

ACT 215

H.B. NO. 2090

A Bill for an Act Relating to Land Court.

*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, regular session of 2007, identified serious shortcomings relating to the bureau of conveyances. Act 120, Session Laws of Hawaii 2009 (Act 120), 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 certificate 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.

Through Act 121, Session Laws of 2012<sup>1</sup> (Act 121), 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 remaining uncertified fee time share certificates of title remains burdensome in light of resource limitations and the demands of new transactions on the office of the assistant registrar.

The purpose of this Act is to streamline the operations of the office of the assistant registrar of the land court by removing the requirement that the assistant registrar certify all pending or otherwise uncertified certificates of title for fee time share interests, all of which were removed from the land court system as of July 1, 2012. This Act is also intended to preserve the ability of the assistant registrar to complete and certify an uncertified certificate of title to clarify and preserve the rights and interests of interested parties under the State's land court law, up to the date and time of deregistration of the property.

SECTION 2. Section 501-20, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“Certified fee time share interest certificate of title” means a certificate of title for a fee time share interest that has been updated and approved by the assistant registrar in accordance with section 501-261(1).

“Uncertified fee time share interest certificate of title” means a certificate of title issued for a fee time share interest that has not been updated and approved by the assistant registrar in accordance with section 501-261(1).”

SECTION 3. Section 501-261, Hawaii Revised Statutes, is amended to read as follows:

**“§501-261 Deregistration of fee time share interests.** The certificate of title for each fee time share interest shall be canceled effective as of the date and time of deregistration of ~~such~~ the 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~~ From and after July 1, 2012, ~~and continuing for so long as shall be reasonably necessary in the ordinary course of business,~~ the assistant registrar ~~shall~~ may, and upon a written request to the assistant registrar by a party in interest with respect to a certificate of title, 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 share 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 earlier to occur of: the date and time of deregistration thereof; or the date and time of cancellation of the certificate of title; and
- (B) Certify ~~[each]~~ the 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 “canceled”, note the cancellation of the certificate of title in the registration book, and notify the court and the state surveyor of the cancellation. The registrar shall thereupon be authorized to file a record of the cancellation in the application or consolidation file, and the state surveyor shall then be authorized to annotate the land court map or maps by identifying thereon the deregistered land and noting thereon the bureau of conveyances document number of the canceled certificate. The assistant registrar may adopt procedures, if any, as it may deem appropriate to reflect the cancellation of the uncertified fee time share interest certificates of title and the state surveyor may annotate the land court map or maps by identifying thereon the deregistration of land covered by uncertified fee time share certificates of title. Regardless of the date upon which any 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]~~ the 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 condominium apartment or condominium 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~~[-]~~ or to reflect or effect the cancellation of the certificate of title for a fee time share interest or otherwise to reflect or effect the withdrawal of the fee time share interest from the operation of this chapter.”

SECTION 4. Section 501-262, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Neither voluntary deregistration of land other than a fee time share interest 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 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 to deregistered land before ~~[a certificate of title for land other than a fee time share interest is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter or a certificate of title for a fee time share interest is certified]~~ the date and time of deregistration, 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. 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; provided further that upon certification thereof, section 501-261(2) shall apply. 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 5. Section 501-263, Hawaii Revised Statutes, is amended to read as follows:

“**§501-263 Effect of deregistration in specific cases.** Notwithstanding section 501-262(a)(3), the following documents, instruments, and papers need not be registered pursuant to this chapter to be effective and shall be recorded in the bureau of conveyances pursuant to chapter 502:

- (1) Any document, instrument, or paper assigning, extending, continuing, dissolving, discharging, releasing in whole or in part, reducing, canceling, extinguishing, or otherwise modifying or amending any of the following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:
  - (A) A mortgage;
  - (B) An agreement of sale for the sale of a fee time share interest or interest in other deregistered land. After the ~~[recordation of the certificate of title, any]~~ date and time of deregistration of a fee time share interest or interest in other deregistered land, the interest in any deregistered land covered by the agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;
  - (C) A correction deed, correction mortgage, or other document, instrument, or paper correcting a document, instrument, or paper registered pursuant to this chapter;
  - (D) A lien or claim of lien on a fee time share interest held or claimed by a time share owners association, an association of apartment owners, or other homeowners’ association or a lien or claim on an interest in other deregistered land held by a lienor or person claiming a lien;

- (E) A lease that demises a fee time share interest or interest in other deregistered land;
  - (F) An order of court, attachment, writ, or other process against a fee time share interest or interest in other deregistered land;
  - (G) A mechanic's or materialman's lien or other lien upon a fee time share interest or interest in other deregistered land;
  - (H) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to chapter 667 or otherwise; or
  - (I) A power of attorney given by the owner of a fee time share interest or interest in other deregistered land or the vendor or vendee under an agreement of sale for the sale of a fee time share interest or interest in other deregistered land, a mortgagee or other lienor having a mortgage or lien upon a fee time share interest or interest in other deregistered land, or another party holding a claim or encumbrance against or an interest in a fee time share interest or interest in other deregistered land;
- (2) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to chapter 667 or otherwise; and
- (3) Any declaration annexing property to, any declaration deannexing property from, any amendment or supplement to, correction of, or release or termination of, any of the following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:
- (A) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, establishing or governing a time share plan, or the bylaws of a time share owners association, notice of time share plan, or other time share instrument;
  - (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:
    - (i) Any declaration annexing property to the condominium property regime;
    - (ii) Any declaration deannexing property from the condominium property regime;
    - (iii) Any instrument effecting a merger of two or more condominium projects or two or more phases of a condominium project; and

- (iv) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in ~~[subparagraph (B)(i) through]~~ clauses (i) to (iii), the declaration of condominium property regime, the bylaws of the association of apartment owners, the condominium map, or any declaration of merger; and
- (C) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, the bylaws of any homeowners association, any declaration of annexation or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof, any declaration of merger and any instrument effecting a merger; provided that if only some of the parcels of land covered by the declaration constitutes deregistered land, and if one or more of the remaining parcels constitute registered land, then it shall be necessary to register, and to note on the certificate of title for any registered land:
  - (i) Any declaration annexing property to the declaration;
  - (ii) Any declaration deannexing property from the operation of the declaration; and
  - (iii) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in ~~[subparagraph (C)(i)]~~ clause (i) or (ii), the declaration of covenants, conditions, restrictions, or the bylaws of the homeowners association.”

SECTION 6. Section 501-264, Hawaii Revised Statutes, is amended to read as follows:

**“§501-264 Chain of title of deregistered land.** ~~[(a) A certificate of title for land other than a fee time share interest recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, 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:]~~  
(a) The chain of record title in the registered owner of any estate or interest in deregistered land shall, as of the date and time of deregistration, be subject only to the following and to the items described in subsection (d):

- (1) In the case of land other than a fee time share interest, the estates, mortgages, liens, charges, instruments, documents, and papers noted on the certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter;
- (2) In the case of a fee time share interest covered by a certified fee time share interest certificate of title, the estates, mortgages, liens, charges, instruments, documents, and papers noted on the certified fee time share interest certificate of title; and
- (3) In the case of a fee time share interest covered by an uncertified fee time share interest certificate of title, the estates, mortgages, liens, charges, instruments, documents, and papers noted or deemed to be noted on the uncertified fee time share interest certificate of title, as set forth in subsection (b).

(b) The following shall, for purposes of part II of this chapter, be deemed to be noted on the uncertified fee time share interest certificate of title for a given fee time share interest:

- (1) The estates, mortgages, liens, charges, instruments, documents, and papers noted in the last certificate of title certified by the assistant registrar for the registered land of that fee time share interest; and
- (2) The estates, mortgages, liens, charges, instruments, documents, and papers registered with respect to the registered land of that fee time share interest, which registration occurred:
  - (A) After the date of certification of the last certified certificate of title for the registered land of the fee time share interest; and
  - (B) Prior to the earlier to occur of: the date and time of cancellation of the fee time share interest certificate of title; or July 1, 2012, including but not limited to any estates, liens, charges, covenants, conditions, easements, restrictions, agreements, reservations, limitations, interests, or other continuing provisions contained or reserved in the deed conveying the fee time share interest to the registered owner, whether or not identified in the uncertified fee time share interest certificate of title.

(c) Nothing in subsection (b) is intended to alter the effect of any instruments, documents, or papers identified in subsection (b)(2) on the items noted in the certificate of title described in subsection (b)(1).

(d) As of the date and time of deregistration, the chain of title for deregistered land shall be subject only to the items described in subsection (a) and, in the case of a fee time share interest covered by an uncertified fee time share interest certificate of title, in subsection (b), and to the following:

- (1) The estates, mortgages, liens, charges, instruments, documents, and papers [noted on the certificate of title so recorded or certified;]:
  - (A) Noted on the certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, in the case of land other than a fee time share interest;
  - (B) Noted on the certified fee time share interest certificate of title, in the case of a fee time share interest for which the assistant registrar issued a certified fee time share interest certificate of title; or
  - (C) Noted or deemed to be noted on the uncertified fee time share interest certificate of title, in the case of all other fee time share interests;
- (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,] for the deregistered land, 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.

~~[(b)]~~ (e) For purposes of this section, an encumbrance shall be deemed sufficiently noted on a certificate of title if the notation:

- (1) References a document by name or number that contains an encumbrance; and
- (2) Indicates that the referenced document contains an encumbrance to which the deregistered land is subject.

~~[(e)]~~ (f) All instruments, documents, and papers; noted on a certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter (in the case of land other than a fee time share interest); noted on a certified fee time share interest certificate of title; or noted or deemed to be noted on an uncertified fee time share interest certificate title, shall have the same force and effect as if they had been recorded in the bureau of conveyances pursuant to chapter 502 as of the date, hour, and minute of reception noted on the certificate of title pursuant to section 501-107[;] or otherwise entered or required to be entered in the record of the assistant registrar pursuant to section 501-107; provided that:

- (1) No instrument, document, or paper shall have any greater or other effect after the certificate of title is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, as constructive notice or otherwise, than it had or acquired at the time it was registered pursuant to this chapter or made; and



- (2) Nothing in this part shall be construed as giving any greater or other effect, as constructive notice or otherwise, to any instrument, document, or paper recorded in the bureau of conveyances pursuant to chapter 502 prior to the ~~reecordation of the certificate of title in the bureau of conveyances pursuant to chapter 502 and part II of this chapter as to~~ date and time of deregistration of any registered land, than was provided by the laws of this State (including this chapter and other laws regarding registered land) in effect at the time the instrument, document, or paper was recorded.

~~(d)~~ (g) If a certificate of title for:

- (1) Land other than a fee time share interest recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter;  
(2) A fee time share interest certified by the assistant registrar; or  
(3) A fee time share interest that has not been certified by the assistant registrar.

relates to more than one fee time share interest or more than one interest in other deregistered land, then ~~[subsection]~~ subsections (a) to (d) shall apply to each interest separately and only those items described in ~~[subsection]~~ subsections (a) to (d) that encumbered a particular interest ~~[prior to recordation of the certificate of title]~~ as of the date and time of deregistration of that interest will continue to encumber that interest after the ~~[reecordation.]~~ date and time of deregistration.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2016.

(Approved July 6, 2016.)

**Note**

1. So in original.