

JAN 26 2009

A BILL FOR AN ACT

RELATING TO THE LAND COURT SYSTEM.

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

1 SECTION 1. Chapter 501, Hawaii Revised Statutes, is
2 amended by adding two new parts to be designated and to read as
3 follows:

4 **"FEE TIME SHARE INTERESTS**

5 **§501-A Deregistration of fee time share interests. (a)**

6 Upon presentation to the assistant registrar for filing or
7 recording of any instrument, document, or paper conveying or
8 encumbering a fee time share interest or any interest therein,
9 the assistant registrar shall not register the same, but shall:

10 (1) Record in the bureau of conveyances, pursuant to
11 chapter 502, the current certificate of title for the
12 registered land in which the fee time share interest
13 includes an undivided interest; provided that:

14 (A) Prior thereto, the assistant registrar shall note
15 on the certificate of title all documents and
16 instruments that have been accepted for
17 registration and that have not yet been noted on
18 the certificate of title; and

1 (B) If separate certificates of title have been
2 issued for individual fee time share interests in
3 the time share plan, the assistant registrar
4 shall record in the bureau of conveyances,
5 pursuant to chapter 502, the certificate of title
6 for each fee time share interest in the time
7 share plan;

8 (2) Record in the bureau of conveyances, pursuant to
9 chapter 502, the instrument, document, or paper
10 presented to the assistant registrar for filing or
11 recording. Such instrument, document, or paper shall
12 be recorded immediately after the certificate or
13 certificates of title; and

14 (3) Cancel the certificate of title.

15 (b) The registrar or assistant registrar shall note the
16 recordation and cancellation of the certificate of title in the
17 registration book and in the records of the application for
18 registration of the land that is the subject of the certificate
19 of title. The notation shall state the bureau of conveyances
20 document number for the certificate of title so recorded, the
21 certificate of title number, and the land court application

1 number, map number, and lot number for the land that is the
2 subject of the certificate of title so recorded.

3 (c) It shall not be necessary for the registered owner,
4 the registrar, the assistant registrar, or any other person to
5 seek or obtain an order of court prior to or in connection with
6 the performance of any of the foregoing actions.

7 **§501-B Effect of deregistration.** (a) Upon the
8 recordation in the bureau of conveyances of a certificate of
9 title pursuant to section 501-A:

10 (1) The deregistered land shall no longer be registered
11 land for purposes of this chapter;

12 (2) No instruments, documents, or papers relating solely
13 to deregistered land shall be filed or recorded with
14 the assistant registrar pursuant to this chapter, but
15 shall instead be recorded in the bureau of conveyances
16 pursuant to chapter 502; and

17 (3) Except as otherwise expressly provided in this
18 chapter, chapter 502 shall apply to the deregistered
19 land.

20 (b) Recordation of a certificate of title pursuant to
21 section 501-A shall not disturb the effect of any proceedings in
22 the land court where the question of title has been determined.

1 All proceedings had in connection with the registration of title
2 that relate to the settlement or determination of title before
3 that recording, and all provisions of this chapter that relate
4 to the status of the title, shall have continuing force and
5 effect with respect to the period of time that title remained
6 under the land court system. Those provisions giving rise to a
7 right of action for compensation from the State, including but
8 not limited to any limits on and conditions to the recovery of
9 such compensation and the State's rights of subrogation with
10 respect thereto, shall also continue in force and effect with
11 respect to the period of time that title remained under the land
12 court system.

13 **§501-C Effect of deregistration in specific cases.**

14 Notwithstanding section 501-B(a)(3), the following documents,
15 instruments, and papers need not be registered pursuant to this
16 chapter to be effective and shall be recorded in the bureau of
17 conveyances pursuant to chapter 502:

- 18 (1) Any document, instrument, or paper assigning,
19 extending, continuing, dissolving, discharging,
20 releasing in whole or in part, reducing, canceling,
21 extinguishing, or otherwise modifying or amending any
22 of the following documents, instruments, or papers

1 that have been registered pursuant to this chapter and
2 that pertain to deregistered land:

3 (A) A mortgage;

4 (B) An agreement of sale for the sale of a fee time
5 share interest. After the recordation of the
6 certificate of title, any such agreement of sale
7 shall be subject to section 502-85 and shall not
8 be subject to section 501-101.5;

9 (C) A correction deed, correction mortgage, or other
10 document, instrument, or paper correcting a
11 document, instrument, or paper registered
12 pursuant to this chapter;

13 (D) A lien or claim of lien on a fee time share
14 interest held or claimed by a time share owners
15 association, an association of apartment owners,
16 or other homeowners' association;

17 (E) A lease that demises a fee time share interest;

18 (F) An order of court, attachment, writ, or other
19 process against a fee time share interest;

20 (G) A mechanic's or materialman's lien or other lien
21 upon a fee time share interest;

1 (H) A lis pendens or notice of pendency of action,
2 notice, affidavit, demand, certificate,
3 execution, copy of execution, officer's return,
4 or other instrument relating to a fee time share
5 interest and otherwise required or permitted to
6 be recorded or registered in connection with the
7 enforcement or foreclosure of any lien, whether
8 by way of power of sale pursuant to a power of
9 sale under section 667-5, or otherwise; or

10 (I) A power of attorney given by the owner of a fee
11 time share interest or the vendor or vendee under
12 an agreement of sale for the sale of a fee time
13 share interest, a mortgagee or other lienor
14 having a mortgage or lien upon a fee time share
15 interest, or another party holding a claim or
16 encumbrance against or an interest in a fee time
17 share interest;

18 (2) A lis pendens or notice of pendency of action, notice,
19 affidavit, demand, certificate, execution, copy of
20 execution, officer's return, or other instrument
21 relating to a fee time share interest and otherwise
22 required or permitted to be recorded or registered in

1 connection with the enforcement or foreclosure of any
2 lien, whether by way of power of sale pursuant to a
3 power of sale under section 667-5, or otherwise; and

4 (3) Any declaration annexing property to, any declaration
5 deannexing property from, any amendment or supplement
6 to, correction of, or release or termination of any of
7 the following documents, instruments, or papers that
8 have been registered pursuant to this chapter and that
9 pertain to deregistered land:

10 (A) A declaration of covenants, conditions,
11 restrictions, or similar instrument, by whatever
12 name denominated, establishing or governing a
13 time share plan, or the bylaws of a time share
14 owners association, notice of time share plan, or
15 other time share instrument;

16 (B) A declaration of condominium property regime or
17 similar declaration by whatever name denominated,
18 the bylaws of the association of apartment
19 owners, the condominium map, any declaration of
20 merger and any instrument effecting a merger;
21 provided that if only some of the condominium
22 apartments are included in the time share plan,

1 then it shall be necessary to register, and to
2 note on the certificate of title for any
3 apartment not included in the time share plan:

4 (i) Any declaration annexing property to the
5 condominium property regime;

6 (ii) Any declaration deannexing property from the
7 condominium property regime;

8 (iii) Any instrument effecting a merger of two or
9 more condominium projects or two or more
10 phases of a condominium project; and

11 (iv) Any document, instrument or paper amending,
12 supplementing, correcting, releasing, or
13 terminating any of the documents listed in
14 items (i) through (iii) above, the
15 declaration of condominium property regime,
16 the bylaws of the association of apartment
17 owners, the condominium map, or any
18 declaration of merger; and

19 (C) A declaration of covenants, conditions, and
20 restrictions or similar instrument, by whatever
21 name denominated, the bylaws of any homeowners
22 association, any declaration of annexation or

1 deannexation, any amendments and supplements
2 thereto, and any cancellation or extinguishment
3 thereof, any declaration of merger and any
4 instrument effecting a merger; provided that if
5 only some of the parcels of land covered by the
6 declaration constituted deregistered land, and if
7 one or more of the remaining parcels constitute
8 registered land, then it shall be necessary to
9 register, and to note on the certificate of title
10 for any registered land:

11 (i) Any declaration annexing property to such
12 declaration;

13 (ii) Any declaration deannexing property from the
14 operation of such declaration; and

15 (iii) Any document, instrument or paper amending,
16 supplementing, correcting, releasing, or
17 terminating any of the documents listed in
18 item (i) or (ii) above, the declaration of
19 covenants, conditions, and restrictions, or
20 the bylaws of the homeowners' association.

21 **§501-D Chain of title of deregistered land.** (a) A

22 certificate of title recorded pursuant to section 501-A shall

1 constitute a new chain of record title in the registered owner
2 of any estate or interest as shown on the certificate of title
3 so recorded, subject only to the following:

4 (1) The estates, mortgages, liens, charges, instruments,
5 documents, and papers noted on the certificate of
6 title so recorded;

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

16 (3) Unpaid real property taxes assessed against the land
17 and improvements covered by the certificate of title
18 so recorded, with interest, penalties, and other
19 additions to the tax, which, unless a notice is filed
20 and registered as provided by county real property tax
21 ordinance, shall be for the period of three years from
22 and after the date on which the lien attached, and if

1 proceedings for the enforcement or foreclosure of the
2 tax lien are brought within the period, until the
3 termination of the proceedings or the completion of
4 the tax sale;

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

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

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

16 (7) Any liability to assessments for betterments, or
17 statutory liability that may attach to land as a lien
18 prior to or independent of, the recording or
19 registering of any paper of the possibility of a lien
20 for labor or material furnished in the improvement of
21 the land; provided that the priority of any such
22 liability and the lien therefor (other than for labor

1 and material furnished in the improvement of the land
2 that shall be governed by section 507-43) shall cease
3 and terminate three years after the liability first
4 accrues unless notice thereof, signed by the officer
5 charged with collection of such assessments or
6 liability, setting forth the amount claimed, the date
7 of accrual, and the land affected, is recorded in the
8 bureau of conveyances pursuant to chapter 502 within
9 such three-year period; and provided further that if
10 there are easements or other rights appurtenant to a
11 parcel of deregistered land that for any reason have
12 failed to be deregistered, such easements or rights
13 shall remain so appurtenant notwithstanding such
14 failure, and shall be held to pass with the
15 deregistered land until cut off or extinguished in any
16 lawful manner;

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

19 (9) Any encumbrance not herein required to be registered
20 as provided in sections 501-241 to 501-248 and
21 relating to a leasehold time share interest; and

1 (10) Child support liens that are created pursuant to order
2 or judgment filed through judicial or administrative
3 proceeding in this State or in any other state, the
4 recording of which shall be as provided by chapter
5 576D.

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

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

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

13 (c) All instruments, documents, and papers noted on a
14 certificate of title recorded pursuant to section 501-A shall
15 have the same force and effect as if they had been recorded in
16 the bureau of conveyances pursuant to chapter 502 as of the
17 date, hour, and minute of reception noted on the certificate of
18 title pursuant to section 501-107; provided that:

19 (1) No such instrument, document, or paper shall have any
20 greater or other effect after such certificate of
21 title is recorded pursuant to section 501-A, as
22 constructive notice or otherwise, than it had or

1 acquired at the time it was registered pursuant to
2 this chapter or made; and

3 (2) Nothing in this part shall be construed as giving any
4 greater or other effect, as constructive notice or
5 otherwise, to any instrument, document, or paper
6 recorded in the bureau of conveyances pursuant to
7 chapter 502 prior to the recordation of the
8 certificate of title pursuant to section 501-A as to
9 any land, than was provided by the laws of this State
10 (including this chapter and other laws regarding
11 registered land) in effect at the time such
12 instrument, document, or paper was recorded.

13 (d) If a certificate of title recorded pursuant to section
14 501-A relates to more than one fee time share interest, then
15 subsection (a) shall apply to each fee time share interest
16 separately and only those items described in subsection (a) that
17 encumbered a particular fee time share interest prior to
18 recordation of the certificate of title will continue to
19 encumber that fee time share interest after such recordation.

20 **§501-E Status of fee time share interest as real property.**

21 Nothing in this part shall affect the status of a fee time share
22 interest as real property.

§501-F Dual recording involving deregistered land.

Nothing in this part shall prevent or prohibit the registration of an instrument that conveys, assigns, or affects both registered land and deregistered land.

§501-G Reference to prior recorded instrument. Any

instrument conveying or otherwise dealing with deregistered land and that requires a reference to a prior recorded instrument may satisfy the requirements of section 502-33 by reference to the land court document number (in the case of a document recorded pursuant to chapter 501) or to the book and page or bureau of conveyances document number (in the case of a document recorded pursuant to chapter 502) of the instrument to which reference is made.

§501-H Legal incidents of deregistered land. Nothing in

this part shall, in any way, be construed to relieve deregistered land, or the owners thereof, of:

(1) Any rights incident to the relation of husband and wife;

(2) Liability to attachment or mesne process or levy on execution;

(3) Liability to any lien of any description established by law on the deregistered land, or in the interest of the owner in the deregistered land;

(4) The right to change the laws of descent;

(5) The rights of partition between coparceners and other cotenants;

(6) The right to take the same by eminent domain;

(7) Liability to be recovered by a trustee in bankruptcy under the provisions of law relating to preferences; or

(8) Any other rights or liabilities created by law and applicable to the owner of a condominium apartment that is part of a condominium property regime established on registered land and that is not utilized in a time share plan, except as otherwise expressly provided in this part.

§501-I Jurisdiction for matters pertaining to deregistered land. The land court shall have jurisdiction over all matters relating to instruments required by this part to be registered pursuant to this chapter. Where any party is in doubt as to whether an instrument must be registered, the question shall be referred to the land court for decision; and the court, after

1 notice to all parties and a hearing, shall enter an order
2 determining the question. Notice to the owner of a fee time
3 share interest shall be given by mailing notice to the
4 association of time share owners required to be established
5 pursuant to section 514E-29, and such association shall
6 represent the owners in any such matters and proceedings,
7 without prejudice to the right of any individual owner to appear
8 and be heard as a separate party. Except as expressly otherwise
9 provided in this section, nothing in this part shall deprive the
10 land court of exclusive jurisdiction pursuant to section 501-101
11 over registered land, or any interest therein, other than
12 registered land that becomes deregistered land. The circuit
13 court shall have jurisdiction, pursuant to section 603-
14 21.5(a)(3), over:

- 15 (1) All matters relating to instruments required by this
16 part to be recorded pursuant to chapter 502;
- 17 (2) All other matters pertaining to deregistered land
18 (except those in which jurisdiction is vested in the
19 land court pursuant to this section); and
- 20 (3) All matters as to which jurisdiction would otherwise
21 lie in the land court in part and in the circuit court
22 in part.

1 VOLUNTARY DEREGISTRATION OF

2 FEE SIMPLE AND LEASEHOLD LANDS

3 §501- Voluntary deregistration of land owned in fee
4 **simple and leasehold.** Upon presentation to the assistant
5 registrar for filing or recording of any instrument, document,
6 or paper selling the fee simple or leasehold interest in a
7 parcel in which the owner of that parcel presents a notarized
8 affidavit that the owner wishes to voluntarily remove that
9 parcel from the provisions of chapter 501, the assistant
10 registrar shall not register the same, but shall record in the
11 bureau of conveyances, pursuant to chapter 502, the current
12 certificate of title for the registered land."

13 SECTION 2. Chapter 657, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§657- Deregistered land. With respect to land that was
17 registered land under chapter 501, but that has been
18 deregistered pursuant to section 501-A, in no event shall the
19 period of limitations provided in the part entitled fee time
20 share interest of this chapter begin prior to the recordation of
21 the certificate of title for such land pursuant to section 501-
22 A."

SECTION 3. Section 501-20, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Deregistered land" means land that is the subject of a certificate of title recorded pursuant to section 501-A.

"Fee time share interest" means a time share interest, other than a leasehold time share interest, that consists of or includes a present undivided interest in registered land, including but not limited to an undivided interest in one or more fee simple condominium apartments established in whole or in part on registered land."

SECTION 4. Section 501-71, Hawaii Revised Statutes, is amended to read as follows:

"§501-71 Decree of registration; conditional when; quieting title, exceptions; reopened when. If the court after hearing finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that since filing the application, the title of the applicant has not been encumbered in any manner, then a decree of confirmation and registration as prayed for shall be entered.

1 If the court finds that the applicant, at the time of
2 filing an application, or subsequently, had title, as stated in
3 the application, that the title is proper for registration, and
4 that subsequent to the filing of the application, the title has
5 been encumbered, then the title shall be registered subject to
6 the encumbrances so found.

7 If the court finds that the applicant, at the time of
8 filing an application, or subsequently, had title, as stated in
9 the application, that the title is proper for registration, and
10 that subsequent to filing the application, the applicant has
11 conveyed away all or any portion or portions of the premises or
12 interest therein sought to be registered, then a decree of
13 confirmation and registration shall be entered, covering the
14 entire premises, confirming title in the applicant and the
15 person or persons deriving their title through the applicant, to
16 the premises or interest in accordance with the applicant's or
17 their respective true ownership of the whole or any portion or
18 portions thereof or interest therein at the time of filing the
19 decree, and subject to all encumbrances affecting all or any
20 portion thereof.

21 Every decree of registration of absolute title shall bind
22 the land, and quiet the title thereto, subject only to the

1 exceptions stated in section 501-82. It shall be conclusive
2 upon and against all persons, including the State, whether
3 mentioned by name in the application, notice, or citation, or
4 included in the general description "to all whom it may
5 concern." The decree shall not be opened by reason of the
6 absence, infancy, or other disability of any person affected
7 thereby, nor by any proceeding for reversing judgments or
8 decrees[~~;~~ ~~subject, to the right of~~], except that any person
9 deprived of land or of any estate or interest therein by a
10 decree of registration obtained by fraud [~~to~~] may file a
11 petition for review within one year after the entry of the
12 decree[~~;~~ ~~provided no~~] unless an innocent purchaser for value has
13 acquired an interest. If there is any such purchaser, the
14 decree of registration shall not be opened but shall remain in
15 full force and effect forever, subject only to the right of
16 appeal hereinbefore provided[~~-~~] and to sections 501-A to 501-I.
17 Deregistration pursuant to sections 501-A to 501-I shall not
18 alter or revoke the conclusive nature or effect of a decree of
19 registration, which shall continue to quiet the title to the
20 deregistered land as to all claims based arising prior to the
21 recording of the certificate of title pursuant to section 501-A,
22 except such claims as would not otherwise be barred under this

1 chapter if such lands were not deregistered. Any person
2 aggrieved by the decree in any case may pursue a remedy by
3 action of tort against the applicant or any other person for
4 fraud, in procuring the decree."

5 SECTION 5. Section 501-86, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§501-86 Registration runs with land.** The obtaining of a
8 decree of registration, and the entry of a certificate of title,
9 shall be regarded as an agreement running with the land, and
10 binding upon the applicant and all the applicant's successors in
11 title, that the land shall be and forever remain registered
12 land, and subject to this chapter [~~and of all acts in amendment~~
13 ~~hereof.~~], except as provided in the part entitled "Fee Time
14 Share Interests"."

15 SECTION 6. Section 501-108, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) An owner desiring to convey in fee registered land or
18 any portion thereof shall execute a deed of conveyance, which
19 the grantor or the grantee may present to the assistant
20 registrar in the bureau of conveyances; provided that no deed,
21 mortgage, lease, or other voluntary instrument shall be accepted
22 by the assistant registrar for registration unless a reference

1 to the number of the certificate of title of the land affected
2 by such instrument is incorporated in the body of the instrument
3 tendered for registration. If the certificate reference in the
4 instrument is not current, an endorsement of the current
5 certificate of title shall be required.

6 The assistant registrar shall note upon all instruments
7 filed or recorded concurrently with the recorded instrument the
8 document number and the certificate of title number in the
9 spaces provided therefor wherever required[-] and, in the case
10 of deregistered land, the bureau of conveyances document number
11 in the space provided therefor wherever required.

12 Except as otherwise provided in section 501-A:

13 (1) The assistant registrar shall thereupon, in accordance
14 with the rules and instructions of the court, make out
15 in the registration book a new certificate of title to
16 the grantee[-];

17 (2) The assistant registrar shall note upon the original
18 certificate the date of transfer, and a reference by
19 number to the last prior certificate[-];

20 (3) The original certificate shall be stamped
21 "canceled"[-]; and

1 (4) The deed of conveyance shall be filed or recorded and
2 endorsed with the number and place of registration of
3 the certificate of title of the land conveyed."

4 SECTION 7. Section 501-116, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§501-116 Mortgage registration necessary.** The owner of
7 any interest in registered land may mortgage such interest by
8 executing a mortgage thereof. Such a mortgage may be assigned,
9 extended, discharged, released in whole or in part, or otherwise
10 dealt with by the mortgagee by any form of instrument sufficient
11 in law for the purpose. [~~The~~] Except as otherwise provided in
12 the part entitled "Fee Time Share Interests", the mortgage, and
13 all instruments assigning, extending, discharging, and otherwise
14 dealing with the mortgage, shall be registered and shall take
15 effect upon the title of the mortgaged property only from the
16 time of registration."

17 SECTION 8. Section 501-171, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) When the owner of registered land, or of any estate
20 or interest therein, dies, having devised the same by will, the
21 person or persons entitled thereto shall file or record with the
22 assistant registrar of the land court a correct statement of the

1 full names of the devisees, the residence or post office address
2 of each and their marital status and a reference to the number
3 of the certificate of title of the land affected, a certified
4 copy of the letters appointing the personal representative
5 showing the powers of the personal representative, or a
6 certified copy of an acknowledgment of authority, and either a
7 certified copy of an order of the circuit court determining the
8 persons entitled to distribution of the registered land and
9 directing or approving distribution or a deed from the personal
10 representative to the devisee or devisees, and thereupon the
11 assistant registrar shall cancel the certificate issued to the
12 testator, and, except as otherwise provided in the part entitled
13 "Fee Time Share Interests", enter a new certificate to the
14 devisee or devisees. When the owner of registered land or of
15 any estate or interest therein dies, not having devised the
16 same, the persons entitled thereto by law shall file or record
17 with the assistant registrar a correct statement of the full
18 names of the heirs, the residence or post office address of
19 each, and their marital status, a certified copy of the letters
20 appointing the personal representative showing the powers of the
21 personal representative, or a certified copy of an
22 acknowledgment of authority, and either a certified copy of an

1 order of the circuit court in probate proceedings determining
2 the persons entitled to distribution of the registered land and
3 directing or approving distribution or a deed from the personal
4 representative to the heir or heirs, and thereupon the assistant
5 registrar shall cancel the certificate issued to the intestate,
6 and, except as otherwise provided in the part entitled "Fee Time
7 Share Interests", enter a new certificate to the heir or heirs
8 entitled thereto."

9 SECTION 9. Section 634-51, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§634-51 Recording of notice of pendency of action.** In
12 any action concerning real property or affecting the title or
13 the right of possession of real property, the plaintiff, at the
14 time of filing the complaint, and any other party at the time of
15 filing a pleading in which affirmative relief is claimed, or at
16 any time afterwards, may record in the bureau of conveyances a
17 notice of the pendency of the action, containing the names or
18 designations of the parties, as set out in the summons or
19 pleading, the object of the action or claim for affirmative
20 relief, and a description of the property affected thereby.
21 From and after the time of recording the notice, a person who
22 becomes a purchaser or incumbrancer of the property affected

1 shall be deemed to have constructive notice of the pendency of
2 the action and be bound by any judgment entered therein if the
3 person claims through a party to the action; provided that in
4 the case of registered land, section 501-151 [~~and~~], sections
5 501-241 to 501-248, and sections 501-A to 501-I shall govern.

6 This section authorizes the recording of a notice of the
7 pendency of an action in a United States District Court, as well
8 as a state court."

9 SECTION 10. Section 636-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§636-3 Judgment, orders, decrees; lien when.** Any money
12 judgment, order, or decree of a state court or the United States
13 District Court for the District of Hawaii shall be a lien upon
14 real property when a copy thereof, certified as correct by a
15 clerk of the court where it is entered, is recorded in the
16 bureau of conveyances. No such lien shall continue beyond the
17 length of time the underlying judgment, order, or decree is in
18 force. Except as otherwise provided, every judgment shall
19 contain or have endorsed on it the Hawaii tax identification
20 number, the federal employer identification number, or the last
21 four digits only of the social security number for persons,
22 corporations, partnerships, or other entities against whom the

1 judgment, order, or decree is rendered. If the debtor has no
2 social security number, Hawaii tax identification number, or
3 federal employer identification number, or if that information
4 is not in the possession of the party seeking registration of
5 the judgment, order, or decree, the judgment, order, or decree
6 shall be accompanied by a certificate that provides that the
7 information does not exist or is not in the possession of the
8 party seeking recordation of the judgment. Failure to disclose
9 or disclosure of an incorrect portion of the social security
10 number, Hawaii tax identification number, or federal employer
11 identification number shall not in any way adversely affect or
12 impair the lien created upon recordation of the judgment, order,
13 or decree. When any judgment, order, or decree is fully paid,
14 the creditor or the creditor's attorney of record in the action
15 ~~[shall]~~, at the expense of the debtor, shall execute,
16 acknowledge, and deliver to the debtor a satisfaction thereof,
17 which may be recorded in the bureau. Every satisfaction or
18 assignment of judgment, order, or decree shall contain a
19 reference to the book and page or document number of the
20 registration of the original judgment. The recording fees for a
21 judgment, order, or decree and for each assignment or

1 satisfaction of judgment, order, or decree shall be as provided
2 by section 502-25.

3 In the case of registered land, section 501-102 [~~and~~],
4 sections 501-241 to 501-248, and sections 501-A to 501-I shall
5 govern."

6 SECTION 11. Notwithstanding any law to the contrary, the
7 provisions of sections 501-A through 501-I, Hawaii Revised
8 Statutes, in section 1 of this bill shall apply to the parcel or
9 parcels voluntarily designated for recordation under the
10 provisions of chapter 502, Hawaii Revised Statutes, except that
11 it shall be recognized that the said parcels are held as fee
12 simple or leasehold property, rather than time share interests.

13 SECTION 12. Nothing contained in this Act shall terminate,
14 extinguish, diminish, or impair any existing right in or
15 pertaining to any deregistered land, or any existing right to
16 compensation created by chapter 501, Hawaii Revised Statutes,
17 but any such right may be asserted and enforced in the same
18 manner, to the same extent, and subject to the same limitations
19 and conditions, provided in the land court laws amended by this
20 Act.

21 SECTION 13. In codifying the new sections added to chapter
22 501, Hawaii Revised Statutes, by section 1 of this Act, the

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1 revisor of statutes shall substitute appropriate section numbers
2 for the letters used in the designations of and references to
3 those new sections in this Act.

4 SECTION 14. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 15. This Act shall take effect on July 1, 2009.

7
8 INTRODUCED BY: _____

9 BY REQUEST

Report Title:

Land Court System

Description:

Removes fee time share transactions from the Land Court System and provides the option for all landowners to transfer their property from the Land Court System to the Regular System of the Bureau of Conveyances.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE LAND COURT SYSTEM.

PURPOSE: To deregister fee simple (fee) time share interest from the Land Court System; and to provide the option for all landowners to transfer their properties from Land Court to the Regular System of the Bureau of Conveyances (Bureau).

MEANS: Add two new parts to chapter 501, Hawaii Revised Statutes (HRS), add a new section to chapter 657, HRS, and amend sections 501-20, 501-71, 501-86, 501-108, 501-116, 501-171, 634-51, and 636-3, HRS.

JUSTIFICATION: The Land Court Act was adopted in 1903 to provide landowners a means to establish clear title to land through a court proceeding. Under the Land Court System, the owner of land is issued a certificate of title to the land that cannot be encumbered unless the encumbrance is filed in the Land Court and noted on the certificate of title. Basically, Land Court was designed as one lot, one certificate.

With fee time shares however, the number of owners of a parcel of land increases from a few hundred owners under a condominium property regime (CPR) to literally thousands of owners, each having a small undivided percentage interest in the CPR land. For example, if the time share project involves 100 units, the interest is broken into 52 individual parts, for 52 weeks in a year, and 52 weeks for 100 units would equate to 5,200 individual interests. If it involves 200 units, there would be twice the amount or 10,400 individual interests (the Marriott project on Kauai a few years ago involved over 11,000 individual time share

interests). In 2008, the Bureau of Conveyances is anticipated to receive 18,000 individual time share interests in Land Court. For these thousands of owners of the parcel of land, the issuance of an initial certificate of title for each one, and subsequent changes in ownership, is cumbersome, costly, and time-consuming. If the transactions were recorded in the Regular System, the process would be simplified to only accept the document for recording without the detailed review.

The cumbersome and time-consuming Land Court review process conducted by the staff of the Bureau has resulted in a current backlog of 18 months. Allowing landowners to remove their property from the Land Court System and have their property recorded instead in the Regular System will enable landowners to achieve recording of future documents in a shorter time than currently entails in the Land Court System.

This bill would deregister lands that are within a CPR fee time share project out of the Land Court System, thereby eliminating the need to issue a certificate of title for each fee time share unit for each owner, and whenever a change in ownership occurs. Additionally, this bill would permit landowners to voluntarily transfer their property from the Land Court System to the Regular System of the Bureau.

Impact on the public: Would: (1) eliminate the option of having a fee time share interest recorded and its title guaranteed by the State under the Land Court System; and (2) eliminate the need to have the documents certified by the Land Court.

Impact on the department and other agencies: Would reduce recording large numbers of transactions in the Land Court System. As a result, the staff of the Bureau can address

other recordation actions in a more timely fashion.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 111, JUD 601.

OTHER AFFECTED
AGENCIES: Judiciary (Land Court).

EFFECTIVE DATE: July 1, 2009.