

ACT 121

S.B. NO. 2632

A Bill for an Act Relating to Fee Time Share Interests.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The joint legislative investigative committee established pursuant to Senate Concurrent Resolution No. 226, adopted during the regular session of 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 requires that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the land court shall not file the same in the land court. Rather, the assistant registrar shall:

- (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 certification of title for a fee time share interest is recorded, that time share interest is no longer subject to the land court pursuant to chapter 501, Hawaii Revised Statutes. From then on, all deeds and other instruments affecting the fee time share interest shall be recorded in the regular system. This process is known as deregistration of fee time share interests.

The legislature finds that the task of updating and recording the certificates of title for all fee time share interests concurrently has exceeded the ca-

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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, the purpose of this Act is to ease the backlog in land court recording and registration by:

- (1) Requiring all fee time share interests to be recorded in the regular system rather than the land court, as of the effective date of this Act; and
- (2) Streamlining the procedure for deregistering all remaining fee time share interests.

SECTION 2. Section 501-20, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“Date and time of deregistration” means:

- (1) The date and time that a certificate of title for land, other than a fee time share interest, is recorded pursuant to section 501-261;
- (2) The date and time, if prior to July 1, 2012, when a certificate of title for a fee time share interest was recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, whether such certificate of title was or is certified by the assistant registrar prior to, subsequent to, or on July 1, 2012;
- (3) July 1, 2012, at 12:01 a.m. for all other fee time share interests then in existence and for which a certificate of title was not recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012; and
- (4) For all fee time share interests not yet in existence as of July 1, 2012, at 12:01 a.m., the date and time of recordation of the declaration, declaration of annexation, or other document or instrument establishing such fee time share interest.”

2. By amending the definitions of “deregistered land” and “fee time share interest” to read:

“Deregistered land” means [land that is the subject of a certificate of title recorded pursuant to section 501-261.];

- (1) Land, other than a fee time share interest, that is the subject of a certificate of title recorded pursuant to section 501-261;
- (2) A fee time share interest that is the subject of a certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012, whether the certificate of title is certified by the assistant registrar on, before, or after July 1, 2012; and
- (3) All other fee time share interests.

“Fee time share interest” means a time share interest, other than a leasehold time share interest, that [consists], at any time on or after July 1, 2011, consists or consisted of, or includes [a present,] or included an undivided interest in registered land, including but not limited to an undivided interest in one or more fee simple condominium apartments or units established in whole or in part on registered land.”

SECTION 3. Section 501-71, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Deregistration pursuant to sections 501-261 to 501-269 shall not alter or revoke the conclusive nature or effect of a decree of registration, which

shall continue to quiet the title to the deregistered land as to all claims arising prior to the ~~[recording of the certificate of title pursuant to section 501-261,]~~ date and time of deregistration of the land, except claims as would not otherwise be barred under this chapter if the lands were not registered.”

SECTION 4. Section 501-261, Hawaii Revised Statutes, is amended to read as follows:

~~“[§501-261]~~ **Deregistration of fee interests.** (a) ~~The registered owner of the fee interest in registered land may submit a written request to the assistant registrar to deregister the land under this chapter.~~

- (1) Any written request for deregistration shall include proof of title insurance in the amount of the value of the land to be deregistered and a written waiver of all claims against the State relating to the title to the land arising after the date of deregistration.
- (2) Upon presentation to the assistant registrar ~~[for filing or recording of any instrument, document, or paper conveying or encumbering a fee time share interest or any interest therein, or upon the]~~ of a written request [under subsection (d) of the] for deregistration by the registered owner of the fee interest in registered land, the assistant registrar shall not register the same, but shall:
 - ~~[(1)]~~ (A) Record in the bureau of conveyances, pursuant to chapter 502, the current certificate of title for the fee interest in the registered land ~~[or the registered land in which the fee time share interest includes an undivided interest];~~ provided that:
 - (A) ~~Prior]~~ prior thereto, the assistant registrar shall note on the certificate of title all documents and instruments that have been accepted for registration and that have not yet been noted on the certificate of title ~~]; and]~~ for the registered land;
 - ~~[(B)]~~ If separate certificates of title have been issued for individual fee time share interests in the time share plan, the assistant registrar shall record in the bureau of conveyances, pursuant to chapter 502, the certificate of title for each fee time share interest in the time share plan;
 - (2) (B) Record in the bureau of conveyances, pursuant to chapter 502, the ~~[instrument, document, paper, or]~~ written request for deregistration presented to the assistant registrar for filing or recording. The ~~[instrument, document, paper, or]~~ request shall be recorded immediately after the certificate or certificates of title; and
 - ~~[(3)]~~ (C) Cancel the certificate of title.
 - ~~[(b)]~~ (3) The registrar or assistant registrar shall note the recordation and cancellation of the certificate of title in the registration book and in the records of the application for registration of the land that is the subject of the certificate of title. The notation shall state the bureau of conveyances document number for the certificate of title so recorded, the certificate of title number, and the land court application number, map number, and lot number for the land that is the subject of the certificate of title so recorded.
 - ~~[(e)]~~ (4) No order of court shall be required prior to or in connection with the performance of any of the foregoing actions.
- ~~[(d)]~~ The registered owner of the fee interest in registered land may submit a written request to the assistant registrar to deregister the land under this chapter. Any written request for deregistration shall include proof of title insur-

ance in the amount of the value of the land to be deregistered and a written waiver of all claims against the State relating to the title to the land arising after the date of deregistration.]

(b) The certificate of title for each fee time share interest shall be canceled effective as of the date and time of deregistration of such fee time share interest. Notwithstanding the provisions of section 501-261 in existence prior to July 1, 2012, a fee time share interest for which a certificate of title was not recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012, shall be deregistered on July 1, 2012, at 12:01 a.m.

- (1) Beginning on July 1, 2012, and continuing for so long as shall be reasonably necessary in the ordinary course of business, the assistant registrar shall:
 - (A) Note on the certificate of title for each fee time share interest all documents and instruments affecting the fee time interest:
 - (i) That were or are registered as of a date and time prior to the date and time of deregistration of the fee time share interest; and
 - (ii) That were not yet noted on the certificate of title of the fee time share interest as of the date and time of deregistration thereof; and
 - (B) Certify each certificate of title.
- (2) Section 501-196 shall apply to a certificate of title updated pursuant to paragraph (1) upon approval of the same by the assistant registrar, which approval shall be evidenced by a certification of the assistant registrar endorsed upon the certificate of title. A certificate of title for a fee time share interest, including but not limited to a certificate of title recorded prior to July 1, 2012, pursuant to part II of this chapter 501, shall not be considered completed or approved, and shall be subject to modification by the assistant registrar, at any time prior to certification thereof by the assistant registrar. Subsequent to the certification, the certificate of title for a fee time share interest may only be modified pursuant to section 501-196 or as otherwise provided in this chapter.
- (3) Upon certification of the certificate of title for a fee time share interest by the assistant registrar, the assistant registrar shall mark the certificate of title "cancelled", note the cancellation of the certificate of title in the registration book, and notify the court of the cancellation. Regardless of the date upon which such administrative acts are performed, the cancellation of the certificate of title for a fee time share interest shall be effective as of the date and time of deregistration of that fee time share interest.
- (4) If only part of the land described in the certificate of title consists of a fee time share interest, then upon the petition of the registered owner of that portion of the registered land not constituting a fee time share interest, a new certificate of title shall be issued to such owner for that portion of the registered land not constituting a fee time share interest. If registered land is held in the condominium form of ownership, then for purposes of this subsection each unit for which a separate certificate of title has been issued shall be treated as if it were a separate parcel of registered land.
- (5) Except as provided in paragraph (4), no order of court shall be required prior to or in connection with the performance of any of the foregoing actions."

SECTION 5. Section 501-262, Hawaii Revised Statutes, is amended to read as follows:

~~“[§501-262] Effect of deregistration. (a) [Upon the recordation in the bureau of conveyances of a certificate of title pursuant to section 501-261:] From and after the date and time of deregistration of registered land:~~

- (1) The deregistered land shall no longer be registered land for purposes of this chapter;
- (2) No instruments, documents, or papers relating solely to deregistered land shall be filed or recorded with the assistant registrar pursuant to this chapter, but shall instead be recorded in the bureau of conveyances pursuant to chapter 502; and
- (3) Except as otherwise expressly provided in this chapter, chapter 502 shall apply to the deregistered land.

~~(b) [Reeordation of a certificate of title] Neither voluntary deregistration of land other than a fee time share interest pursuant to section 501-261 nor the mandatory deregistration of any fee time share interest pursuant to part II of this chapter, whether by recordation of a certificate of title in the bureau of conveyances prior to July 1, 2012, or by operation of law thereafter, shall [not] disturb the effect of any proceedings in the land court where the question of title has been determined. All proceedings had in connection with the registration of title that relate to the settlement or determination of title before [that reeord- ing,] a certificate of title for land other than a fee time share interest is recorded pursuant to section 501-261 or a certificate of title for a fee time share interest is certified and all provisions of this chapter that relate to the status of the title, shall have continuing force and effect with respect to the period of time that title remained under the land court system. Those provisions giving rise to a right of action for compensation from the State, including any limits on and conditions to the recovery of compensation and the State's rights of subrogation with respect thereto, shall also continue in force and effect with respect to the period of time that title remained under the land court system.”~~

SECTION 6. Section 501-264, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) A certificate of title for land other than a fee time share interest recorded pursuant to section 501-261, or certified by the assistant registrar in the case of a fee time share interest, shall constitute a new chain of record title in the registered owner of any estate or interest as shown on the certificate of title so recorded[;] or certified, subject only to the following:~~

- (1) The estates, mortgages, liens, charges, instruments, documents, and papers noted on the certificate of title so recorded[;] or certified;
- (2) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting the liens, shall be deemed to fall within this paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505;
- (3) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title 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;
 - (6) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed;
 - (7) Any liability to assessments for betterments, or statutory liability that may attach to land as a lien 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 there are easements or other rights, appurtenant to a parcel of deregistered land, which for any reason have failed to be deregistered, the easements or rights shall remain so appurtenant notwithstanding the failure, and shall be held to pass with the deregistered land until cut off or extinguished in any lawful manner;
 - (8) The possibility of reversal or vacation of the decree of registration upon appeal;
 - (9) Any encumbrance not required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest or leasehold interest in deregistered land; and
 - (10) Child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapter 576D.”

SECTION 7. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

“§502-33 Identification of reference to registration of original. [The] (a) If the owner of a fee time share interest acquired title thereto pursuant to a deed or other instrument filed or recorded in the land court pursuant to chapter 501, then the registrar need not accept for recording any deed, mortgage, or other voluntary instrument purporting to convey or affect title to such fee time share interest unless the deed, mortgage, or other voluntary instrument contains a reference to the certificate of title number by which the owner of the fee time share interest acquired title thereto. The term “fee time share interest” as used in this subsection shall have the same meaning as in section 501-20.

(b) Except as otherwise provided in subsection (a), the registrar shall not record any instrument requiring a reference to a prior recorded instrument, unless the same contains a reference to the book and page or document number of

the registration of the original recorded instrument or a statement that the original instrument is unrecorded, as the case may be. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon registration of the judgment. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are or are to become fixtures shall be filed unless it complies with the requirements of part 5 of Article 9 of the Uniform Commercial Code. This section does not apply to any document mentioned herein executed prior to April 13, 1915.

The party seeking registration of a judgment shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment to be filed or recorded.”

SECTION 8. Section 657-33.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§657-33.5]]~~ Deregistered land. In no event shall the period of limitations provided in this part begin prior to the ~~[recording of the certificate of title]~~ date and time of deregistration for deregistered land. The terms “date and time of deregistration” and “deregistered land” as used in this section shall have the same meaning as in section 501-20.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2012.

(Approved June 15, 2012.)