known adjoining owners~~;~~ and

(8) If the land is deregistered pursuant to chapter 501, part II, and if a plan is required to be submitted as part of such deregistration pursuant to section 501-261.5(a)(2):

(A) A map and description prepared by a licensed professional surveyor of the parcel or parcels of land deregistered; and

(B) An application or consolidation number and document numbers of the canceled certificate of title.

One or more durable monuments shall be placed on the land which shall connect with the government triangulation system and which monuments shall be placed as indicated on the plan. Whenever the land platted is made up of more than one original title, it shall be necessary to show all original title lines in broken lines as follows:

.....

(b) The plan shall first be referred to the department of accounting and general services of the State which shall cause the same to be checked as to form and mathematical correctness but not on the ground. If the plan is drawn in accordance with this section and sections 502-18 and 502-19, the department shall indorse its approval of the plan on the face thereof, after which the plan may be filed of record. The department shall withhold approval of any plan until satisfied that the surveyor and maker of the plan is a [registered] licensed professional surveyor."

2. By amending subsection (d) to read:

"(d) On receipt for recordation of a transfer or separate description document concerning a lot in a subdivision, the registrar shall accept and file the document with:

- (1) A metes and bounds description, either solely or as part of the document;
- (2) A county certified plat map; and
- (3) A letter from a [registered] licensed professional surveyor, certifying that the metes and bounds description conforms to the accompanying plat map.

The document shall otherwise comply with the requirements for recordation under this section. Any parcel created or subdivided prior to the effective date of the subdivision laws of the respective counties are exempt from the provisions of this subsection."

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2050.

Report Title:

Land Recordation; Bureau of Conveyances; Deregistered Land

Description:

Requires submission of a map and description of the relevant land prepared by a licensed surveyor along with an application for the voluntary deregistration of land from the Land Court and recordation of title in the Bureau of Conveyances. Exempts transactions that involve time shares, condominiums, planned communities, or deregistration of an undivided interest in registered land. (SB898 HD1)

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

STARN • O'TOOLE • MARCUS & FISHER

A LAW CORPORATION

March 20, 2019

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice-Chair
Members of the House Committee on Judiciary

Re: **Testimony in Opposition to SB 898 Relating to Land Recordation**
Hearing on March 21, 2019 2:05 p.m., Conf. Room 325

Dear Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

This Bill would unreasonably burden homeowners and landowners seeking to relieve themselves of the burdens of Land Court registration, in derogation of the Legislature's efforts to assist such owners.

I am a real estate attorney who deals regularly with land that has been removed ("deregistered") from the Land Court system. The Bill would impose a new requirement, as a condition to deregistration, for the owner to have a surveyed map prepared and recorded in the Bureau of Conveyances. The Bill's rationale states that "there are no clear requirements or standards for the mapping and describing of deregistered lands."

That rationale is, however, in error. The legal description attached to the parcel – no less required while it is subject to Land Court – is not "lost" or disregarded when a parcel becomes deregistered. To the contrary, the Transfer Certificate of Title is recorded in the Bureau of Conveyances, carrying with it all of the information needed to permit the State (so long as registered) or a purchaser (after deregistration) to identify the parcel being described.

In all of my years of preparing conveyances of deregistered lands, there has never been an occasion when any party (including the surveying community as well as the title insurance industry) has expressed a problem with mapping or describing deregistered lands.

Imposing this requirement does not, therefor, solve any existing problem, but does impose significant cost and delay on an owner seeking to deregister its land – in some instances, the additional cost involved would be prohibitive, especially for the average homeowner and for the owner of a large parcel. Absent some problem to be solved – and there does not appear to be any such problem – imposing such a burden is not justified.

Accordingly, I respectfully request that the Committee not advance this bill or, as an alternative, make the new mapping provisions optional, only.

Very truly yours,



Kenneth B. Marcus

SCHNEIDER TANAKA RADOVICH
ANDREW & TANAKA
A Limited Liability Law Company

David F. Andrew
Joel D. Kam
Diane Yuen Praywell
Scott D. Radovich
Robert F. Schneider
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Edward H. H. Wong

March 20, 2019

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice-Chair
Members of the House Committee on Judiciary

Via email: JUDtestimony@capitol.hawaii.gov

Re: Testimony in Opposition to SB 898 Relating to Land Recordation
Hearing on March 21, 2019 2:05 p.m., Conf. Room 325

Dear Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

This Bill would unreasonably burden homeowners and landowners seeking to relieve themselves of the burdens of Land Court registration, in derogation of the Legislature's efforts to assist such owners.

I am a real estate attorney who regularly deals with land that has been removed or deregistered from the Land Court system. The Bill would impose a new requirement, as a condition to deregistration, for the owner to have a surveyed map prepared and recorded in the Bureau of Conveyances. The Bill's rationale is that such a map is necessary, because "there are no clear requirements or standards for the mapping and describing of deregistered lands."

That rationale is wrong. When a parcel of land is deregistered, the legal description for the parcel is not lost or disregarded. In fact, the Land Court Transfer Certificate of Title is recorded in the Bureau of Conveyances, carrying with it all of the information needed to permit the State (so long as registered) or a purchaser (after deregistration) to identify the parcel being described.

In my many years of preparing documents involving deregistered lands, there has never been an occasion when any party (including surveyors and title companies) has expressed a problem with mapping or describing deregistered lands.

As such, imposing this requirement does not solve any existing problem. It would, however, impose significant cost and delay on an owner seeking to deregister its land. In some instances, the additional cost involved would be prohibitive, especially for the average homeowner and for the owner of a large parcel. Absent some problem to be solved – and there does not appear to be any such problem – imposing such a burden is not justified.

Accordingly, I respectfully request that the Committee not advance this Bill. Alternatively, the Committee should only make the new mapping provisions optional.

Very truly yours,



David F. Andrew

SB-898-HD-1

Submitted on: 3/20/2019 1:33:02 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kendall Hee	Individual	Support	No

Comments:

COMMITTEE ON JUDICIARY

Honorable Rep. Chris Lee, Chair

Honorable Rep. Joy A. San Buenaventura, Vice Chair

Thank you for allowing me to submit testimony in favor of SB 898 SD1 HD1

This bill brings order to the deregistration process. It ensures that when a landowner decides to deregister land court property, the underlying land titles and related information be brought forward and set forth in a fashion easily understandable and readable by all, the current landowner(s) as well as the future landowner(s).

This creates a system of orderly land matters going forward so that things don't fall through the cracks. Coming from the registered (land court) system there should be no ambiguities and we want to perpetuate that clear understanding of the land.

Thank you, again, for allowing my testimony. Should you have any questions, I may be reached at 808-591-8116 x216

Kendall Hee

SB-898-HD-1

Submitted on: 3/20/2019 5:27:06 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christina Ohira	Individual	Oppose	No

Comments:

Dear Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

This Bill would unreasonably burden homeowners and landowners seeking to relieve themselves of the burdens of Land Court registration, in derogation of the Legislature's efforts to assist such owners.

I am a real estate attorney who deals regularly with land that has been removed ("deregistered") from the Land Court system. The Bill would impose a new requirement, as a condition to deregistration, for the owner to have a surveyed map prepared and recorded in the Bureau of Conveyances. The Bill's rationale states that "there are no clear requirements or standards for the mapping and describing of deregistered lands."

That rationale is, however, in error. The legal description attached to the parcel – no less required while it is subject to Land Court – is not "lost" or disregarded when a parcel becomes deregistered. To the contrary, the Transfer Certificate of Title is recorded in the Bureau of Conveyances, carrying with it all of the information needed to permit the State (so long as registered) or a purchaser (after deregistration) to identify the parcel being described.

In all of my years of preparing conveyances of deregistered lands, there has never been an occasion when any party (including the surveying community as well as the title insurance industry) has expressed a problem with mapping or describing deregistered lands.

Imposing this requirement does not, therefore, solve any existing problem, but does impose significant cost and delay on an owner seeking to deregister its land – in some instances, the additional cost involved would be prohibitive, especially for the average homeowner and for the owner of a large parcel. Absent some problem to be solved – and there does not appear to be any such problem – imposing such a burden is not justified.

Accordingly, I respectfully request that the Committee not advance this Bill or, as an alternative, make the new mapping provisions optional, only.

On a closing note, I can't help but wonder about the motivation for this Bill. The only persons who would seem to benefit from this are the land sureyors who would have all this new work. But even then, it seems like whenever I want to hire a surveyor they're overbooked and super busy. If this Bill were to pass, I think it will essentially make it impossible to de-register Land Court properties.

Accordingly, I respectfully request that the Committee not advance this Bill or, as an alternative, make the new mapping provisions optional, only.

Very truly yours,

Christina N. Ohira, Esq.

SB-898-HD-1

Submitted on: 3/20/2019 12:32:15 AM

Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments: