

CHAPTER 501
LAND COURT REGISTRATION

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Note

The \$5 recording fee for deregistered land transactions is repealed on adoption of administrative rules. L 2009, c 120, §§16, 21.

Cross References

Nonconsensual common law liens, see chapter 507D.

Rules of Court

See Rules of the Land Court; applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(b)(1), (d), (f), (g), (h).

Law Journals and Reviews

Constructive Trust: An Equitable Doctrine for Protecting and Establishing Legal Interests in Real Property. II HBJ No. 13, at pg. 121.

Case Notes

Act 73, L 2003, by declaring accreted land to be "public land" and prohibiting littoral owners from registering existing accretion under this chapter and/or quieting title under chapter 669, permanently divested a littoral owner of his or her ownership rights to any existing accretions to oceanfront property that were unregistered or unrecorded as of the effective date of Act 73 or for which no application for registration or petition to quiet title was pending; thus, Act 73 effectuated a permanent taking of such accreted lands without just compensation in violation of article I, §20 of the Hawaii constitution. 122 H. 34 (App.), 222 P.3d 441 (2009).

Act 73, L 2003, by declaring accreted land to be "public land" and prohibiting littoral owners from registering future accretion under this chapter and/or quieting title under chapter 669, did not effectuate a taking of future accreted lands without just compensation in violation of article I, §20 of the Hawaii constitution where plaintiffs had no vested right to future accretions to their oceanfront land that may never materialize. 122 H. 34 (App.), 222 P.3d 441 (2009).

"PART I. GENERAL PROVISIONS

Note

Sections 501-1 to 501-248 designated as Part I by L 2009, c 120, §3.

LAND COURT; PERSONNEL

§501-1 Court; jurisdiction; proceedings; location; rules, practice, etc. A court is established, called the land court, which shall have exclusive original jurisdiction of all applications for the registration of title to land and easements or rights in land held and possessed in fee simple within the State, with power to hear and determine all questions arising upon such applications, and also have jurisdiction over such other questions as may come before it under this chapter, subject to the rights of appeal under this chapter. The proceedings upon the applications shall be proceedings in rem against the land, and the decrees shall operate directly on the land and vest and establish title thereto.

The court shall hold its sittings in Honolulu, but may adjourn from time to time to such other places as the public convenience may require.

The court shall have jurisdiction throughout the State, and shall always be open, except on Saturdays, Sundays, and holidays established by law.

It is a court of record, and shall cause to be made a seal, and to be sealed therewith all orders, process, and papers made by or proceeding from the court and requiring a seal. All notices, orders, and process of the court may run into any judicial circuit and be returnable as the court may direct.

The procedure shall conform as near as may be to the practice in the circuit courts, but subject to the express provisions of this chapter and to general laws and rules of court. Forms prescribed by the court before taking effect shall be approved by the supreme court.

Upon demand for jury trial, issues shall be framed therefor by the circuit judge to whom the case has been assigned. No other issues shall be presented to the jury, and a special verdict shall be rendered.

In this chapter, except where the context requires a different construction, the word "court" or "judge" means the land court, the administrative judge of the circuit court of the first circuit, civil division, or the circuit judge to whom a land court matter is assigned pursuant to section 501-2. [L 1903, c 56, §2; am L 1913, c 21, §1; am L 1921, c 208, §1; RL 1925, §3191; RL 1935, §5000; RL 1945, §12600; RL 1955, §342-1; HRS §501-1; am L 1972, c 91, §1(a), (b); am L 1984, c 102, §3]

Cross References

Conveyance tax, see chapter 247.
Special mortgage recording fee, see §431P-16.

Rules of Court

Generally, see Rules of the Land Court.

Case Notes

Decree is conclusive. 402 F. Supp. 95.

Land court is tribunal separate and distinct from circuit court. 20 H. 699, 701; 34 H. 10, 11. Is court of limited jurisdiction deriving all its powers from statutes relating to it. 24 H. 298, 308, modified on another point, 25 H. 561. Cannot register title in favor of one other than applicant, since land court can exercise no power not found in the statutes. 24 H. 298, 308, modified on another point, 25 H. 561; 35 H. 254; see 37 H. 74, 95, aff'd 158 F.2d 122.

Equity procedure, applicability of, see 21 H. 175, 178.

Statutes control, not common law doctrine. 33 H. 343, 346.

Land court had no jurisdiction over claims for cancellation or rescission of agreement of sale, which are breach of contract actions. 68 H. 334, 713 P.2d 426.

Cited: 20 H. 355, 356; 34 H. 93, 98; 35 H. 816, 822; 79 H. 56 (App.), 897 P.2d 983.

Regardless of whether the land court enjoys exclusive jurisdiction over amendments or alterations to a certificate of title, circuit court had concurrent jurisdiction under this section to determine matters regarding title to land court property. 130 H. 387 (App.), 311 P.3d 710 (2013).

Cited: 529 F. Supp. 2d 1206 (2007).

" **§501-2 Judges; assignment of cases.** The administrative judge of the circuit court of the first circuit, subject to the direction of the chief justice as provided by section 601-2(b)(2)(B), shall assign all land court matters to such judge or judges of the circuit court of the first circuit as shall be deemed appropriate. [L 1903, c 56, §3; am L 1909, c 11, §1; am L 1913, c 21, §1; RL 1925, §3192; RL 1935, §5001; RL 1945, §12601; RL 1955, §342-2; HRS §501-2; am L 1984, c 102, §1]

Case Notes

Land court is tribunal separate and distinct from circuit court. 20 H. 699, 701; 34 H. 10, 11.

" **§501-3 Sessions.** The judge shall so arrange the sessions as to insure a prompt discharge of the business of the court. [L 1903, c 56, §4; RL 1925, §3193; RL 1935, §5002; RL 1945, §12602; RL 1955, §342-3; HRS §501-3]

" **§501-4 Process.** Citations, orders of notice, and all other process issuing from the court shall bear teste of the judge, and be under the seal of the court and signed by the registrar. [L 1903, c 56, §5; am imp L 1913, c 21, §1; RL 1925, §3194; RL 1935, §5003; RL 1945, §12603; RL 1955, §342-4; HRS §501-4]

" **§501-5 REPEALED.** L 1984, c 102, §2.

" **§501-6 Registrar and assistants; appointment, tenure, powers, and duties.** The judge of the court shall appoint a registrar and such assistants as may be allowed by law. The registrar or an assistant shall attend the sessions of the court and keep a docket of all causes, and shall affix the seal of the court to all processes or papers proceeding therefrom, and requiring a seal. [L 1903, c 56, §7; am L 1909, c 11, §3; am L 1913, c 21, §1; RL 1925, §3196; am L 1927, c 258, §1; RL 1935, §5005; RL 1945, §12605; RL 1955, §342-6; HRS §501-6; am L 2006, c 38, §10]

" **§501-7 Registrar; powers, duties.** The registrar shall be under the direction of the court, and shall have the custody and control of all papers and documents filed with the registrar under this chapter, and shall carefully number and index the same. The papers and documents shall be kept in Honolulu in an office to be called the land registration office, which shall be near the land court. The registrar may, with the sanction of the court, employ such clerks and messengers as are necessary. [L 1903, c 56, §8; am L 1913, c 21, §1; RL 1925, §3197; RL 1935, §5006; RL 1945, §12606; RL 1955, §342-7; HRS §501-7; gen ch 1985]

" **§501-8 Registrar may act in any circuit.** The registrar may act in any judicial circuit. After lands have been registered under this chapter, the registrar may make all memoranda affecting the title, and enter and issue certificates of title as provided herein. [L 1903, c 56, §9; RL 1925, §3198; RL 1935, §5007; RL 1945, §12607; RL 1955, §342-8; HRS §501-8; gen ch 1985]

" **§501-9 Assistant registrars; powers.** The registrar of conveyances in the bureau of conveyances designated in section

502-1 and the registrar of conveyances' deputy are assistant registrars to carry out the duties of recording and registration required under this chapter. Assistant registrars have the same authority as the registrar to make all memoranda affecting the title of land, to enter and issue new certificates of title as provided herein and to affix the seal of the court to the certificates of titles. In executing this chapter, the assistant registrars shall be subject to the general direction of the registrar in order to secure uniformity throughout the State. In case of the death or disability of the registrar, the assistant registrars in Honolulu shall perform the duties of the registrar until the vacancy is filled or the disability removed. [L 1903, c 56, §10; RL 1925, §3199; RL 1935, §5008; RL 1945, §12608; RL 1955, §342-9; HRS §501-9; gen ch 1985; am L 1988, c 346, §1]

" **§501-10 Registrar and assistants; oath, accounts, absence.** The registrar and all assistant registrars shall be sworn before the judge, and a record thereof shall be made. They may administer oaths in all cases in which an oath is required, to persons appearing before them in matters pertaining to the registration of land. They shall keep accurate accounts of all moneys received as fees or otherwise, which shall be subject to examination by the clerk of the supreme court, in the same manner as accounts of deputy clerks. They shall pay over such moneys monthly to the director of finance. [L 1903, c 56, §11; am imp L 1913, c 21, §1; RL 1925, §3200; RL 1935, §5009; RL 1945, §12609; RL 1955, §342-10; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §501-10]

" **§501-11 Examiners of title; appointment, removal.** The judge may appoint one or more examiners of title in the first judicial circuit, or when necessary in any other judicial circuit, who shall be persons of good moral character, and shall have been declared by the supreme court to be qualified for the office after examination. They shall be subject to removal by the supreme court. [L 1903, c 56, §12; am imp L 1913, c 21, §1; RL 1925, §3201; RL 1935, §5010; RL 1945, §12610; RL 1955, §342-11; HRS §501-11; am L 1972, c 91, §1(c)]

Rules of Court

Examiners, see RLC rule 10.

" **§501-12 Salaries and expenses.** The judge of the court, the registrar, and the authorized clerks and assistants shall receive such salaries as are appropriated by the legislature.

In the absence of such provision all salaries of officers or employees or fees of examiners of title shall be paid out of the appropriation for expenses of the court, according to a schedule fixed by the governor. [L 1903, c 56, §13; am L 1904, c 7, §1; am L 1913, c 21, §1; RL 1925, §3202; am L 1927, c 258, §2; RL 1935, §5011; RL 1945, §12611; RL 1955, §342-12; HRS §501-12]

" **[§501-13] Validity of facsimile signature.** A facsimile of the signature of the registrar, imprinted by the registrar or by such office assistant as the registrar in writing may designate, on any paper which the registrar is required by law to certify as a true copy, except a copy of a decree for transcription in a registry of deeds, and such facsimile imprinted by the registrar upon any writ, summons, order of notice or order of attachment, except executions, shall have the same validity as the registrar's written signature. This authorization shall apply to assistant registrars under section 501-9. [L 1975, c 140, §1; gen ch 1993]

"COMMENCEMENT OF LAND REGISTRATION PROCEDURE

§501-20 Definitions. As used in this chapter, unless the context otherwise requires:

"Apartment lease" means an apartment or unit lease, a condominium conveyance document, an apartment or unit deed and ground lease, or other instrument which has been registered pursuant to section 501-121 and which leases or subleases a condominium apartment or unit or its appurtenant undivided interest in the land of a condominium project established or existing under chapter 514A or 514B or at common law.

"Certified fee time share interest certificate of title" means a certificate of title for a fee time share interest that has been updated and approved by the assistant registrar in accordance with section 501-261(1).

"Date and time of deregistration" means:

- (1) The date and time that a certificate of title for land, other than a fee time share interest, is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter;
- (2) The date and time, if prior to July 1, 2012, when a certificate of title for a fee time share interest was recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, whether such certificate of title was or is certified by the assistant registrar prior to, subsequent to, or on July 1, 2012;

- (3) July 1, 2012, at 12:01 a.m. for all other fee time share interests then in existence and for which a certificate of title was not recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012; and
- (4) For all fee time share interests not yet in existence as of July 1, 2012, at 12:01 a.m., the date and time of recordation of the declaration, declaration of annexation, or other document or instrument establishing such fee time share interest.

"Deregistered land" means:

- (1) Land, other than a fee time share interest, that is the subject of a certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter;
- (2) A fee time share interest that is the subject of a certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012, whether the certificate of title is certified by the assistant registrar on, before, or after July 1, 2012; and
- (3) All other fee time share interests.

"Enter", "entered", or "entering" means to note the purpose of a filed or recorded document on the certificate of title.

"Fee time share interest" means a time share interest, other than a leasehold time share interest, that, at any time on or after July 1, 2011, consists or consisted of, or includes or included an undivided interest in registered land, including but not limited to an undivided interest in one or more fee simple condominium apartments or units established in whole or in part on registered land.

"File", "filed", or "filing" means to accept, maintain, and preserve all instruments required to be filed.

"Leasehold time share interest" means a time share interest consisting of an undivided interest in an apartment lease.

"Notice of time share plan" means a notice of time share plan as that term is defined in chapter 514E.

"Record", "recorded", or "recording" means to make an entire literal copy of all instruments required to be recorded.

"Signature" means the name of a person as written by the individual, the affixing of a mark or finger or toe print, or electronic signature as that term is defined in chapter 489E.

"State" means the State of Hawaii.

"Time share interest" means a time share interest as that term is defined in chapter 514E.

"Time share plan" means a time share plan as that term is defined in chapter 514E.

"Uncertified fee time share interest certificate of title" means a certificate of title issued for a fee time share interest that has not been updated and approved by the assistant registrar in accordance with section 501-261(1). [L 1986, c 246, §1; am L 1995, c 22, §1; am L 1998, c 219, §6; am L 2000, c 178, §1; am L 2008, c 28, §28; am L 2009, c 120, §5; am L 2012, c 121, §2; am L 2013, c 119, §3; am L 2016, c 215, §2]

Note

The 2008 amendment is retroactive to July 1, 2006. L 2008, c 28, §43.

" **[§501-20.5] Rules.** The supreme court of the State of Hawaii shall adopt, amend, and repeal rules relating to the processing of land court documents and instruments. [L 1986, c 246, §2]

Rules of Court

See Rules of the Land Court.

" **§501-21 Registration application; by whom made.**

Application for registration of title may be made by:

- (1) The persons who claim, singly or collectively, to own the legal estate or easements or rights in land held and possessed in fee simple, either as a whole or as owner or owners of an undivided part;
- (2) The persons who claim, singly or collectively, to have the power of appointing or disposing of the legal estate or easements or rights in land held and possessed in fee simple, either as a whole or as owners of an undivided part;
- (3) Infants and other persons under disability, by their legally appointed guardians;
- (4) A corporation by its proper officer or by an agent duly authorized by the board of directors;
- (5) An unincorporated nonprofit association by a person authorized in a statement of authority recorded in the office of the assistant registrar of the land court or with the registrar of conveyances in the bureau of conveyances;
- (6) Any personal representative duly appointed by the proper probate court, and duly authorized so to do by an order of court. For the purpose of registering title, such representative shall be a trustee of any title registered for the heirs of the estate, and be

subject to the decree of distribution of the court of probate; and

- (7) Any political subdivision of the State by its mayor, after resolution duly passed by its council so directing; the State, by the board of land and natural resources; or the government of the United States by any proper officer thereof thereunto duly authorized.

The basis for determining the fees payable in the registration of the easements and rights above stated shall, instead of the assessed valuation, be the value of the same as found by the land court and instead of the fee for examination of title chargeable under section 501-218, the fee shall be the actual amount allowed by the court to the examiner therefor.

The provisions relative to the registration and conveyance of registered land shall apply to the registration and conveyance of easements and rights. [L 1903, c 56, §19; am L 1907, c 43, §2; am L 1913, c 126, §1; am L 1921, c 208, §2; RL 1925, §3208; RL 1935, §5012; RL 1945, §12612; am L 1953, c 126, §1; RL 1955, §342-13; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; HRS §501-21; am L 1972, c 91, §1(d); am L 1976, c 200, pt of §1; am L 2000, c 178, §2]

Law Journals and Reviews

For comparison of procedures under this chapter and quiet title statute, see Adverse Possession Against Unknown Claimants Under Land Court and Quiet Title Procedures. 2 HBJ, Dec 1964, at 4.

" **§501-22 Filing; memorandum to be recorded.** The application shall be filed with the registrar.

Upon filing the application the applicant shall forthwith cause to be filed in the bureau of conveyances a memorandum stating that application for registration has been filed, and the date and place of filing, and a copy of the description of the land contained in the application. This memorandum shall be filed and indexed by the assistant registrar with the records of deeds. The fee to be charged the applicant by the assistant registrar for the filing and indexing of this memorandum is \$1. [L 1903, c 56, §20; RL 1925, §3209; am L 1931, c 217, §1; RL 1935, §5013; RL 1945, §12613; RL 1955, §342-14; HRS §501-22; gen ch 1993]

Cross References

Modification of fees, see §92-28.

" **§501-23 Application, form, and contents.** The application shall be in writing, signed, and sworn to by the applicant or by some person duly authorized in the applicant's behalf. If there is more than one applicant, the application shall be signed and sworn to by, or in behalf of, each. It shall contain a description of the land, with a statement of the estate or interest of the applicant in the land. It shall state whether the applicant is married, and if married, the name in full of the wife or husband, the time and place of marriage, and the name and office of the officer performing the marriage ceremony; and if unmarried, whether the applicant has been married, and if so, when and how the marriage relation terminated; and if by divorce, when, where, and by what court the divorce was granted. It shall also state the name in full and the address of the applicant and also the names and addresses of the adjoining owners and occupants, if known; and if not known, it shall state what search has been made to find them. If the applicant has been known by more than one name, the applicant shall state all the applicant's names in full. It may be in form as follows:

State of Hawaii.

To the Honorable Judge of the Land Court:

I (or we), the undersigned, hereby apply to have the land herein described brought under the operation and provisions of chapter 501 of the Hawaii Revised Statutes and to have my (or our) title therein registered and confirmed as an absolute (qualified or possessory) title. And I (or we) declare:

- (1) That I am (or we are) the owner (or owners) in fee simple of a certain parcel of land, with the buildings (if any, and if not, strike out the clause), situate in (here insert accurate description).
- (2) That the land at the last assessment for taxation was assessed at....dollars; and the buildings (if any) at....dollars.
- (3) That I (or we) do not know of any mortgage or encumbrance affecting the land, or that any other person has any estate or interest therein, legal or equitable, in possession, remainder, reversion, or expectancy. (If any, add "other than as follows," and set forth each clearly.)
- (4) That I (or we) obtained title (if by deed, state name of grantor, date, and place of record, and file the deed, or state reason for not filing. If in any other way, state it).
- (5) That the land is....occupied (state name in full, residence and post office address of occupant and the

nature of the occupancy. If unoccupied, insert "not").

- (6) That the names in full and addresses as far as known to me (or us) of the occupants of all lands adjoining the land are as follows: (give post office address, street, and number wherever possible. If names not known, state whether inquiry has been made, and what inquiry.)
- (7) That the names and addresses so far as known to me (or us) of the owners of all lands adjoining above land are as follows: (same directions as above.)
- (8) That I am (or we are) married (follow literally the directions given in section 501-23.)
- (9) That my (or our) full name (or names), residence and post office address are as follows:

Dated: (Schedule of documents.)

.....
(Signature).

State of Hawaii } ss.

Dated:

Then personally appeared the above named..... known to me to be the signer (or signers) of the foregoing application, and made oath before me, that the statements made therein, so far as made of the signer (or signers) own knowledge are true, and so far as made upon information and belief, that the signer (or signers) believes them to be true.

....., Notary Public.

[L 1903, c 56, §21; am L 1913, c 21, §1 and c 126, §2; RL 1925, §3210; RL 1935, §5014; RL 1945, §12614; RL 1955, §342-15; HRS §501-23; gen ch 1985; am L 2006, c 38, §11]

Rules of Court

Applications, see RLC rule 6.

Case Notes

Form given is permissive. 21 H. 175, 178.

Where claim is for fee simple absolute but source of title given in the application is legally insufficient, in absence of

objection to source of title raised before the hearing any evidence in support of fee simple title should be received and matter of amendment should be held in abeyance until evidence all in. 21 H. 175.

Cited, as to required information concerning marital status. 35 H. 816, 825.

" **§501-23.5 Disposition of fees received at the bureau of conveyances.** Notwithstanding any other law to the contrary, of the fees received at the bureau of conveyances, the registrar of conveyances shall deposit to the credit of the state general fund \$18 for each document recorded and shall deposit the remaining balance and all fees other than the special mortgage recording fee established pursuant to section 431P-16 and conveyance tax collected pursuant to section 247-1 to the credit of the bureau of conveyances special fund established under section 502-8. [L 1999, c 125, §1; am L 2002, c 125, §1]

" **§501-24 Agent for nonresident.** If the applicant is not a resident of the State, the applicant shall file with the applicant's application a paper appointing an agent residing in the State, giving the agent's name in full and post office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application is of the same legal effect when made on the agent, as if made on the applicant within the State. If the agent dies, or removes from the State, the applicant shall at once make another appointment. If the applicant fails to do so the court may dismiss the application. [L 1903, c 56, §22; RL 1925, §3211; RL 1935, §5015; RL 1945, §12515; RL 1955, §342-16; HRS §501-24; gen ch 1985]

" **§501-25 Application may include several parcels.** An application may include two or more parcels of land in which the applicant claims the same interests; provided that all parcels must be within the same district, as such districts are defined by chapter 4, except that the districts of North Kona and South Kona, referred to in subparagraphs (G) and (H) of section 4-1(1), shall be deemed one district for this purpose.

Two or more parcels shall not be included in one application regardless of where they are situated, unless the claim of the applicant is of the same interest in each parcel included in the application. Coapplicants, whether their claims are of equal or unequal interest in the lands sought to be registered, shall not include more than one parcel in one application, unless the interest claimed by each applicant is uniform and of the same quantum of estate in every parcel sought

to be included in the one application. [L 1903, c 56, pt of §24; RL 1925, pt of §3213; am L 1927, c 258, §4; am L 1929, c 184, §1; am L 1931, c 221, §1; RL 1935, §5016; RL 1945, §12616; RL 1955, §342-17; HRS §501-25; am L 1972, c 91, §1(e)]

" **§501-26 Amendments to application.** Amendments to the application, including joinder, substitution, or discontinuing as to parties, shall be allowed by the court at any time upon terms that are just and reasonable. All amendments shall be in writing, signed, and sworn to, like the original.

The court may at any time order an application to be amended by striking out one or more of the parcels or by a severance of the application. [L 1903, c 56, §23, pt of §24; RL 1925, §3212, pt of §3213; RL 1935, §5017; RL 1945, §12617; RL 1955, §342-18; HRS §501-26]

Rules of Court

Amendments to application, see RLC rule 6.

Case Notes

Petition should not be denied in toto because of adverse claim to a portion; denial should be without prejudice to registration of the remainder. 19 H. 334.

This section sanctions amendment to show applicant a trustee for another, and intervention of the equitable owner. 33 H. 364, 368.

" **§501-27 Land bounded on way.** If the application describes the land as bounded on a public or private way, it shall state whether or not the applicant claims any and what land within the limits of the way, and whether the applicant desires to have the line of the way determined. [L 1903, c 56, §25; RL 1925, §3214; RL 1935, §5018; RL 1945, §12618; RL 1955, §342-19; HRS §501-27]

" **§501-28 Plans and muniments.** The applicant shall file with the application a plan of the land, and all original muniments of title within the applicant's control mentioned in the schedule of documents. Such original muniments as affect land not included in the application may be withdrawn on filing certified copies of the same. When an application is dismissed or discontinued the applicant may, with the consent of the court, withdraw the original muniments of title. The applicant shall also file with the application a complete abstract of title of the land upon forms furnished by the court and in accordance with the rules of court. [L 1903, c 56, §26; am L

1915, c 62, §1; RL 1925, §3215; RL 1935, §5019; RL 1945, §12619; RL 1955, §342-20; HRS §501-28; am L 1972, c 91, §1(f); gen ch 1985]

Case Notes

Cited as to abstract, documents to be included. 32 H. 813, 816.

" **§501-29 Land subject to mortgage or lease.** When an application is made subject to an existing recorded mortgage, or to a recorded lease for a term exceeding one year, or when the registration is to be made subject to such a mortgage or lease executed after the time of the application and before the date of the transcription of the decree, the applicant shall, if required by the court, file a certified copy of the mortgage or lease, and shall cause the original, or, in the discretion of the court, a certified copy thereof, to be presented for registration before a decree of registration is entered. [L 1903, c 56, §27; RL 1925, §3216; RL 1935, §5020; RL 1945, §12620; RL 1955, §342-21; HRS §501-29]

" **§501-30 Additional facts.** The rules of court may require facts to be stated in the application in addition to those prescribed by this chapter, and not inconsistent therewith, and may require the filing of any additional papers. [L 1903, c 56, §28; RL 1925, §3217; RL 1935, §5021; RL 1945, §12621; RL 1955, §342-22; HRS §501-30; am L 1972, c 91, §1(g)]

" **§501-31 Transfers pending application; temporary record; final record.** After the filing of an application, and before registration, the land therein described may be dealt with and instruments relating thereto shall be recorded and indexed by the registrar of conveyances in the usual manner and also entered in the index of applications; provided that such instruments shall state that application to register the land is pending and shall state the application number. A certified copy thereof shall be filed with the application. When any such instrument purports to convey the whole or any interest in the land, the original instrument, with the original signature, after recording shall be sent to the land court and filed with the application, whereupon the certified copy may be withdrawn.

As soon as an application is disposed of, the registrar shall make a memorandum stating the disposition of the case and shall send the same to the assistant registrar, who shall record and index it with the records of deeds in the bureau of conveyances, and in the index of applications. If the

proceedings upon the application end in a decree of registration of title the land included therein shall, as soon as the decree is transcribed, as provided in section 501-75, become registered land. Thereafter no deeds or other instruments relating solely to such land shall be recorded with the records of deeds, but shall be registered in the registration book and filed or recorded and indexed with the records and documents relating to registered land. [L 1903, c 56, §29; RL 1925, §3218; am L 1927, c 258, §5; RL 1935, §5022; RL 1945, §12622; RL 1955, §342-23; HRS §501-31; am L 1986, c 246, §3; am L 1995, c 22, §3]

Rules of Court

Record of disposition, see RLC rule 54.

" **§501-32 Reference to examiner; report; election to proceed.** Immediately after the filing of an application the court shall enter an order referring it to one of the examiners of title, who shall search the records and investigate all facts stated in the application, or otherwise brought to the examiner's notice, and file in the case a report thereon, concluding with a certificate of the examiner's opinion upon the title. The registrar shall give notice to the applicant of the filing of the report. If the opinion of the examiner is adverse to the applicant the applicant shall be allowed by the court a reasonable time in which to elect to proceed further or to withdraw the applicant's application. The election shall be made in writing and filed with the registrar. [L 1903, c 56, §30; RL 1925, §3219; RL 1935, §5023; RL 1945, §12623; RL 1955, §342-24; HRS §501-32; gen ch 1985]

Rules of Court

Examiners, see RLC rule 10.

Case Notes

Cited: 32 H. 813, 816.

" **§501-33 Accretion to land.** An applicant for registration of land by accretion shall prove by a preponderance of the evidence that the accretion is natural and permanent and that the land accreted before or on May 20, 2003; provided that:

- (1) The State may register land accreted along the ocean after May 20, 2003; and
- (2) A private property owner whose eroded land has been restored by accretion after May 20, 2003, may file an

accretion claim to regain title to the restored portion.

The applicant shall supply the office of environmental quality control with notice of the application, for publication in the office's periodic bulletin in compliance with section 343-3(c)(4). The application shall not be approved unless the office of environmental quality control has published notice in the office's periodic bulletin.

As used in this section, "permanent" means that the accretion has been in existence for at least twenty years. The accreted portion of the land shall be considered within the conservation district. Land accreted after May 20, 2003, shall be public land except as otherwise provided in this section. Prohibited uses are governed by section 183-45. [L 1985, c 221, §2; am L 2003, c 73, §4; am L 2012, c 56, §2]

Rules of Court

Accretion, see RLC rule 26; maps, see RLC rule 105.

Law Journals and Reviews

The Wash of the Waves: How the Stroke of a Pen Recharacterized Accreted Lands as Public Property. 34 UH L. Rev. 525 (2012).

Case Notes

Cited: 73 H. 297, 832 P.2d 724.

"NOTICE AFTER REPORT

§501-41 Notice of application. If, in the opinion of the examiner, the applicant has a good title as alleged, and proper for registration, or, if the applicant after an adverse opinion of the examiner, elects to proceed further, the registrar shall, immediately upon the filing of the examiner's opinion, or the applicant's election, cause notice of the filing of the application to be published in some newspaper of general circulation. The notice shall be issued by the order of the court, attested by the registrar, and shall be in form substantially as follows:

Registration of Title. Land Court. No....
State of Hawaii.

To (insert and classify the names of all persons known to have an adverse interest, and the adjoining owners and occupants, so far as known), and to all whom it may concern:

Whereas, an application has been presented to the court by (name or names and address in full) to register and confirm title in the following described land (insert description):

You are hereby cited to appear at the land court to be held at....in the Island of.....on the....day of.....A.D..... at....o'clock....M., to show cause, if any you have, why the prayer of the application should not be granted. And unless you appear at the court at the time and place aforesaid your default will be recorded, and the application will be taken as confessed, and you will be forever barred from contesting the application or any decree entered thereon.

Witness, the Presiding Judge of the court.

Dated:

Attest:

.....
Registrar.

The description included in the notice in addition to the number of award, patent, and grant and name of awardee or original grantee need not be by metes and bounds, but may be a brief general description of the land sufficient to identify the same. The notice shall contain a statement that the map of the land and the description thereof by metes and bounds are on file in the land court and are open to inspection. [L 1903, c 56, §31; am L 1907, c 43, §3; am L 1913, c 21, §1; RL 1925, §3220; am L 1933, c 22, §1; RL 1935, §5024; RL 1945, §12624; RL 1955, §342-25; HRS §501-41; am L 2006, c 38, §12]

Rules of Court

Notices, see RLC rule 12.

Case Notes

Cited: 34 H. 93, 99.

" **§501-42 Service; return day; further notice.** The return day of the notice shall be not less than twenty, nor more than sixty days from the date of issue. The court shall also, within seven days after publication of the notice in a newspaper, cause a copy of the notice to be mailed by the registrar to every person named therein whose address is known. The court shall also cause a duly attested copy of the notice to be posted in a

conspicuous place on each parcel of land included in the application, by a sheriff or other police officer, fourteen days at least before the return day thereof, and the sheriff's or police officer's return shall be conclusive proof of the service.

If the applicant requests to have the line of a public way determined, the court shall order notice to be given by the registrar by mailing a registered letter to the attorney general, and to the mayor of the county where the land lies; and also to the corporation counsel or county attorney of the county. If the land borders on a river, or shore, or on an arm of the sea where a river or harbor line has been established, or on a great pond, or if it otherwise appears from the application or the proceedings that the State may have a claim adverse to that of the applicant, notice shall be given in the same manner to the attorney general.

The court may also cause other or further notice of the application to be given in such manner and to such persons as it may deem proper. The court shall, so far as it deems it possible, require proof of actual notice to all adjoining owners and to all persons who appear to have any interest in or claim to the land included in the application. Notice to such persons by mail shall be by registered letter. The certificate of the registrar that the registrar 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 such service.

Every copy of the notice required to be mailed, posted, or given in any manner other than by publication shall include a description of the land by metes and bounds. [L 1903, c 56, §32; RL 1925, §3221; am L 1933, c 22, §2; RL 1935, §5025; RL 1945, §12625; RL 1955, §342-26; HRS §501-42; am L 1972, c 91, §1(h); gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

Cross References

Publication of notice, see §1-28.5.
Service of notice by mail, see §1-28.

Rules of Court

Notices, see RLC rule 12.

Case Notes

Disclaimer by attorney general barred county claim to highway when ownership of highway, if established, would have been in Territory under prior law. 29 H. 820.

Dismissed when U.S. indispensable party. 34 H. 93.

State has consented to be sued in land court. 48 H. 92, 96, 395 P.2d 620. As to Territory of Hawaii, see 331 U.S. 256, 278, note 23.

" **§501-43 Guardian ad litem; compensation.** Upon the return of the notice and upon proof of service of all orders of notice issued, the court may appoint a disinterested person to act as guardian ad litem for minors and for all persons under disability, for persons not in being, unascertained, unknown, or out of the State, who may have an interest. The compensation of the guardian or agent shall be determined by the court and paid as part of the expenses of the court, or may be taxed with the costs of the proceedings as the court deems just. [L 1903, c 56, §33; am L 1921, c 214, pt of §1; RL 1925, §3222; RL 1935, §5026; RL 1945, §12626; RL 1955, §342-27; HRS §501-43]

Case Notes

Cited: 256 F.2d 208, 209, remanding 41 H. 490, modified 42 H. 661.

" **§501-44 Contests not otherwise represented; duty of attorney general; res adjudicata when.** Whenever there are grounds for contesting an application to have the title to land registered and the grounds or any of them are not being presented to the court, the attorney general or the attorney general's deputy shall contest all applications to register title irrespective of whether or not a specific claim on behalf of the State has been filed by the attorney general or the attorney general's deputy. The contest shall not be held to be res adjudicata in any subsequent action contemplated in section 501-212. [L 1927, c 258, §6; am imp L 1932 2d, c 33, §§2-5; RL 1935, §5027; RL 1945, §12627; RL 1955, §342-28; HRS §501-44; gen ch 1985]

Case Notes

Cited: 50 H. 201, note 6, 436 P.2d 752.

" **§501-45 Answer intervention; surveyor to be heard when.** Any person claiming an interest, whether named in the notice or not, may appear and file an answer on or before the return day, or within such further time as may be allowed by the court. The

answer shall state all objections to the application; shall set forth the interest claimed by the party filing the same; and shall be signed and sworn to by the party or by some person in the party's behalf. The department of accounting and general services or the county surveyor may appear in any case and be heard upon the facts pertaining to the accuracy of the location or survey, according to the rules of court. [L 1903, c 56, §34; RL 1925, §3223; RL 1935, §5028; RL 1945, §12628; RL 1955, §342-29; am L Sp 1959 2d, c 1, §12; HRS §501-45; am L 1972, c 91, §1(i); gen ch 1985]

" **§501-46 Default; effect.** If no person appears and answers within the time allowed, the court may at once, upon motion of the applicant and no reason to the contrary appearing, order a general default to be recorded and the application to be taken for confessed. By the description in the notice "to all whom it may concern," all the world are made parties defendant and shall be concluded by the default and order. After the default and order the court may enter a decree confirming the title of the applicant and ordering registration of the same. The court shall not be bound by the report of the examiner of title, but may require other or further proof. [L 1903, c 56, §35; RL 1925, §3224; RL 1935, §5029; RL 1945, §12629; RL 1955, §342-30; HRS §501-46]

Cross References

Duty of attorney general when there are grounds for contesting, see §501-44.

Case Notes

Cited: 35 H. 816, 822.

"HEARINGS AND POWERS

§501-51 Reference to other judges or to master; maps, reference; subdivision; costs; etc. 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 shall first be entered against all persons who do not appear and answer, as provided in section 501-46. If the land is located in any circuit without the island of Oahu the court may refer the cause or any part thereof (including presiding at return days referred to in sections 501-41, 501-42, 501-46) to the judge presiding in the circuit in which the land is located as part of the judge's calendar duties as judge to make record

of appearances, grant continuances and to record defaults, or to hear the parties and their evidence, and make report thereof to the court. The report of the judge to whom such reference is made has the same weight as that of a master appointed in a matter within the jurisdiction of a circuit court as set forth in sections 603-21.6, 603-21.7, and 635-14, and the judge of the land court shall proceed thereon to ratify, affirm, or modify the decision or orders performed under such reference as is proper on the record. The reference may be revoked or modified at any time.

The court, before granting a decree, shall require a map of the land in question to be filed. The map may be required to show all data necessary to enable the lines thereon to be reproduced upon the ground. The map shall also contain, or be accompanied by, such data (as survey lines or field notes) from enduring monuments, that the destruction of temporary monuments will not render it impracticable to enforce a decree based upon the map.

The court shall require that the names, as far as known, of all occupants and owners of adjoining lands and the names, as far as known, of all occupants of the land, other than tenants of the applicant, shall be placed on the map, and that all parcels of land owned by parties, other than the applicant, situate within the exterior boundaries of applicant's land shall be marked on the ground and their boundaries defined by metes and bounds together with such easements or rights of way as may be in existence on the ground.

Distances and functions of necessary angles must be shown definitely, not approximately. The court may order durable bounds to be set and referred to in the application by amendment; may require additional field surveys to be made either by the department of accounting and general services or by a competent surveyor in private practice; and may issue such additional instructions in regard to surveys as it deems proper or as are called for by the rules of court. The expenses of survey and bounds shall be taxed in the costs of the case and may be apportioned among the parties, as justice may require. If no persons appear to oppose the application, such expenses shall be borne by the applicant.

The court may waive in its discretion any part or all of the requirements hereof, when it deems that the interests of justice and equity require such waiver.

The map may be referred by the court to the department of accounting and general services, which shall cause the same to be verified, making such practical check with ground monuments as to verify its accuracy, and a proper report of its findings made to the court; provided that in all cases where the State is

an applicant for a registered title or in any other way directly interested in any application for a registered title, as indicated by the examiner's report thereon, the court shall refer the map to a competent surveyor in private practice who shall cause the same to be verified, making such practical check with ground monuments as to verify its accuracy and a proper report of the surveyor's findings to the court. After a decree has been issued in favor of the State, and the land therein described has been subdivided, the certificate of the department certifying to the correctness of the map, showing the subdivision, shall be competent for all purposes of the subdivision.

Any errors on the map filed with the application for registration or in the survey on the ground of any property proposed to be registered or already registered in the land court, which may be found by checking as provided in this section shall be corrected by and at the expense of the surveyor firm, partnership, or individual surveyor or surveyors that performed the survey for the owner. [L 1903, c 56, §36; am L 1913, c 21, §1; am L 1915, c 162, §1; RL 1925, §3225; am L 1927, c 152, §1; am L 1933, c 23, §1; RL 1935, §5030; am L 1941, c 30, §1; RL 1945, §12630; am L 1949, c 394, §1; RL 1955, §342-31; am L Sp 1959 2d, c 1, §12; HRS §501-51; am L 1972, c 91, §1(j), (k); gen ch 1985]

Rules of Court

Masters, see RLC rules 20 to 22.

Surveys, see Rules of the Land Court, part III.

Case Notes

Cited as to costs, apportionment of. 32 H. 385, 386, den. reh'g of 32 H. 355.

Cited as to requirement that map be filed. 40 H. 730, 733.

" **§501-52 Powers of the court.** The court may make and award all such judgments, decrees, orders, and mandates, issue all such executions, writs of possession, and other processes, and take all other steps necessary for the promotion of justice in matters pending before it, and to carry into full effect all powers which are, or may be given to it by law. [L 1909, c 11, §4; am L 1913, c 21, §1; RL 1925, §3226; RL 1935, §5031; RL 1945, §12631; RL 1955, §342-32; HRS §501-52]

Case Notes

Court may determine validity of deed though it cannot reform it. 20 H. 355, 357.

Jurisdiction limited, power to register title of applicant only. 24 H. 298; 29 H. 815, 816; 35 H. 254; 37 H. 74, 95, aff'd 158 F.2d 122.

Construction of will in land court, see 29 H. 815.

Issuance of new certificate to reflect acquisition by condemnation may be compelled. 31 H. 781, aff'd 61 F.2d 896.

" **§501-53 Dismissal; effect; withdrawal, conditions.** If the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application and the decree may be ordered to be without prejudice in whole or in part; but unless it is so ordered, it shall bind the parties, their privies, and the land in respect to any issue of fact which has been tried and determined. The applicant may withdraw the applicant's application at any time before final decree, upon terms to be determined by the court. The court may in its discretion require the applicant who moves to withdraw the applicant's application or to substitute some other person as applicant, to stipulate that the applicant shall be bound by the result of any issue of fact which has been tried and determined, and such stipulation shall bind the parties, their privies and the land itself. [L 1903, c 56, §37; am L 1921, c 214, pt of §1; RL 1925, §3227; RL 1935, §5032; RL 1945, §12632; RL 1955, §342-33; HRS §501-53; gen ch 1985]

Case Notes

Petition dismissed by circuit court after appeal taken there, when it appeared U. S. indispensable party. 34 H. 93.

Application based on adverse possession, proof required. 37 H. 49.

Applicant has burden of proof; application may be dismissed if court is unable to decide which of the conflicting testimony is trustworthy. 47 H. 472, 391 P.2d 403.

Land court decree need not contain factual issues tried and determined in a land court application. Appellate court is not limited to reviewing land court decree, but should review land court's written decision and entire record to determine binding effect on the parties in accordance with the mandate of this section. 75 H. 164, 858 P.2d 712.

State was precluded from maintaining its ejectment action with respect to parcels of real property pursuant to this section. 75 H. 164, 858 P.2d 712.

"REVIEW OF DECISIONS AND DECREES

§§501-61, 62 REPEALED. L 1984, c 102, §§4, 5.

" **§501-63 REPEALED.** L 2004, c 3, §4.

Note

L 2004, c 202, §53, as amended by L 2006, c 94, §1, purports to amend this section.

" **§501-64 Enforcement of decrees; bailiff.** The court, in all matters over which it has jurisdiction, may enforce its orders or decrees in the same manner as decrees are enforced in actions in the nature of suits in equity, and upon the request of the judge, the chief of police shall assign an officer to attend the sittings of the court. [L 1903, c 56, §17; am L 1913, c 21, §1; RL 1925, §3206; RL 1935, §5036; RL 1945, §12636; RL 1955, §342-37; HRS §501-64; am L 1972, c 91, §1(n)]

"DECREES

§501-71 Decree of registration; conditional when; quieting title, exceptions; reopened when. (a) If the court after a hearing finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that since filing the application, the title of the applicant has not been encumbered in any manner, then a decree of confirmation and registration as prayed for shall be entered.

(b) If the court finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that subsequent to the filing of the application, the title has been encumbered, then the title shall be registered subject to the encumbrances so found.

(c) If the court finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that subsequent to filing the application, the applicant has conveyed away all or any portion or portions of the premises or interest therein sought to be registered, then a decree of confirmation and registration shall be entered, covering the entire premises, confirming title in the applicant and the person or persons deriving their title through the applicant, to the premises or interest in accordance with the applicant's or their respective true ownership of the whole or any portion or portions thereof or interest therein at the time of filing the

decree, and subject to all encumbrances affecting all or any portion thereof.

(d) Every decree of registration of absolute title shall bind the land, and quiet the title thereto, subject only to the exceptions stated in section 501-82. It shall be conclusive upon and against all persons, including the State, whether mentioned by name in the application, notice, or citation, or included in the general description "to all whom it may concern". The decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding for reversing judgments or decrees, except that any person deprived of land or of any estate or interest therein by a decree of registration obtained by fraud may file a petition for review within one year after the entry of the decree, unless an innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened but shall remain in full force and effect forever, subject only to the right of appeal herein provided. Any person aggrieved by the decree in any case may pursue remedy by action of tort against the applicant or any other person for fraud, in procuring the decree.

(e) Deregistration pursuant to part II of this chapter shall not alter or revoke the conclusive nature or effect of a decree of registration, which shall continue to quiet the title to the deregistered land as to all claims arising prior to the date and time of deregistration of the land, except claims as would not otherwise be barred under this chapter if the lands were not registered. [L 1903, c 56, pt of §38; RL 1925, pt of §3228; am L 1927, c 258, §7; RL 1935, pt of §5037; RL 1945, pt of §12637; RL 1955, pt of §342-38; HRS §501-71; am L 2006, c 38, §13; am L 2009, c 120, §6; am L 2012, c 121, §3; am L 2013, c 119, §4]

Law Journals and Reviews

For comparison of procedures under this chapter and quiet title statute, see Adverse Possession Against Unknown Claimants Under Land Court and Quiet Title Procedures. 2 HBJ, Dec 1964, at 4.

Case Notes

Rights vest as of date of decree of registration. 402 F. Supp. 95.

Decree bars action for reformation of deed though land court ruled it could not hear question. 20 H. 355.

Decree quiets title as against a respondent who, after filing claim, withdraws and consents that decree be entered in favor of applicant. 31 H. 357.

Infant, rights of after reaching majority. 41 H. 490, remanded 256 F.2d 208, modified 42 H. 661, app. dismissed 267 F.2d 449.

Applicant has burden of establishing its title. 50 H. 507, 444 P.2d 909.

Decree does not freeze seaward boundary, it being subject to erosion. 55 H. 176, 517 P.2d 57.

In construing a land court decree, court held "along high water mark" prevails over distances and azimuths as measure of title line. 57 H. 585, 562 P.2d 771.

Cited: 29 H. 232, 233; 34 H. 93, 99; 35 H. 816, 822; 37 H. 270, 277.

" **§501-72 Types of nonabsolute title.** Possessory title. When a possessory title only is required, the applicant may be registered as the owner of the fee simple on giving such evidence of actual bona fide possession and of title, and serving such notices, if any, as may from time to time be ordered by the court. The registration of any person as first registered owner of land with a possessory title only shall not affect or prejudice the enforcement of any estate, right, or interest adverse to or in derogation of the title of the first registered owner, and subsisting or capable of arising at the time of the registration of the owner; but, save as aforesaid, shall have the same effect as registration of a person with an absolute title.

Qualified title. When an absolute title has been applied for, and on examination of title it appears to the court that the title can be established only for a limited period or subject to certain reservations, or upon application claiming such a qualified title, the court, on the application of the party applying to be registered, may except from the effects of registration, by an order included in the court's decree, any estate, right, or interest arising before a specified date; or arising under a specified instrument; or otherwise particularly described in the decree.

A title registered subject to an excepted estate, right, or interest, shall be called a qualified title. The registration of a person as first registered owner of land with a qualified title shall have the same effect as the registration of a person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be excepted. [L 1903, c 56, pt of §38; RL 1925, pt of §3228; RL

1935, pt of §5037; RL 1945, pt of §12637; RL 1955, pt of §342-38; HRS §501-72; gen ch 1985]

Case Notes

Applicant has burden of establishing its title. 50 H. 507, 444 P.2d 909.

" **§501-73 Removing clouds on title.** The court may remove clouds on titles and may find and decree in whom the title or any interest, legal or equitable, in land is vested, whether in the applicant or in any other person. [L 1909, c 11, §5; RL 1925, pt of §3228; RL 1935, pt of §5037; RL 1945, pt of §12637; RL 1955, pt of §342-38; HRS §501-73]

Case Notes

Dower, power of widow to convey. 21 H. 431.

Court may decree title to be in beneficiary of trust when trustee's sole duty was to convey. 26 H. 809, 816.

Applicant has burden of establishing its title. 50 H. 507, 444 P.2d 909.

Cited: 20 H. 355, 357; 37 H. 74, 95, aff'd 158 F.2d 122.

" **§501-74 Decree, contents of.** Every decree of registration shall bear the date of the year, day, hour, and minute of its entry, and shall be signed by the registrar. It shall state whether the owner is married or unmarried, and if married the full name of the husband or wife. If the owner (or spouse of the owner) has been known by more than one name, all the names of such person shall be stated. The wife's maiden name and surname shall be stated in all cases. If the owner is under disability it shall state the nature of the disability, and if a minor, shall state the minor's age. It shall contain a description of the land as finally determined by the court; and shall set forth the estate of the owner, and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, and other encumbrances including rights of husband or wife, if any, to which the land or the owner's estate is subject; and may contain any other matter properly to be determined in pursuance of this chapter. The decree shall be stated in a convenient form for transcription upon the certificate of title hereinafter mentioned. [L 1903, c 56, §40; RL 1925, §3230; RL 1935, §5038; RL 1945, §12638; RL 1955, §342-39; HRS §501-74; gen ch 1985; am L 1988, c 346, §2]

Case Notes

Dower must be noted. 21 H. 431, 434; 35 H. 816.

Surveyed description of land in decree construed same as in instrument inter partes. 23 H. 51.

Infant, rights of after reaching majority. 41 H. 490, remanded 256 F.2d 208, modified 42 H. 661, app. dismissed 267 F.2d 449.

Cited: 40 H. 730, 733.

Mentioned: 75 H. 164, 858 P.2d 712.

" **§501-75 Transcription of decree in registry; certificate of title.** Immediately upon the entry of the decree of registration the registrar shall send a certified copy thereof, under the seal of the court, to the assistant registrar in the bureau of conveyances, who shall transcribe the decree in a book to be called the registration book, in which a leaf or leaves in consecutive order shall be devoted exclusively to each title. The entry made by the assistant registrar in this book in each case shall be the original certificate of title, and shall be signed by the assistant registrar and sealed with the seal of the court. All certificates of title shall be numbered consecutively, beginning with number one.

The certified copy of the decree of registration shall be filed and numbered by the assistant registrar with a reference noted on it to the place of record of the original certificate of title. When several parcels of land which are not contiguous have been registered under one application as permitted by section 501-25, the decree of registration shall expressly state that the assistant registrar, after entering the decree in the registration book, may cancel the original certificate of title and issue in place thereof a separate transfer certificate of title for each parcel so registered. [L 1903, c 56, §41; RL 1925, §3231; am L 1931, c 242, §1; RL 1935, §5039; RL 1945, §12639; RL 1955, §342-40; HRS §501-75; am L 1972, c 91, §1(o); gen ch 1985; am L 1988, c 346, §3]

Rules of Court

Record of disposition, see RLC rule 54.

Transcription of decree, see RLC rule 55.

"LEGAL INCIDENTS OF REGISTERED LAND

§501-81 Legal incidents of registered land. Registered land, and ownership therein, shall in all respects be subject to the same burdens and incidents which attach by law to

unregistered land. Nothing in this chapter shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife; or from liability to attachment or mesne process or levy on execution; or from liability to any lien of any description established by law on land and the buildings thereon, or in the interest of the owner in land or buildings; or to change the laws of descent except as provided in section 501-71; or the rights of partition between coparceners and other cotenants; or the right to take the same by eminent domain; or to relieve such land from liability to be recovered by a trustee in bankruptcy under the provisions of law relating to preferences; or to change or affect in any way any other rights or liabilities created by law and applicable to unregistered land; except as otherwise expressly provided in this chapter. [L 1903, c 56, §70; RL 1925, §3259; RL 1935, §5040; RL 1945, §12640; RL 1955, §342-41; HRS §501-81; am L 1972, c 91, §1(p)]

Case Notes

Civil rights action involving courts' relocation of seaward boundary of registered land. 402 F. Supp. 95.

Easements of ingress and egress, creation of by subdivision map filed in land court. 34 H. 881; 39 H. 608. See 37 H. 270. Dedication of streets. 39 H. 514.

Rights incident to relation of husband and wife affect registered land as well as unregistered. 35 H. 816, 825.

Registered land, like unregistered land, is subject to erosion. 55 H. 176, 517 P.2d 57.

Referred to: 44 H. 235, 246, 353 P.2d 1007; 50 H. 189, 436 P.2d 207.

Mentioned: 130 H. 183 (App.), 307 P.3d 163 (2013).

" **§501-82 Tenure of holder of certificate of title.** (a) Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, hold the same free from all encumbrances except those noted on the certificate in the order of priority of recordation, and any of the following encumbrances which may be subsisting, namely:

- (1) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting such liens, shall

be deemed to fall within this paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505;

- (2) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by county real property tax ordinance, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale;
- (3) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33;
- (4) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of such way has been determined;
- (5) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed;
- (6) Any liability to assessments for betterments, or statutory liability which may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any such liability and the lien therefor (other than for labor and material furnished in the improvement of the land which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of such assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is registered and noted on the certificate of title within such three year period; provided further that if there are easements or other rights, appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner;

- (7) The possibility of reversal or vacation of the decree of registration upon appeal;
- (8) Any encumbrance not herein required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest; or
- (9) Money judgments, orders, or decrees of a Hawaii state court or the United States District Court for the District of Hawaii, if the same are recorded in the bureau of conveyances; provided that only the monetary lien created by the recordation shall affect the land; provided further that no other provision of a judgment, order, or decree shall affect the land unless otherwise registered in compliance with this chapter.

(b) For the purposes of this section, an encumbrance shall be deemed sufficiently noted on a certificate if the notation:

- (1) References a document by name or number which contains an encumbrance; and
- (2) Indicates that the referenced document contains an encumbrance to which the registered land is subject.

(c) Except as provided in sections 501-241 to 501-248, if the title of a recorded document indicates that it contains an encumbrance, the assistant registrar shall note the document as an encumbrance on the certificate of title or the new certificate of title issued upon recordation of such document, as applicable. [L 1903, c 56, §39; am L 1909, c 139, §1; RL 1925, §3229; am imp L 1925, c 192, §14; am L 1931, c 222, §1; am imp L 1932 2d, c 140, §65; RL 1935, §5041; RL 1945, §12641; am L 1945, c 255, §1; am L 1949, c 144, §1; RL 1955, §342-42; HRS §501-82; am L 1972, c 91, §1(q), (r); am L 1973, c 128, §3; am L 1989, c 14, §17 and c 20, §2; am L 1994, c 206, §2; am L 1998, c 219, §7; am L 2014, c 19, §2]

Revision Note

"Sections 501-241 to 501-248" substituted for "chapter 501, part ".

Case Notes

Dower must be noted. 21 H. 431, 434; 35 H. 816.

Encumbrances which need not be noted: Third paragraph, relating to highways, construed. 31 H. 787, 789, aff'd 61 F.2d 896. See 39 H. 514. Relating to private ways, construed. 40 H. 730. Fifth paragraph, relating to statutory liens, construed. 31 H. 446.

"Good faith" of purchaser. See 33 H. 343; 35 H. 816; 37 H. 270; 44 H. 235, 248, 353 P.2d 1007; 44 H. 365, 367-68, 355 P.2d 40, aff'g 44 H. 147, 355 P.2d 40; 50 H. 189, 436 P.2d 207.

Purchaser of lease noted on certificate of title holds free of unregistered sublease. 33 H. 343.

Whether holder of equitable right may, by registration, cut off equities which otherwise would be superior, raised but not decided. 44 H. 235, 247, 353 P.2d 1007.

Unauthorized city and county deed, effect of. 44 H. 365, 367-68, 355 P.2d 40, aff'g 44 H. 147, 355 P.2d 40.

Knowledge of unregistered encumbrance does not disqualify holder of certificate of title from protection against it. 50 H. 189, 436 P.2d 207.

Maintenance of city and county sewer line across premises is required to be noted as an "encumbrance". 50 H. 189, 436 P.2d 207.

Whatever equitable rights may be possessed by holder of unregistered encumbrance, they cannot be asserted against holder of certificate of title. 50 H. 189, 436 P.2d 207.

One who takes a certificate of title to registered land for value and in good faith holds land free of all encumbrances except those noted on the certificate and enumerated in statute. 58 H. 580, 574 P.2d 524.

City condemning registered land may invoke the same rights and protections regarding the registered land as may be invoked by a private land purchaser. 60 H. 40, 587 P.2d 294.

Reference to height restriction on transfer certificate of title within document identified as a "consent" deemed to be insufficient notation of an encumbrance under this section; because height restriction was never explicitly and separately noted on 1988 transfer certificate of title, defendant-appellant was entitled to hold lot free from such restriction. 75 H. 370, 862 P.2d 1048.

Cited: 41 H. 490, 497, remanded 256 F.2d 208, modified 42 H. 661, app. dismiss'd 267 F.2d 449; 74 H. 85, 839 P.2d 10.

" **§501-83 Certificate effective from transcription.** The certificate first registered in pursuance of a decree of registration in regard to any parcel of land shall be entitled in the registration book "original certificate of title, entered pursuant to decree of the land court, dated at" (stating time and place of entry of decree and the number of the case). The certificate shall take effect from the date of the transcription of the decree. Subsequent certificates relating to the same land shall be in like form, but shall be entitled "transfer from No...." (the number of the next previous certificate relating to the same land); and also the words "originally registered"

(date, volume, and page of registration); except that where land after original registration is registered in heirs or devisees, the certificate shall be entitled "registered transfer by descent or devise from No...." and shall contain the same information as to the decree as an original certificate. [L 1903, c 56, §42; am L 1913, c 21, §1; RL 1925, §3232; am L 1927, c 258, §8; RL 1935, §5042; RL 1945, §12642; RL 1955, §342-43; HRS §501-83]

" **§501-83.5 Outstanding owner's duplicate certificates.** No owner's duplicate certificates of title shall be issued after June 14, 1988, whether the deed or other instrument upon which such would have been based was recorded before or after June 14, 1988. Whenever a duplicate has been issued and is still outstanding, it shall be deemed to have been surrendered and notwithstanding any other provision herein, the assistant registrar shall accept for filing any deed or other voluntary instruments without requiring the presentation of the outstanding duplicate certificate. [L 1988, c 346, §25; am L 1992, c 197, §2]

" **§501-84 Certificates, when two or more owners.** Where two or more persons are registered owners under any tenancy, one certificate shall be issued for the whole land. Any conveyance of fee simple interest in registered land shall be recorded with the assistant registrar, who shall note the same on the certificate, cancel all the certificates affecting the whole land, and issue a new certificate to reflect all the owners of the whole land. [L 1903, c 56, §43; RL 1925, §3233; RL 1935, §5043; RL 1945, §12643; RL 1955, §342-44; HRS §501-84; gen ch 1985; am L 1988, c 346, §4; am L 1993, c 18, §1]

" **§501-85 Substitution, one certificate for several, several for one; subdivisions, maps.** A registered owner of several distinct parcels of land covered by one certificate of title may, with the approval of the court, have that certificate of title canceled and separate certificates entered for portions thereof. A registered owner of two or more distinct parcels of land, which are contiguous, or which are so adjacent (although separated by a roadway or stream or other strip of land) as to form one lot of land for practical use, may with like approval and by a decree of the court, have that certificate canceled and a single original certificate for the whole, or separate certificates for subdivisions thereof, entered in place of the canceled certificates; provided that if any person or persons other than the registered owner appear to have an interest in any part of the premises proposed to be consolidated, or in any

intervening roadway, stream, or strip of land as aforesaid, the court shall not entertain the application for consolidation unless the other person or persons join with the owner in the application, signing and acknowledging the same in the same manner as provided for original applications, or unless the person or persons if not joining in the application have been given notice thereof and an opportunity to be heard as shall be ordered by the court.

Any owner proposing to combine two or more parcels of land, or to subdivide any registered land, shall file with the court an application therefor, together with a map or plan showing the proposed combination or subdivision and accurately delineating thereon all boundaries, streets, passageways, and other easements connected therewith. The court, before approving the same, and authorizing the issuance of any new certificate or certificates thereon, shall cause the same to be verified by the department of accounting and general services and be satisfied that the same are accurately represented, and that the applicant has complied with the laws and regulations covering subdivisions in the county concerned, applicable thereto. [L 1903, c 56, §44; am L 1923, c 196, §1; RL 1925, §3234; RL 1935, §5044; am L 1939, c 242, §10; RL 1945, §12644; am L 1949, c 222, §13; am L 1951, c 271, §3; RL 1955, §342-45; am L Sp 1959 2d, c 1, §12; HRS §501-85; am L 1972, c 91, §1(s); am L 1988, c 346, §5]

Rules of Court

Subdivisions, see RLC rule 15; consolidations, see RLC rule 27; maps, see RLC rules 104, 106.

Case Notes

Easements of ingress and egress, creation of by subdivision map filed in land court. 34 H. 881; 39 H. 608. See 37 H. 270. Dedication of streets, 39 H. 514.

Whenever and however court is notified that any person other than registered owner has any interest in the premises sought to be consolidated, court cannot proceed unless such person joins in the petition or is given an opportunity to be heard. 54 H. 276, 506 P.2d 1.

Where State objected to highwater mark shown on map of lands sought to be consolidated, State should have been granted standing as party. 54 H. 276, 506 P.2d 1.

Land court acted prematurely by approving consolidation and resubdivision before county laws were complied with. 66 H. 354, 662 P.2d 206.

" **§501-86 Registration runs with land.** The obtaining of a decree of registration, and the entry of a certificate of title, shall be regarded as an agreement running with the land, and binding upon the applicant and all the applicant's successors in title, that the land shall be and forever remain registered land, and subject to this chapter and of all acts in amendment hereof. [L 1903, c 56, §45; RL 1925, §3235; RL 1935, §5045; RL 1945, §12645; RL 1955, §342-46; HRS §501-86; gen ch 1985]

Case Notes

Cited: 35 H. 816, 821; 37 H. 270, 277.

" **§501-87 No adverse possession or prescription.** No title, right, or interest in, to, or across registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession; provided that this section shall not prejudice any adverse claim, as against any person registered as first owner of land with a possessory title only, in respect of length of possession of any other person, who was in possession of the land at the time when the registration of the first owner took place.

Land registered pursuant to this chapter is not subject to surrender under section 264-1. [L 1903, c 56, §46; am L 1921, c 135, §1; RL 1925, §3236; RL 1935, §5046; RL 1945, §12646; am L 1949, c 64, §1; RL 1955, §342-47; HRS §501-87]

Case Notes

Considered in relation to unregistered sublease where sublessee in possession. 33 H. 343, 346.

Cited: 40 H. 730, 733; 73 H. 297, 832 P.2d 724.

" **§501-88 Certificate as evidence.** The original certificate in the registration book, and any copy thereof duly certified under the signature of the registrar or assistant registrar, and the seal of the court, shall be received as evidence in all the courts of the State and shall be conclusive as to all matters contained therein, except as otherwise provided in this chapter. [L 1903, c 56, §47; RL 1925, §3237; RL 1935, §5047; RL 1945, §12647; RL 1955, §342-48; HRS §501-88; am L 1988, c 346, §6]

Case Notes

Issuance of new certificate to reflect acquisition by condemnation may be compelled. 31 H. 781, aff'd 61 F.2d 896.

Conclusive character of certificate considered. 35 H. 816, 822.

Certificate does not freeze seaward boundary, it being subject to erosion. 55 H. 176, 517 P.2d 57.

Matters contained in transfer certificate of title were not conclusive. 8 H. App. 273, 800 P.2d 618.

" **§501-89 Indexes, record books, etc.** The registrar, under the direction of the court, shall make and keep indexes of all applications and of all decrees of registration, and shall also index and classify all papers and instruments filed in the registrar's office relating to applications and to registered titles. The registrar shall also, under the direction of the court, cause forms of indexes and registration and entry books to be prepared for the use of the assistant registrar in the bureau of conveyances.

The court shall prepare and adopt convenient forms of certificates of title, and shall also adopt general forms of memoranda to be used by the assistant registrar in registering the common forms of conveyance, and other instruments, to express briefly their effect. [L 1903, c 56, §49; RL 1925, §3238; RL 1935, §5048; RL 1945, §12648; RL 1955, §342-49; HRS §501-89; gen ch 1985]

"VOLUNTARY DEALING WITH LAND AFTER ORIGINAL REGISTRATION

§501-101 Voluntary dealing with registered lands. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. The owner may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. No deed, mortgage, or other voluntary instrument, except a will and a lease for a term not exceeding one year, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties, and as evidence of authority to the registrar or assistant registrar to make registration. The act of registration shall be the operative act to convey or affect the land, and in all cases under this chapter the registration shall be made in the office of the assistant registrar in the bureau of conveyances, during office hours prescribed in section 502-32. The rules of court may provide for forms of conveyances respecting registered land. [L 1903, c 56, §50; am L 1913, c 21, §1; RL 1925, §3239; RL 1935, §5049; RL 1945, §12649; RL 1955, §342-50; HRS §501-101; am L 1972, c 91, §1(t); am L 1974, c 13, §1; gen ch 1985]

Case Notes

Cited in holding that an agreement could operate as a contract between the parties and give rise to enforceable rights, although it could not affect the title situation because not noted on certificate. 324 F. Supp. 768.

Cited in holding that land was not subject to a trust in favor of a partnership when the trust was not noted on the certificate of title. 324 F. Supp. 768.

Bill of sale affecting registered land must be registered to take effect as a conveyance. 58 H. 580, 574 P.2d 524.

Unregistered instrument regarded only as a contract between the parties. 60 H. 40, 587 P.2d 294.

See 33 H. 343; 39 H. 278; 44 H. 235, 246, 353 P.2d 1007; 50 H. 189, 436 P.2d 207.

Where the date of registration of the assignment of assignor's interest in the land, pursuant to this section, acted as the time of conveyance and was nearly two years after the execution of the note and mortgage, and there was nothing in the record to indicate that title was not conveyed or that there was any legally relevant defect in the assignment, the note and mortgage were properly assigned by assignor to assignee. 117 H. 506 (App.), 184 P.3d 821 (2008).

" **§501-101.5 Agreements of sale; priority.** (a) The rights of a buyer under an agreement of sale which has been duly filed and noted on the certificate of title in accordance with this chapter shall be entitled to priority over the claim of any other person with respect to the real estate covered by the agreement of sale where such claim results:

- (1) From a conveyance made to the claimant by the seller of the real estate covered by the agreement of sale if such conveyance was filed after the filing of the agreement of sale; or
- (2) From a judgment in favor of the claimant against the seller affecting the real estate covered by the agreement of sale if the judgment or a notice of the action out of which the judgment arises was not filed prior to the filing of the agreement of sale.

(b) Upon the buyer's satisfaction of the agreement of sale, the claim or lien upon the real estate covered by the agreement of sale of any person who shall have such a claim resulting from a conveyance or a judgment referred to in subsection (a), shall be extinguished as to such real estate upon the filing of a transfer of title to such real estate from the seller to the buyer.

(c) For purposes of this section, the following definitions apply:

"Agreement of sale" means an executory contract for the sale and purchase of real estate which binds one party to sell and the other party to buy real estate which is the subject matter of the transaction, and in which the seller retains legal title to the real estate. As used in this section, an agreement of sale includes a subagreement of sale or subsequent subagreement of sale.

"Buyer" means the party who has agreed to purchase, and "seller" means the party who has agreed to sell the real estate pursuant to an agreement of sale, and includes each of their respective assignees and successors in interest in the agreement of sale.

"Conveyance" means every written instrument by which any estate or interest in real estate is voluntarily created, alienated, mortgaged, or encumbered, or by which title to any real estate may be voluntarily affected, other than wills.

"Filed" or "filing" means filed in accordance with this chapter.

"Real estate covered by the agreement of sale" means the real estate which the seller has agreed to sell and the buyer has agreed to buy pursuant to the agreement of sale, including any portion of or any interest in such real estate.

"Satisfaction of agreement of sale" means the full performance of the buyer's obligations under the agreement of sale, and:

- (1) The buyer's compliance or tender of compliance with all of the buyer's filed written agreements and filed written consents, if any, with claimants whose claims are superior or subject to the rights of the buyer, and with all filed written directions, if any, of the seller to the buyer to make payments under the agreement of sale to a claimant or claimants;
- (2) The buyer's compliance or tender of compliance with all orders, which have been filed, of any court of competent jurisdiction relating to the agreement of sale or to payments under or proceeds of the agreement of sale; and
- (3) The buyer's payment of all periodic, interim, prepaid, and final payments under the agreement of sale.

If a claimant's claim or lien upon the real estate covered by the agreement of sale is extinguished according to this section before the claimant actually receives satisfaction of the claim or lien, the claim or lien shall be automatically transferred to the proceeds from satisfaction of the agreement of sale, in the same priority with respect to other transferred

claims or liens on such real estate and with respect to other claims or liens on such proceeds, as the transferred claim or lien had immediately before such extinguishment. [L 1984, c 205, §1; am L 1985, c 247, §1]

" **§501-102 Filing liens, etc., notice.** (a) Every conveyance, lien, attachment, order, decree, instrument, or entry affecting registered land, which would under existing laws, if recorded, filed, or entered in the bureau of conveyances, affect the real estate to which it relates, shall, if registered, filed, or recorded, or entered in the office of the assistant registrar in the bureau of conveyances, be notice to all persons from the time of such registering, filing, recording, or entering and shall contain a reference to the number of the certificate of title and an indorsement of the current certificate of title, if applicable, of the land to be affected.

(b) This section shall not be construed to relate to state or federal tax liens or child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapters 231, 505, and 576D, respectively, or to liens arising from money judgments, orders, or decrees recorded pursuant to section 636-3. The recordation of the child support order or judgment in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to place a lien on land registered in the land court under this chapter. [L 1903, c 56, §51; RL 1925, §3240; RL 1935, §5050; RL 1945, §12650; RL 1955, §342-51; HRS §501-102; am L 1973, c 128, §4; am L 1986, c 246, §4; am L 1989, c 20, §3; am L 1997, c 293, §21; am L 2000, c 178, §3; am L 2014, c 19, §3]

Rules of Court

Filing liens, see RLC rule 62.

Case Notes

Stipulated judgment and order not a final judgment as it did not dispose of all claims in lawsuit nor was certified as final; non-final damage determination thus not judgment lien upon real property under this section. 85 H. 398 (App.), 944 P.2d 1341.

" **§501-103 Conveyances of less than fee simple.** No new certificate shall be entered or issued upon any transfer of registered land which does not divest the title in fee simple

from the owner or one of the registered owners. Except as provided in sections 501-241 to 501-248, all interests in registered land less than an estate in fee simple shall contain a reference to the document number of the interest acquired and shall be registered by recording with the assistant registrar the instrument creating or transferring or claiming such interest, and by a brief memorandum thereof made by the assistant registrar upon the certificate of title, and signed by the assistant registrar. Except as provided in sections 501-241 to 501-248, the cancellation or extinguishment of such interests shall be recorded in the same manner. [L 1903, c 56, §52; RL 1925, §3241; RL 1935, §5051; RL 1945, §12651; RL 1955, §342-52; HRS §501-103; gen ch 1985; am L 1986, c 246, §5; am L 1988, c 346, §7; am L 1993, c 18, §2; am L 1998, c 219, §8]

Revision Note

"Sections 501-241 to 501-248" substituted for "chapter 501, part ".

Rules of Court

Certificates of title, see Rules of the Land Court, part II.

Case Notes

Cited: 35 H. 816, 823.

" **§501-104 Reference of doubtful questions.** Where the assistant registrar is in doubt upon any question, or where any party in interest does not agree as to the proper memorandum to be made in pursuance of any deed, mortgage, or other voluntary instrument presented for registration, the question shall be referred to the court for decision, either on the certificate of the assistant registrar, stating the question upon which the assistant registrar is in doubt, or upon the suggestion in writing of any party in interest; and the court, after notice to all parties and a hearing, shall enter an order prescribing the form of memorandum to the assistant registrar, who shall make registration in accordance therewith. [L 1903, c 56, §53; RL 1925, §3242; RL 1935, §5052; RL 1945, §12652; RL 1955, §342-53; HRS §501-104; gen ch 1985]

" **§501-105 Grantee's address, etc., to be stated.** Every deed or other voluntary instrument presented for recording shall contain or have indorsed upon it the full name or names, if more than one, and the address of the grantee or other person

acquiring or claiming an interest under the instrument and every document shall also contain or have indorsed upon it a statement that the grantee is married or unmarried, and if married, the statement shall give the name in full of the husband or wife. Whenever the grantee is a corporation or partnership, the document shall contain or have indorsed upon it the state where the entity is registered and the entity's address. All names and addresses shall also be entered on all certificates. Notices and processes issued in relation to registered land in pursuance of this chapter may be served upon any person in interest by mailing the same to the address so given, and shall be binding whether such person resides within or without the State.

Any deed conveying one or more but not all lots or all interests in a lot appurtenant to apartments or units in a condominium project in a certificate shall contain full memoranda relating to easements, rights-of-way, and all other liens and encumbrances affecting the particular lot, lots, interest appurtenant to an apartment or unit, or interests appurtenant to apartments or units conveyed. If the deed affects all of the land or interests appurtenant to apartments or units in a certificate of title, encumbrances may be referred to by reference. [L 1903, c 56, §54; am L 1907, c 43, §4; RL 1925, §3243; RL 1935, §5053; RL 1945, §12653; RL 1955, §342-54; HRS §501-105; am L 1986, c 246, §6; am L 1989, c 51, §1; am L 1992, c 197, §3; am L 1995, c 22, §4; am L 2008, c 28, §29]

Note

The 2008 amendment is retroactive to July 1, 2006. L 2008, c 28, §43.

" **§501-106 Entry of new certificate.** (a) No new certificate of title shall be entered, and no memorandum shall be made upon any certificate of title by the registrar or assistant registrar, except:

- (1) In pursuance of any deed or other voluntary instrument;
- (2) Upon the recording of a certificate of merger that merges two or more condominium projects as provided by section 514A-19 or 514B-46;
- (3) Upon the recording of an amendment to a declaration of condominium property regime which alters the percentage interest of the respective apartment or unit owners in the common elements;
- (4) In cases expressly provided for in this chapter; or
- (5) Upon the order of the court, for cause shown.

(b) The new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under the registered owner, in favor of every purchaser for value and in good faith; provided that in all cases of registration procured by fraud the owner may pursue all the owner's remedies against the parties to the fraud, without prejudice however to the rights of any innocent holder for value of a certificate of title; and provided further that after the transcription of the decree of registration on the original application any subsequent registration under this chapter procured by the presentation of a forged deed or other instrument, shall be void. [L 1903, c 56, §55; RL 1925, §3244; RL 1935, §5054; RL 1945, §12654; RL 1955, §342-55; HRS §501-106; am L 1972, c 91, §1(u); gen ch 1985; am L 1988, c 346, §8; am L 1993, c 18, §3; am L 2004, c 164, §18; am L 2008, c 28, §12]

Note

The 2008 amendment is retroactive to July 1, 2006. L 2008, c 28, §43.

Rules of Court

New certificate of title, see RLC rule 59.

Case Notes

Issuance of new certificate to reflect acquisition by condemnation may be compelled. 31 H. 781, aff'd 61 F.2d 896. Cited: 79 H. 56 (App.), 897 P.2d 983.

" **§501-107 Entry record; duplicates and certified copies.** The assistant registrar shall keep a record in which shall be entered all deeds and other voluntary instruments, and all copies of writs or other process filed or recorded with the assistant registrar relating to registered land. The assistant registrar shall note in the record the date of reception of all instruments. The instruments shall be stamped with the date, hour, and minute of reception and shall be regarded as registered from the date and time so noted, and the memorandum of each instrument when made on the certificate of title to which it refers shall bear the same date.

Every deed or other instrument, whether voluntary or involuntary, so filed or recorded with the registrar or assistant registrar shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records relating to registered land in the office of the registrar or of the assistant registrar shall be open to the

public in the same manner as probate records are open, subject to reasonable regulations as the registrar, under the direction of the court, may make.

Certified copies of all instruments filed or recorded and registered may also be obtained at any time on payment of the assistant registrar's fees.

Within ten days after the end of each week, the assistant registrar shall deliver or forward by mail or electronic transmission, without charge, an image and index of all deeds and other voluntary instruments, writs, or other process that have been filed or recorded with the assistant registrar during each week relating to registered land in all the counties, to the county designated to act as a central clearinghouse in a memorandum of understanding agreed upon by the counties. The central clearinghouse shall deliver the images and index to the other counties without charge. The index shall include the following for each instrument:

- (1) Document number;
- (2) Certificate number;
- (3) Date of the filing;
- (4) Type of document;
- (5) Names of grantor and grantee;
- (6) Current tax map key number; and
- (7) Location of the real property by island. [L 1903, c 56, §56; RL 1925, §3245; RL 1935, §5055; RL 1945, §12655; am L 1955, c 89, §1; RL 1955, §342-56; HRS §501-107; gen ch 1985; am L 1986, c 246, §7; am L 1988, c 346, §26; am L 2009, c 197, §2]

Cross References

Copies of instruments, certificates, see §502-26.

Rules of Court

Entry book, see RLC rule 60.

" **§501-108 Conveyance of fee; procedure.** (a) An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that no deed, mortgage, lease, or other voluntary instrument shall be accepted by the assistant registrar for registration unless a reference to the number of the certificate of title of the land affected by such instrument is incorporated in the body of the instrument tendered for registration. If the certificate reference in the instrument is

not current, an endorsement of the current certificate of title shall be required.

The assistant registrar shall note upon all instruments filed or recorded concurrently with the recorded instrument the document number, the certificate of title number, and, in the case of deregistered land, the bureau of conveyances document number in the spaces provided therefor wherever required.

Except as otherwise provided in part II of this chapter:

- (1) The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee;
- (2) The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate;
- (3) The original certificate shall be stamped "canceled"; and

(4) The deed of conveyance shall be filed or recorded and endorsed with the number and place of registration of the certificate of title of the land conveyed.

(b) On all instruments to be filed or recorded, the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of that space, and for the registrar of conveyances on the right half of that space. The following one inch of space shall be reserved for information showing to whom the document should be returned. In addition, the first page shall identify and include, if possible, all names of the grantors and all names and addresses of the grantees, the type of document, and the tax map key number. Endorsements, if any, may be made on a conforming fly sheet. If an instrument consists of more than one page, each page shall be single-sided sheets of written text numbered consecutively, beginning with number one, and shall be stapled once in the upper left corner. No instrument shall have a cover or backer attached. The assistant registrar shall be permitted to remove any rivets affixed to any instrument.

(c) All names of all natural persons signing in their individual capacity in the instrument shall be typewritten, stamped, legibly printed by hand, or by a mechanical or electrical printing method beneath all signatures. No discrepancy in any name shall exist between the printed name, as it appears either in the body of the instrument, beneath the signature, or in the notary's certificate of acknowledgment. The provisions of this subsection shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

(d) The assistant registrar may refuse to file or record any instrument that will not reproduce legibly under photographic, electronic, or electrostatic methods, or that is of a size larger than eight and one-half inches by eleven inches, or that contains a schedule, inventory sheet, or map in excess of that size. Notwithstanding any other law to the contrary, the assistant registrar may accept an electronic instrument in lieu of an original instrument with original signatures subject to the requirements set forth in rules adopted by the supreme court of the State of Hawaii consistent with this section and chapter 489E. [L 1903, c 56, §57; am L 1913, c 16, §1; RL 1925, §3246; RL 1935, §5056; RL 1945, §12656; RL 1955, §342-57; am L 1961, c 86, §1; HRS §501-108; gen ch 1985; am L 1986, c 246, §8; am L 1988, c 346, §9; am L 1989, c 51, §2; am L 1992, c 197, §4; am L 2000, c 178, §4; am L 2001, c 23, §1; am L 2009, c 120, §8; am L 2013, c 119, §5]

Rules of Court

New certificate of title, see RLC rule 59(a).

Case Notes

Infant, right to disaffirm conveyance after reaching majority. 41 H. 490, remanded 256 F.2d 208, modified 42 H. 661, app. dism'd 267 F.2d 449.

" **§501-109 Portion of registered fee.** When a deed in fee is for part only of the land described in a certificate of title the assistant registrar shall also enter a new certificate to the grantor for the part of the land not included in the deed. In every case of transfer the new certificate or certificates shall include all the land described in the original certificate; provided that no new certificate to a grantee of a part only of the land shall be invalid by reason of the failure of the assistant registrar to enter a new certificate to the grantor for the remaining unconveyed portion. In case the land described in a certificate of title is divided into lots, designated by numbers or letters, with measurements of all the bounds, and a plan of the land has been filed with the registrar and verified pursuant to section 501-85; and a certified copy thereof is filed with the assistant registrar bearing the same number as is given to the application, and which plan is filed separately by such number, apart from the registration book containing the original certificate, but which certificate has indorsed thereon a reference to the filed plan, when the registered owner makes a deed or transfer in fee of one or more

of such lots, the assistant registrar may, instead of canceling the certificate and entering a new certificate to the grantor for the part of the land not included in the deed of transfer, enter on the original certificate a memorandum of the deed of transfer, with a reference to the lot or lots thereby conveyed as designated on the plan, and a statement that the certificate is canceled as to the lot or lots. Every certificate with the memorandum is as effectual for the purpose of showing the grantor's title to the remainder of the land not conveyed as if the old certificate had been canceled and a new certificate of the land had been entered. This process may be repeated so long as there is convenient space upon the original certificate for making the memorandum of sale of lots. [L 1903, c 56, §58; am L 1913, c 20, §1; RL 1925, §3247; RL 1935, §5057; RL 1945, §12657; RL 1955, §342-58; HRS §501-109; am L 1988, c 346, §10]

Rules of Court

New certificate of title, see RLC rule 59(b).

Case Notes

Issuance of new certificate to reflect acquisition by condemnation. 31 H. 781, aff'd 61 F.2d 896.

" **§501-110 Statement of encumbrances.** If at the time of any transfer there appears upon the registration book encumbrances or claims adverse to the title of the registered owner, they shall be stated in the new certificate or certificates, except as far as they may be simultaneously released or discharged and except as provided in sections 501-241 to 501-248. [L 1903, c 56, §59; RL 1925, §3248; RL 1935, §5058; RL 1945, §12658; RL 1955, §342-59; HRS §501-110; am L 1998, c 219, §9]

Revision Note

"Sections 501-241 to 501-248" substituted for "chapter 501, part ".

Case Notes

Cited: 35 H. 816, 822.

"MORTGAGES

Cross References

Registered land, see §506-6.

Special mortgage recording fee, see §431P-16.

§501-116 Mortgage registration necessary. The owner of any interest in registered land may mortgage the interest by executing a mortgage thereof. Such a mortgage may be assigned, extended, discharged, released in whole or in part, or otherwise dealt with by the mortgagee by any form of instrument sufficient in law for the purpose. Except as provided in part II, the mortgage, and all instruments assigning, extending, discharging, and otherwise dealing with the mortgage, shall be registered and shall take effect upon the title of the mortgaged property only from the time of registration. [L 1903, c 56, §60; RL 1925, §3249; RL 1935, §5059; RL 1945, §12659; RL 1955, §342-60; am L 1963, c 83, §9; am L 1966, c 18, §8; HRS §501-116; am L 1970, c 15, §1; am L 2009, c 120, §9]

Case Notes

Validity of mortgage, jurisdiction of land court to determine upon petition to cancel memorandum of the mortgage under §501-196. 32 H. 680.

" **§501-117 Procedure.** Registration of a mortgage shall be made in the manner following: the mortgage shall be presented to the assistant registrar who shall enter upon the original certificate of title a memorandum of the purport of the mortgage, the time of filing or recording, the document number of the mortgage, and shall sign the memorandum. The assistant registrar shall also note upon the mortgage the time of filing or recording, and a reference to the volume and page of the registration book where it is registered. [L 1903, c 56, §61; RL 1925, §3250; RL 1935, §5060; RL 1945, §12660; am L 1951, c 142, §1; RL 1955, §342-61; HRS §501-117; gen ch 1985; am L 1986, c 246, §9; am L 1988, c 346, §11]

" **§501-118 Foreclosure.** Mortgages of registered land may be foreclosed like mortgages of unregistered land.

In case of foreclosure by action, a certified copy of the final judgment of the court confirming the sale may be filed or recorded with the assistant registrar or the deputy after the time for appealing therefrom has expired and the purchaser shall thereupon be entitled to the entry of a new certificate.

In case of foreclosure by exercising the power of sale without a previous judgment, the affidavit required by chapter 667 shall be recorded with the assistant registrar. The purchaser or the purchaser's assigns at the foreclosure sale may

thereupon at any time present the deed under the power of sale to the assistant registrar for recording and obtain a new certificate. Nothing in this chapter shall be construed to prevent the mortgagor or other person in interest from directly impeaching by action or otherwise, any foreclosure proceedings affecting registered land, prior to the entry of a new certificate of title.

After a new certificate of title has been entered, no judgment recovered on the mortgage note for any balance due thereon shall operate to open the foreclosure or affect the title to registered land. [L 1903, c 56, §63; am L 1913, c 21, §1; RL 1925, §3252; RL 1935, §5062; RL 1945, §12662; am L 1951, c 142, §3; RL 1955, §342-62; HRS §501-118; am L 1972, c 91, §1(v); gen ch 1985; am L 1986, c 246, §10; am L 1988, c 346, §12; am L 1998, c 122, §3]

Rules of Court

Certificates of title, see Rules of the Land Court, part II.

Case Notes

Even assuming arguendo that plaintiffs had valid defenses to the propriety of the non-judicial foreclosure sale of the property, the defenses were time-barred because plaintiff failed to raise them before a new certificate of title was issued; defendant's motion to dismiss granted. 795 F. Supp. 2d 1098 (2011).

A mortgagor's right to "impeach any foreclosure proceeding" is expressly limited to the period before entry of a new certificate of title. 107 H. 95, 110 P.3d 1042.

Discussed: 814 F. Supp. 2d 1073 (2011).

"LEASES

§501-121 Leases; registration required. Leases of registered land for a term of one year or more shall be registered. [L 1903, c 56, §64; RL 1925, §3253; RL 1935, §5063; RL 1945, §12663; am L 1951, c 142, §4; RL 1955, §342-63; HRS §501-121]

Cross References

Land subject to mortgage or lease, see §501-29.

Case Notes

Purchaser of lease noted on certificate of title holds free of unregistered sublease. 33 H. 343.

Cited: 60 H. 40, 587 P.2d 294.

"TRUSTS

§501-131 Transfer in trust; procedure. Whenever a deed or other instrument is filed or recorded for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in land without transfer, the particulars of the trust, condition, limitation, or other equitable interest shall not be entered on the certificate; but a memorandum thereon shall be entered by the words "in trust", or "upon condition", or other apt words, and by a reference by number to the instrument authorizing or creating the same. The assistant registrar shall note upon the original instrument creating or declaring the trust or other equitable interest a reference by number of the certificate of title to which it relates. If the instrument creating or declaring a trust or other equitable interest is already recorded in the bureau of conveyances or admitted to probate, or any order of a federal court creating or declaring a trust in real property has been made, a certified copy may be filed or recorded by the assistant registrar and registered. [L 1903, c 56, §65; RL 1925, §3254; RL 1935, §5064; RL 1945, §12664; RL 1955, §342-64; HRS §501-131; am L 1986, c 246, §11; am L 1988, c 346, §13]

Rules of Court

Transfer in trust, see RLC rule 61.

" **§501-132 Powers to be noted on certificate; construction for court.** If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage, or deal with the land in any manner, the power shall be stated in the certificate of title by the words "with power to sell" or "with power to mortgage", and by apt words of description in case of other powers.

No instrument transferring, mortgaging, or in any way dealing with registered land held in trust shall be registered, unless the power thereto enabling is expressly conferred in the instrument of trust, or unless the judgment of a court of competent jurisdiction has construed the instrument in favor of the power, in which case a certified copy of the judgment may be filed or recorded with the assistant registrar who shall make

registration in accordance therewith. [L 1903, c 56, §66; RL 1925, §3255; RL 1935, §5065; RL 1945, §12665; RL 1955, §342-65; HRS §501-132; am L 1972, c 91, §1(w); gen ch 1985; am L 1986, c 246, §12]

Rules of Court

Transfer in trust, see RLC rule 61.

" **§501-133 New trustee.** When a new trustee of registered land is appointed either by any court or otherwise, a new certificate may be entered upon presentation to the assistant registrar of a certified copy of the order or deed of appointment. [L 1903, c 56, §67; RL 1925, §3256; RL 1935, §5066; RL 1945, §12666; RL 1955, §342-66; HRS §501-133; am L 1972, c 91, §1(x); gen ch 1985; am L 1986, c 246, §13; am L 1988, c 346, §14]

Rules of Court

New certificate of title, see RLC rule 59(f).

" **§501-134 Trusts, implied or constructive.** Whoever claims an interest in registered land by reason of any implied or constructive trust shall file or record for registration a statement thereof with the assistant registrar. The statement shall contain a description of the land, and a reference to the number of the certificate of title and the volume and page of the registration book where it is entered. The claim shall not affect the title of a purchaser for value and in good faith before its registration. [L 1903, c 56, §68; RL 1925, §3257; RL 1935, §5067; RL 1945, §12667; RL 1955, §342-67; HRS §501-134; am L 1986, c 246, §14]

Law Journals and Reviews

Constructive Trust: An Equitable Doctrine for Protecting and Establishing Legal Interests in Real Property. II HBJ No. 13, at pg. 121.

" **§501-135 Application by trustee.** Any trustee may file an application for registration of any land held in trust by the trustee, unless expressly prohibited by the instrument creating the trust. [L 1903, c 56, §69; RL 1925, §3258; RL 1935, §5068; RL 1945, §12668; RL 1955, §342-68; HRS §501-135; gen ch 1985]

" **§501-136 Attachment and other liens; filing or recording of.** In every case where a writing of any description or a copy of any writ is required by law to be filed or recorded in the bureau of conveyances in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land shall be filed or recorded and registered with the assistant registrar of the land court. In addition to any particulars required in such papers for recording with records of deeds, it shall also contain a reference to the number of the certificate of title of the land to be affected and also, if the attachment, right, or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for identification of the land intended to be affected. This section and section 501-138 do not apply to liens for internal revenue taxes payable to the United States or to liens for state taxes payable to the state department of taxation. [L 1903, c 56, §71; RL 1925, §3260; RL 1935, §5069; RL 1945, §12669; am L 1949, c 237, §1; RL 1955, §342-69; HRS §501-136; am L 1973, c 128, §5; am L 1986, c 246, §15; am L 1989, c 20, §4]

Rules of Court

Filing liens, see RLC rule 62.

" **§501-137 REPEALED.** L 1988, c 346, §15.

" **§501-138 Discharge or modification of liens to be recorded.** Attachments on mesne process and liens of every description upon registered land shall be continued, reduced, discharged, and dissolved by any method sufficient in law to continue, reduce, discharge, or dissolve like liens on unregistered land. All certificates or other instruments which are permitted or required by law to be recorded in the bureau of conveyances to give effect to the continuance, reduction, discharge, or dissolution of attachments or other liens upon unregistered lands, or to give notice of such continuance, reduction, discharge, or dissolution, shall in the case of like liens upon registered land be filed and registered with the assistant registrar. [L 1903, c 56, §73; RL 1925, §3262; RL 1935, §5071; RL 1945, §12671; RL 1955, §342-71; HRS §501-138]

Rules of Court

Discharge or modification of liens, see RLC rule 63.

Case Notes

Removing of encumbrance. 32 H. 680.

" **§501-139 Assistant registrar as official recorder.** All the provisions of law relating to attachments of real estate and leasehold estates on mesne process apply to registered land, except that the duties required to be performed by the registrar of conveyances shall be performed as the assistant registrar, who shall register the facts required to be recorded, and for that purpose shall keep books similar to those required to be kept for attachments as the registrar of conveyances, if any, and the fees for registering attachments shall be the same as are provided for recording. [L 1903, c 56, §74; RL 1925, §3263; RL 1935, §5072; RL 1945, §12672; RL 1955, §342-72; HRS §501-139; am L 2006, c 38, §14]

" **§501-140 Indorsement of and notices to plaintiff's attorney.** The name and address of the plaintiff's attorney shall in all cases be indorsed upon the writ, where an attachment is made. The attorney is deemed to be the attorney of the plaintiff until written notice that the attorney has ceased to be such is filed for registration by the plaintiff. [L 1903, c 56, §75; RL 1925, §3264; RL 1935, §5073; RL 1945, §12673; RL 1955, §342-73; HRS §501-140; gen ch 1985]

" **§501-141 Court orders to be recorded.** Whenever an attachment on mesne process is continued, reduced, dissolved, or otherwise affected by an order, decision, or judgment of the court in which the action or proceeding in which the attachment was made is pending, or by any order of a court of bankruptcy, a certificate of the entry of the order, decision, or judgment from the clerk or registrar and under the seal of the court, shall be entitled to be registered on presentation to the assistant registrar. A like certificate of the allowance by the court of an amendment which a subsequent attaching creditor or purchaser contends had the effect of dissolving an attachment, may be registered as an amendment allowed, but shall not be conclusive of dissolution, unless the court in which the action is pending adjudicates that the amendment dissolves the attachment, in which case a certificate of the order, as soon as it becomes absolute, shall be registered as a dissolution of the attachment. [L 1903, c 56, §76; RL 1925, §3265; RL 1935, §5074; RL 1945, §12674; RL 1955, §342-74; HRS §501-141; am L 1972, c 91, §1(y)]

" **§501-142 Mechanic's lien.** When a mechanic's lien or lien for labor and materials is claimed upon registered and

unregistered land, and the notice required by law is filed in the circuit court where the land is situated, an attested copy of the order directing the lien to attach which contains or has indorsed upon it a reference to the certificate of title of the land affected shall be filed or recorded with the assistant registrar and registered. [L 1903, c 56, §77; RL 1925, §3266; RL 1935, §5075; RL 1945, §12675; RL 1955, §342-75; HRS §501-142; am L 1986, c 246, §16]

Rules of Court

Mechanic's lien, see RLC rule 62(b).

" **§501-143 Enforcement of lien.** A lien of any description upon registered land shall be enforced in the same manner as like liens upon unregistered land. Whenever registered land is set off or sold on execution; or taken or sold for taxes or for any assessment; or sold to enforce a lien for labor or materials, or the lien of a mortgagee or cotenant arising from a payment of taxes, or for an assessment, or for any costs and charges incident to any liens, any execution, or copy of the execution, any officer's return, or any deed, demand, certificate, or affidavit or other instrument made in the course of proceedings to enforce the liens and required by law to be recorded in the bureau of conveyances in the case of unregistered land, shall be filed or recorded and registered with the assistant registrar and a memorandum made upon the proper certificate of title in each case as an adverse claim or encumbrance. [L 1903, c 56, §78; RL 1925, §3267; RL 1935, §5076; RL 1945, §12676; RL 1955, §342-76; HRS §501-143; am L 1986, c 246, §17]

" **§501-144 New certificate after enforcement of lien; tax sale.** After registered land has been sold on any execution, or taken or sold for the enforcement of any lien of any description, the person claiming under an execution or under any deed or other instrument made in the course of proceedings to levy the execution or enforce any lien, may petition the court for the entry of a new certificate to the person, and the application may be granted. Every new certificate entered under this section shall contain a memorandum of the nature of the proceeding on which it is based and, where a new certificate is entered in pursuance of any tax title, the certificate shall contain a memorandum that it is subject to the rights of redemption reserved by law, if any. At any time prior to the entry of a new certificate the registered owner may pursue all the registered owner's remedies to impeach or annul proceedings

under executions or to enforce liens of any description. [L 1903, c 56, §79; RL 1925, §3268; RL 1935, §5077; RL 1945, §12677; RL 1955, §342-77; HRS §501-144; am L 1972, c 91, §1(z); gen ch 1985]

Case Notes

Issuance of new certificate to reflect acquisition by condemnation may be compelled. 31 H. 781, aff'd 61 F.2d 896.

"PENDING ACTIONS; JUDGMENTS AND PARTITIONS; RECORDING

§501-151 Pending actions, judgments; recording of, notice.

No writ of entry, action for partition, or any action affecting the title to real property or the use and occupancy thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of the certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recording of the judgment. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter "judgment" includes an order or decree having the effect of a judgment.

Notice of the pendency of an action in a United States

District Court, as well as a court of the State of Hawaii, may be recorded.

Notice of opening a dispute resolution case as provided in section 667-79 may be recorded.

Foreclosure notice as provided in section 667-23 may be recorded.

The party seeking registration of a judgment shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment to be filed or recorded. [L 1903, c 56, §80; RL 1925, §3269; am L 1931, c 223, §1; RL 1935, §5078; RL 1945, §12678; RL 1955, §342-78; HRS §501-151; am L 1972, c 91, §1(aa); gen ch 1985; am L 1986, c 246, §18; am L 1990, c 203, §2; am L 1993, c 18, §4; am L 2008, c 86, §1; am L 2009, c 5, §2; am L 2011, c 48, §12; am L 2012, c 182, §6]

Note

The 2008 amendment shall not be applied to judgments, orders, or decrees existing and filed or recorded in the bureau of conveyances or land court as of July 1, 2008. L 2008, c 86, §5.

Rules of Court

Recording notice, see RLC rule 62(d).

Case Notes

Where plaintiff obtained and recorded its judgment after pendency of foreclosure action was filed with land court, plaintiff had constructive notice of the lawsuit and was bound by state court's orders. 876 F. Supp. 230.

Pursuant to this section, §501-152, and TSA International, the circuit court has jurisdiction to expunge a lis pendens originally recorded in the land court and thus did not err when it asserted jurisdiction over the case. 101 H. 81, 63 P.3d 389.

The circuit court properly granted defendant's motion to expunge the lis pendens where plaintiff's application for lis pendens did not seek to obtain title to or possession of the real property at issue, and thus was not valid. 101 H. 81, 63 P.3d 389.

Lis pendens and supplemental lis pendens invalid where plaintiffs' claims for relief did not fall within categories authorizing filing of lis pendens under this section. 85 H. 398 (App.), 944 P.2d 1341.

Whether a lis pendens is valid under this section is determined by the nature of the relief sought in the recording parties' pleading. 85 H. 398 (App.), 944 P.2d 1341.

Where plaintiffs filed a notice of pendency of action pursuant to this section and §634-51, magistrate judge's order, in applying Sports Shinko to the facts of the case to deny defendant's motion to expunge, was not clearly erroneous or contrary to law. 529 F. Supp. 2d 1206 (2007).

" **§501-152 Certificate of judgment for defendant.** At any time after final judgment in favor of the defendant, or other disposition of any case in which a memorandum has been registered as provided in section 501-151, a certificate of the clerk stating the manner of the disposal thereof shall be entitled to registration. [L 1903, c 56, §81; RL 1925, §3270; RL 1935, §5079; RL 1945, §12679; RL 1955, §342-79; HRS §501-152; am L 1972, c 91, §1(bb)]

Case Notes

Pursuant to this section, §501-151, and TSA International, the circuit court has jurisdiction to expunge a lis pendens originally recorded in the land court and thus did not err when it asserted jurisdiction over the case. 101 H. 81, 63 P.3d 389.

The circuit court properly granted defendant's motion to expunge the lis pendens where plaintiff's application for lis pendens did not seek to obtain title to or possession of the real property at issue, and thus was not valid. 101 H. 81, 63 P.3d 389.

" **§501-153 Certificate of judgment for plaintiff.** Whenever in any action affecting registered land, judgment is entered for the plaintiff, except in actions relating to terms of less than one year, the judgment is entitled to registration on presentation of a certificate of the entry thereof from the clerk of the court where the action is pending, to the assistant registrar, who shall enter a memorandum upon the certificate of title of the land to which the judgment relates. If the judgment does not apply to all the land described in the certificate of title the certificate of the clerk and the memorandum entered by the assistant registrar shall contain a description of the land affected by the judgment. [L 1903, c 56, §82; RL 1925, §3271; RL 1935, §5080; RL 1945, §12680; RL 1955, §342-80; HRS §501-153; am L 1972, c 91, §1(cc)]

" **§501-154 Writ of possession, service, time limit for registration.** *[Repeal and reenactment on June 30, 2020. L*

2015, c 101, §4.] When in any action in the nature of an action of ejectment an execution or writ of possession has been issued and served by the sheriff, deputy sheriff, police officer, or independent civil process server from the department of public safety's list under section 353C-10, the sheriff, deputy sheriff, police officer, or independent civil process server shall cause a copy of the writ, with a return of the doings of the sheriff, deputy sheriff, police officer, or independent civil process server thereon, to be filed and registered within three months after the service and before the return of the writ into the clerk's office. The plaintiff, in case the judgment was that the plaintiff was entitled to an estate in fee simple in the demanded premises, or in any part thereof, and for which execution or writ of possession issued, is thereupon entitled to the entry of a new certificate of title. [L 1903, c 56, §83; RL 1925, §3272; RL 1935, §5081; RL 1945, §12681; RL 1955, §342-81; HRS §501-154; am L 1972, c 91, §1(dd); gen ch 1985; am L 2013, c 116, §§2, 25(1)]

Case Notes

Ejectment as remedy for removal of unregistered sewer line. 35 H. 225, 230; 50 H. 189, 436 P.2d 207.

Necessity of describing the area unlawfully occupied, see 35 H. 225, 228.

" **§501-155 Judgment directing conveyance.** Any judgment of a court of competent jurisdiction, whether a federal court or a court of the State of Hawaii, affecting title or rights in registered land, may be recorded, whether the claim adjudicated was legal or equitable in nature. Every instrument necessary to give effect to the judgment and directed by the court to be executed, whether executed by a party or by some other person appointed by the court, shall be recorded and shall have full force and effect to bind the land to be affected thereby. A judgment entered in lieu of directing a conveyance, and having the effect of a conveyance, shall be recorded with like force and effect. [L 1903, c 56, §85; RL 1925, §3274; RL 1935, §5082; RL 1945, §12682; RL 1955, §342-82; HRS §501-155; am L 1972, c 91, §1(ee); gen ch 1985; am L 1988, c 346, §16; am L 1993, c 18, §5]

Rules of Court

As to giving effect to judgment, see HRCPC rule 70.

Case Notes

Referred to: 44 H. 235, 246, 353 P.2d 1007.

Hawaii Legal Reporter Citations

Lis pendens expunged. 78-2 HLR 78-1289.

Unconstitutional. 78-2 HLR 78-1289.

" **§501-156 Partition.** In an action for partition of registered land, after the entry of the final judgment of partition and the acceptance of the report of the commissioners, if any, a copy of the judgment and of the return of the commissioners, certified by the clerk or registrar, as the case may be, shall be filed or recorded and registered. Thereupon, in case the land is set off to the owners in severalty, any owner is entitled to have a certificate entered of the share set off to the owner in severalty. In case the land is ordered by the court to be sold, the purchaser or the purchaser's assigns are entitled to have a certificate of title entered on presenting the deed of the commissioners for registration; provided that any new certificate entered in pursuance of partition proceedings, whether by way of set off or of sale, shall contain a reference to the final judgment of partition, and shall be conclusive as to the title to the same extent and against the same persons as the judgment is made conclusive by the statutes applicable thereto. Any person holding such certificate of title or a transfer thereof may petition the court at any time to cancel the memorandum relating to the judgment and the court, after notice and hearing, may grant the application. The certificate thereafter is conclusive in the same manner and to the same extent as other certificates of title. [L 1903, c 56, §86; RL 1925, §3275; RL 1935, §5083; RL 1945, §12683; RL 1955, §342-83; HRS §501-156; am L 1972, c 91, §1(ff); gen ch 1985; am L 1986, c 246, §19; am L 1988, c 346, §17]

Rules of Court

New certificate of title, see RLC rule 59(p).

" **§501-157 Reregistration of mortgage or lease after partition.** When a certified copy of a judgment for partition and of the return of the commissioners, if any, is presented for registration, if a mortgage or lease affecting a specific portion or an undivided share of the premises has previously been registered, the tenant claiming under the mortgagor or lessor shall cause the mortgage or lease to be again presented

for registration. The assistant registrar shall indorse on each a memorandum of the partition, with a description of the land set off in severalty on which the mortgage or lease remains in force. [L 1903, c 56, §87; RL 1925, §3276; RL 1935, §5084; RL 1945, §12684; am L 1951, c 142, §5; RL 1955, §342-84; HRS §501-157; am L 1972, c 91, §1(gg)]

" **§501-158 Notice of bankruptcy proceedings.** Whenever a petition in bankruptcy which contains or has indorsed upon it a reference to the number of the certificate of title of the land affected is filed or recorded within the State by or against the owner of registered land, the assistant registrar of the land court shall note the fact by the entry of an appropriate memorandum on the owner's certificate in the registration book. Thereafter, except where the owner's interest in the land cannot be affected by the bankruptcy proceedings, no conveyance by the owner respecting the registered land shall be accepted for registration unless the conveyance recites that it is made subject to the rights of the trustee in bankruptcy. A trustee in bankruptcy is entitled to the entry of a new certificate for the registered land upon presenting and filing or recording a certified copy of either the petition in bankruptcy (the schedules may be omitted), or the decree of adjudication of bankruptcy, or the order approving the trustee's bond; provided that the instrument contains or has indorsed upon it a reference to the number of the certificate of title of the land affected. The new certificate shall state that it is entered to the trustee in bankruptcy. [L 1903, c 56, §88; RL 1925, §3277; RL 1935, §5085; RL 1945, §12685; am L 1949, c 313, §1; RL 1955, §342-85; HRS §501-158; gen ch 1985; am L 1986, c 246, §20; am L 1988, c 346, §18]

Rules of Court

Filing notice, see RLC rule 62(c).

New certificate of title, see RLC rule 59(h).

" **§501-159 Decree of discharge.** Whenever proceedings in bankruptcy against a registered owner of which notice has been registered, are vacated, or when the court of bankruptcy orders a reconveyance of land to a bankrupt debtor, a certified copy of the order or decree may be filed or recorded and registered. If a new certificate has been entered to the trustee in bankruptcy, as registered owner, the debtor is entitled to the entry of a new certificate. [L 1903, c 56, §89; RL 1925, §3278; RL 1935, §5086; RL 1945, §12686; RL 1955, §342-86; HRS §501-159; am L

1972, c 91, §1(hh); gen ch 1985; am L 1986, c 246, §21; am L 1988, c 346, §19]

Rules of Court

New certificate of title, see RLC rule 59(n).

"EMINENT DOMAIN; RECORDING

§501-166 Eminent domain; recording procedure. Whenever any land of a registered owner, or any right or interest therein, is taken by eminent domain, the State or body politic or corporate or other authority exercising the right shall file for registration with the assistant registrar a description of the registered land so taken, giving the name of each owner thereof, referring by number and place of registration in the registration book to each certificate of title, and stating what estate or interest in the land is taken, and for what purpose. A memorandum of the right or interest taken shall be made on each certificate of title by the assistant registrar, and where the fee simple is taken a new certificate shall be entered to the owner for the land remaining to the owner after the taking. In any case where the owner has a lien upon the land taken for the owner's damages, it shall be so stated in the memorandum of registration. All fees on account of any memorandum of registration or entry of new certificates shall be paid by the State or body politic or corporate or other authority taking the land. [L 1903, c 56, §90; RL 1925, §3279; RL 1935, §5087; RL 1945, §12687; RL 1955, §342-87; HRS §501-166; gen ch 1985]

Rules of Court

New certificate of title, see RLC rule 59(1).

Case Notes

Cited re state supreme court's relocation of seaward boundary of land. 402 F. Supp. 95.

Issuance of new certificate to reflect acquisition by condemnation may be compelled. 31 H. 781, aff'd 61 F.2d 896.

" **§501-167 New certificate upon reverter of land.** When for any reason, by operation of law, land which was taken for a public use reverts to the owner from whom it was taken or to the owner's heirs or assigns, the court, upon the petition of the person entitled to the benefit of reversion, after notice and hearing, may order the entry of a new certificate of title to

the person. [L 1903, c 56, §91; RL 1925, §3280; RL 1935, §5088; RL 1945, §12688; RL 1955, §342-88; HRS §501-167; gen ch 1985]

Rules of Court

New certificate of title, see RLC rule 59(m).

"DESCENT AND DEVISE

§501-171 Registration upon transfer by descent and devise.

(a) When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the person or persons entitled thereto shall file or record with the assistant registrar of the land court a correct statement of the full names of the devisees, the residence or post office address of each and their marital status and a reference to the number of the certificate of title of the land affected, a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an acknowledgment of authority, and either a certified copy of an order of the circuit court determining the persons entitled to distribution of the registered land and directing or approving distribution or a deed from the personal representative to the devisee or devisees, and thereupon the assistant registrar shall cancel the certificate issued to the testator, and, except as provided in part II, enter a new certificate to the devisee or devisees. When the owner of registered land or of any estate or interest therein dies, not having devised the same, the persons entitled thereto by law shall file or record with the assistant registrar a correct statement of the full names of the heirs, the residence or post office address of each, and their marital status, a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an acknowledgment of authority, and either a certified copy of an order of the circuit court in probate proceedings determining the persons entitled to distribution of the registered land and directing or approving distribution or a deed from the personal representative to the heir or heirs, and thereupon the assistant registrar shall cancel the certificate issued to the intestate, and, except as provided in part II, enter a new certificate to the heir or heirs entitled thereto.

(b) No voluntary instrument or deed of a personal representative, assignee for the benefit of creditors, sheriff, master, commissioner, or other officer purporting to transfer or create a lien or charge upon any estate or interest of any devisee or heir in registered land or to authorize the same to

be done, shall have any effect to accomplish that purpose until the title of the heir or devisee is registered as herein provided. An involuntary lien, charge, or lis pendens against the interest of a relict, heir, or devisee in the lands of a deceased registered owner, prior to the registration of the title of such relict, heir, or devisee, only can be obtained by filing or recording the proper papers with the assistant registrar as in other cases, and the assistant registrar making entry thereof as a memorial on the registered certificate of title of the deceased owner, giving the name and residence or post office address of the relict, heir, or devisee against whom the lien, charge, or lis pendens is to operate. [L 1903, c 56, §92; am L 1921, c 214, pt of §1; RL 1925, §3281; am L 1927, c 258, §9; RL 1935, §5089; am L 1939, c 108, §1; RL 1945, §12689; RL 1955, §342-89; HRS §501-171; am L 1972, c 91, §1(ii); am L 1976, c 200, pt of §1; am L 1977, c 144, §56; am L 1986, c 246, §22; am L 1987, c 283, §46; am L 1988, c 346, §20; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2000, c 178, §5; am L 2001, c 23, §2; am L 2009, c 120, §10]

Cross References

Determination of heirs and devisees, see §§560:3-409, 412, 1001.

Rules of Court

Liens, see RLC rule 62(g).

New certificate of title, see RLC rule 59(i),(j),(k).

Case Notes

Cited: 45 H. 521, 536, 371 P.2d 379.

" **§501-172 License to sell or mortgage, not affected.**
Nothing in this chapter shall in any way affect or impair the jurisdiction of a circuit court to license a guardian to sell, mortgage, or convey registered land for any purpose for which a license may be granted in the case of unregistered land. The purchaser or mortgagee taking a deed executed in pursuance of a license is entitled to a new certificate of title, or memorandum of registration, on presenting the purchaser's or mortgagee's deed to the assistant registrar. [L 1903, c 56, §93; RL 1925, §3282; RL 1935, §5090; RL 1945, §12690; RL 1955, §342-90; HRS §501-172; am L 1972, c 91, §1(jj); am L 1976, c 200, pt of §1; am L 1977, c 144, §57; gen ch 1985]

" **§501-173 Purchaser acquiring title through personal representative may have the same registered.** If any personal representative is authorized by the terms of any will to grant, bargain, sell, convey, mortgage, or otherwise deal with registered land, the personal representative may do so in the same manner as if the land were registered in the representative's name as personal representative. Before any instrument executed by the personal representative, pursuant to such authority, is filed or recorded with the assistant registrar of the land court, there shall be first filed or recorded with the assistant registrar a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an order granting the petition for authority, or a certified copy of an acknowledgment of authority, and either a certified copy of the order of the circuit court confirming the sale of the affected land or a certified copy of an affidavit filed in the circuit court of the personal representative made at the time of the deed, mortgage, lease, or other conveyance, attesting that the decedent's will does not require confirmation of the transaction and that no devisee or heir has demanded the confirmation. Any person who acquired title or any interest in registered land through or by virtue of the execution of the power vested in the personal representative may have the title or interest registered. [L 1921, c 214, §2; RL 1925, §3283; RL 1935, §5091; am L 1939, c 108, §2; RL 1945, §12691; am L 1955, c 134, §1; RL 1955, §342-91; HRS §501-173; am L 1972, c 91, §1(kk); am L 1976, c 200, pt of §1; am L 1977, c 144, §58; gen ch 1985; am L 1986, c 246, §23; am L 2000, c 178, §6; am L 2001, c 23, §3]

Rules of Court

Personal representative's deed, see RLC rule 59(k).

" **§501-174 Power of attorney; registration necessary.** Any person may by attorney procure land to be registered and convey or otherwise deal with registered land, but the letters of attorney shall be acknowledged and filed or recorded with the assistant registrar and registered. Any instrument revoking such letters shall be acknowledged and registered in like manner. [L 1903, c 56, §104; RL 1925, §3294; RL 1935, §5092; RL 1945, §12692; RL 1955, §342-92; HRS §501-174; am L 1986, c 246, §24]

Rules of Court

Power of attorney, see RLC rule 64.

Case Notes

Referred to: 50 H. 189, 436 P.2d 207.

"LOST DUPLICATE CERTIFICATES

§501-181 REPEALED. L 1988, c 346, §21.

"ADVERSE CLAIMS AFTER ORIGINAL REGISTRATION

§501-186 Registration of adverse claims; notice; hearing; costs. Whoever claims any right or interest in registered land adverse to the registered owner arising subsequent to the date of original registration may, if no other provision is made in this chapter for registering the same, make a statement in writing setting forth fully the alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed. The statements shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon the adverse claimant. This statement is entitled to registration as an adverse claim, and the court, upon the petition of any party in interest, may require an approved bond to be filed for the payment of double costs if so taxed, and shall grant a speedy hearing upon the question of the validity of the adverse claim, and shall enter such decree thereon as justice and equity may require. If the claim is adjudged to be invalid or the bond is not filed, the registration shall be canceled. If in any case the court, after notice and hearing, finds that the claim thus registered was frivolous or vexatious, it may tax the adverse claimant double costs. [L 1903, c 56, §106; RL 1925, §3296; RL 1935, §5094; RL 1945, §12694; RL 1955, §342-94; HRS §501-186; am L 2006, c 38, §15]

Cross References

Vexatious litigants, see chapter 634J.

Case Notes

Referred to: 44 H. 235, 246, 353 P.2d 1007.

Federal court, based on the language of §501-1, was without jurisdiction to rule on defendant's motion to expunge as it

related to plaintiffs' notice of adverse claim. 529 F. Supp. 2d 1206 (2007).

"COMPELLING SURRENDER OF DUPLICATE CERTIFICATE

§501-191 REPEALED. L 1988, c 346, §22.

"AMENDMENT AND ALTERATION OF CERTIFICATE OF TITLE

§501-196 Alterations upon registration book prohibited when; court hearings; limitations. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon, and the approval of the same by the registrar or an assistant registrar except by order of the court recorded with the assistant registrar, provided that the registrar or assistant registrar may correct any clerical error made by personnel of the registrar's or assistant registrar's office. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered as married that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution, or upon any other reasonable ground. The court shall have jurisdiction to hear and determine the petition after notice to all parties in interest and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper. This section shall not be construed to give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which impairs the title or other interest of a purchaser holding a certificate for value and in good faith, or the purchaser's heirs or assigns, without the purchaser's or their written consent.

Any petition filed under this section and all petitions and motions filed under this chapter after original registration shall be filed and entitled in the original case in which the decree of registration was entered. [L 1903, c 56, §108; RL 1925, §3298; RL 1935, §5096; RL 1945, §12696; RL 1955, §342-96;

HRS §501-196; gen ch 1985; am L 1988, c 346, §23; am L 2000, c 178, §7]

Rules of Court

Alteration, see RLC rule 65.

Case Notes

Power to cancel memorandum. 32 H. 680.

Notice of marital status may be given under this section. 35 H. 816, 825.

Land court's jurisdiction under section is in personam as to all interested parties properly served. 5 H. App. 304, 689 P.2d 204.

Respondent's filing came within the purview of this statute, respondent having filed its petition for one of the purposes listed under rule 65 of the rules of the land court, and pursuant to this statute, notice to all parties in interest was required to be given; proposed amendment of their certificates would make registered owners "parties in interest" entitled to notice under this statute. 79 H. 56 (App.), 897 P.2d 983.

"SERVICE OF NOTICE AFTER REGISTRATION

§501-201 Service of notice after registration; how made; effect. All notices required by or given in pursuance of this chapter by the registrar or any assistant registrar after original registration, shall be sent by mail to the person to be notified at the person's residence and post office address as stated in the certificate of title or in any registered instrument under which the person claims an interest.

All notices and citations directed by special order of the court under this chapter, after original registration, may be served in the manner above stated, and the certificate of the registrar or assistant registrar shall be conclusive proof of service. The court may in any case order different or further service by publication or otherwise. [L 1903, c 56, §109; RL 1925, §3299; RL 1935, §5097; RL 1945, §12697; RL 1955, §342-97; HRS §501-201; gen ch 1985]

Case Notes

Right to notice of application for subdivision order, raised but not decided. 37 H. 260.

"FEES AND ACTIONS FOR RECOVERY OF LOSS

§501-211 Fees required for protection against loss or damage. There shall be paid to the registrar upon the original registration of land under this chapter, under absolute or qualified ownership, one-tenth of one per cent of the assessed value of the land and improvements on the basis of the last assessment for taxation.

Where the land sought to be registered was not separately assessed at the time of the last assessment for taxation, the value of the same shall be as found by the court as of July 1 preceding the date on which the application was filed. The court may appoint one or more appraisers at such rates of pay as it deems just, the cost to be taxed against the applicant.

All moneys received by the registrar under this section shall be paid to the director of finance as a realization to the general fund. [L 1903, c 56, §94; am L 1913, c 21, §2; RL 1925, §3284; am L 1927, c 258, §10; am L 1932 2d, c 33, §1; am L 1933, c 25, §1; RL 1935, §5098; RL 1945, §12698; am L 1945, c 255, §2; RL 1955, §342-98; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §501-211; am L 1972, c 91, §1(11)]

" **§501-212 Actions for compensation for fraud, mistake, etc.** Any person who, without negligence on the person's part, sustains loss or damage, or is deprived of land or of any estate or interest therein, after the original registration of land under this chapter, by the registration of any other person as owner of such land, or of any estate or interest therein, through fraud, or in consequence of any error, omission, mistake, or misdescription in any certificate of title or in any entry of memorandum in the registration book, may prosecute a contract claim in the circuit court for the recovery of compensation for such loss or damage or for such land or estate, or interest therein; provided that when the person deprived of land or of any estate, or interest therein, in the manner above stated, has a remedy for the recovery of the land or of the estate, or interest therein, the person shall exhaust this remedy before resorting to the contract claim herein provided. Nothing in this chapter shall be construed to deprive the plaintiff of any tort claim which the plaintiff may have against any person for loss or damage, or deprivation of land, or of any estate or interest therein. If the plaintiff elects to pursue the plaintiff's tort claim and also the plaintiff's contract claim under this chapter, the contract claim shall be continued to await the result of the tort claim or shall be deemed alternative thereto. [L 1903, c 56, §96; RL 1925, §3286; am L 1932 2d, c 33, §2; RL 1935, §5099; RL 1945, §12699; RL 1955, §342-99; HRS §501-212; am L 1972, c 91, §1(mm); gen ch 1985]

Case Notes

Relocation of seaward boundary of land. 402 F. Supp. 95.
Infant, rights of after reaching majority. 41 H. 490,
remanded 256 F.2d 208, modified 42 H. 661, app. dismiss'd 267 F.2d
449.

Cited: 50 H. 201, note 6, 436 P.2d 752.

" **§501-213 Action, parties defendant.** If any contract claim is prosecuted to recover for loss or damage, or for deprivation of land, or of any estate or interest therein, arising wholly through fraud, negligence, omission, mistake, or misfeasance of the registrar, assistant registrar, or of any of the examiners of title, in the performance of executive or ministerial duties, or of any of the assistants or clerks, in the performance of their respective duties, then the action shall be brought against the state director of finance, as sole defendant. If any action is brought to recover for loss or damage, or deprivation of land, or of any estate or interest therein, arising wholly through any fraud, negligence, omission, mistake, or misfeasance of some person other than the officers and assistants above named, or arising jointly through the fraud, negligence, omission, mistake, or misfeasance of such other person and any such officers and assistants, then the action shall be brought against both the director and such other person as joint defendants. [L 1903, c 56, §97; RL 1925, §3287; RL 1935, §5100; RL 1945, §12700; RL 1955, §342-100; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §501-213; am L 1972, c 91, §1(nn)]

Cross References

Suits against State, see chapter 661.

Rules of Court

Parties, see Hawaii Rules of Civil Procedure, part IV.

" **§501-214 Judgments, how satisfied.** When there are defendants other than the director of finance, and where judgment is entered for the plaintiff against the director and against some or all of the other defendants, execution shall issue against the other defendants and be levied upon them. If the execution is returned unsatisfied in whole or in part, and the officer returning the same certifies that the amount due cannot be collected from the lands or goods of the other

defendants, the circuit court rendering the judgment shall direct the clerk to certify to the governor the amount due on the execution, and the governor shall draw the governor's warrant therefor upon the director, and the director shall pay the amount out of the general fund, without any further act making an appropriation therefor.

When in the action judgment for any reason cannot be entered against all or any of the other defendants, it may be entered against the director alone, or against the director and such of the other defendants as are found to be liable, and against whom judgment can lawfully be entered. Whenever judgment is entered against the director alone, whether in a case where the director is sole defendant or joint defendant with others, the circuit court before which the action is tried shall cause the clerk to transmit to the governor a certificate of the entry of judgment and of the amount due, and the director shall pay the same upon the warrant of the governor, as above provided. [L 1903, c 56, §98; RL 1925, §3288; am L 1932 2d, c 33, §3; RL 1935, §5101; RL 1945, §12701; RL 1955, §342-101; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §501-214; am L 1972, c 91, §1(oo); gen ch 1985]

Case Notes

Cited: 42 H. 661, 664, modifying 41 H. 490, app. disp'd 267 F.2d 449.

" **§501-215 Subrogation in favor of State.** In every case where payment has been made by the director of finance under warrant from the governor, the State shall be subrogated to all rights of the plaintiff against any other parties or securities, and the director shall enforce the same in behalf of the State. Any sums so recovered by the director shall be paid into the treasury of the State to the account of the general fund. [L 1903, c 56, §100; RL 1925, §3290; am L 1932 2d, c 33, §4; RL 1935, §5102; RL 1945, §12702; RL 1955, §342-102; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §501-215]

" **§501-216 State, not liable when.** The State shall not be liable to pay for any loss, damage, or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage. Nor shall any plaintiff prosecuting a contract claim under this chapter recover as compensation more than the fair market value of the real estate at the time when the plaintiff suffered the loss, damage, or deprivation thereof. [L 1903, c 56, §102; RL 1925,

§3292; am L 1932 2d, c 33, §5; RL 1935, §5103; RL 1945, §12703; RL 1955, §342-103; HRS §501-216; am L 1972, c 91, §1(pp); gen ch 1985]

" **§501-217 Limitation of actions.** All actions on contract claims for compensation under this chapter by reason of any loss or damage or deprivation of land, or any estate or interest therein, shall be begun within the period of six years from the time when the cause of action accrued, and not afterwards; provided that the plaintiff in an action for the recovery of the land or estate or interest therein in accordance with section 501-213, may bring the action on the contract claim within one year after the termination of that action. The contract claim herein provided shall survive to the personal representatives of the registered owner, unless barred in the registered owner's lifetime, but the proceeds thereof shall be treated as real estate. [L 1903, c 56, §103; RL 1925, §3293; RL 1935, §5104; RL 1945, §12704; RL 1955, §342-104; HRS §501-217; am L 1972, c 91, §1(qq); am L 2006, c 38, §16]

" **§501-218 Schedule of fees; authority to amend.** (a) The fees payable under this chapter are as follows:

- (1) For every application filed pursuant to this chapter, including indexing and recording the application, and transmitting to registrar, when filed with assistant registrar, \$3;
- (2) For every plan filed, \$1;
- (3) For examining title, \$10 and two-tenths of one per cent of the assessed value of the land and improvements on the basis of the last assessment for taxation, or the value of the land as determined under section 501-211 when the land was not separately assessed;
- (4) For verifying and checking map on the ground, for lots of one acre or less, \$25; an addition of \$1 an acre or fraction thereof for all area over one acre and up to one hundred acres; an addition of 50 cents an acre or fraction thereof for all area over one hundred acres and up to one thousand acres; an addition of 25 cents an acre or fraction thereof for all area over one thousand acres;
- (5) For checking survey and map as to form and mathematical correctness, but not on the ground, \$3 an hour;
- (6) For approving subdivision of registered land, and for checking the form and mathematical correctness, but not on the ground, \$3 an hour;

- (7) For all services by a sheriff or other police officer under this chapter, the same fees as are now provided by law for each service;
- (8) For each instrument affecting a title not reported in applicant's filed abstract of title, \$2;
- (9) For filing an amended application, \$1;
- (10) For each notice by publication, 25 cents;
- (11) For entering any general default, \$1;
- (12) For filing any answer, \$1, to be paid by the party filing the answer;
- (13) For every subpoena, \$1;
- (14) For swearing each witness, 10 cents;
- (15) For entering any discontinuance, \$1;
- (16) For filing notice of appeal, \$30;
- (17) For entry of order dismissing application, or decree of registration, and sending memorandum to assistant registrar, \$1;
- (18) For copy of decree of registration, \$1;
- (19) For filing any petition after original registration, \$1; an addition of 25 cents for each exhibit attached;
- (20) For filing any order after original registration, \$5;
- (21) In all cases not expressly provided for by law, the fees of all public officers for any official duty or service under this chapter shall be at a rate established by the court; and
- (22) For any application made by or in the name of the State, or any political subdivision of the State, any proceedings upon the application or any dealing with registered land by the State, or any political subdivision of the State, as owner, no fees shall be charged.

(b) For recordation of the document of which the United States, State of Hawaii, or any county of the State of Hawaii, is the grantee, no fees shall be charged.

(c) The supreme court, by rule of court, from time to time, may revise, amend, add to, or eliminate any fees payable under subsection (a), or prescribe additional fees as it deems reasonable, for services provided by the office of the registrar of the land court as may be required under this chapter.

(d) The department of land and natural resources, by rule adopted pursuant to chapter 91, from time to time, may revise, amend, add to, or eliminate any fees payable under subsection (a) for services provided by assistant registrars in the bureau of conveyances under this chapter.

(e) The department of accounting and general services, by rule adopted pursuant to chapter 91, from time to time, may revise, amend, add to, or eliminate any fees payable under

subsection (a) for services provided by the state land surveyor for checking and processing land court maps and other services as may be required under this chapter. [L 1903, c 56, §110; am L 1907, c 43, §5; am L 1915, c 61, §1; am L 1921, c 156, §§1, 2; RL 1925, §3300; am L 1927, c 258, §11; am L 1929, c 75, §1; am L 1933, c 21, §1; RL 1935, §5105; RL 1945, §12705; am L 1945, c 241, §2 and c 255, §3; am L 1949, c 394, §2; RL 1955, §342-105; am L 1957, c 316, §24; HRS §501-218; am L 1972, c 91, §1(rr), (ss); am L 1980, c 154, §1; am L 1985, c 147, §2; am L 1986, c 246, §25; am L 1988, c 346, §24; am L 1989, c 51, §3 and c 211, §10; am L 1990, c 281, §11; am L 1992, c 197, §5; am L 1993, c 141, §2; am L 2014, c 92, §2]

Cross References

Modification of fees, see §92-28.

Rules of Court

Fees, see RLC rules 70, 107; deposit of fees, see RLC rule 4.

Case Notes

Paragraph (9) relating to instruments affecting title and not reported, construed. 32 H. 813.

" **[§501-219] Sale of land court maps.** The department of accounting and general services may sell land court maps, for a reasonable fee as established by rules adopted under chapter 91. [L 1981, c 146, §1]

"PENALTY

§501-221 REPEALED. L 1988, c 346, §27.

"MISCELLANEOUS PROVISIONS

§501-231 Family child care homes; permitted use in residential areas. (a) Family child care homes shall be considered a residential use. Notwithstanding any other law to the contrary, every recorded restriction or prohibition entered into whether by way of covenant, condition upon use or occupancy, or upon transfer of title to residential real property, which directly or indirectly restricts or prohibits family child care homes on residential real property is void.

(b) This provision shall not apply to:

- (1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
- (2) Limited-equity housing cooperatives created pursuant to chapter 421H; or
- (3) Cooperative housing corporations created pursuant to chapter 421I.

(c) For the purposes of this section "family child care home" means a private residence, including an apartment, unit, or townhouse, as those terms are defined in section 502C-1, at which care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption at any given time. [L 1996, c 303, §3; am L 1999, c 242, §§5, 8(2); am L 2001, c 225, §3; am L 2005, c 20, §1]

" **[§501-232] Prohibition of transfer fees.** (a) A deed restriction or other covenant running with the land applicable to the transfer of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns to pay a fee in connection with a future transfer of the property to a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable.

(b) This section shall not apply to the following fees or charges required by a deed restriction or other covenant running with the land in connection with the transfer of real property:

- (1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the real property, for providing an estoppel letter or certificate, or for any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;
- (2) Any fee, charge, assessment, or fine payable to an association of apartment owners as defined in section 514A-3, an association as defined in section 514B-3, a cooperative housing corporation as described in section 421I-1, a limited-equity housing cooperative as defined in section 421H-1, or a planned community association as defined in section 607-14 and described in chapter 421J, pursuant to a declaration, covenant,

or law applicable to such association or corporation, including a fee or charge to change the association or corporation's records as to the owner of the real property or to provide an estoppel letter or certificate;

- (3) Any fee or charge payable to a lessor under a lease of real property, including a fee or charge payable to the lessor for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the lessor's records as to the holder of the lessee's interest in the lease;
- (4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;
- (5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:
 - (A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives;
 - (B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or
 - (C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller; provided that such fee, charge, shared appreciation interest, profit participation, or other consideration becomes payable, if ever, within ten years of the recording of the deed restriction or other covenant running with the land imposing the fee or charge on the real property;
- (6) Any fee or charge payable to a government entity;
- (7) Any fee, charge, assessment, or other amount payable pursuant to a deed restriction or other covenant running with the land, regardless of when filed or recorded, that was required by a litigation settlement

that was approved by a court of competent jurisdiction before [June 22, 2010]; or

- (8) Any reasonable fee payable to a qualified organization for:
 - (A) The qualified organization's management, stewardship, or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or
 - (B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

As used in this paragraph, "qualified real property interest", "qualified organization", and "conservation purpose" have the same meaning as in section 170(h)(2), (3), and (4), respectively, of the Internal Revenue Code.

- (c) Any:
 - (1) Deed restriction;
 - (2) Covenant running with the land; or
 - (3) Lien;

to the extent that it purports to secure the payment of a transfer fee prohibited by this section, and that is created or filed on or after [June 22, 2010], shall be void and shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the real property. This subsection shall not imply that any particular deed restriction, covenant running with the land, or lien that is created or filed prior to [June 22, 2010], is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to [June 22, 2010].

(e) For purposes of this section:

"Filed" means filed in the office of the assistant registrar of the land court.

"Recorded" means the same as defined in section 502-7. [L 2010, c 169, §§1, 5; am L 2013, c 42, §2]

Cross References

Bureau of conveyances; prohibition of transfer fees, see §502-112.

"LEASEHOLD TIME SHARE INTERESTS

§501-241 Leasehold time share interests. (a) Except as otherwise expressly provided in this part, the requirements of chapter 502 shall apply to a leasehold time share interest and the requirements of this chapter shall not apply to such leasehold time share interest.

(b) Without limiting the generality of subsection (a), the following instruments need not be registered pursuant to this chapter to be effective and shall be recorded in the bureau of conveyances pursuant to chapter 502:

- (1) An assignment or other instrument transferring a leasehold time share interest;
- (2) A mortgage or other instrument granting a lien on a leasehold time share interest;
- (3) An agreement of sale for the sale of a leasehold time share interest. Any such agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;
- (4) A lien or notice of lien pertaining to a leasehold time share interest in favor of a time share owners association, an association of owners under chapter 514A or 514B, or a similar homeowner's association;
- (5) A judgment, decree, order of court, attachment, writ, or other process against a leasehold time share interest;
- (6) A mechanic's or materialman's lien or other lien upon a leasehold time share interest;
- (7) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a leasehold time share interest and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to chapter 667 or otherwise;
- (8) A power of attorney given by the owner of a leasehold time share interest or the vendor or vendee under an agreement of sale for the sale of a leasehold time share interest, a mortgagee or other lienor having a mortgage or lien upon a leasehold time share interest, or another party holding a claim or encumbrance against or an interest in a leasehold time share interest; or
- (9) An instrument assigning, extending, continuing, dissolving, discharging, releasing in whole or in part, reducing, canceling, extinguishing, or otherwise

modifying or amending any of the foregoing instruments.

(c) Every conveyance, lien, attachment, order, decree, instrument, or entry affecting a leasehold time share interest which would, if registered, filed or recorded, or entered in the office of the assistant registrar pursuant to this chapter, affect the leasehold time share interest to which it relates, if recorded, filed, or entered in the bureau of conveyances pursuant to chapter 502, shall be notice to all persons from the time of such recording, filing, or entering in the bureau of conveyances.

(d) The assistant registrar shall not be required to make a memorandum or other note upon the certificate of title for registered land subject to a leasehold time share interest of any conveyance, lien, attachment, order, decree, instrument, or entry recorded, filed, or entered solely in the bureau of conveyances against the leasehold time share interest.

(e) Notwithstanding subsections (a), (b), and (c), the following instruments shall be registered by recording the instrument with the assistant registrar and by a brief memorandum thereof made by the assistant registrar upon the certificate of title, and signed by the assistant registrar:

- (1) The apartment or unit lease, and any amendments thereto, and any cancellation or extinguishment thereof;
- (2) Any deed or other instrument conveying the fee interest in registered land and any other instrument encumbering or otherwise dealing with the fee interest in registered land including but not limited to a mortgage of the fee interest, an assignment of the lessor's interest in a lease, or the designation, grant, conveyance, transfer, cancellation, relocation, realignment, or amendment of any easement encumbering the fee interest;
- (3) If the apartment or unit lease is a sublease, any assignment or other conveyance of the sublessor's estate or any other leasehold estate which is superior to the apartment or unit lease, and any other instrument mortgaging, encumbering, or otherwise dealing with the sublessor's estate or any other estate which is prior and superior to the leasehold time share interest;
- (4) Any other instrument assigning, modifying, canceling, or otherwise dealing with an interest in registered land which is:
 - (A) Less than an estate in fee simple; and
 - (B) Prior or superior to the lessee's interest in a

leasehold time share interest;

- (5) The declaration of condominium property regime or similar declaration by whatever name denominated, the bylaws of the association of owners under chapter 514A or 514B, the condominium map, any declaration of annexation or deannexation, any declaration of merger and any instrument effecting a merger, and any amendments to any of the foregoing and any cancellation or extinguishment thereof;
- (6) Any declaration of covenants, conditions, and restrictions, or similar instrument, by whatever name denominated, encumbering the fee, the bylaws of any homeowners association, any declaration of annexation or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof;
- (7) Any declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, establishing the time share plan, the bylaws of the time share owners association, any declaration of annexation or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof; and
- (8) Any notice of time share plan, any declaration of annexation or deannexation, any amendments thereto, and any cancellation or extinguishment thereof.

(f) The execution or joinder of the lessees of the leasehold time share interests shall not be required for the registration or notation of instruments which must be registered and noted pursuant to subsection (e); provided, however, an instrument amending, canceling, or extinguishing an apartment lease shall not be registered unless such instrument is:

- (1) Required to be registered by order of a court of competent jurisdiction;
- (2) Executed by officers of the time share owners association pursuant to any registered time share instrument or power of attorney which authorizes the time share owners association, its board, or its officers, to deal with issues arising under the apartment lease; or
- (3) Accompanied by an affidavit of an officer of any title insurer or underwritten title company, as defined in section 431:20-102, stating that based upon a search of the records of title to the apartment lease, the parties who executed and acknowledged the instrument amending, canceling, or extinguishing the apartment lease are the owners of the leasehold time share

interests in such apartment and/or their duly authorized attorney(s)-in-fact. In the event that the affidavit is incorrect and the title insurer or underwritten title company acted with gross negligence or in bad faith in making the affidavit, the title insurer or underwritten title company shall be liable to the owners of the leasehold time share interests for treble damages and reasonable attorneys' fees and costs.

This section shall not alter the rights of the parties to any such instrument. [L 1998, c 219, pt of §1; am L 2008, c 28, §30; am L 2012, c 182, §7]

Note

The 2008 amendment is retroactive to July 1, 2006. L 2008, c 28, §43.

" **[\$501-242] Status of leasehold time share interest as real property.** Nothing in this part shall affect the status of a leasehold time share interest as real property. [L 1998, c 219, pt of §1]

" **[\$501-243] Dual recording involving leasehold time share interests.** Nothing in this part shall prevent or prohibit the registration of an instrument which assigns or affects both:

- (1) One or more leasehold time share interests; and
- (2) One or more interests in registered land other than a leasehold time share interest. [L 1998, c 219, pt of §1]

" **[\$501-244] Assignment of leasehold time share interest.** Any instrument which first assigns or otherwise conveys a leasehold time share interest shall refer to the land court document number of the apartment lease or the most recent assignment of the whole thereof, whichever is later. Any subsequent instrument of assignment or conveyance shall refer to the book and page or bureau of conveyances document number of the prior instrument of assignment or conveyance for the leasehold time share interest acquired. [L 1998, c 219, pt of §1]

" **[\$501-245] Reference to recorded instruments pertaining to leasehold time share interests.** Any instrument assigning, conveying, or otherwise dealing with a leasehold time share interest and which requires a reference to a prior recorded instrument may satisfy the requirements of section 502-33 by

reference to the land court document number (in the case of a document recorded pursuant to chapter 501) or to the book and page or bureau of conveyances document number (in the case of a document recorded pursuant to chapter 502) of the instrument to which reference is made. [L 1998, c 219, pt of §1]

" **[§501-246] Legal incidents of a leasehold time share interest.** A leasehold time share interest, and ownership therein, shall in all respects be subject to the same burdens and incidents which attach by law to the lessee's interest in a leasehold apartment that is part of a condominium property regime established on unregistered land and which is not utilized in a time share plan.

Nothing in this part shall, in any way, be construed to relieve a leasehold time share interest or the owners thereof:

- (1) From any rights incident to the relation of husband and wife;
- (2) From liability to attachment or mesne process or levy on execution;
- (3) From liability to any lien of any description established by law on the leasehold time share interest, or in the interest of the owner in the leasehold time share interest;
- (4) To change the laws of descent;
- (5) The rights of partition between coparceners and other cotenants;
- (6) The right to take the same by eminent domain;
- (7) To relieve such leasehold time share interest from liability to be recovered by a trustee in bankruptcy under the provisions of law relating to preferences; or
- (8) To change or affect in any way any other rights or liabilities created by law and applicable to the lessee's interest in a leasehold apartment which is part of a condominium property regime established on unregistered land and which is not utilized in a time share plan; except as otherwise expressly provided in this part. [L 1998, c 219, pt of §1]

" **[§501-247] Voluntary dealing with a leasehold time share interest.** (a) Except as otherwise provided in this part, an owner of a leasehold time share interest may convey, mortgage, sublease, charge, or otherwise deal with the same as if the condominium to which it pertains was established on unregistered land. The owner may use forms of assignments, mortgages, or other voluntary instruments like those now in use and sufficient in law for the purpose intended.

(b) Notwithstanding subsection (a) and section 502-83, no assignment, mortgage, or other voluntary instrument (except a will, a lease for a term not exceeding one year, or an instrument required by this part to be registered in the land court and which is so registered) purporting to assign or affect a leasehold time share interest, shall take effect as a conveyance or bind the leasehold time share interest, but shall operate only as a contract between the parties, and as evidence of authority to the registrar or assistant registrar. The act of recordation pursuant to chapter 502 shall be the operative act to assign or affect the leasehold time share interest. [L 1998, c 219, pt of §1]

" **[§501-248] Jurisdiction for matters pertaining to leasehold time share interests.** The land court shall have jurisdiction over all matters relating to instruments required by this part to be registered pursuant to this chapter. Where any party is in doubt as to whether an instrument must be registered, the question shall be referred to the land court for decision; and the court, after notice to all parties and a hearing, shall enter an order determining the question. Except as expressly otherwise provided in this section, nothing in this part shall deprive the land court of exclusive jurisdiction pursuant to section 501-101 over registered land, or any interest therein, which is prior or superior to the interest of the lessee of a leasehold time share interest. The circuit court shall have jurisdiction, pursuant to section [603-21.5(a)(3)], over:

- (1) All matters relating to instruments required by this part to be recorded pursuant to chapter 502;
- (2) All other matters pertaining to a leasehold time share interest (except those in which jurisdiction is vested in the land court pursuant to this section); and
- (3) All matters as to which jurisdiction would otherwise lie in the land court in part and in the circuit court in part. [L 1998, c 219, pt of §1]

"PART II. DEREGISTRATION

Note

The \$5 recording fee for deregistered land transactions is repealed on adoption of administrative rules. L 2009, c 120, §§16, 21.

§501-261 Deregistration of fee time share interests. The certificate of title for each fee time share interest shall be

canceled effective as of the date and time of deregistration of the fee time share interest. Notwithstanding the provisions of section 501-261 in existence prior to July 1, 2012, a fee time share interest for which a certificate of title was not recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012, shall be deregistered on July 1, 2012, at 12:01 a.m.

- (1) From and after July 1, 2012, the assistant registrar may, and upon a written request to the assistant registrar by a party in interest with respect to a certificate of title, the assistant registrar shall:
 - (A) Note on the certificate of title for each fee time share interest all documents and instruments affecting the fee time share interest:
 - (i) That were or are registered as of a date and time prior to the date and time of deregistration of the fee time share interest; and
 - (ii) That were not yet noted on the certificate of title of the fee time share interest as of the earlier to occur of: the date and time of deregistration thereof; or the date and time of cancellation of the certificate of title; and
 - (B) Certify the certificate of title.
- (2) Section 501-196 shall apply to a certificate of title updated pursuant to paragraph (1) upon approval of the same by the assistant registrar, which approval shall be evidenced by a certification of the assistant registrar endorsed upon the certificate of title. A certificate of title for a fee time share interest, including but not limited to a certificate of title recorded prior to July 1, 2012, pursuant to part II of this chapter, shall not be considered completed or approved, and shall be subject to modification by the assistant registrar, at any time prior to certification thereof by the assistant registrar. Subsequent to the certification, the certificate of title for a fee time share interest may only be modified pursuant to section 501-196 or as otherwise provided in this chapter.
- (3) Upon certification of the certificate of title for a fee time share interest by the assistant registrar, the assistant registrar shall mark the certificate of title "canceled", note the cancellation of the certificate of title in the registration book, and notify the court and the state surveyor of the

cancellation. The registrar shall thereupon be authorized to file a record of the cancellation in the application or consolidation file, and the state surveyor shall then be authorized to annotate the land court map or maps by identifying thereon the deregistered land and noting thereon the bureau of conveyances document number of the canceled certificate. The assistant registrar may adopt procedures, if any, as it may deem appropriate to reflect the cancellation of the uncertified fee time share interest certificates of title and the state surveyor may annotate the land court map or maps by identifying thereon the deregistration of land covered by uncertified fee time share certificates of title. Regardless of the date upon which any such administrative acts are performed, the cancellation of the certificate of title for a fee time share interest shall be effective as of the date and time of deregistration of that fee time share interest.

- (4) If only part of the land described in the certificate of title consists of a fee time share interest, then upon the petition of the registered owner of that portion of the registered land not constituting a fee time share interest, a new certificate of title shall be issued to the owner for that portion of the registered land not constituting a fee time share interest. If registered land is held in the condominium form of ownership, then for purposes of this subsection each condominium apartment or condominium unit for which a separate certificate of title has been issued shall be treated as if it were a separate parcel of registered land.
- (5) Except as provided in paragraph (4), no order of court shall be required prior to or in connection with the performance of any of the foregoing actions or to reflect or effect the cancellation of the certificate of title for a fee time share interest or otherwise to reflect or effect the withdrawal of the fee time share interest from the operation of this chapter. [L 2009, c 120, pt of §2, §21; am L 2012, c 121, §4; am L 2013, c 119, §§6, 11; am L 2014, c 47, §2; am L 2016, c 215, §3]

" **[§501-261.5] Deregistration of registered land other than fee time share interests.** The registered owner of the fee interest in registered land may submit a written request to the assistant registrar to deregister the land under this chapter.

- (1) Any written request for deregistration shall include proof of title insurance in the amount of the value of the land to be deregistered and a written waiver of all claims against the State relating to the title to the land arising after the date of deregistration.
- (2) Upon presentation to the assistant registrar of a written request for deregistration by the registered owner of the fee interest in registered land, the assistant registrar shall not register the same, but shall:
 - (A) Record in the bureau of conveyances, pursuant to chapter 502, the current certificate of title for the fee interest in the registered land; provided that prior thereto, the assistant registrar shall note on the certificate of title all documents and instruments that have been accepted for registration and that have not yet been noted on the certificate of title for the registered land;
 - (B) Record in the bureau of conveyances, pursuant to chapter 502, the written request for deregistration presented to the assistant registrar for filing or recording. The request shall be recorded immediately after the certificate or certificates of title; and
 - (C) Cancel the certificate of title.
- (3) The registrar or assistant registrar shall note the recordation and cancellation of the certificate of title in the registration book and in the records of the application for registration of the land that is the subject of the certificate of title. The notation shall state the bureau of conveyances document number for the certificate of title so recorded, the certificate of title number, and the land court application number, map number, and lot number for the land that is the subject of the certificate of title so recorded.
- (4) No order of court shall be required prior to or in connection with the performance of any of the foregoing actions. [L 2013, c 119, §§2, 13; am L 2014, c 47, §3; am L 2016, c 39, §2]

" **§501-262 Effect of deregistration.** (a) From and after the date and time of deregistration of registered land:

- (1) The deregistered land shall no longer be registered land for purposes of this chapter;
- (2) No instruments, documents, or papers relating solely to deregistered land shall be filed or recorded with

the assistant registrar pursuant to this chapter, but shall instead be recorded in the bureau of conveyances pursuant to chapter 502; and

- (3) Except as otherwise expressly provided in this chapter, chapter 502 shall apply to the deregistered land.

(b) Neither voluntary deregistration of land other than a fee time share interest nor the mandatory deregistration of any fee time share interest pursuant to part II of this chapter, whether by recordation of a certificate of title in the bureau of conveyances prior to July 1, 2012, or by operation of law thereafter, shall disturb the effect of any proceedings in the land court where the question of title has been determined. All proceedings had in connection with the registration of title that relate to the settlement or determination of title to deregistered land before the date and time of deregistration, and all provisions of this chapter that relate to the status of the title, shall have continuing force and effect with respect to the period of time that title remained under the land court system. An uncertified fee time share interest certificate of title shall have the same force and effect as a certified fee time share interest certificate of title; provided that the assistant registrar shall have the right to correct and complete the uncertified fee time share interest certificate of title prior to certification thereof; provided further that upon certification thereof, section 501-261(2) shall apply. Those provisions giving rise to a right of action for compensation from the State, including any limits on and conditions to the recovery of compensation and the State's rights of subrogation with respect thereto, shall also continue in force and effect with respect to the period of time that title remained under the land court system. [L 2009, c 120, pt of §2, §21; am L 2012, c 121, §5; am L 2013, c 119, §§7, 11; am L 2016, c 215, §4]

" **§501-263 Effect of deregistration in specific cases.**

Notwithstanding section 501-262(a)(3), the following documents, instruments, and papers need not be registered pursuant to this chapter to be effective and shall be recorded in the bureau of conveyances pursuant to chapter 502:

- (1) Any document, instrument, or paper assigning, extending, continuing, dissolving, discharging, releasing in whole or in part, reducing, canceling, extinguishing, or otherwise modifying or amending any of the following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:
 - (A) A mortgage;

- (B) An agreement of sale for the sale of a fee time share interest or interest in other deregistered land. After the date and time of deregistration of a fee time share interest or interest in other deregistered land, the interest in any deregistered land covered by the agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;
- (C) A correction deed, correction mortgage, or other document, instrument, or paper correcting a document, instrument, or paper registered pursuant to this chapter;
- (D) A lien or claim of lien on a fee time share interest held or claimed by a time share owners association, an association of apartment owners, or other homeowners' association or a lien or claim on an interest in other deregistered land held by a lienor or person claiming a lien;
- (E) A lease that demises a fee time share interest or interest in other deregistered land;
- (F) An order of court, attachment, writ, or other process against a fee time share interest or interest in other deregistered land;
- (G) A mechanic's or materialman's lien or other lien upon a fee time share interest or interest in other deregistered land;
- (H) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to chapter 667 or otherwise; or
- (I) A power of attorney given by the owner of a fee time share interest or interest in other deregistered land or the vendor or vendee under an agreement of sale for the sale of a fee time share interest or interest in other deregistered land, a mortgagee or other lienor having a mortgage or lien upon a fee time share interest or interest in other deregistered land, or another party holding a claim or encumbrance against or an interest in a fee time share interest or interest in other deregistered land;

- (2) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to chapter 667 or otherwise; and
- (3) Any declaration annexing property to, any declaration deannexing property from, any amendment or supplement to, correction of, or release or termination of, any of the following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:
 - (A) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, establishing or governing a time share plan, or the bylaws of a time share owners association, notice of time share plan, or other time share instrument;
 - (B) A declaration of condominium property regime or similar declaration by whatever name denominated, the bylaws of the association of apartment owners, the condominium map, any declaration of merger and any instrument effecting a merger; provided that if only some of the condominium apartments are included in the time share plan, then it shall be necessary to register, and to note on the certificate of title for any apartment not included in the time share plan:
 - (i) Any declaration annexing property to the condominium property regime;
 - (ii) Any declaration deannexing property from the condominium property regime;
 - (iii) Any instrument effecting a merger of two or more condominium projects or two or more phases of a condominium project; and
 - (iv) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in clauses (i) to (iii), the declaration of condominium property regime, the bylaws of the association of apartment owners, the condominium map, or any declaration of merger; and

- (C) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, the bylaws of any homeowners association, any declaration of annexation or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof, any declaration of merger and any instrument effecting a merger; provided that if only some of the parcels of land covered by the declaration constitutes deregistered land, and if one or more of the remaining parcels constitute registered land, then it shall be necessary to register, and to note on the certificate of title for any registered land:
- (i) Any declaration annexing property to the declaration;
 - (ii) Any declaration deannexing property from the operation of the declaration; and
 - (iii) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in clause (i) or (ii), the declaration of covenants, conditions, restrictions, or the bylaws of the homeowners association. [L 2009, c 120, pt of §2, §21; am L 2012, c 182, §8; am L 2013, c 119, §11; am L 2016, c 215, §5]

"§501-264 Chain of title of deregistered land. (a) The chain of record title in the registered owner of any estate or interest in deregistered land shall, as of the date and time of deregistration, be subject only to the following and to the items described in subsection (d):

- (1) In the case of land other than a fee time share interest, the estates, mortgages, liens, charges, instruments, documents, and papers noted on the certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter;
- (2) In the case of a fee time share interest covered by a certified fee time share interest certificate of title, the estates, mortgages, liens, charges, instruments, documents, and papers noted on the certified fee time share interest certificate of title; and
- (3) In the case of a fee time share interest covered by an uncertified fee time share interest certificate of

title, the estates, mortgages, liens, charges, instruments, documents, and papers noted or deemed to be noted on the uncertified fee time share interest certificate of title, as set forth in subsection (b).

(b) The following shall, for purposes of part II of this chapter, be deemed to be noted on the uncertified fee time share interest certificate of title for a given fee time share interest:

- (1) The estates, mortgages, liens, charges, instruments, documents, and papers noted in the last certificate of title certified by the assistant registrar for the registered land of that fee time share interest; and
- (2) The estates, mortgages, liens, charges, instruments, documents, and papers registered with respect to the registered land of that fee time share interest, which registration occurred:
 - (A) After the date of certification of the last certified certificate of title for the registered land of the fee time share interest; and
 - (B) Prior to the earlier to occur of: the date and time of cancellation of the fee time share interest certificate of title; or July 1, 2012, including but not limited to any estates, liens, charges, covenants, conditions, easements, restrictions, agreements, reservations, limitations, interests, or other continuing provisions contained or reserved in the deed conveying the fee time share interest to the registered owner, whether or not identified in the uncertified fee time share interest certificate of title.

(c) Nothing in subsection (b) is intended to alter the effect of any instruments, documents, or papers identified in subsection (b)(2) on the items noted in the certificate of title described in subsection (b)(1).

(d) As of the date and time of deregistration, the chain of title for deregistered land shall be subject only to the items described in subsection (a) and, in the case of a fee time share interest covered by an uncertified fee time share interest certificate of title, in subsection (b), and to the following:

- (1) The estates, mortgages, liens, charges, instruments, documents, and papers:
 - (A) Noted on the certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, in the case of land other than a fee time share interest;

- (B) Noted on the certified fee time share interest certificate of title, in the case of a fee time share interest for which the assistant registrar issued a certified fee time share interest certificate of title; or
 - (C) Noted or deemed to be noted on the uncertified fee time share interest certificate of title, in the case of all other fee time share interests;
- (2) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting the liens, shall be deemed to fall within this paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505;
 - (3) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title for the deregistered land, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by county real property tax ordinance, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale;
 - (4) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33;
 - (5) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of the way has been determined;
 - (6) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed;
 - (7) Any liability to assessments for betterments, or statutory liability that may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any liability and the lien therefor (other than for labor and material furnished in the improvement of the land,

which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of the assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is recorded in the bureau of conveyances pursuant to chapter 502 within the three-year period; and provided further that if there are easements or other rights, appurtenant to a parcel of deregistered land, which for any reason have failed to be deregistered, the easements or rights shall remain so appurtenant notwithstanding the failure, and shall be held to pass with the deregistered land until cut off or extinguished in any lawful manner;

- (8) The possibility of reversal or vacation of the decree of registration upon appeal;
- (9) Any encumbrance not required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest or leasehold interest in deregistered land; and
- (10) Child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapter 576D.

(e) For purposes of this section, an encumbrance shall be deemed sufficiently noted on a certificate of title if the notation:

- (1) References a document by name or number that contains an encumbrance; and
- (2) Indicates that the referenced document contains an encumbrance to which the deregistered land is subject.

(f) All instruments, documents, and papers: noted on a certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter (in the case of land other than a fee time share interest); noted on a certified fee time share interest certificate of title; or noted or deemed to be noted on an uncertified fee time share interest certificate [of] title, shall have the same force and effect as if they had been recorded in the bureau of conveyances pursuant to chapter 502 as of the date, hour, and minute of reception noted on the certificate of title pursuant to section 501-107 or otherwise entered or required to be entered in the record of the assistant registrar pursuant to section 501-107; provided that:

- (1) No instrument, document, or paper shall have any greater or other effect after the certificate of title

is recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, as constructive notice or otherwise, than it had or acquired at the time it was registered pursuant to this chapter or made; and

(2) Nothing in this part shall be construed as giving any greater or other effect, as constructive notice or otherwise, to any instrument, document, or paper recorded in the bureau of conveyances pursuant to chapter 502 prior to the date and time of deregistration of any registered land, than was provided by the laws of this State (including this chapter and other laws regarding registered land) in effect at the time the instrument, document, or paper was recorded.

(g) If a certificate of title for:

(1) Land other than a fee time share interest recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter;

(2) A fee time share interest certified by the assistant registrar; or

(3) A fee time share interest that has not been certified by the assistant registrar,

relates to more than one fee time share interest or more than one interest in other deregistered land, then subsections (a) to (d) shall apply to each interest separately and only those items described in subsections (a) to (d) that encumbered a particular interest as of the date and time of deregistration of that interest will continue to encumber that interest after the date and time of deregistration. [L 2009, c 120, pt of §2, §21; am L 2012, c 121, §6; am L 2013, c 119, §§8, 11; am L 2016, c 215, §6]

" **[\$501-265] Status of fee time share interest and other interest in deregistered land as real property.** Nothing in this part shall affect the status of a fee time share interest or other interest in deregistered land as real property. [L 2009, c 120, pt of §2, §21; am L 2013, c 119, §11]

" **[\$501-266] Dual recording involving deregistered land.** Nothing in this part shall prevent or prohibit the registration of an instrument that conveys, assigns, or affects both registered land and deregistered land. [L 2009, c 120, pt of §2, §21; am L 2013, c 119, §11]

" **[\$501-267] Reference to prior recorded instrument.** Any instrument conveying or otherwise dealing with deregistered land

and which requires a reference to a prior recorded instrument may satisfy the requirements of section 502-33 by reference to the land court document number (in the case of a document recorded pursuant to chapter 501) or to the book and page or bureau of conveyances document number (in the case of a document recorded pursuant to chapter 502) of the instrument to which reference is made. [L 2009, c 120, pt of §2, §21; am L 2013, c 119, §11]

" **[\$501-268] Legal incidents of deregistered land.** Nothing in this part shall in any way be construed to relieve deregistered land or the owners of deregistered land from:

- (1) Any rights incident to the relation of husband and wife;
- (2) Liability to attachment or mesne process or levy on execution;
- (3) Liability to any lien of any description established by law on the deregistered land, or in the interest of the owner in the deregistered land;
- (4) The right to change the laws of descent;
- (5) The rights of partition between coparceners and other cotenants;
- (6) The right to take the same by eminent domain;
- (7) Liability to be recovered by a trustee in bankruptcy under the provisions of law relating to preferences;
- (8) Any other rights or liabilities created by law and applicable to the owner of a condominium apartment that is part of a condominium property regime established on registered land and which is not used in a time share plan, except as otherwise expressly provided in this part; or
- (9) Any other rights or liabilities created by law and applicable to the deregistered land, except as otherwise expressly provided [in] this part. [L 2009, c 120, pt of §2, §21; am L 2013, c 119, §11]

" **[\$501-269] Jurisdiction for matters pertaining to deregistered land.** The land court shall have jurisdiction over all matters relating to instruments required by this part to be registered pursuant to this chapter. Where any party is in doubt as to whether an instrument must be registered, the question shall be referred to the land court for decision; and the court, after notice to all parties and a hearing, shall enter an order determining the question. Notice to the owner of a fee time share interest shall be given by mailing notice to the association of time share owners required to be established pursuant to section 514E-29, and the association shall represent

the owners in any matters and proceedings, without prejudice to the right of any individual owner to appear and be heard as a separate party. Except as expressly provided in this section, nothing in this part shall deprive the land court of exclusive jurisdiction pursuant to section 501-1 over registered land, or any interest therein, other than registered land that becomes deregistered land. The circuit court shall have jurisdiction, pursuant to section 603-21.5(a)(3), over:

- (1) All matters relating to instruments required by this part to be recorded pursuant to chapter 502;
- (2) All other matters pertaining to deregistered land (except those in which jurisdiction is vested in the land court pursuant to this section); and
- (3) All matters as to which jurisdiction would otherwise lie in the land court in part and in the circuit court in part. [L 2009, c 120, pt of §2, §21; am L 2013, c 119, §11]