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GOVERNOR OF HAWAII

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
JUDICIARY AND LABOR

Thursday, March 31, 2016
9:30 A.M.
State Capitol, Conference Room 016

In consideration of
HOUSE BILL 2090, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO LAND COURT

House Bill 2090, House Draft 2, Senate Draft 1 proposes to streamline the operations of the Office of the Assistant Registrar of the Land Court by removing the requirement that the Assistant Registrar certify pending certificates of title for fee time share interests. **The Department of Land and Natural Resources supports this measure with the amendments made in House Draft 2, Senate Draft 1.**

March 31, 2016

TO: JUDICIARY AND LABOR COMMITTEE
Senator Gilbert Keith-Agaran, Chair
Senator Maile Shimabukuro, Vice-Chair

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

RE: H.B. 2090, H.D.2, S.D.1 Relating to Land Court
Position: Support

Dear Chair Keith-Agaran, Vice-Chair Shimabukuro and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports House Bill (HB) 2090, House Draft (HD) 2, Senate Draft (SD) 1, which streamlines the operations of the office of the assistant registrar of the land court by removing the requirement that the assistant registrar certify pending certificates of title for fee time share interests. This certification is no longer necessary since these pending certificates were removed from the land court system as of July 1, 2012.

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

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

(1) Update the certificate of title for all fee time share interests in the time share plan;
(2) Record in the regular system the updated certificate of title for each fee time share interest in the time share plan;
(3) Record in the regular system the deed or other instrument presented for recording; and

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

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

Through Act 121, Session Laws of 2012, the legislature found that the task of updating and recording the certificates of title for all fee time share interests concurrently had exceeded the capacity of the land court, particularly in light of the approximately three-year backlog of land court recordings and registration existing at the time that Act 120 took effect. Accordingly, Act 121 was adopted to amend the deregistration procedure by removing fee time share interests from the land court system as of July 1, 2012.

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

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

Therefore, ARDA supports HB 2090 HD2, SD1. Thank you for the opportunity to submit testimony.

MCCORRISTON MILLER MUKAI MACKINNON LLP

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March 29, 2016

Sen. Gilbert S. C. Keith-Agaran, Chair
Sen. Maile S. L. Shimabukuro, Vice Chair
Members of the Senate Committee on
Judiciary and Labor
Twenty-Eighth Legislature
Regular Session, 2016

Re: H.B. 2090, H.D. 2, S.D. 1
Hearing on March 31, 2016, 9:30 a.m.
Conference Room 016

Dear Chair, Vice Chair and Members of the Committee:

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

ARDA Hawaii supports the bill, but suggests that certain technical amendments be made.

The Hawai`i Land Court Act was adopted in 1903. It provided a means to establish clear title to a parcel of land through a court proceeding. Essentially, the court determined the lawful owner of a parcel of real estate, and then issued a certificate of title to that owner. From then on, no encumbrance would affect the title unless it was filed in the Land Court and noted on the certificate of title. Likewise, a deed was not effective to convey title unless it was filed in the Land Court. Upon filing a deed, the Land Court would cancel the old certificate of title and issue a new one to the new owner.

The Land Court system served its intended purpose very well. At the time that the law was adopted, however, there were no condominiums and no time share projects.

The introduction of condominium projects posed certain new issues for the Land Court. In time, a workable system for dealing with Land Court condominiums developed. That system involved bending some of the statutory requirements, and problems continued to surface from time to time.

For example, Section 514A-11 of the old Condominium Property Act required that the Bureau of Conveyances establish recording procedures for condominium projects. It provided, and still provides, that "land court certificates of title shall not be issued for apartments."

Despite this, the Land Court has issued separate certificates of title for fee simple condominium apartments.[1] The Land Court probably found it impractical to do otherwise. If a single certificate of title covered all units in, say, a 200 unit condominium, then each owner's interest would have to be noted on a single certificate of title. Each mortgage of an apartment would also have to be noted.

The Land Court's practice of issuing individual certificates of title to each unit owner was a practical, if not entirely authorized response to the problem. It has worked effectively for fee simple condominiums.

In the case of leasehold condominiums, however, a single certificate of title still is issued to the lessor for the entire project. The interest of individual apartment lessees is noted on the certificate of title. This has proven to be a cumbersome process.

In the 1970's, time sharing showed up on the scene. Some of these time share plans were established in leasehold condominiums. A time share plan may divide the ownership of an individual condominium apartment among 50 or more owners. The result was that the certificate of title for a 200 unit leasehold condominium would now reflect not 200 lessees, but perhaps 10,000 lessees.

After struggling with this for nearly two decades, the Land Court initiated a legislative solution. On behalf of the Land Court, I prepared a bill that provided that all conveyances of leasehold time share interests would be recorded in the "regular system", and that such conveyances would not be noted on the certificate of title. That bill was adopted as Act 219, S.L.H. 1998, and took effect in 1999.

At that point, similar concerns were arising with respect to fee simple time share projects. For example, at about that time, construction began on a time share project, consisting of perhaps 750 units. It is not a condominium. Instead, as I understand it, each purchaser receives an undivided interest in the whole project. If so, there may be perhaps as many as 50,000 co-owners of the land.

The Land Court Act provides that when property is owned by two or more co-owners, a single certificate of title will be issued showing the interest of all co-owners.[2] Upon a

[1] Technically, the Land Court issued separate certificates of title for the undivided interest in the land appurtenant to each condominium unit, instead of issuing the certificate of title for the unit itself. The practical effect is that separate certificates were issued with respect to each unit.

[2] Section 501-84 provides: Where two or more persons are registered owners under any tenancy, one certificate shall be issued for the whole land. Any conveyance of fee simple interest in registered land shall be recorded with the assistant registrar, who shall note the same on the certificate, cancel all the certificates affecting the whole land, and issue a new certificate to reflect all the owners of the whole land.

conveyance, the Land Court must cancel the existing certificate of title and issue a new one showing the interest of each owner.[3]

In the project described above, sales are taking place daily. In this context, the existing law might literally require that the Land Court cancel and issue new certificates of title daily.

Following its practical bent toward solving such problems, the Land Court simply began issuing individual certificates of title for each time share interests. Despite this effort, however, various problems remained.

For example, when the declaration for a time share plan is amended, the amendment must be noted on each certificate of title. The Land Court requires that it be provided a list showing all owners and their certificate of title number. In the case of one project, this required a title search for the records of some 12,000 owners. This was a costly and time-consuming process. Moreover, by the time that such a search is completed, additional sales and resales have taken place such that the list is no longer accurate.

In 2002 and 2003, I prepared various drafts of legislation that would effectively withdraw fee simple time share interests from the operation of the Land Court Act. In 2009, a variation of that legislation passed and was enacted as Act 120, 2009 S.L.H. The Act took effect on July 1, 2011.

Act 120 was patterned on legislation adopted in certain other states that terminated their equivalent of the Land Court. It provided that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the Land Court would not file the same in the Land Court. Instead, it required that the assistant registrar of the Land Court:

1. Update the certificate of title for all fee time share interests in the time share plan;

2. Record in the regular system the updated certificate of title for each fee time share interest in the time share plan;

3. Record in the regular system the deed or other instrument; and

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

Upon recordation of the certificate of title for a fee time share interest, that time share interest would no be longer subject to chapter 501, HRS (the Land Court Act). From then on, all deeds and other instruments affecting the fee time share interest would have to be recorded in the

[3] See the second sentence in the preceding footnote.

regular system instead of in the Land Court. This process is referred to as "deregisration" of the time share interests.

At the time when Act 120 was drafted, the Land Court seemed to be approximately nine months behind in issuing certificates of title. By that, I mean that if a deed was recorded in the Land Court on January 1, the certificate of title would not be finalized until about September 1. While this may seem like an extended period, in fact the Land Court had previously suffered considerably longer delays and it appeared at the time that the Land Court was well on its way to catching up.

As we all know, however, a historic boom in the real estate industry occurred in the middle of the decade. By the time that Act 120 passed in 2009, the delay between recording a deed and issuing a certificate of title had increased to approximately three years. Moreover, timesharing had enjoyed a concurrent boom with the result that large numbers of deeds of fee time share interests were recorded between 2002 and 2009. As a result, the task of updating and recording the certificates of title for all fee time share interests concurrently exceed the capacity of the Land Court.

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

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

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

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

1. Freeing the Land Court of the obligation to certify pending certificates of title, and

2. Establishing a chain of title for fee time share interests that do not have a certified certificate of title. This chain of title consists of:

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

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

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

- If an amendment to the condominium declaration was recorded in the Land Court in 2009, then the purchaser's title to the fee time share interest would be subject to that amendment.

- If the mortgage was released in 2010, then the purchaser's title to the fee time share interest would not be subject to the mortgage.

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

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

Thank you for your kind consideration of the foregoing. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

Charles E. Pear, Jr.

CEP:kn

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

DATE: March 30, 2016

TO: Senator Gilbert Keith-Agaran
Chair, Committee on Judiciary and Labor
Submitted Via JDLtestimony@capitol.hawaii.gov

RE: **H.B. 2090, H.D.2, S.D.1 – Relating to Land Court**
Hearing Date: Thursday, March 31, 2016 at 9:30 a.m.
Conference Room: 016

Dear Chair Keith-Agaran and Members of the Committee on Judiciary and Labor:

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

Wyndham **supports** H.B. 2090, H.D.2, S.D.1, which streamlines the operations of the office of the assistant registrar of the land court by removing the requirement that the assistant registrar certify pending certificates of title for time share fee interests.

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

For these reasons, we support H.B. 2090, H.D.2, S.D.1 and respectfully ask the committee to pass the bill.

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

Gary M. Slovin
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C. Mike Kido
Tiffany N. Yajima

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March 30, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor
Conference Room 016
State Capitol
415 South Beretania Street

Re: House Bill 2090, HD2, SD1 Relating to Land Court
Hearing Date: Thursday, March 31, 2016
Hearing Time: 9:30 A.M.

Dear Senator Keith-Agaran, Senator Shimabukuro, and the Members of the Senate Committee on Judiciary and Labor:

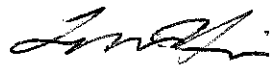
Thank you for the opportunity to submit comments on House Bill 2090, HD2, SD1. We support the intent to streamline the operations of the office of the assistant registrar. We have expressed certain concerns raised by the bill, and are continuing to discuss these issues with other interested stakeholders.

One technical amendment that we respectfully request be made to Senate Draft 1 is the following addition to Section 4 on page 10. A clause should be added to the end of the first full sentence which ends with the words ". . . certification thereof," so that the sentence will read:

> "An uncertified fee time share interest certificate of title shall have the same force and effect as a certified fee time share interest certificate of title; provided that the assistant registrar shall have the right to correct and complete the uncertified fee time share interest certificate of title prior to certification thereof; and provided further that upon certification thereof the provisions of section 501-261(2) shall apply."

Thank you for your consideration.

Very truly yours,



Lorrin Hirano