

ACT 83

An Act Relating to Acknowledgments and Other Requirements for, and the Effect of, Recordation and Registration of Mortgages and Other Instruments in the Bureau of Conveyances and Office of the Assistant Registrar of the Land Court, and Amending Sections 343-29, 343-30, 343-34(b), 343-39, 343-41, 343-49, 343-51, 343-52 and 342-60, Revised Laws of Hawaii 1955.

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

SECTION 1. Section 343-29 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Sec. 343-29. Acknowledgments without the State. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without the State and within any other state, territory, district, or dependency of the United States, may be made before any officer of such state, territory, district or dependency authorized by the laws thereof to take proof and acknowledgment of deeds and when so taken, and when the certificate of acknowledgment is in a form sufficient to entitle deeds of real property to be recorded in the appropriate office for recording in such state, territory, district, or dependency or in the form provided or permitted by any of sections 343-25, 343-26 or 343-27, shall be entitled to be recorded and may be read in evidence in the State. The signature of such officer shall constitute prima facie evidence that the acknowledgment is taken in accordance with the laws of the place where made and of the authority of the officer to take the acknowledgment. If, however, the record of any such instrument, or a transcript thereof, is used in evidence in any proceeding the burden shall be on the party relying on such record to prove that such instrument was duly executed, in any proceeding where such fact is asserted by such party and is in dispute. Said burden may be met by proof made in the manner provided in section 343-30."

SECTION 2. The first paragraph of section 343-30 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Sec. 343-30. Same; certificate of authority of officer. The burden of proving due execution of any conveyance or written instrument, acknowledged or proved under section 343-29, may be met by any admissible evidence sufficient for that purpose and shall also be met if at the time of recording or thereafter there shall be indorsed, subjoined or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of the state or territory, or

a certificate of the clerk of a court of record of the state, territory or district in the county in which the officer resides or in which he took such proof or acknowledgment, under the seal of the court, or a certificate of the executive officer or clerk of a court of record of such dependency, authorized to make such certificate, stating that the officer was, at the time of taking the proof or acknowledgment, duly authorized to take acknowledgments and proofs of deeds of lands in the state, territory, district or dependency, and that the secretary of state, or other authorized executive officer, or clerk of court, is well acquainted with the handwriting of the officer taking the acknowledgment or proof, and that he verily believes that the signature affixed to the certificate of proof or acknowledgment is genuine."

SECTION 3. Section 343-34(b) of the Revised Laws of Hawaii 1955 is hereby amended by deleting the words "and noted" appearing in lines 2 and 3 thereof.

SECTION 4. Section 343-39 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Sec. 343-39. Changes noted in instrument. Every notary public or the officer authorized to take acknowledgments to instruments, before taking any acknowledgment, shall first carefully inspect any instrument proposed to be acknowledged before him, and ascertain whether there are any interlineations, erasures, or changes in such instrument. If there are any interlineations, erasures or changes, he shall call the attention thereto of the person offering to acknowledge the instrument. If they are approved, the acknowledging officer shall place his initials in the margin of the instrument opposite each interlineation, erasure or change. Such initialing by the officer taking the acknowledgment shall be prima facie evidence of the extent of the interlineations, erasures or changes and of the fact that the same were made prior to acknowledgment of the instrument, but shall not preclude proof to the contrary."

SECTION 5. Section 343-41 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Sec. 343-41. Not recorded unless initialed. No instrument in which there are interlineations, erasures, or changes shall be recorded by the registrar, unless the same are duly initialed by the officer or officers taking the acknowledgment or acknowledgments to the same."

SECTION 6. Section 343-49 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Sec. 343-49. Effect of not recording deeds, leases, etc. All deeds, leases for a term of more than one year, mortgages of any interest in real estate, or other conveyances of real estate within the State, shall be recorded in the bureau of conveyances. Every such conveyance not so recorded shall be void as against any subsequent purchaser, lessee or mortgagee, in good faith and for a valuable consideration, not having actual notice of the conveyance of the same real estate, or any portion thereof or interest therein, whose conveyance is first duly recorded."

SECTION 7. Section 343-51 of the Revised Laws of Hawaii 1955 is hereby amended by inserting in the first sentence thereof, immediately before the semicolon preceding the words "provided that," the following words: "or is registered under the provisions of section 342-60".

SECTION 8. Section 343-52 of the Revised Laws of Hawaii 1955 is hereby amended:

(a) By inserting therein, between the words "growing crops" and the word "shall", the following words: "and other than personal property affixed to improvements upon real estate and described as part of the security in a mortgage of the real estate and improvements"; and

(b) By adding an additional sentence thereto reading as follows: "A mortgage of a leasehold or other interest in real property shall not be considered to be a mortgage of tangible personal property within the meaning of this section."

SECTION 9. Section 342-60 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Sec. 342-60. Mortgage registration necessary. The owner of any interest in registered land may mortgage his interest in said land and any improvements thereon, and in any personal property affixed to the improvements and described in the mortgage, by executing a mortgage thereof. The 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 mortgage, and all instruments assigning, extending, discharging and otherwise dealing with the mortgage, shall be registered, and shall take effect upon the title to the mortgaged property only from the time of registration."

SECTION 10. This Act shall take effect upon its approval.

(Approved May 25, 1963.) **S.B. 904.**
