

# S.B. NO. 2910

JAN 27 2016

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## A BILL FOR AN ACT

RELATING TO TIME SHARE COMMISSIONERS OF DEEDS.

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

1           SECTION 1. The legislature finds the existing process for  
2 authentication and recordation of time share real estate  
3 documents signed outside of the United States can be cumbersome  
4 and expensive. Act 277, Session Laws of Hawaii 2013, now  
5 codified at chapter 503B, Hawaii Revised Statutes, established  
6 the commissioners of deeds program within the office of the  
7 lieutenant governor to streamline this process. Chapter 503B  
8 authorizes the governor to appoint commissioners of deeds to  
9 administer oaths, take acknowledgments, and take proofs of  
10 execution outside of the United States in connection with the  
11 execution of conveyance documents relating to time shares. The  
12 law also includes protections for consumers wishing to purchase  
13 a time share property located in Hawaii, including written  
14 notice of legal rights, bonding requirements for commissioners  
15 of deeds, and liabilities and limitations on liabilities for  
16 commissioners of deeds.

1           The legislature further finds that after the law's passage,  
2 a working group was established to assist in implementing the  
3 commissioners of deeds program. Representatives from the office  
4 of the lieutenant governor, department of the attorney general,  
5 department of commerce and consumer affairs, bureau of  
6 conveyances, and members of the time share industry met on  
7 multiple occasions to discuss and analyze the law's  
8 implementation. Accordingly, the working group determined that  
9 additional legislation and authorization are needed to ensure  
10 effective implementation of the commissioners of deeds program  
11 while also protecting consumers who wish to purchase a time  
12 share property located in the State. Moreover, due to a lack of  
13 funding and the absence of necessary clarification, the program  
14 has not yet been implemented.

15           Accordingly, the purposes of this Act are to:

- 16           (1) Clarify the lieutenant governor's rulemaking  
17                 authority;
- 18           (2) Authorize the lieutenant governor to assess and  
19                 collect fees and administrative fines;
- 20           (3) Clarify the lieutenant governor's responsibility for  
21                 the commissioners of deeds program;

1 (4) Increase the surety bond requirement for commissioners  
2 of deeds; and

3 (5) Appropriate funds for expenses incurred by the office  
4 of the lieutenant governor related to establishing and  
5 administering the commissioners of deeds program.

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

9 "§503B-A Rules. The lieutenant governor may adopt rules  
10 pursuant to chapter 91 as the lieutenant governor deems  
11 necessary to implement this chapter, including but not limited  
12 to the appointment and duties of commissioners of deeds and  
13 other measures necessary to prevent the fraudulent use of a  
14 document affixed with the commissioner of deeds' seal

15 §503B-B Fees and administrative fines. (a) The  
16 lieutenant governor shall charge and collect the following fees:

17 (1) Application for commissioner of deeds commission, \$10;

18 (2) Application for renewal of commissioner of deeds  
19 commission, \$10;

20 (3) Application for restoration of forfeited commission,  
21 \$10;

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

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

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

- 13       (1) Maintain an official seal in accordance with section  
14             503B-2(a)(1) and any rule adopted pursuant to chapter  
15             91, \$20;
- 16       (2) Surrender the seal and certificate of the commissioner  
17             of deeds to the lieutenant governor within ninety days  
18             of resignation, removal from office, or the expiration  
19             of a term without renewal, \$200;
- 20       (3) Authenticate every acknowledgment or jurat with a  
21             certificate that is signed and dated by a commissioner

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1 and in a form prescribed by the lieutenant governor,  
2 \$500;

3 (4) Record all of the transactions of the commissioner of  
4 deeds as prescribed by section 503B-4 and any rules  
5 adopted pursuant to chapter 91, \$200;

6 (5) Surrender the record books of the commissioner of  
7 deeds to the lieutenant governor within ninety days of  
8 the expiration or termination of the commission,  
9 resignation, or removal from office, \$500;

10 (6) Notify the lieutenant governor within ten days after  
11 loss, misplacement, or theft of the commissioner's  
12 seal or record book, or both, \$20; provided that, in  
13 the case of theft, the commissioner shall also:

14 (A) Inform the appropriate local law enforcement  
15 agency of the theft within ten days of discovery  
16 of the theft or, if the theft occurs on a vessel,  
17 inform the vessel's captain of the theft within  
18 ten days of discovery of the theft;

19 (B) Use reasonable efforts to obtain a copy of a  
20 report of the theft from the appropriate local  
21 law enforcement agency or, if the theft occurs on  
22 a vessel, obtain a copy of the report of the

1                   theft from the vessel's captain or other officer;  
2                   and  
3                   (C) Deliver a copy of any report of the theft to the  
4                   lieutenant governor within ten days after receipt  
5                   thereof.

6                   Administrative fines may be adjusted by the lieutenant  
7 governor by adopting rules pursuant to chapter 91. Moneys  
8 collected by the lieutenant governor pursuant to this section  
9 shall be deposited by the director of finance to the credit of  
10 the general fund.

11                   §503B-C Immunity. (a) The lieutenant governor and  
12 employees of the office of the lieutenant governor shall be  
13 immune from liability for good faith conduct under this chapter.

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

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

1           " [†] §503B-1 [†] **Commissioners; appointment.** The lieutenant  
2 governor may appoint commissioners who shall serve for four  
3 years from the date of the individual commissioner's respective  
4 appointment, unless removed by the lieutenant governor."

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

7           " [†] §503B-3 [†] **Powers; charges.** A commissioner, in any  
8 foreign country; in international waters; and in any possession,  
9 territory, or commonwealth of the United States, including but  
10 not limited to the United States territorial seas, may  
11 administer oaths and take acknowledgments and proofs of  
12 execution of any deed, assignment of lease, apartment deed and  
13 ground lease, condominium conveyance document, mortgage, deed of  
14 trust, contract, power of attorney, or any other instrument or  
15 writing to be used or recorded in the State in connection with:

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

20 provided that the instrument or writing is executed in  
21 international waters or in the United States territorial seas,  
22 or outside of the fifty states and the District of Columbia.

1 Oaths, acknowledgments, and proofs of execution shall be taken  
2 or made in the manner provided by the laws of the State,  
3 including but not limited to sections 502-42, 502-43, 502-48,  
4 502-61, 502-62, and 502-63, and shall be certified by the  
5 commissioner under the commissioner's official seal. The  
6 certification shall be endorsed on or attached to the instrument  
7 or writing and shall have the same effect as if made or taken in  
8 the State by a notary public commissioned in the State. Charges  
9 made by commissioners for services rendered shall be no higher  
10 than the rates authorized by any law governing similar services  
11 rendered by notaries within the jurisdictions in which the  
12 services are performed~~[-]~~ or, if in international waters or in  
13 the United States territorial seas, no higher than the rates  
14 authorized to be charged by notaries in this State."

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

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



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1 SECTION 6. In codifying the new sections added to chapter  
2 503B, Hawaii Revised Statutes, by section 2 of this Act, the  
3 revisor of statutes shall substitute appropriate section numbers  
4 for the letters used in designating the new sections in this  
5 Act.

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

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

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

16 SECTION 9. This Act, upon its approval, shall take effect  
17 on July 1, 2016.

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INTRODUCED BY:   
BY REQUEST

**Report Title:**

Commissioners of Deeds; Rules; Fees; Administrative Fines;  
Office of the Lieutenant Governor; Appropriation

**Description:**

Clarifies the Lieutenant Governor's rulemaking authority; authorizes the Lieutenant Governor to assess and collect fees and administrative fines; clarifies that the Lieutenant Governor is responsible for the commissioners of deeds program; increases the surety bond requirement from \$1,000 to \$10,000; and makes appropriations. Effective July 1, 2016.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

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## JUSTIFICATION SHEET

DEPARTMENT: Office of the Lieutenant Governor

TITLE: A BILL FOR AN ACT RELATING TO TIME SHARE COMMISSIONERS OF DEEDS.

PURPOSE: Add new sections to chapter 503B, Hawaii Revised Statutes to clarify the Lieutenant Governor's rulemaking authority, authority to assess and collect fees and administrative fines; amend chapter 503B, Hawaii Revised Statutes, to clarify the Lieutenant Governor is responsible for the program and increase the surety bond requirement from \$1,000 to \$10,000; and appropriate funds to the Office of the Lieutenant Governor for a commissioner of deeds specialist and expenses incurred related to the establishing and administering the commissioners of deeds program.

MEANS: Add new sections to chapter 503B, Hawaii Revised Statutes and amend sections 503B-1, 503B-3, and 503B-8(a).

JUSTIFICATION: Act 277, Session Laws of Hawaii 2013, established the Commissioners of Deeds program within the Office of the Lieutenant Governor.

Although much progress was initially made to implement the program by a working group comprised of the Bureau of Conveyances, Attorney General's office, the Department of Commerce and Consumer Affairs, and the time share industry, it was determined that additional legislation and authorization is necessary prior to implementation.

Impact on the public: This bill clarifies Chapter 503B, Hawaii Revised Statutes, by

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amending three sections and adding three new sections.

The current process is cumbersome, expensive, and can be a detriment to Hawaii timeshare property and business.

The proposed amendments to the Commissioners of Deeds program will streamline the process for consumers located outside the United States who wish to purchase timeshare properties located in Hawaii.

The general public will experience a less cumbersome process.

Impact on the department and other agencies:  
The proposed changes will allow the Office of the Lieutenant Governor to responsibly implement and administer the Commissioner of Deeds program.

GENERAL FUND:	FY 2016-2017 \$60,000
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LTG100
OTHER AFFECTED AGENCIES:	Bureau of Conveyances and the Department of Commerce and Consumer Affairs.
EFFECTIVE DATE:	July 1, 2016.