

ACT 197

S.B. NO. 2729

A Bill for an Act Relating to Recordation.

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

SECTION 1. Section 490:9-407, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Upon request of any person, the filing officer shall issue [his] a certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be [\$1 plus 50 cents for each financing statement and for each statement of assignment reported therein.] as specified in section 502-25 or by rules adopted by the department of land and natural resources, pursuant to chapter 91. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a [uniform fee of 50 cents per page.] fee as specified in section 502-25 or by rules adopted by the department of land and natural resources, pursuant to chapter 91.”

SECTION 2. Section 501-83.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§501-83.5] Outstanding owner’s duplicate certificates.** No owner’s duplicate certificates of title shall be issued after June 14, 1988, whether the deed or other instrument upon which such would have been based was recorded before or after June 14, 1988. Whenever a duplicate has been issued and is still outstanding, [the assistant registrar shall require that the same be presented with any deed or other voluntary instrument to be filed or recorded affecting the land described therein. The assistant registrar shall thereupon cancel such owner’s duplicate. The foregoing requirements for presenting such owner’s duplicate certificate shall not apply if there shall be or has been presented to the assistant registrar a sworn statement by the registered owner of the subject land that such owner’s duplicate has been lost or destroyed. The assistant registrar shall keep a record of such

canceled owner's duplicate certificates and of such affidavits.] it shall be deemed to have been surrendered and notwithstanding any other provision herein, the assistant registrar shall accept for filing any deed or other voluntary instruments without requiring the presentation of the outstanding duplicate certificate. [All references in this chapter to the holder, receiver or taker of a certificate of title, or similar references, shall refer to the party registered as the owner in the certificate of title on file in the office of the assistant registrar. In case of a variance between the outstanding owner's duplicate certificate and the original certificate the original shall prevail.]”

SECTION 3. Section 501-105, Hawaii Revised Statutes, is amended to read as follows:

**“§501-105 Grantee's [residence,] address, etc., to be stated.** Every deed or other voluntary instrument presented for [registration] recording shall contain or have indorsed upon it the full name or names, if more than one, and the address of the grantee or other person acquiring or claiming an interest under the instrument and every deed shall also contain or have indorsed upon it a statement that the grantee is married or unmarried, and if married, the statement shall give the name in full of the husband or wife. All names and addresses shall also be entered on all certificates. Notices and processes issued in relation to registered land in pursuance of this chapter may be served upon any person in interest by mailing the same to the address so given, and shall be binding whether such person resides within or without the State.

Any deed conveying one or more but not all lots or all interests in a lot appurtenant to apartments in a condominium property regime in a certificate shall contain full memoranda relating to easements, rights-of-way, and all other liens and encumbrances affecting the particular lot, lots, interest appurtenant to an apartment, or interests appurtenant to apartments conveyed. If the deed affects all of the land or interests appurtenant to apartments in a certificate of title, encumbrances may be referred to by reference.”

SECTION 4. Section 501-108, Hawaii Revised Statutes, is amended to read as follows:

**“§501-108 Conveyance of fee; procedure.** An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that the assistant registrar shall not accept for registration any deed, mortgage, lease, or other voluntary instrument, unless a reference to the number of the certificate of title of the land affected by such instrument is incorporated in the body of the instrument tendered for registration.

The assistant registrar shall note upon all instruments filed or recorded concurrently with the recorded instrument the document number and the certificate of title number in the spaces provided therefor wherever required.

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. The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate. The original certificate shall be stamped “canceled.” The deed of conveyance shall be filed or recorded and indorsed with the number and place of registration of the certificate of title of the land conveyed.

On all instruments to be filed or recorded, the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of that space, and for the registrar of conveyances on the right half of that space. The following one inch of space shall be reserved for information showing to whom the document should be returned. [Each instrument] If an instrument consists of more than one page, it shall be stapled once in the upper left corner [and]. No instrument shall [not] have a cover or backer attached. The assistant registrar shall be permitted to remove any rivets affixed to any instrument.

All names of all natural persons signing in their individual capacity in the instrument shall be typewritten, stamped, or printed by some other mechanical or electrical printing method beneath all signatures. No discrepancy in any name shall exist between the printed name, as it appears either in the body of the instrument, beneath the signature, or in the notary's certificate of acknowledgment. The provisions of this paragraph shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

The assistant registrar [shall] may refuse to file or record any instrument that will not reproduce legibly under photographic or electrostatic methods, or that is of a size larger than eight and one-half inches by fourteen inches, or that contains a schedule, inventory sheet, or map in excess of that size."

SECTION 5. Section 501-218, Hawaii Revised Statutes, is amended to read as follows:

**"§501-218 Schedule of fees.** (a) Except where otherwise provided by the supreme court of the State of Hawaii which shall be empowered to amend or add to the schedule from time to time, or as to paragraphs (3), (20), (21), (22), (23), (25), (30) and (31) hereof by rules adopted by the department of land and natural resources, pursuant to chapter 91, the fees payable under this chapter are as follows:

- (1) For every application filed pursuant to this chapter, including indexing and recording the same, and transmitting to registrar, when filed with assistant registrar, \$3.
- (2) For every plan filed, \$1.
- (3) For indexing any instrument recorded while application for registration is pending, [25 cents.] \$1.
- (4) For examining title, \$10 and two-tenths of one per cent of the assessed value of the land and improvements on the basis of the last assessment for taxation, or the value of the same as determined under section 501-211 when the land was not separately assessed.
- (5) For verifying and checking map on the ground, for lots of one acre or less, \$25; an addition of \$1 an acre or fraction thereof for all area over one acre and up to one hundred acres; an addition of 50 cents an acre or fraction thereof for all area over one hundred acres and up to five hundred acres; an addition of 50 cents an acre or fraction thereof for all area over five hundred acres and up to one thousand acres; an addition of 25 cents an acre or fraction thereof for all area over one thousand acres.
- (6) For checking survey and map as to form and mathematical correctness but not on the ground, \$3 an hour.
- (7) For approving subdivision of registered land, and for checking same as to form and mathematical correctness but not on the ground, \$3 an hour.

- (8) For all services by a sheriff or other police officer under this chapter, the same fees as are now provided by law for like services.
- (9) For each instrument affecting a title not reported in applicant's filed abstract of title, \$2.
- (10) For filing an amended application, \$1.
- (11) For each notice by publication, 25 cents.
- (12) For entering any general default, \$1.
- (13) For filing any answer, \$1, to be paid by the party filing the same.
- (14) For every subpoena, \$1.
- (15) For swearing each witness, 10 cents.
- (16) For entering any discontinuance, \$1.
- (17) For filing notice of appeal, \$30.
- (18) For entry of order dismissing application, or decree of registration, and sending memorandum to assistant registrar, \$1.
- (19) For copy of decree of registration, \$1.
- (20) For entry of original certificate of title, or for making and entering a new certificate of title, \$25 if contained within four pages. For each additional page or fraction thereof, \$1.
- (21) For a certified copy of any certificate of title, \$2 if contained within one page. For each additional page or fraction thereof, \$1.
- (22) For the registration or recording of every instrument, including entering, indexing, filing or recording, attesting registration, and making and attesting memorandum on certificates not in excess of four, [~~\$10~~] \$20, except where herein otherwise provided, and \$1 for each additional memorandum on certificates in excess of four required by any one instrument.
- (23) For a copy of any instrument, authenticated by the assistant registrar's seal of office, or for a copy of any instrument, or a portion of any instrument not authenticated by the assistant registrar's seal of office, \$1 per page or fraction thereof.
- (24) For filing or recording and registering an adverse claim, [~~\$3.~~] \$20.
- (25) For [~~registration~~] recording of an order for a suggestion of death, fact of marriage, divorce, subdivision, or notice of issue of an order in bankruptcy, [~~\$10.~~] \$20.
- (26) For filing [~~or recording~~] any petition after original registration, \$1[.]; an addition of 25 cents for each exhibit attached.
- (27) For filing [~~or recording~~] any order after original registration, [~~\$1.~~] \$5.
- (28) In all cases not expressly provided for by law the fees of all public officers for any official duty or service under this chapter shall be at a rate established by the court.
- (29) For any application made by or in the name of the State, or any political subdivision thereof, any proceedings had upon such application or any dealing with registered land by the State, or any political subdivision thereof, as owner, no fees shall be charged.
- (30) For a daily copy of the magnetic tapes containing computerized data of the daily entry record, \$100 per month.
- (31) For inquiring into computerized data of the land court automated title system, \$100 per month[.] plus hookup and per minute charges."

SECTION 6. Section 502-12, Hawaii Revised Statutes, is amended to read as follows:

**"§502-12 Indexes.** The registrar shall keep indexes for public inspection in such form and manner as is prescribed by the board of land and natural resources. [The master index shall be programmed in such manner as to permit the location of all recorded agreement of sale documents by an alphabetical listing of each party to such agreements of sale.]"

SECTION 7. Section 502-25, Hawaii Revised Statutes, is amended to read as follows:

**"§502-25 Fees.** (a) Unless otherwise provided by rules [established] adopted by the department of land and natural resources, pursuant to chapter 91, the registrar is entitled to demand and receive the following fees:

- (1) For the registry or recording of any instrument required by law to be recorded, or presented for record, except that no fee shall be required of any county presenting a document for record, wherein the county is the grantee, [~~\$10;~~] \$20;
- (2) For taking any acknowledgment preparatory to registry[, \$1] or recording, \$4 for each party signing;
- (3) For every copy of any instrument recorded in the registrar's office, authenticated by the registrar's seal of office, or for a copy of any instrument or portion thereof not authenticated by the registrar's seal of office, \$1 per page;
- (4) For searching the records, when personnel is available for searching, and giving the certificate required by law, [~~\$10~~] \$25 for each year searched and also \$1 for each page in the certificate;
- (5) For copy of plan of land, authenticated by the registrar's seal of office, \$1 for the first square foot and additional 10 cents for each additional square foot or fraction thereof in the size of the plan;
- (6) For photographing instruments, etc., for any federal, state, or county agency, the cost of the materials used therein, such fees to be used by the registrar for the purchase of necessary materials used in such photographing process;
- (7) For a daily copy of the magnetic tapes containing the computerized daily entry record, \$100 per month[.];
- (8) For the registrar's certificate pursuant to the Uniform Commercial Code, section 490:9-407, \$25 plus \$5 for each financing statement and for each statement of assignment reported therein."

SECTION 8. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

**"§502-31 Recording, method.** The registrar shall make or cause to be made an entire literal copy of all instruments required to be recorded in the registrar's office, and the registrar, the registrar's deputy, or clerk shall certify its correspondence with the original, after which the registrar, the registrar's deputy, or clerk shall certify upon the exterior, or indorse upon the recorded instrument, the date of its registry and the document number.

The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as they first appear in the recorded instrument. All names of [individual signatories] all natural persons signing in their individual capacity shall be typewritten, stamped, or printed by some other mechanical or electrical printing method beneath all signatures.

The registrar or the registrar's deputy may refuse to accept for record any document of a size larger than eight and one-half inches by fourteen inches, or which contains a schedule or inventory sheet in excess of such size.

This paragraph shall apply to all instruments presented for recording in the bureau of conveyances, unless otherwise provided by rules [established] adopted by the department of land and natural resources, pursuant to chapter 91.

On all instruments to be recorded the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of such space, and for the registrar of conveyances on the right half of such space. The following one inch of space shall be reserved for information showing to whom the document should be returned. If an instrument consists of more than one page, it shall be stapled once in the upper left corner. The registrar of conveyances shall be permitted to remove any rivets affixed to any instrument. The registrar may refuse to accept all instruments, papers, or notices presented for recordation that will not reproduce legibly under photographic or electrostatic methods."

SECTION 9. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

**"§502-33 Identification of [assignments, etc., of mortgages and leases by] reference to registration of original.** The registrar shall not record any [assignment, extension, or release of mortgage of real property, or an affidavit of foreclosure under a power contained in a mortgage, or a writ, order, or judgment, for possession of the premises covered by any mortgage, or an assignment, extension, or cancellation of lease,] 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 [mortgage or lease,] 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 social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification 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 the Uniform Commercial Code, section 490:9-408. This section does not apply to any document mentioned herein executed prior to April 13, 1915[; and this section does not apply to any document mentioned herein which refers to an unrecorded mortgage or lease, if such fact be recited therein]."

SECTION 10. Section 502-41, Hawaii Revised Statutes, is amended to read as follows:

**“§502-41 Certificate of acknowledgment; natural persons, corporations.** Except as otherwise provided by sections 502-50 to 502-52, to entitle any conveyance or other instrument to be recorded there shall be endorsed, subjoined, or attached thereto an acknowledgment in the form provided or authorized in any of sections 502-42, 502-43, or 502-45, or in substantially the following form:

(Begin in all cases by a caption specifying the state or territory and the place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right:

On this ..... day of ....., 19....., before me personally appeared A.B. (or A.B. and C.D.), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or she) (or they) executed the same as his (or her) (or their) free act and deed.

2. In the case of natural persons acting by attorney:

On this ..... day of ....., 19....., before me personally appeared A.B., to me known to be the person who executed the foregoing instrument in behalf of C.D. and acknowledged that he (or she) executed the same as the free act and deed of said C.D.

3. In the case of corporations or [joint stock associations:] partnerships:

On this ..... day of ....., 19....., before me appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that he (or she) is the president (or other officer, partner, or agent of the corporation, or [association] partnership) of (describing the corporation or [association] partnership) [and that the seal affixed to the instrument is the corporate seal of the corporation (or association)], and that the instrument was signed [and sealed] in behalf of the corporation (or [association] partnership) by authority of its board of directors (partners or trustees), and A.B. acknowledged the instrument to be the free act and deed of the corporation (or [association] partnership).

[In case the corporation or association has no corporate seal, omit “the seal affixed to the instrument is the corporate seal of the corporation (or association), and that” and add, at the end of the affidavit clause, “and that the corporation (or association) has no corporate seal.”]

4. In the case of a corporation [or joint stock company] acknowledging by an individual as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On this ..... day of ....., 19....., before me personally appeared A.B., to me personally known, who being by me duly sworn (or affirmed) did say that he (or she) is the attorney in fact of C.D. (here name the corporation) duly appointed under power of attorney dated the ..... day of ....., 19....., recorded in book ....., at page .....[;]/as document no. ....; and that the foregoing instrument was executed in the name and behalf of said C.D. by A.B. as its attorney in fact; and A.B. acknowledged the instrument to be the free act and deed of C.D.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words “which power of attorney is now in full force and effect.”

5. In the case of a corporation [or joint stock company] acknowledging by another corporation [or joint stock company] as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On this ..... day of ....., 19....., before me personally appeared A.B., to me personally known, who, being by me duly sworn (or affirmed) did say that he (or she) is the president (or other officer or agent of the corporation [or joint stock company] acting as attorney) of C.D. (here name the corporation [or joint stock company] acting as attorney) and that C.D. is the attorney in fact of E.F. (here name the corporation [or joint stock company] in whose behalf the attorney is acting) duly appointed under power of attorney dated the ..... day of ....., 19....., recorded in book ....., at page .....[;]/as document no. ....; that the foregoing instrument was executed in the name and behalf of E.F. by C.D. as its attorney-in-fact; that [the seal affixed to the foregoing instrument is the corporate seal of C.D., and] the instrument was so executed by C.D. by authority of its board of directors; and A.B. acknowledged the instrument to be the free act and deed of E.F.

[In case the corporation acting as attorney has no corporate seal, or no seal within the State, omit the words "the seal affixed to the foregoing instrument is the corporate seal of C.D." and insert in lieu thereof, "C.D. has no corporate seal," or "C.D. has no corporate seal within the State of Hawaii."] In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words "which power of attorney is now in full force and effect."

6. The following form may be used in lieu of any of the foregoing forms:

On this ..... day of ..... 19....., before me personally appeared A.B. (or A.B. and C.D.), to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

In all cases add signature and title of the officer taking the acknowledgment."

SECTION 11. Section 502-43, Hawaii Revised Statutes, is amended to read as follows:

**"§502-43 Form when person unknown.** When the person offering the acknowledgment is unknown to the officer taking the acknowledgment, the certificate may be substantially in the following form, to-wit:

State of Hawaii                    ) ss.  
County of .....)

On this ..... day of .....19....., personally appeared before me A.B., satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of C.D., a credible witness for that purpose, to me known and by me duly sworn, and he[,] (or she), A.B., acknowledged that he (or she) executed the same freely and voluntarily for the uses and purposes therein set forth."



SECTION 12. Section 502-63, Hawaii Revised Statutes, is amended to read as follows:

**“§502-63 Not recorded unless initialed.** No instrument acknowledged in the State of Hawaii 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[.] in the State of Hawaii.

No instrument acknowledged outside of the State of Hawaii in which there are interlineations, erasures, or changes shall be recorded by the registrar, unless the same are duly initialed by either:

- (1) The parties to such instrument; or
- (2) The officer or officers taking the acknowledgment or acknowledgments to the same.”

SECTION 13. Section 514A-12, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-12 Copy of the floor plans to be filed.** Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the verified statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with and approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, there shall be recorded within thirty days from the date of completion of the building or buildings as “date of completion” is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, which amendment shall require only the vote or written consent of the declarant or such other person or persons as are provided in the declaration. The plans shall be kept by the recording officer [in a separate file for each property,] as provided by rules adopted by the department of land and natural resources, pursuant to chapter 91, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated “apartment ownership,” with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.”

SECTION 14. Section 502-64, Hawaii Revised Statutes, is repealed.

SECTION 15. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

**ACT 197**

**SECTION 16.** This Act shall take effect sixty days after its approval.  
(Approved June 12, 1992.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.