
A BILL FOR AN ACT

RELATING TO TIME SHARE CONVEYANCES.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 TIME SHARE COMMISSIONERS OF DEEDS

6 § -1 **Commissioners; appointment.** The governor may
7 appoint commissioners who shall serve for four years from the
8 date of the individual commissioner's respective appointment,
9 unless removed by the governor.

10 § -2 **Oath and seal.** (a) Within three months of
11 appointment, a commissioner shall:

12 (1) Cause an official seal to be prepared upon which shall
13 appear the commissioner's name and the words

14 "commissioner of deeds for Hawaii"; and

15 (2) Take and subscribe an oath to faithfully perform the
16 duties of the commissioner's office; provided that the
17 oath shall be taken before:

18 (A) A notary public in the State or any other state;



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(B) Any officer of the United States diplomatic or consular service resident in any foreign country or port, when certified by the officer under the officer's seal of office; or

(C) Any person authorized by the law of any foreign country to take an acknowledgement or proof; provided that the acknowledgement or proof shall be accompanied by a certificate to the effect that the person taking the acknowledgement or proof is duly authorized to do so and that the acknowledgement or proof is in a manner prescribed by the laws of the foreign country or a treaty or international agreement of the United States; provided further that a certificate under this subparagraph may be issued by:

(i) A diplomatic or consular officer of the United States under the seal of the officer's office;

(ii) A diplomatic or consular officer of the foreign country under the seal of the officer's office with the signature or

1 facsimile of the signature of the diplomatic
2 or consular officer of the United States; or
3 (iii) An apostille in the case of a foreign
4 country that is party to the Hague
5 Convention of 5 October 1961 Abolishing the
6 Requirement of Legalisation for Foreign
7 Public Documents.

8 (b) A commissioner's oath of office, signature, and an
9 impression of the commissioner's seal shall be transmitted to
10 and filed with the office of the lieutenant governor.

11 (c) For purposes of this section, a diplomatic or consular
12 officer includes any minister, consul, vice-consul, charge
13 d'affaires, consular or commercial agent, or a vice-consular or
14 vice-commercial agent.

15 § -3 **Powers; charges.** A commissioner shall have the
16 authority in any foreign country, in international waters, and
17 in any possession, territory, or commonwealth of the United
18 States, to administer oaths and to take acknowledgements and
19 proofs of execution of any deed, assignment of lease, apartment
20 deed and ground lease, condominium conveyance document,
21 mortgage, deed of trust, contract, power of attorney, or any



1 other instrument or writing to be used or recorded in the State
2 in connection with:

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

7 provided that the instrument or writing is executed outside of
8 the fifty states and the District of Columbia. Such oaths,
9 acknowledgements, and proofs of execution shall be taken or made
10 in the manner provided by the laws of the State including but
11 not limited to sections 502-42, 502-43, 502-48, 502-61, 502-62,
12 and 502-63, and shall be certified by the commissioner under the
13 commissioner's official seal. The certification shall be
14 endorsed on or attached to the instrument or writing and shall
15 have the same effect as if made or taken in the State by a
16 notary public commissioned in the State. Charges made by
17 commissioners for services rendered shall be no higher than the
18 rates authorized by any law governing similar services rendered
19 by notaries within the jurisdictions in which the services are
20 performed.

21 § -4 **Records.** Each commissioner shall keep a record of
22 every acknowledgement, oath, and proof of execution in a book of



1 records. Each record shall set forth, at a minimum, the date of
 2 the acknowledgement, the parties to the instrument, the persons
 3 making the acknowledgements, and a memorandum as to the nature
 4 of the instrument acknowledged. For oaths and affidavits, the
 5 record shall set forth, at a minimum, the names of the parties
 6 making the oath or affidavit, the date of the oath or affidavit,
 7 the nature of the instrument, and the date the oath was
 8 administered.

9 § -5 **Instructions.** The lieutenant governor shall
 10 prepare and forward to each commissioner instructions and forms
 11 in conformity with law and a copy of this chapter.

12 § -6 **Construction of statutes.** This chapter shall not
 13 be construed as repealing or amending chapter 502.

14 § -7 **Notice of legal effect.** (a) A commissioner shall
 15 provide to each person whose signature is witnessed or
 16 acknowledged by the commissioner a written notice in
 17 substantially the following form:

18 "LEGAL EFFECT OF CERTIFICATION BY A COMMISSIONER OF DEEDS
 19 A certification by a Hawaii commissioner of deeds is intended
 20 only to confirm that a document was signed by a person whose
 21 signature appears on it. It does not validate the substance,
 22 contents, and/or legal effect of the document, nor indicate that



1 the document has been approved and/or endorsed by any
 2 governmental authority, including the State of Hawaii.
 3 Timesharing is regulated in Hawaii and you may have rights under
 4 Hawaii law. By signing below, you acknowledge that you have
 5 read and understand this."

6 (b) In the event that the person whose signature is
 7 witnessed or acknowledged by the commissioner does not speak
 8 English, then a translation of the notice required by subsection
 9 (a) shall be provided to the person in the predominant language
 10 spoken in the country in which the execution or acknowledgement
 11 takes place; provided that:

12 (1) The content of the notice may be varied as necessary
 13 to convey the intended concepts in the other language;
 14 and

15 (2) Neither the commissioner nor any other person shall be
 16 liable for errors in translation of the notice
 17 required by subsection (a) so long as a good faith
 18 effort to accurately translate the notice was made.

19 (c) A commissioner of deeds shall retain, for three
 20 calendar years from the date upon which the notice was executed,
 21 the original executed notice or a copy made by any means capable
 22 of providing an accurate reproduction of the executed notice.

1 (d) Failure to provide the notice required by subsection
2 (a) shall subject the commissioner of deeds to a penalty in an
3 amount to be established by the lieutenant governor by rule
4 adopted pursuant to chapter 91 but shall not render any
5 agreement void or voidable, nor shall it constitute a defense to
6 any action to enforce the agreement or any action for breach of
7 the agreement by any party to the agreement.

8 § -8 Bond. (a) Each commissioner forthwith and before
9 entering upon the duties of the commissioner's office shall
10 execute at the commissioner's own expense an official surety
11 bond or deposit with the lieutenant governor a cash bond which
12 in either case shall be in the sum of \$1,000. Each bond shall
13 be approved by the office of the lieutenant governor.

14 (b) The obligee of each bond shall be the State and the
15 condition contained therein shall be that the commissioner will
16 well, truly, and faithfully perform all the duties of the
17 commissioner's office which are then or may thereafter be
18 required, prescribed, or defined by law or by any rule made
19 under the express or implied authority of any statute, and all
20 duties and acts undertaken, assumed, or performed by the
21 commissioner by virtue or color of the commissioner's office.
22 The surety on any such surety bond shall be a surety company



1 authorized to do business in the State. After approval the bond
2 shall be deposited and kept on file in the office of the
3 lieutenant governor. The lieutenant governor shall keep a book
4 to be called the "bond record", in which the lieutenant governor
5 shall record the data in respect to each of the bonds deposited
6 and filed in the lieutenant governor's office.

7 (c) A commissioner who files a cash bond may cancel the
8 bond by giving thirty days' notice in writing to the lieutenant
9 governor; provided that the security for the bond shall not be
10 returned for a period of six years after the effective date of
11 cancellation of the bond or upon posting a surety bond meeting
12 the requirements set forth above, whichever shall occur first.

13 § -9 **Liabilities; limitations on; official bond.** (a)
14 In the performance of a commissioned act, a commissioner's
15 liability shall be limited to a failure by the commissioner to
16 perform properly the actions required for oaths,
17 acknowledgements, and proofs of execution. The commissioner's
18 liability shall not be based on statements in a document apart
19 from the commissioner's certificate.

20 (b) For the official misconduct or neglect of a
21 commissioner or breach of any of the conditions of the
22 commissioner's official bond, the commissioner and the surety on



1 the commissioner's official bond shall be liable to the party
2 injured thereby for all the damages sustained. The party shall
3 have a right of action in the party's own name upon the bond and
4 may prosecute the action to final judgment and execution. The
5 liability of the surety shall not exceed the amount of the bond
6 issued to the commissioner of deeds for whom the bond was
7 issued."

8 SECTION 2. This Act shall take effect upon its approval.

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Report Title:

Time Shares; Conveyances; Commissioners of Deeds

Description:

Creates a new chapter to authorize the governor to appoint commissioners of deeds to administer oaths, take acknowledgements, and take proofs of execution outside of the United States in connection with the execution of conveyance documents relating to a timeshare interest, any property subject to a time share plan, or the operation of a time share plan covering any property located within the State. Requires written notice to be provided to consumers. Establishes bonding requirements, penalties, and liabilities for commissioners of deeds. (SD1)

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