H.B. NO. 3171

A BILL FOR AN ACT

RELATING TO THE LAND COURT SYSTEM.

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

PART I

SECTION 1. Chapter 501, Hawaii Revised Statutes, is amended by adding a new part to be designated and to read as follows:

"PART II. FEE TIME SHARE INTERESTS

§501-A Deregistration of fee time share interests. (a) 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, the assistant registrar shall not register the same, but shall:

(1) Record in the bureau of conveyances, pursuant to chapter 502, the current certificate of title for the registered land in which the fee time share interest includes an undivided interest; provided that:

(A) 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

(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) Record in the bureau of conveyances, pursuant to chapter 502, the instrument, document, or paper presented to the assistant registrar for filing or recording. Such instrument, document, or paper shall be recorded immediately after the certificate or certificates of title; and

(3) Cancel the certificate of title.

(b) 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.

(c) It shall not be necessary for the registered owner, the registrar, the assistant registrar, or any other person to seek or obtain an order of court prior to or in connection with the performance of any of the foregoing actions.

§501-B Effect of deregistration. (a) Upon the recordation in the bureau of conveyances of a certificate of title pursuant to section 501-A:

(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) Recordation of a certificate of title pursuant to section 501-A 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 recording, 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 but not limited to any limits on and conditions to the recovery of such 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.

§501-C Effect of deregistration in specific cases. Notwithstanding section 501-B(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. After the recordation of the certificate of title, any such 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;

(E) A lease that demises a fee time share interest;

(F) An order of court, attachment, writ or other process against a fee time share interest;

(G) A mechanic's or materialman's lien or other lien upon a fee time share interest;

(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 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 a power of sale under section 667-5, or otherwise; or

(I) A power of attorney given by the owner of a fee time share interest or the vendor or vendee under an agreement of sale for the sale of a fee time share interest, a mortgagee or other lienor having a mortgage or lien upon a fee time share interest, or another party holding a claim or encumbrance against or an interest in a fee time share interest;

(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 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 a power of sale under section 667-5, 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 items (i) through (iii) above, 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 and 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 constituted 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 such declaration;

(ii) Any declaration deannexing property from the operation of such declaration; and

(iii) Any document, instrument or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in item (i) or (ii) above, the declaration of covenants, conditions and restrictions, or the bylaws of the homeowners association.

§501-D Chain of title of deregistered land. (a) A certificate of title recorded pursuant to section 501-A 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, subject only to the following:

(1) The estates, mortgages, liens, charges, instruments, documents, and papers noted on the certificate of title so recorded;

(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 such 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 so recorded, 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 such 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 which 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 such 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 such 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 such 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, such easements or rights shall remain so appurtenant notwithstanding such 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 herein required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest; 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) 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 which contains an encumbrance; and

(2) Indicates that the referenced document contains an encumbrance to which the registered land is subject.

(c) All instruments, documents, and papers noted on a certificate of title recorded pursuant to section 501-A 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; provided that:

(1) No such instrument, document, or paper shall have any greater or other effect after such certificate of title is recorded pursuant to section 501-A, 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 recordation of the certificate of title pursuant to section 501-A as to any land, than was provided by the laws of this State (including this chapter and other laws regarding registered land) in effect at the time such instrument, document, or paper was recorded.

(d) If a certificate of title recorded pursuant to section 501-A relates to more than one fee time share interest, then subsection (a) shall apply to each fee time share interest separately and only those items described in subsection (a) that encumbered a particular fee time share interest prior to recordation of the certificate of title will continue to encumber that fee time share interest after such recordation.

§501-E Status of fee time share interest as real property. Nothing in this part shall affect the status of a fee time share interest as real property.

§501-F Dual recording involving deregistered land. Nothing in this part shall prevent or prohibit the registration of an instrument that conveys, assigns, or affects both registered land and deregistered land.

§501-G Reference to prior recorded instrument. Any instrument conveying or otherwise dealing with deregistered land and which requires a reference to a prior recorded instrument may satisfy the requirements of section 502-33 by reference to the land court document number (in the case of a document recorded pursuant to chapter 501) or to the book and page or bureau of conveyances document number (in the case of a document recorded pursuant to chapter 502) of the instrument to which reference is made.

§501-H Legal incidents of deregistered land. Nothing in this part shall, in any way, be construed to relieve deregistered land, or the owners thereof, of:

(1) Any rights incident to the relation of husband and wife;

(2) Liability to attachment or mesne process or levy on execution;

(3) Liability to any lien of any description established by law on the deregistered land, or in the interest of the owner in the deregistered land;

(4) The right to change the laws of descent;

(5) The rights of partition between coparceners and other cotenants;

(6) The right to take the same by eminent domain;

(7) Liability to be recovered by a trustee in bankruptcy under the provisions of law relating to preferences; or

(8) Any other rights or liabilities created by law and applicable to the owner of a condominium apartment that is part of a condominium property regime established on registered land and which is not utilized in a time share plan, except as otherwise expressly provided in this part.

§501-I Jurisdiction for matters pertaining to deregistered land. The land court shall have jurisdiction over all matters relating to instruments required by this part to be registered pursuant to this chapter. Where any party is in doubt as to whether an instrument must be registered, the question shall be referred to the land court for decision; and the court, after

notice to all parties and a hearing, shall enter an order determining the question. Notice to the owner of a fee time share interest shall be given by mailing notice to the association of time share owners required to be established pursuant to section 514E-29, and such association shall represent the owners in any such matters and proceedings, without prejudice to the right of any individual owner to appear and be heard as a separate party. Except as expressly otherwise provided in this section, nothing in this part shall deprive the land court of exclusive jurisdiction pursuant to section 501-101 over registered land, or any interest therein, other than registered land that becomes deregistered land. The circuit court shall have jurisdiction, pursuant to section 603-21.5(a)(3), over:

(1) All matters relating to instruments required by this part to be recorded pursuant to chapter 502;

(2) All other matters pertaining to deregistered land (except those in which jurisdiction is vested in the land court pursuant to this section); and

(3) All matters as to which jurisdiction would otherwise lie in the land court in part and in the circuit court in part."

SECTION 2. Chapter 657, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§657- Deregistered land.** With respect to land that was registered land under chapter 501, but that has been deregistered pursuant to section 501-A, in no event shall the period of limitations provided in part II of this chapter begin prior to the recordation of the certificate of title for such land pursuant to section 501-A."

SECTION 3. Chapter 501, Hawaii Revised Statutes, is amended by designating sections 501-1 to 501-248 as part I, entitled "General Provisions".

SECTION 4. Section 501-20, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

""Deregistered land" means land that is the subject of a certificate of title recorded pursuant to section 501-A.

"Fee time share interest" means a time share interest, other than a leasehold time share interest, that consists of or includes a present undivided interest in registered land, including but not limited to an undivided interest in one or

more fee simple condominium apartments established in whole or in part on registered land."

SECTION 5. Section 501-71, Hawaii Revised Statutes, is amended to read as follows:

"**§501-71 Decree of registration; conditional when; quieting title, exceptions; reopened when.** If the court after hearing finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that since filing the application, the title of the applicant has not been encumbered in any manner, then a decree of confirmation and registration as prayed for shall be entered.

If the court finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that subsequent to the filing of the application, the title has been encumbered, then the title shall be registered subject to the encumbrances so found.

If the court finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that subsequent to filing the application, the applicant has

conveyed away all or any portion or portions of the premises or interest therein sought to be registered, then a decree of confirmation and registration shall be entered, covering the entire premises, confirming title in the applicant and the person or persons deriving their title through the applicant, to the premises or interest in accordance with the applicant's or their respective true ownership of the whole or any portion or portions thereof or interest therein at the time of filing the decree, and subject to all encumbrances affecting all or any portion thereof.

Every decree of registration of absolute title shall bind the land, and quiet the title thereto, subject only to the exceptions stated in section 501-82. It shall be conclusive upon and against all persons, including the State, whether mentioned by name in the application, notice, or citation, or included in the general description "to all whom it may concern." The decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding for reversing judgments or decrees[~~; subject, to the right of~~], except that any person deprived of land or of any estate or interest therein by a decree of registration obtained by fraud to file a petition for

review within one year after the entry of the decree[~~; provided no~~] unless an innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided[~~.~~] and to sections 501-A to 501-I. Deregistration pursuant to sections 501-A to 501-I 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 based arising prior to the recording of the certificate of title pursuant to section 501-A, except such claims as would not otherwise be barred under this chapter if such lands were not deregistered. Any person aggrieved by the decree in any case may pursue a remedy by action of tort against the applicant or any other person for fraud, in procuring the decree."

SECTION 6. Section 501-86, Hawaii Revised Statutes, is amended to read as follows:

"**§501-86 Registration runs with land.** The obtaining of a decree of registration, and the entry of a certificate of title, shall be regarded as an agreement running with the land, and binding upon the applicant and all the applicant's successors in

1 title, that the land shall be and forever remain registered
2 land, and subject to this chapter [~~and of all acts in amendment~~
3 ~~hereof.~~], except as provided in part II."
4 SECTION 7. Section 501-108, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:
6 "(a) An owner desiring to convey in fee registered land or
7 any portion thereof shall execute a deed of conveyance, which
8 the grantor or the grantee may present to the assistant
9 registrar in the bureau of conveyances; provided that no deed,
10 mortgage, lease, or other voluntary instrument shall be accepted
11 by the assistant registrar for registration unless a reference
12 to the number of the certificate of title of the land affected
13 by such instrument is incorporated in the body of the instrument
14 tendered for registration. If the certificate reference in the
15 instrument is not current, an endorsement of the current
16 certificate of title shall be required.
17 The assistant registrar shall note upon all instruments
18 filed or recorded concurrently with the recorded instrument the
19 document number and the certificate of title number in the
20 spaces provided therefor wherever required[~~.~~] and, in the case
21 of deregistered land, the bureau of conveyances document number
22 in the space provided therefor wherever required.

Except as otherwise provided in section 501-A:

(1) The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee[~~.~~];

(2) The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate[~~.~~];

(3) The original certificate shall be stamped "canceled"[~~.~~]; and

(4) The deed of conveyance shall be filed or recorded and endorsed with the number and place of registration of the certificate of title of the land conveyed."

SECTION 8. Section 501-116, Hawaii Revised Statutes, is amended to read as follows:

"**§501-116 Mortgage registration necessary.** The owner of any interest in registered land may mortgage such interest by executing a mortgage thereof. Such a mortgage may be assigned, extended, discharged, released in whole or in part, or otherwise dealt with by the mortgagee by any form of instrument sufficient in law for the purpose. [~~The~~] Except as otherwise provided in part II, the mortgage, and all instruments assigning, extending,

discharging, and otherwise dealing with the mortgage, shall be registered and shall take effect upon the title of the mortgaged property only from the time of registration."

SECTION 9. Section 501-171, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the person or persons entitled thereto shall file or record with the assistant registrar of the land court a correct statement of the full names of the devisees, the residence or post office address of each and their marital status and a reference to the number of the certificate of title of the land affected, a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an acknowledgment of authority, and either a certified copy of an order of the circuit court determining the persons entitled to distribution of the registered land and directing or approving distribution or a deed from the personal representative to the devisee or devisees, and thereupon the assistant registrar shall cancel the certificate issued to the testator, and, except as otherwise provided in part II, enter a new certificate to the devisee or devisees. When the owner of

registered land or of any estate or interest therein dies, not having devised the same, the persons entitled thereto by law shall file or record with the assistant registrar a correct statement of the full names of the heirs, the residence or post office address of each, and their marital status, a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an acknowledgment of authority, and either a certified copy of an order of the circuit court in probate proceedings determining the persons entitled to distribution of the registered land and directing or approving distribution or a deed from the personal representative to the heir or heirs, and thereupon the assistant registrar shall cancel the certificate issued to the intestate, and, except as otherwise provided in part II, enter a new certificate to the heir or heirs entitled thereto."

SECTION 10. Section 634-51, Hawaii Revised Statutes, is amended to read as follows:

"**§634-51 Recording of notice of pendency of action.** In any action concerning real property or affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and any other party at the time of

filing a pleading in which affirmative relief is claimed, or at any time afterwards, may record in the bureau of conveyances a notice of the pendency of the action, containing the names or designations of the parties, as set out in the summons or pleading, the object of the action or claim for affirmative relief, and a description of the property affected thereby. From and after the time of recording the notice, a person who becomes a purchaser or incumbrancer of the property affected shall be deemed to have constructive notice of the pendency of the action and be bound by any judgment entered therein if the person claims through a party to the action; provided that in the case of registered land, section 501-151 [~~and~~], sections 501-241 to 501-248, and sections 501-A to 501-I shall govern.

This section authorizes the recording of a notice of the pendency of an action in a United States District Court, as well as a state court."

SECTION 11. Section 636-3, Hawaii Revised Statutes, is amended to read as follows:

"**§636-3 Judgment, orders, decrees; lien when.** Any money judgment, order, or decree of a state court or the United States District Court for the District of Hawaii shall be a lien upon real property when a copy thereof, certified as correct by a

clerk of the court where it is entered, is recorded in the bureau of conveyances. No such lien shall continue beyond the length of time the underlying judgment, order, or decree is in force. Except as otherwise provided, every judgment shall contain or have endorsed on it the social security number, the Hawaii tax identification number, or the federal employer identification number for persons, corporations, partnerships, or other entities against whom the judgment, order, or decree is rendered. If the debtor has no social security number, Hawaii tax identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, order, or decree, the judgment, order, or decree shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking recordation of the judgment. Failure to disclose or disclosure of an incorrect social security number, Hawaii tax identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recordation of the judgment, order, or decree. When any judgment, order, or decree is fully paid, the creditor or the creditor's attorney of record in the action [~~shall~~], at the expense of the debtor,

shall execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment, order, or decree shall contain a reference to the book and page or document number of the registration of the original judgment. The recording fees for a judgment, order, or decree and for each assignment or satisfaction of judgment, order, or decree shall be as provided by section 502-25.

In the case of registered land, section 501-102 [~~and~~], sections 501-241 to 501-248, and sections 501-A to 501-I shall govern."

PART II

SECTION 12. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§501- Voluntary deregistration of land owned in fee simple and leasehold.** Upon presentation to the assistant registrar for filing or recording of any instrument, document, or paper, selling the fee simple or leasehold interest in a parcel in which the owner of said parcel presents a notarized affidavit that they wish to voluntarily remove said parcel from the provisions of chapter 501, the assistant registrar shall not

register the same, but shall record in the bureau of conveyances, pursuant to chapter 502, the current certificate of title for the registered land."

SECTION 13. Notwithstanding any law to the contrary, the provisions of sections 501-A through 501-I in section 1 of this bill shall apply to the parcel or parcels voluntarily designated for recordation under the provisions of chapter 502, Hawaii Revised Statutes, except that it shall be recognized that the said parcels are held as fee simple or leasehold property, rather than timeshare interests.

SECTION 14. Nothing contained in this Act shall terminate, extinguish, diminish, or impair any existing right in or pertaining to any deregistered land, or any existing right to compensation created by chapter 501, Hawaii Revised Statutes, but any such right may be asserted and enforced in the same manner, to the same extent, and subject to the same limitations and conditions, provided in the land court laws amended by this Act.

SECTION 15. In codifying the new sections added to chapter 501, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers

for the letters used in the designations of and references to those new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on July 1, 2008.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3171

Report Title:
Land Court System

Description:
Removes fee-simple time share transactions from the Land Court System and to provide the option for all landowners to transfer their property from the Land Court System to the Regular System of the Bureau of Conveyances.

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JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE LAND COURT SYSTEM.

PURPOSE: To deregister fee simple time share interest from the Land Court System; and to provide the option for all landowners to transfer their properties from Land Court to the Regular System of the Bureau of Conveyances (Bureau).

MEANS: Add a new part II to chapter 501, Hawaii Revised Statutes (HRS); add a new section to chapter 501, HRS; add a new section to chapter 657, HRS; designate a new part I to incorporate sections 501-1 to 501-248, HRS; and amend sections 501-20, 501-71, 501-86, 501-108(a), 501-116, 501-171(a), 634-51, 634-51, and 636-3, HRS.

JUSTIFICATION: The Land Court Act was adopted in 1903 to provide landowners a means to establish clear title to land through a court proceeding. Under the Land Court System, the owner of land is issued a certificate of title to the land that cannot be encumbered unless the encumbrance is filed in the Land Court and noted on the certificate of title. Basically, Land Court was designed as one lot, one certificate.

With fee simple time share however, the number of owners of a parcel of land increases from a few hundred owners under a condominium property regime (CPR) to literally thousands of owners, each having a small undivided percentage interest in the CPR land. For example, if the timeshare project involves 100 units, the interest is broken into 52 individual parts, for 52 weeks in a year and 52 weeks for 100 units would equate to 5,200 individual interests. If it involves 200 units, you would have

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twice the amount or 10,400 individual interests (the Marriott project on Kauai a few years ago involved over 11,000 individual timeshare interests). For these thousands of owners of the parcel of land, the issuance of an initial certificate of title for each one, and subsequent changes in ownership, is cumbersome, costly, and time consuming. If the transactions were recorded in the Regular System, the process would be simplified only to accept the document for recording without the detailed review.

The cumbersome and time consuming Land Court review process conducted by the staff of the Bureau has resulted in a current backlog of 18 months. Allowing landowners to remove their property from the Land Court System and have their property recorded instead in the Regular System will enable landowners to achieve recording of future documents in a shorter time than currently entails in the Land Court System.

This bill would deregister lands that are within a CPR fee simple time share project out of the Land Court System, thereby eliminating the need to issue a certificate of title for each fee simple time share unit for each owner, and whenever a change in ownership occurs. Additionally, this bill would permit landowners to voluntarily transfer their property from the Land Court System to the Regular System of the Bureau.

Impact on the public: Would: (1) eliminate the option of having fee simple time share recorded and its title guaranteed by the State under the Land Court System; and (2) eliminate the need to have the documents certified by the Land Court.

Impact on the department and other agencies: Would reduce recording large numbers of transactions in the Land Court System. As a result, the staff of the Bureau can address

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other recordation actions in a more timely fashion.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 111, JUD 601.

OTHER AFFECTED AGENCIES: Judiciary (Land Court).

EFFECTIVE DATE: July 1, 2008.