A BILL FOR AN ACT

RELATING TO LAND COURT.

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

- 1 SECTION 1. The joint legislative investigative committee 2 established pursuant to Senate Concurrent Resolution No. 226, 3 regular session 2007, identified serious shortcomings relating 4 to the bureau of conveyances. Act 120, Session Laws of Hawaii 2009, was adopted in response to the findings of the committee. 5 6 Act 120 was intended to ease the backlog in land court recording 7 and registration by, among other things, transferring fee simple 8 time share interests from the land court system to the regular 9 system.
- 10 Act 120 requires that, upon presentation of a deed or any
 11 other instrument affecting a fee time share interest, the
 12 assistant registrar of the land court shall not file the same in
 13 the land court. Rather, the assistant registrar shall:
- 14 (1) Update the certificate of title for all fee time share
 15 interests in the time share plan;

1	(2)	Record in the regular system the updated certificate		
2		of title for each fee time share interest in the time		
3		share plan;		
4	(3)	Record in the regular system the deed or other		
5		instrument presented for recording; and		
6	(4)	Cancel the certificate of title for each fee time		
7		share interest in the time share plan.		
8	Once	the certificate of title for a fee time share interest		
9	is record	ed, that time share interest is no longer subject to		
10	the land	court pursuant to chapter 501, Hawaii Revised Statutes.		
11	From then	on, all deeds and other instruments affecting the fee		
12	time share interest shall be recorded in the regular system.			
13	This process is known as deregistration of fee time share			
14	interests.			
15	Thro	ugh Act 121, Session Laws of 2012, the legislature		
16	found tha	t the task of updating and recording the certificates		
17	of title	for all fee time share interests concurrently had		
18	exceeded	the capacity of the land court, particularly in light		
19	of the ap	proximately three-year backlog of land court recordings		

and registration existing at the time that Act 120 took effect.

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1 Accordingly, Act 121 was adopted to amend the deregistration procedure by removing fee time share interests 2 3 from the land court system as of July 1, 2012. The assistant 4 registrar was charged with the obligation to certify the certificates of title for all fee time share interests in the 5 ordinary course of business. This was intended to lighten the 6 7 load of the assistant registrar in the preparation and 8 certification of the certificates of title for fee time share interests without delaying the removal of the fee time share 9 10 interests from the land court system. 11 However, the requirement that the assistant registrar 12 certify all of the then-remaining uncertified fee time share 13 certificates of title remained burdensome in light of resource 14 limitations and the demands of new transactions on the office of 15 the assistant registrar. 16 The purpose of this Act is to streamline the operations of **17** the office of the assistant registrar of the land court by 18 removing the requirement that the assistant registrar certify 19 pending certificates of title for fee time share interests, all 20 of which were removed from the land court system as of July 1, 21 2012.

1	SECTION 2. Section 501-20, Hawaii Revised Statutes, is				
2	amended by adding two new definition to be appropriately				
3	inserted and to read as follows:				
4	"Certified fee time share interest certificate of title"				
5	means a certificate of title for a fee time share interest that:				
6	(1) Notes all documents and instruments which affect that				
7	fee time share interest and which were registered on				
8	or before the date and time of deregistration of that				
9	fee time share interest; and				
10	(2) Has been approved by the assistant registrar, which				
11	approval shall be evidenced by a certification of the				
12	assistant registrar endorsed upon the certificate of				
13	title.				
14	"Pending fee time share interest certificate of title"				
15	means a certificate of title issued for a fee time share				
16	interest not certified by the assistant registrar prior to July				
17	<u>1, 2016.</u> "				
18	SECTION 3. Section 501-261, Hawaii Revised Statutes, is				
19	amended to read as follows:				
20	"§501-261 Deregistration of fee time share interests. The				
21	certificate of title for each fee time share interest shall be				

1	canceled effective as of the date and time of deregistration of
2	such fee time share interest. Notwithstanding the provisions of
3	section 501-261 in existence prior to July 1, 2012, a fee time
4	share interest for which a certificate of title was not recorded
5	in the bureau of conveyances pursuant to chapter 502 and part II
6	of this chapter prior to July 1, 2012, shall be deregistered on
7	July 1, 2012, at 12:01 a.m.
8	[(1) Beginning on July 1, 2012, and continuing for so long
9	as shall be reasonably necessary in the ordinary
10	course of business, the assistant registrar shall:
11	(A) Note on the certificate of title for each fee
12	time share interest all documents and instruments
13	affecting the fee time share interest:
14	(i) That were or are registered as of a date and
15	time prior to the date and time of
16	deregistration of the fee-time-share
17	interest; and
18	(ii) That were not yet noted on the certificate
19	of title of the fee time share interest as
20	of the date and time of deregistration
21	thereof; and

1		(B) Certify each certificate of title.			
2	[(2)]	(1) Section 501-196 shall apply to a certified fee			
3		time share interest certificate of title [updated			
4		oursuant to paragraph (1) upon approval of the same by			
5		the assistant registrar, which approval shall be			
6		evidenced by a certification of the assistant			
7		registrar endorsed upon the certificate of title]. A			
8		certificate of title for a fee time share interest,			
9		including but not limited to a certificate of title			
10		recorded prior to July 1, 2012, pursuant to part II of			
11		this chapter 501, shall not be considered completed or			
12		approved, and shall be subject to modification by the			
13		assistant registrar, at any time prior to			
14		certification thereof by the assistant registrar.			
15		Subsequent to the certification, [the] a certificate			
16		of title [for a fee time share interest] may only be			
17		modified pursuant to section 501-196 or as otherwise			
18		provided in this chapter.			
19	[-(3)-]	(2) The certificate of title for a fee time share			
20		interest shall be cancelled automatically by operation			
21		of law as of the date and time of deregistration. The			

1	assistant registrar is authorized to adopt such
2	procedures as it may deem appropriate to reflect the
3	cancellation of the certificate of title. The state
4	surveyor shall be authorized to annotate the land
5	court map or maps by identifying thereon the
6	deregistered land and noting thereon the bureau of
7	conveyances document number of the canceled
8	certificate. [Upon certification of the certificate
9	of title for a fee time share interest by the
10	assistant registrar, the assistant registrar shall
11	mark the certificate of title "canceled", note the
12	cancellation of the certificate of title in the
13	registration book, and notify the court and the state
14	surveyor of the cancellation. The registrar shall
15	thereupon be authorized to file a record of the
16	cancellation in the application or consolidation file,
17	and the state surveyor shall then be authorized to
18	annotate the land court map or maps by identifying
19	thereon the deregistered land and noting thereon the
20	bureau of conveyances document number of the canceled
21	certificate.] Regardless of the date upon which any

1		such administrative acts are performed, the
2		cancellation of the certificate of title for a fee
3		time share interest shall be effective as of the date
4		and time of deregistration of that fee time share
5		interest.
6	[-(4)-]	(3) If only part of the land described in the
7		certificate of title consists of a fee time share
8		interest, then upon the petition of the registered
9		owner of that portion of the registered land not
10		constituting a fee time share interest, a new
11		certificate of title shall be issued to such owner for
12		that portion of the registered land not constituting a
13		fee time share interest. If registered land is held
14	•	in the condominium form of ownership, then for
15		purposes of this subsection each condominium apartment
16		or condominium unit for which a separate certificate
17		of title has been issued shall be treated as if it
18		were a separate parcel of registered land.
19	[(5)]	(4) Except as provided in paragraph [(4),] (3), no
20		order of court shall be required prior to or in
- 21		representation with the performance of any of the

1	foregoing actions [+] or to reflect or effect the
2	cancellation of the certificate of title for a fee
3	time share interest or otherwise to reflect or effect
4	the withdrawal of the fee time share interest from the
5	operation of this chapter."
6	SECTION 4. Section 501-262, Hawaii Revised Statutes, is
7	amended by amending subsection (b) to read as follows:
8	"(b) Neither voluntary deregistration of land other than a
9	fee time share interest nor the mandatory deregistration of any
10	fee time share interest pursuant to part II of this chapter,
11	whether by recordation of a certificate of title in the bureau
12	of conveyances prior to July 1, 2012, or by operation of law
13	thereafter, shall disturb the effect of any proceedings in the
14	land court where the question of title has been determined. All
15	proceedings had in connection with the registration of title
16	that relate to the settlement or determination of title before
17	[a certificate of title for land other than a fee time share
18	interest is recorded in the bureau of conveyances pursuant to
19	chapter 502 and part II of this chapter or a certificate of
20	title for a fee time share interest is certified] the date and
21	time of deregistration, and all provisions of this chapter that

- 1 relate to the status of the title, shall have continuing force
- 2 and effect with respect to the period of time that title
- 3 remained under the land court system. Those provisions giving
- 4 rise to a right of action for compensation from the State,
- 5 including any limits on and conditions to the recovery of
- 6 compensation and the State's rights of subrogation with respect
- 7 thereto, shall also continue in force and effect with respect to
- 8 the period of time that title remained under the land court
- 9 system."
- 10 SECTION 5. Section 501-263, Hawaii Revised Statutes, is
- 11 amended to read as follows:
- 12 "§501-263 Effect of deregistration in specific cases.
- 13 Notwithstanding section 501-262(a)(3), the following documents,
- 14 instruments, and papers need not be registered pursuant to this
- 15 chapter to be effective and shall be recorded in the bureau of
- 16 conveyances pursuant to chapter 502:
- 17 (1) Any document, instrument, or paper assigning,
- 18 extending, continuing, dissolving, discharging,
- 19 releasing in whole or in part, reducing, canceling,
- 20 extinguishing, or otherwise modifying or amending any
- 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 or interest in other deregistered
6		land. After the [recordation of the certificate
7		of title,] date and time of deregistration of a
8		fee time share interest or interest in other
9		deregistered land, any agreement of sale shall be
10		subject to section 502-85 and shall not be
11		subject to section 501-101.5;
12	(C)	A correction deed, correction mortgage, or other
13		document, instrument, or paper correcting a
14		document, instrument, or paper registered
15		pursuant to this chapter;
16	(D)	A lien or claim of lien on a fee time share
17		interest held or claimed by a time share owners
18		association, an association of apartment owners,
19		or other homeowners' association or a lien or
20		claim on an interest in other deregistered land
21		held by a lienor or person claiming a lien;

1	(11)	A lease that demises a ree time share interest of
2		interest in other deregistered land;
3	(F)	An order of court, attachment, writ, or other
4	•	process against a fee time share interest or
5		interest in other deregistered land;
6	(G)	A mechanic's or materialman's lien or other lien
7		upon a fee time share interest or interest in
8		other deregistered land;
9	(H)	A lis pendens or notice of pendency of action,
10		notice, affidavit, demand, certificate,
11		execution, copy of execution, officer's return,
12		or other instrument relating to a fee time share
13		interest or interest in other deregistered land
14		and otherwise required or permitted to be
15		recorded or registered in connection with the
16		enforcement or foreclosure of any lien, whether
17		by way of power of sale pursuant to chapter 667
18		or otherwise; or
19	(I)	A power of attorney given by the owner of a fee
20		time share interest or interest in other
21		deregistered land or the wendor or wendee under

1		an agreement of sale for the sale of a fee time
2		share interest or interest in other deregistered
3		land, a mortgagee or other lienor having a
4		mortgage or lien upon a fee time share interest
5		or interest in other deregistered land, or
6		another party holding a claim or encumbrance
7		against or an interest in a fee time share
8		interest or interest in other deregistered land;
9	(2)	A lis pendens or notice of pendency of action, notice,
10		affidavit, demand, certificate, execution, copy of
11		execution, officer's return, or other instrument
12		relating to a fee time share interest or interest in
13		other deregistered land and otherwise required or
14		permitted to be recorded or registered in connection
15		with the enforcement or foreclosure of any lien,
16		whether by way of power of sale pursuant to chapter
17		667 or otherwise; and
18	(3)	Any declaration annexing property to, any declaration
19		deannexing property from, any amendment or supplement
20		to, correction of, or release or termination of, any

of the following documents, instruments, or papers

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H.B. NO. 2090

2	that	pertain to deregistered land:
3	(A)	A declaration of covenants, conditions,
4		restrictions, or similar instrument, by whatever
5		name denominated, establishing or governing a
6		time share plan, or the bylaws of a time share
7		owners association, notice of time share plan, or
8		other time share instrument;
9	(B)	A declaration of condominium property regime or
10		similar declaration by whatever name denominated,

(B) A declaration of condominium property regime or similar declaration by whatever name denominated, the bylaws of the association of apartment owners, the condominium map, any declaration of merger and any instrument effecting a merger; provided that if only some of the condominium apartments are included in the time share plan, then it shall be necessary to register, and to note on the certificate of title for any apartment not included in the time share plan:

that have been registered pursuant to this chapter and

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

1	(ii) Any declaration deannexing property from th
2	condominium property regime;
3	(iii) Any instrument effecting a merger of two or
4	more condominium projects or two or more
5	phases of a condominium project; and
6	(iv) Any document, instrument, or paper amending
7	supplementing, correcting, releasing, or
8	terminating any of the documents listed in
9	subparagraph (B)(i) through (iii), the
10	declaration of condominium property regime,
11	the bylaws of the association of apartment
12	owners, the condominium map, or any
13	declaration of merger; and
14	(C) A declaration of covenants, conditions,
15	restrictions, or similar instrument, by whatever
16	name denominated, the bylaws of any homeowners
17	association, any declaration of annexation or
18	deannexation, any amendments and supplements
19	thereto, and any cancellation or extinguishment
20	thereof, any declaration of merger and any
21	instrument effecting a merger; provided that if

1	only some of the parcels of land covered by the
2	declaration constitutes deregistered land, and if
3	one or more of the remaining parcels constitute
4	registered land, then it shall be necessary to
5	register, and to note on the certificate of title
6	for any registered land:
7	(i) Any declaration annexing property to the
8	declaration;
9	(ii) Any declaration deannexing property from the
10	operation of the declaration; and
11	(iii) Any document, instrument, or paper amending,
12	supplementing, correcting, releasing, or
13	terminating any of the documents listed in
14	subparagraph (C)(i) or (ii), the declaration
15	of covenants, conditions, restrictions, or
16	the bylaws of the homeowners association."
17	SECTION 6. Section 501-264, Hawaii Revised Statutes, is
18	amended to read as follows:
19	"§501-264 Chain of title of deregistered land. [(a)
20	A certificate of title for land other than a fee time share
21	interest recorded in the bureau of conveyances nursuant to

1	chapter 5 (92 and part II of this chapter, or certified by the
2	assistant	registrar in the case of a fee time share interest,
3	shall con	stitute a new chain of record title in the registered
4	owner of	any estate or interest as shown on the certificate of
5	title so :	recorded or certified, subject only to the following:
6	(a) The	chain of record title in the registered owner of any
7	estate or	interest in deregistered land shall, as of the date
8	and time	of deregistration, be subject only to the following and
9	to the it	ems described in subsection (d):
10	(1)	In the case of land other than a fee time share
11		interest, the estates, mortgages, liens, charges,
12		instruments, documents, and papers noted on the
13		certificate of title recorded in the bureau of
14		conveyances pursuant to chapter 502 and part II of
15		this chapter;
16	(2)	In the case of a fee time share interest covered by a
17		certified fee time share interest certificate of
18		title, the estates, mortgages, liens, charges,
19		instruments, documents, and papers noted on the
20		certified fee time share interest certificate of
21		title;

1	<u>(3)</u>	In the case of a fee time share interest covered by a
2		pending fee time share interest certificate of title,
3		the estates, mortgages, liens, charges, instruments,
4		documents, and papers noted or deemed to be noted on
5		the pending fee time share interest certificate of
6		title, as set forth in subsection (b).
7	(b)	The following shall, for purposes of Part II of this
8	chapter,	be deemed to be noted on the pending fee time share
9	interest	certificate of title for a given fee time share
10	interest:	
11	(1)	The estates, mortgages, liens, charges, instruments,
12		documents, and papers noted in the last certificate of
13		title certified by the assistant registrar for the
14		registered land of that fee time share interest; and
15	(2)	The estates, mortgages, liens, charges, instruments,
16		documents, and papers registered with respect to the
17		registered land of that fee time share interest, which
18		registration occurred:
19		(A) After the date of certification of the last
20		certified certificate of title for the registered
21		land of the fee time share interest; and

1	<u>(B)</u>	Prior to July 1, 2012. This includes but is not
2		limited to any estates, liens, charges,
3		covenants, conditions, easements, restrictions,
4		agreements, reservations, limitations, interests,
5		or other continuing provisions contained or
6		reserved in the deed conveying the fee time share
7		interest to the registered owner, whether or not
8		identified in the pending fee time share interest
9		certificate of title.
10	(c) Noth	ing in subsection (b) is intended to alter the
11	affect of any	instruments, documents, or papers identified in
12	subsection (b)	(2) on the items noted in the certificate of title
13	described in s	ubsection (b)(1). Nothing in Part II of this
14	chapter prohib	its the assistant registrar from updating and
15	certifying a p	ending fee time share interest certificate of
16	title.	
17	(d) The	chain of title for deregistered land shall be
18	subject only t	o the items described in subsection (a) and, in
19	the case of a	fee time share interest covered by a pending fee
20	time share int	erest certificate of title, in subsection (b), and
21	to the followi	ng:

1	(1)	The	estates, mortgages, liens, charges, instruments,
2		docu	ments, and papers [noted on the certificate of
3		titl	e so recorded or certified;]:
4		(A)	Noted on the certificate of title recorded in the
5			bureau of conveyances pursuant to chapter 502 and
6			part II of this chapter, in the case of land
7			other than a fee time share interest;
8		<u>(B)</u>	Noted on the certified fee time share interest
9			certificate of title, in the case of a fee time
10			share interest for which the assistant registrar
11			issued a certified fee time share interest
12			certificate of title; or
13		(C)	Noted or deemed to be noted on the pending fee
14			time share interest certificate of title, in the
15			case of all other fee time share interests;
16	(2)	Lien	s, claims, or rights arising or existing under the
17		laws	or Constitution of the United States, which the
18		stat	utes of this State cannot require to appear of
19		reco	ord in the registry; provided that notices of liens
20		for	internal revenue taxes payable to the United
21		Stat	es, and certificates affecting the liens, shall be

1	deemed to fall within this paragraph only if the same
2	are recorded in the bureau of conveyances as provided
3	by chapter 505;

- 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;

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H.B. NO. 2090

1	(6)	Any lease, coupled with occupancy, for a term not
2		exceeding one year; provided that the priority of the
3		unrecorded lease shall attach only at the date of the
4		commencement of the unrecorded lease and expire one
5		year from the date or sooner if so expressed;
6	(7)	Any liability to assessments for betterments, or
7		statutory liability that may attach to land as a lien
8		prior to or independent of, the recording or

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

1		there are easements or other rights, appurtenant to a
2		parcel of deregistered land, which for any reason have
3		failed to be deregistered, the easements or rights
4		shall remain so appurtenant notwithstanding the
5		failure, and shall be held to pass with the
6		deregistered land until cut off or extinguished in any
7		lawful manner;
8	(8)	The possibility of reversal or vacation of the decree
9		of registration upon appeal;
10	(9)	Any encumbrance not required to be registered as
11		provided in sections 501-241 to 501-248 and relating
12		to a leasehold time share interest or leasehold
13		interest in deregistered land; [and]
14	(10)	Child support liens that are created pursuant to order
15		or judgment filed through judicial or administrative
16		proceeding in this State or in any other state, the
17		recording of which shall be as provided by chapter
18		576D[-]; and
19	(11)	Money judgments, orders, or decrees of a Hawaii state
20		court or the United States District Court for the
21		District of Hawaii, if the same are recorded in the

1		bureau of conveyances; provided that only the monetary
2		lien created by the recordation shall affect the land;
3		provided further that no other provision of a
4		judgment, order, or decree shall affect the land
5		unless otherwise registered in compliance with this
6		chapter.
7	[-(d)-]	(e) For purposes of this section, an encumbrance
8	shall be	deemed sufficiently noted on a certificate of title if
9	the notat:	ion:
10	(1)	References a document by name or number that contains
11		an encumbrance; and
12	(2)	Indicates that the referenced document contains an
13		encumbrance to which the deregistered land is subject.
14	[-(c)]	(f) All instruments, documents, and papers [noted]:
15	(1)	Noted on a certificate of title recorded in the bureau
16		of conveyances pursuant to chapter 502 and part II of
17		this chapter in the case of land other than a fee time
18		<pre>share interest;</pre>
19	(2)	Noted on a certified fee time share interest
20		certificate of title; or



1	<u>(3)</u>	Noted or deemed to be noted on a pending fee time
2		share interest certificate title,
3	shall have	e the same force and effect as if they had been
4	recorded :	in the bureau of conveyances pursuant to chapter 502 as
5	of the da	te, hour, and minute of reception noted on the
6	certifica	te of title pursuant to section 501-107[+] or otherwise
7	entered o	r required to be entered in the record of the assistant
8	registrar	pursuant to section 501-107; provided that:
9	(1)	No instrument, document, or paper shall have any
10		greater or other effect after the certificate of title
11		is recorded in the bureau of conveyances pursuant to
12		chapter 502 and part II of this chapter, as
13		constructive notice or otherwise, than it had or
14		acquired at the time it was registered pursuant to
15		this chapter or made; and
16	(2)	Nothing in this part shall be construed as giving any
17		greater or other effect, as constructive notice or
18		otherwise, to any instrument, document, or paper
19		recorded in the bureau of conveyances pursuant to
20		chapter 502 prior to the [recordation of the
21		gertificate of title in the bureau of conveyances

1		pursuant to chapter 502 and part II of this chapter as
2		to] date and time of deregistration of any registered
3		land, than was provided by the laws of this State
4		(including this chapter and other laws regarding
5		registered land) in effect at the time the instrument,
6		document, or paper was recorded.
7	[(d)]	(g) If a certificate of title [recorded in the bureau
8	of-convey	ances pursuant to chapter 502 and part II of this
9	chapter]:	
10	<u>(1)</u>	For land other than a fee time share interest is
11		recorded in the bureau of conveyances pursuant to
12		chapter 502 and part II of this chapter;
13	(2)	For a fee time share interest is certified by the
14		assistant registrar; or
15	<u>(3)</u>	For a fee time share interest has not been certified
16		by the assistant registrar,
17	and the c	ertificate of title relates to more than one fee time
18	share int	erest or more than one interest in other deregistered
19	land, the	n [subsection] <u>subsections</u> (a) <u>through and including</u>
20	(d) shall	apply to each interest separately and only those items
21	described	in [subsection] subsections (a) through and including

- 1 (d) that encumbered a particular interest [prior to recordation
- 2 of the certificate of title] as of the date and time of
- 3 deregistration of that interest will continue to encumber that
- 4 interest after the [recordation.] date and time of
- 5 deregistration."

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- 6 SECTION 7. Statutory material to be repealed is bracketed
- 7 and stricken. New statutory material is underscored.
- 8 SECTION 8. This Act shall take effect upon its approval.

INTRODUCED BY:

JAN 2 2 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.

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