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February 1, 2016

Sen. Rosalyn H. Baker, Chair
Sen. Michelle N. Kidani, Vice Chair
Members of the Senate Committee on
Commerce, Consumer Protection and Health
Twenty-Eighth Legislature
Regular Session, 2016

Re: S.B. 2436
Hearing on February 1, 2016, 9:00 a.m.
Conference Room 229

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I drafted the provisions of the Land Court Act removing conveyances of leasehold time share interests from the Land Court. I have some reservations about this bill.

1. The term "leasehold time share interest" is used in §53-60, HRS and §246-55, HRS. Those provisions are shown in Exhibit A, which is attached hereto. If the part of the Land Court Act dealing with leasehold time share interests is to be expanded to include other leaseholds, then it will be necessary to make corresponding changes to §53-60 and §46-55.
2. The bill establishes a new defined term, "leasehold interest," to refer to a leasehold time share interest or a leasehold condominium interest.

A. The bill does not define the term "leasehold condominium interest." This may create problems of construction. For example, some condominium units are leased by way of a simple apartment lease. In other projects, however, the developer issues an "apartment deed and ground lease." We expect that the legislation is intended to apply to all interests conveyed by an apartment deed and ground lease. However, it is not clear that the apartment deed portion constitutes a "leasehold interest", with the result that a single instrument could now have to be recorded in both the regular system (as to the ground lease) and the land court (as to the apartment deed). This may be exactly the opposite of the intended result for this legislation. A proper definition could prevent this.

B. The Land Court Act already contains a definition of "apartment lease." If the term "leasehold condominium interest" is intended to refer to an apartment lease as defined in §501-20, then the definition should be revised to say so. If it is intended to

address other leasehold interests (for example, a lease of the common elements of the condominium made by the Board of Directors pursuant to §514B-38, HRS), then it needs to be clear that this is also intended.

C. The term “leasehold interest” is used in various other statutes. It may be preferable to adopt a more distinctive term in order to avoid any potential disputes over interpretation.

To resolve the foregoing issues, it might be appropriate to change the definition of “leasehold interest” to “leasehold condominium interest”, and to have it read as follows:

"Leasehold condominium interest" means a leasehold time share interest or an apartment lease.

A more expansive version of the definition would read as follows:

"Leasehold condominium interest" means an estate for years in a condominium project established or existing under chapter 514A or chapter 514B or at common law, including but not limited to: (i) a leasehold time share interest, (ii) an apartment lease, and (iii) a lease of common elements of a condominium issued in accordance with chapter 514A or chapter 514B.

This would cover all leasehold interests in a condominium project. It is not clear, however, that this is what the legislation is intended to accomplish.

3. Various other corrections need to be made to the bill. For example, the changes to the second sentence of §501-241(b)(3) is not correct:

Any [~~such~~] agreement under this paragraph of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;

This should be changed to read as follows:

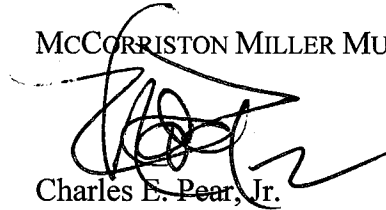
Any [~~such~~] agreement of sale under this paragraph shall be subject to section 502-85 and shall not be subject to section 501-101.5;

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

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read "Charles E. Pear, Jr.", is written over the printed name. The signature is stylized with a large, sweeping initial "C" and a long horizontal stroke at the end.

Charles E. Pear, Jr.

CEP:kn

EXHIBIT A

§ 53-60. Ordinance relating to repair, closing, and demolition of dwellings unfit for human habitation.

(d) Complaints or orders issued pursuant to an ordinance adopted under this section shall be served upon persons either personally or by registered mail, but if the whereabouts of the persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the persons may be made by publishing the same once each week for two consecutive weeks in a newspaper printed and published in the county, or, in the absence of such newspaper, in one printed and published in the State and circulating in the county in which the dwellings are located. A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall also be filed with the registrar of conveyances or, in the case of registered land (but excluding a leasehold [~~time share~~] condominium interest), with the assistant registrar of the land court as provided in section 501-136, and the filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

§ 246-55. Tax liens; co-owners' rights; foreclosure; limitation.

(b) In case of cotenancy, if one cotenant pays, within the period of the aforesaid government lien, all of the real property taxes, interest, penalties, and other additions to the tax, due and delinquent at the time of payment, the cotenant shall have, pro tanto, a lien on the interest of any noncontributing cotenant upon recording in the bureau of conveyances, within ninety days after the payment so made by the cotenant, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify it, the tax year or years, and the name of the cotenant upon whose interest such lien is asserted. When a notice of such tax lien is recorded by a cotenant, the registrar shall forthwith cause the same to be indexed in the general indexes of the bureau of conveyances. In case the land affected is registered in the land court and is not a leasehold [~~time share~~] condominium interest as described in section 501-20, the notice shall also contain a reference to the number of the certificate of title of such land and shall be filed and registered in the office of the assistant registrar of the land court, and the registrar, in the registrar's capacity as assistant registrar of the land court, shall make a notation of the filing thereof on each land court certificate of title so specified. The cotenant's lien shall have the same priority as the lien or liens of the government for the taxes paid by the cotenant, and may be enforced by an action in the nature of a suit in equity. The lien shall continue for three years after recording or registering, or until termination of the proceedings for enforcement thereof if such proceedings are begun and notice of the pendency thereof is recorded or filed and registered as provided by law, within the period.

(c) The director or the director's subordinate, in case of a government lien, and the creditor cotenant, in case of a cotenant's lien, at the expense of the debtor, upon payment of the amount of the lien, shall execute and deliver to the debtor a sworn satisfaction thereof, including a reference to the name of the person assessed or cotenant affected as shown in the original

notice, the date of filing of the original notice, a description of the land involved and, except with respect to a leasehold [~~time-share~~] condominium interest as described in section 501-20, the number of the certificate of title of such land if registered in the land court, which, when recorded in the bureau of conveyances or filed and registered in the office of the assistant registrar of the land court, in the case of a cotenant's lien, which contains the reference to the book and page or document number of the original lien, shall be entered in the general indexes of the bureau of conveyances, and if a notation of the original notice was made on any land court certificate of title the filing of such satisfaction shall also be noted on the certificate. This section as to cotenancy shall apply, as well, in any case of ownership by more than one assessable person.