

CHAPTER 172
LAND COMMISSION AWARDS; SURVEYS

Section

- 172-1 Department to list lands on which commutation payable; public notice; notice to pay
- 172-2 Department to appraise lands; determine commutation; interest; lien
- 172-3 Enforcement of payment
- 172-4 General default
- 172-5 Hearing, foreclosure
- 172-6 Proof
- 172-7 Unsurveyed lands; listing by comptroller
- 172-8 Notice to owners to have boundaries determined
- 172-9 Upon failure of owners, comptroller to have boundaries determined at owner's expense
- 172-10 Enforcement of payment of expenses by owners
- 172-11 Land patents on land commission awards; to whom, for whose benefit
- 172-12 Land patents issued after boundary and commutation settled
- 172-13 Destruction, defacing or removal of survey monuments; penalty

Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCPC rule 81(b)(12).

" **§172-1 Department to list lands on which commutation payable; public notice; notice to pay.** The department of land and natural resources shall prepare a list of all lands on which commutation to extinguish the government's right therein is payable. Upon completion of the list the department shall give public notice thereof throughout the State, at least once each week for four successive weeks, together with notice that the amount of commutation ascertained shall thereafter bear interest at the rate of six per cent a year and be subject to collection in the manner provided by law. [L 1909, c 90, §1; RL 1925, §570; RL 1935, §1601; RL 1945, §4631; RL 1955, §100-1; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; HRS §172-1; am L 1998, c 2, §39]

Law Journals and Reviews

For an account of the change from the ancient Hawaiian land system, see *The Hawaiian Land Revolution*, Jon J. Chinen, 5 HBJ 11.

" **§172-2 Department to appraise lands; determine commutation; interest; lien.** The department of land and natural resources shall cause to be appraised each piece of property upon which commutation shall then be due. The value of the property for the purposes of this chapter shall be fixed by the appraisers as nearly as may be at the value of the land without improvements as of the date of the award of the property made by the board of commissioners to quiet land titles.

Upon the value so ascertained the department shall determine the amount of the commutation due according to the terms of the award. The commutation so fixed shall bear interest from and after January 1, 1910, until paid, at the rate of six per cent a year and the commutation and interest is hereby made a lien upon the land superior to all other encumbrances. [L 1909, c 90, §2; RL 1925, §571; RL 1935, §1602; RL 1945, §4632; RL 1955, §100-2; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; HRS §172-2]

" §172-3 Enforcement of payment. The attorney general shall proceed at any time after the determination of the commutation due as hereinbefore provided, to enforce payment of the same by any proper proceedings brought in the name of the State. The attorney general may foreclose the lien herein provided by suit in equity as hereinafter provided, and jurisdiction to hear and determine all such suits is hereby conferred upon the respective circuit courts. In any such suit service of process may be made by publication thereof in a newspaper of general circulation in the State once each week for three successive weeks, in form substantially as follows:

**FORECLOSURE OF LIEN
FOR COMMUTATION
In the Circuit Court of the State of Hawaii,
.....Circuit**

To (here insert the names of the owners of the property so far as known) and to all whom it may concern:

Whereas, a complaint has been filed by the State to foreclose its lien for commutation to extinguish the government's rights in the following described land:

(Here insert description of land sufficient to identify the same, giving number of land commission award, name of awardee and date of award.)

You are hereby ordered to appear before the Honorable, circuit judge of the circuit, at the courthouse at on the island of on the day of A.D. 19....., at o'clockM., to show cause, if any you have, why the complaint of the State to foreclose its lien for the commutation on the above land in the sum of dollars, should not be granted. And unless you appear before the circuit judge at the time and place stated, your default will be entered and the complaint for foreclosure will be taken as confessed and you will be forever barred from contesting the complaint for foreclosure or any decree or order entered thereafter.

Witness the presiding judge of the circuit court, said circuit, this day of 19.....

Attest: Clerk.

The return day of the notice shall be not less than twenty-one nor more than sixty days from the date of issue.

A copy of the published notice shall be mailed by the clerk to every person named therein whose address is known. A duly

attested copy of the notice shall be sent to the registrar of conveyances, who shall make and keep a record of the notice. The certificate of the clerk of the circuit judge that the clerk has served the notice as directed by the court, by publishing or mailing, shall be filed in the case before the return day and shall be conclusive proof of the service. [L 1909, c 90, §3; RL 1925, §572; RL 1935, §1603; RL 1945, §4633; RL 1955, §100-3; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; HRS §172-3; am L 1973, c 31, pt of §21; gen ch 1985]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

Rules of Court

As to one form of action whether at law or in equity, see HRCF rules 1, 2, 81(i).

Process, service, return, see HRCF rule 4.

" **§172-4 General default.** If no person appears and answers within the time allowed, the judge may at once upon motion of the State order a general default to be recorded and the complaint for foreclosure of the government's lien for commutation to be taken as confessed. By the description in the notice "to all whom it may concern", all the world is made party defendant and shall be concluded by the default and order. [L 1909, c 90, §4; RL 1925, §573; RL 1935, §1604; RL 1945, §4634; RL 1955, §100-4; HRS §172-4]

Rules of Court

Default, see HRCF rule 55(b).

" **§172-5 Hearing, foreclosure.** If in any case, an appearance is entered and answer filed, the cause shall be set down for hearing on the motion of either party, but an order of default may first be entered against all persons who do not appear and answer in the manner provided in section 172-4. If on the trial of the cause it appears that commutation is due the State on the land in question, or in case of an order of default having been entered, the judge may make an order that unless the amount of the commutation, together with all costs accrued, is paid within thirty days, the property or so much thereof as may be necessary, shall be sold at public auction to the highest bidder to satisfy the government's lien for commutation,

together with interest, costs of appraisement, the costs of publication of the notice herein provided for, costs of court and of sale, and that the owner or owners of the property and their predecessors in title shall be forever foreclosed and barred from any right to redeem the property so sold. [L 1909, c 90, §5; RL 1925, §574; RL 1935, §1605; RL 1945, §4635; RL 1955, §100-5; HRS §172-5]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§172-6 Proof.** The award by the board of commissioners to quiet land titles, together with a certificate by the department of land and natural resources of the date and amount of the appraisement and the amount of the government's commutation determined thereon, and that the same has not been paid, together with the certificate of the clerk of publication as hereinbefore provided, shall be prima facie proof of the right of the government to the commutation claimed. [L 1909, c 90, §6; RL 1925, §575; RL 1935, §1606; RL 1945, §4636; RL 1955, §100-6; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; HRS §172-6]

Case Notes

History of land titles under the Kingdom discussed. 6 H. 63.

" **§172-7 Unsurveyed lands; listing by comptroller.** The comptroller shall prepare a list of all ahupuaas, iliainas, and leles within the State (including those owned by the government), on which there has been no legal description of survey determined by metes and bounds, either by incorporation of same in land commission award, or patent in confirmation of award, or patent grant, or government deed, or deed of the commissioners of crown lands, or land court survey, or certificate of boundaries, or by decree of a court of competent jurisdiction of the State. [L 1919, c 208, §1; am L 1923, c 155, §1; RL 1925, §564; RL 1935, §1690; RL 1945, §4637; RL 1955, §100-7; am L Sp 1959 2d, c 1, §12; HRS §172-7]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§172-8 Notice to owners to have boundaries determined.**

Upon the completion of a list, the comptroller shall give public notice thereof throughout the State at least once each week for four successive weeks, together with name or names of the last known owner or owners, and with a notice that unless the unsurveyed lands have had their boundaries properly and legally determined prior to July 1, 1925, the State shall proceed in the manner hereinafter provided for. [L 1919, c 208, §2; am L 1923, c 155, §2; RL 1925, §565; RL 1935, §1691; RL 1945, §4638; RL 1955, §100-8; am L Sp 1959 2d, c 1, §12; HRS §172-8; am L 1998, c 2, §40]

" **§172-9 Upon failure of owners, comptroller to have boundaries determined at owner's expense.**

The comptroller shall list all lands which have not had their boundaries determined in compliance with the requirements of section 172-8, and shall proceed to make the necessary surveys and shall thereupon have the boundaries of the lands adjudicated as provided by law, and the expense of the surveys and of the adjudication shall be determined and is hereby made a lien upon the lands superior to all other incumbrances. [L 1919, c 208, §3; am L 1923, c 155, §2; RL 1925, §566; RL 1935, §1692; RL 1945, §4639; RL 1955, §100-9; am L Sp 1959 2d, c 1, §12; HRS §172-9]

" **§172-10 Enforcement of payment of expenses by owners.**

The attorney general shall proceed, at any time after the determination of the sum due as hereinbefore provided, to enforce payment of the same by any proper proceedings brought in the name of the State in such manner as provided for in sections 172-1 to 172-6, in the foreclosure of lien for commutation. [L 1919, c 208, §4; am L 1923, c 155, §2; RL 1925, §567; RL 1935, §1693; RL 1945, §4640; RL 1955, §100-10; HRS §172-10]

" **§172-11 Land patents on land commission awards; to whom, for whose benefit.**

Every land patent issued upon an award of the board of commissioners to quiet land titles, shall be in the name of the person to whom the original award was made, even though the person is deceased, or the title to the real estate thereby granted has been alienated; and all land patents so issued shall inure to the benefit of the heirs and assigns of the holder of the original award. [L 1872, c 21, §1; RL 1925, §568; RL 1935, §1587; RL 1945, §4641; RL 1955, §100-11; HRS §172-11]

Land commission award held good against later royal patent. 1 H. 69; 1 H. 90. Award cannot be collaterally attacked. 1 H. 90.

Certificate of award of land commission, with its accompanying survey, are admissible in evidence. 2 H. 202.

Patents based as awards do not confer or confirm title of later holders. It is merely a quitclaim interest of the government in lands. 3 H. 783; 11 H. 587, 589.

Court is inclined not to disturb award of land commission long adjudicated. 5 H. 354.

Mahele of 1848 considered and defined. 6 H. 195.

Award may be to deceased person; heirs must determine their own respective rights. 15 H. 648.

Section does not authorize the issuance of grant to deceased person. 26 H. 382, 397.

Review of case law and effect of patent. 49 H. 429, 421 P.2d 570.

Cited: 35 H. 608, 630, 658.

" **§172-12 Land patents issued after boundary and commutation settled.** Upon presentation to the department of land and natural resources of a certificate of a commissioner of boundaries defining the boundaries of a portion of an ahupuaa, ili, or other denomination of land, the department shall cause an appraisement to be made of the unimproved value of that portion of land; and upon payment to the department of the government commutation in that portion of land, upon the appraisement as above provided, the department shall cause to be issued a land patent for that portion of land, which land patent shall define the boundaries of that portion of land. [L 1872, c 21, §3; RL 1925, §569; RL 1935, §1588; RL 1945, §4642; RL 1955, §100-12; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; HRS §172-12]

Case Notes

Patent is merely quitclaim interest of government in lands. 3 H. 783; 11 H. 587, 589.

Patent is evidence that government right to commutation therein is extinguished. 6 H. 315.

Value of land at time of award is the basis of its appraisement for commutation of government interest. 8 H. 125.

Patent, valid on its face, may be attacked and declared void in action at law provided evidence shows it to be void for want of authority for its issue. 25 H. 651.

Royal patent issued on land commission award, validity of reservation of mineral rights. 49 H. 429, 421 P.2d 570. Royal

patent on land commission award, significance if award defective. 49 H. 456, 479, 421 P.2d 550. Royal patent issued on land commission award, whether schoolhouse site included or excluded. 49 H. 537, 425 P.2d 83.

Cited: 35 H. 608, 658.

" **[\$172-13 Destruction, defacing or removal of survey monuments; penalty.]** It shall be unlawful, without the written consent of the state comptroller, for any person to destroy, deface, change, or remove to another place, any trigonometrical survey station, boundary line mark or monument, corner post, or any other government line of survey, or to cut down any witness tree or any tree blazed to mark the line of a government survey, or any bench mark in any government survey. Any person who violates this chapter, shall be fined not more than \$500, or imprisoned not more than four months, or both. [L 1911, c 106, §1; RL 1925, §4304; RL 1935, §5780; RL 1945, §11170; RL 1955, §274-1; am L Sp 1959 2d, c 1, §12; HRS §732-1; ren L 1972, c 9, pt of §1]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.