

ACT 185

H.B. NO. 77

A Bill for an Act Relating to Real Property Encroachment.

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

SECTION 1. The legislature finds that this Act represents a collaborative effort among licensed land surveyors, title and escrow companies, and the real estate community in Hawaii at clarifying the existing law on real property encroachments.

The purpose of this Act is to adopt cost-efficient, time-saving methods to resolve relatively minor structure position discrepancies, including those situated on industrial property, and without regard to the date at which such discrepancies arise. The legislature recently enacted a structure position discrepancies law. However, that law applies only to discrepancies that existed on June 16, 1997. The problem with the law is that applicability turns upon the date of construction of the encroaching structure, which often is indeterminable due to the lack of documentation. This ambiguity renders the law unusable in many situations. The legislature believes that the removal of the retroactive date of that law will allow that law to be implemented. Furthermore, the requirement that the structures be otherwise "legally constructed" forecloses the possibility that the law, without any temporary restrictions as to its applicability, will be used to promote or encourage future, intentional encroachments.

SECTION 2. Section 669-11, Hawaii Revised Statutes, is amended to read as follows:

"[[§669-11]] De minimus structure position discrepancies, defined.

For the purposes of this part, "de minimus structure position discrepancy" means:

- (1) For commercial property, industrial property, and multi-unit residential property, 0.25 feet;
- (2) For all other residential property, 0.5 feet;
- (3) For agricultural and rural property, 0.75 feet; and
- (4) For conservation property, 1.5 feet;

between the location of an improvement legally constructed along what was reasonably believed to be the boundary line and the actual location of the boundary line based on [a modern] the most recent survey."

SECTION 3. Section 669-12, Hawaii Revised Statutes, is amended to read as follows:

“[[§669-12[]] Consequences.

- (1) A de minimus structure position discrepancy shall not be considered an encroachment or a basis for a zoning violation;
- (2) No de minimus structure position discrepancy authorized under this part shall be considered as a basis for any claim of adverse possession of land. If the wall or other improvement that is affected by the discrepancy is removed or substantially damaged or destroyed, the replacement improvement shall be constructed to comply with the most recent survey available at the time of construction of the improvement;
- (3) Responsibility for maintenance and repair of an improvement within a de minimus structure position discrepancy shall be borne by the property owner who constructed the improvement[, or the property owner's successor in interest; and]
- (4) Liability for any claims for injuries or damages to persons or property arising out of, or in connection with, an improvement within a de minimus structure position discrepancy shall be borne by the property owner who constructed the improvement[, or the property owner's successor in interest[.]; and]
- (5) In the event that the property owner who constructed the improvement within a de minimus structure position discrepancy is not readily identifiable, then for purposes of this part, the owner of the improvement shall be determined to be the owner of the property upon which the improvement is substantially located.”

SECTION 4. Act 131, Session Laws of Hawaii 1997, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall apply to all structure position discrepancies [in effect on its effective date] without regard to when the facts or actions giving rise to the discrepancy occurred.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act, upon its approval, shall take effect retroactive to June 16, 1997.

(Approved July 2, 1999.)