

ACT 78

S.B. NO. 2910

A Bill for an Act Relating to Time Share Commissioners of Deeds.

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

SECTION 1. The legislature finds the existing process for authentication and recordation of time share real estate documents signed outside of the United States can be cumbersome and expensive. Act 277, Session Laws of Hawaii 2013 (Act 277), established the commissioners of deeds program within the office of the lieutenant governor to streamline this process. Act 277 authorizes the governor to appoint commissioners of deeds to administer oaths, take acknowledgments, and take proofs of execution outside of the United States in connection with the execution of conveyance documents relating to time shares. Act 277 also includes protections for consumers wishing to purchase a time share property located in Hawaii, including written notice of legal rights, bonding requirements for commissioners of deeds, and liabilities and limitations on liabilities for commissioners of deeds.

The legislature further finds that after the enactment of Act 277, a working group was established to assist in implementing the commissioners of deeds program. Representatives from the office of the lieutenant governor, department of the attorney general, department of commerce and consumer affairs, and bureau of conveyances, and members of the time share industry met on multiple occasions to discuss and analyze the implementation of Act 277. The working group determined that additional legislation and authorization would assist with the effective implementation of the commissioners of deeds program and ensure the protection of consumers who wish to purchase a time share property located in the State. However, due to a lack of funding and the absence of necessary clarification, the program has not yet been implemented.

Accordingly, the purpose of this Act is to:

- (1) Clarify the lieutenant governor's rulemaking authority;
- (2) Authorize the lieutenant governor to assess and collect fees and administrative fines;
- (3) Clarify the lieutenant governor's responsibility for the commissioners of deeds program;
- (4) Increase the surety bond requirement for commissioners of deeds; and
- (5) Appropriate funds for expenses incurred by the office of the lieutenant governor related to establishing and administering the commissioners of deeds program.

SECTION 2. Chapter 503B, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§503B-A Rules. The lieutenant governor may adopt rules pursuant to chapter 91 as the lieutenant governor deems necessary to implement this chapter, including but not limited to the appointment and duties of commissioners of deeds and other measures necessary to prevent the fraudulent use of a document affixed with the commissioner of deeds' seal.

§503B-B Fees and administrative fines. (a) The lieutenant governor shall charge and collect the following fees:

- (1) Application for commissioner of deeds commission, \$10;
- (2) Application for renewal of commissioner of deeds commission, \$10;
- (3) Application for restoration of forfeited commission, \$10;
- (4) Application for reinstatement of suspended commission, \$10;
- (5) Issuance of the original commission, \$40;
- (6) Renewal of the commission, \$40;
- (7) Restoration of forfeited commission, \$60;
- (8) Reinstatement of suspended commission, \$40; and
- (9) Commission name change, \$10.

Fees may be adjusted by the lieutenant governor by adopting rules pursuant to chapter 91.

(b) The lieutenant governor may impose and collect the following administrative fines if a commissioner of deeds fails to do the following:

- (1) Maintain an official seal in accordance with section 503B-2(a)(1) and any rule adopted pursuant to chapter 91, \$20;
- (2) Surrender the seal and certificate of the commissioner of deeds to the lieutenant governor within ninety days of resignation, removal from office, or the expiration of a term without renewal, \$200;
- (3) Authenticate every acknowledgment or jurat with a certificate that is signed and dated by a commissioner and in a form prescribed by the lieutenant governor, \$500;
- (4) Record all of the transactions of the commissioner of deeds as prescribed by section 503B-4 and any rules adopted pursuant to chapter 91, \$200;
- (5) Surrender the record books of the commissioner of deeds to the lieutenant governor within ninety days of the expiration or termination of the commission, resignation, or removal from office, \$500;
- (6) Notify the lieutenant governor within ten days after loss, misplacement, or theft of the commissioner's seal or record book, or both, \$20; provided that, in the case of theft, the commissioner shall also:

- (A) Inform the appropriate local law enforcement agency of the theft within ten days of discovery of the theft or, if the theft occurs on a vessel, inform the vessel's captain of the theft within ten days of discovery of the theft;
- (B) Use reasonable efforts to obtain a copy of a report of the theft from the appropriate local law enforcement agency or, if the theft occurs on a vessel, from the vessel's captain or other officer; and
- (C) Deliver a copy of any report of the theft to the lieutenant governor within ten days after receipt thereof.

Administrative fines may be adjusted by the lieutenant governor by adopting rules pursuant to chapter 91.

(c) Moneys collected by the lieutenant governor pursuant to this section shall be deposited by the director of finance to the credit of the general fund.

§503B-C Immunity. (a) The lieutenant governor and employees of the office of the lieutenant governor shall be immune from liability for good faith conduct under this chapter.

(b) Notwithstanding any law to the contrary, nothing in this chapter shall be construed to constitute a waiver of any immunity of the State, and no action or failure to act under this chapter shall be construed to create any liability for the State or its officers or employees for the recovery of any damages caused by any action or failure to act.”

SECTION 3. Section 503B-1, Hawaii Revised Statutes, is amended to read as follows:

“~~§503B-1~~ Commissioners; appointment. The lieutenant governor may appoint commissioners who shall serve for four years from the date of the individual commissioner's respective appointment, unless removed by the lieutenant governor.”

SECTION 4. Section 503B-3, Hawaii Revised Statutes, is amended to read as follows:

“~~§503B-3~~ Powers; charges. A commissioner, in any foreign country; in international waters; and in any possession, territory, or commonwealth of the United States, including but not limited to the United States territorial seas, may administer oaths and take acknowledgments and proofs of execution of any deed, assignment of lease, apartment deed and ground lease, condominium conveyance document, mortgage, deed of trust, contract, power of attorney, or any other instrument or writing to be used or recorded in the State in connection with:

- (1) A time share interest;
- (2) Any property subject to a time share plan; or
- (3) The operation of a time share plan that includes any property located within the State;

provided that the instrument or writing is executed in international waters or in the United States territorial seas, or outside of the fifty states and the District of Columbia. Oaths, acknowledgments, and proofs of execution shall be taken or made in the manner provided by the laws of the State, including but not limited to sections 502-42, 502-43, 502-48, 502-61, 502-62, and 502-63, and shall be certified by the commissioner under the commissioner's official seal. The certifica-

tion shall be endorsed on or attached to the instrument or writing and shall have the same effect as if made or taken in the State by a notary public commissioned in the State. Charges made by commissioners for services rendered shall be no higher than the rates authorized by any law governing similar services rendered by notaries within the jurisdictions in which the services are performed~~[-]~~ or, if in international waters or in the United States territorial seas, no higher than the rates authorized to be charged by notaries in this State.

SECTION 5. Section 503B-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each commissioner forthwith and before entering upon the duties of the commissioner’s office shall execute at the commissioner’s own expense an official surety bond or deposit with the lieutenant governor a cash bond, which in either case shall be in the sum of ~~[\$1,000.]~~ \$10,000. Each bond shall be approved by the office of the lieutenant governor.”

SECTION 6. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$60,000 or so much thereof as may be necessary for fiscal year 2016-2017 for a commissioner of deeds specialist and expenses incurred by the office of the lieutenant governor related to establishing and administering the commissioners of deeds program.

The sum appropriated shall be expended by the office of the lieutenant governor for the purposes of this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2016.

(Approved June 20, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.