

**"CHAPTER 502
BUREAU OF CONVEYANCES; RECORDING**

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Note

For new part headings not included above, see text of chapter in this Supplement.

Cross References

Nonconsensual common law liens, see chapter 507D.

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.

"PART I. REGISTRAR, DEPUTY

Note

Sections 502-1 to 502-4 designated as Part I and part heading amended by L 2009, c 102, §2(2).

§502-1 Registrar; appointment; tenure; salary. There shall be a bureau in the department of land and natural resources to be called the bureau of conveyances. A registrar of conveyances shall be appointed by the board of land and natural resources, under chapter 76, and shall be superintendent of the bureau. The registrar shall receive such salary as shall be provided by law. [CC 1859, §1249; RL 1925, §3124; am L 1931, c 63, §1; RL 1935, §5110; RL 1945, §12710; am L 1951, c 47, §1; RL 1955, §343-1; am L 1963, c 107, §1(a), (b); HRS §502-1; gen ch 1985; am L 2000, c 253, §150]

Cross References

Conveyance tax, see chapter 247.

" **§502-2 REPEALED.** L 2006, c 48, §9.

" **§502-3 Deputy registrar, appointment, duties.** The registrar, under the direction of the board of land and natural resources, shall appoint a deputy, for whose official acts the registrar shall be responsible, and whose appointment the registrar shall announce by public notice. The deputy shall act as registrar of conveyances, during the absence of the registrar, or in case of a vacancy in that office. [CC 1859, §1252; am L 1903, c 5, §1; RL 1925, §3126; RL 1935, §5112; RL

1945, §12712; am L 1951, c 47, §2; RL 1955, §343-3; am L 1963, c 107, §1(b); HRS §502-3; gen ch 1985; am L 1998, c 2, §103]

" **[§502-4] Rules.** The department of land and natural resources may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. [L 1993, c 141, §1]

"PART II. GENERAL PROVISIONS

Note

Sections 502-7 and 502-8 designated as Part II and part heading amended by L 2009, c 102, §2(3).

§502-7 Definitions. As used in this chapter, unless the context otherwise requires:

"Grantee" means a party that acquires interest by way of transfer of real property.

"Record", "recorded", or "recording" means the act of entering into the public records the written instruments affecting title to real property.

"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. [L 1995, c 22, §2; am L 2009, c 120, §11]

" **§502-8 Bureau of conveyances special fund.** (a) There is established in the state treasury the bureau of conveyances special fund, into which shall be deposited the revenues remitted pursuant to sections 501-23.5 and 502-25, interest earnings, grants, donations, and appropriations from the legislature that shall be held separate and apart from all other moneys, funds, and accounts in the state treasury.

(b) Moneys in the bureau of conveyances special fund shall be used by the bureau of conveyances for the following purposes:

- (1) Planning, design, construction, and acquisition of equipment, furnishings, and software necessary for the development of the recording system described in this chapter and chapter 501;
- (2) Operating, maintaining, and improving the recording system described in this chapter and chapter 501 or any other purpose deemed necessary by the bureau of conveyances for the purpose of planning, improving, developing, operating, and maintaining the recording system described in this chapter and chapter 501;
- (3) Permanent and temporary staff positions for the purposes of this chapter and chapter 501; and

(4) Administrative costs for the purposes of this chapter and chapter 501.

(c) All moneys in excess of \$500,000 remaining on balance in the bureau of conveyances special fund on June 30 of each year shall lapse to the credit of the state general fund; provided that any balance of funds collected pursuant to section 16 of Act 120, Session Laws of Hawaii 2009, shall not lapse to the credit of the state general fund. On July 1 of each year, the director of finance is authorized to transfer any excess funds in the bureau of conveyances special fund to the state general fund. [L 1999, c 125, §2; am L 2003, c 178, §58; am L 2009, c 120, §12]

"PART III. INDEXING OF RECORDS

Note

Sections 502-11 to 502-27 designated as Part III and part heading amended by L 2009, c 102, §2(4).

§502-11 Entry record. The registrar shall make and keep in such form and manner as is prescribed by the board of land and natural resources a permanent record of the receipt of every deed and instrument left for record, every copy left as a caution, and every plan filed, and shall note on the record, in addition to a description sufficient to identify the document and the date and time of its receipt, such other facts as are prescribed by the board of land and natural resources. Every such document shall be considered as recorded at the time so noted. [L 1905, c 4, §1; RL 1925, §3127; RL 1935, §5113; RL 1945, §12713; RL 1955, §343-4; am L 1963, c 107, §2; HRS §502-11]

" **§502-12 Indexes.** The registrar shall keep indexes for public inspection in such form and manner as is prescribed by the board of land and natural resources. [L 1905, c 4, §3; RL 1925, §3129; RL 1935, §5115; RL 1945, §12715; RL 1955, §343-6; am L 1966, c 26, §2; HRS §502-12; am L 1980, c 39, §1; am L 1992, c 197, §6]

" **§502-13 Names of parties indexed.** The registrar shall, within a reasonable time, cause the name of each and every grantor, grantee, or other party thereto to be entered at length and alphabetically in its appropriate index. [L 1905, c 4, §4; RL 1925, §3130; RL 1935, §5116; RL 1945, §12716; RL 1955, §343-7; HRS §502-13; gen ch 1993]

" **§502-14 Entries where one transfers another's real estate; in partition cases.** When an instrument, by which one person by authority of law transfers or conveys the real estate of another person, is left for record, the registrar shall enter in the registrar's entry book and grantor index both the name of the person making the transfer and conveyance and that of the person whose estate has been so transferred or conveyed, if the latter name appears in the instrument.

When a return of a commissioner appointed to make partition of real estate is left for record, the registrar shall enter in the entry book, and in both the grantor and grantee indexes, the names of all persons whose estates plainly appear to be affected by the return. [L 1905, c 4, §5; RL 1925, §3131; RL 1935, §5117; RL 1945, §12717; RL 1955, §343-8; HRS §502-14; gen ch 1985]

" **§502-15 Annual indexes.** The registrar shall within the first six months of each year, or within such further time during the year as the registrar may think proper, cause to be made by competent persons, copies of the indexes to the instruments recorded in the bureau of conveyances during the preceding year, in which copies the grantors and grantees shall be classified by their respective surnames in alphabetical order, and arranged under such surnames in the order in which the deeds and other conveyances to which they refer were left for record. The registrar may also cause the Christian or given names of grantors and grantees, as well as their surnames to be arranged in alphabetical order in such lists.

The registrar shall cause to be made a reclassification and consolidation of the yearly indexes as the convenience of the registrar may permit. The registrar may also cause copies of the indexes or new indexes to the records existing in the registrar's office to be made by some competent person as conditions may require. [L 1905, c 4, §6; RL 1925, §3132; RL 1935, §5118; RL 1945, §12718; am L 1955, c 135, §1; RL 1955, §343-9; am imp L 1967, c 6, §1; HRS §502-15; gen ch 1985]

" **§502-16 Decennial indexes.** The registrar shall cause a reclassification and consolidation of the yearly indexes to be made at least once in every ten years as the convenience of the registrar may permit, in the same manner as set forth in section 502-15. The registrar may cause copies of the indexes or new indexes to the records existing in the registrar's office, to be made by some competent person in the same manner as set forth in section 502-15. [L 1905, c 4, §7; RL 1925, §3133; RL 1935, §5119; RL 1945, §12719; am L 1955, c 135, §2; RL 1955, §343-10; HRS §502-16; gen ch 1985; am L 2006, c 38, §17]

" **§502-17 Filing of; data on plans; monuments; metes and bounds descriptions.** (a) The registrar shall accept and file in the registrar's office, upon the payment of the fee as provided in section 502-25, any plan of land prepared in the manner prescribed by this section. Every such plan shall contain a short name of the tract; the name of the ahupuaa or ili, district, and island; such data concerning the original title of the land as may be known, together with the name of the last owner of record and the owner's address; the signature of the surveyor and the surveyor's address; the signature of the maker and the maker's address; date of survey, scale, the meridian line, area, the true azimuths and lengths of principal lines; and the names of all known adjoining owners. One or more durable monuments shall be placed on the land which shall connect with the government triangulation system and which monuments shall be placed as indicated on the plan. Whenever the land platted is made up of more than one original title, it shall be necessary to show all original title lines in broken lines as follows:

.....

(b) The plan shall first be referred to the department of accounting and general services of the State which shall cause the same to be checked as to form and mathematical correctness but not on the ground. If the plan is drawn in accordance with this section and sections 502-18 and 502-19, the department shall indorse its approval of the plan on the face thereof, after which the plan may be filed of record. The department shall withhold approval of any plan until satisfied that the surveyor and maker of the plan is a registered professional surveyor.

(c) Plans for the subdivision of land situated in any county shall, before approval by the department, be subject to approval by the appropriate officer, agency, or agencies in like manner as subdivisions under applicable laws.

(d) On receipt for recordation of a transfer or separate description document concerning a lot in a subdivision, the registrar shall accept and file the document with:

- (1) A metes and bounds description, either solely or as part of the document;
- (2) A county certified plat map; and
- (3) A letter from a registered professional surveyor, certifying that the metes and bounds description conforms to the accompanying plat map.

The document shall otherwise comply with the requirements for recordation under this section. Any parcel created or subdivided prior to the effective date of the subdivision laws

of the respective counties are exempt from the provisions of this subsection.

(e) For checking the survey and plan as to form and mathematical correctness, the department shall charge \$2 an hour and shall require the owner of the land to deposit the estimated cost thereof before making such check.

(f) All fees collected under this section, except as provided under sections 501-23.5 and 502-25 for the bureau of conveyances special fund, shall be deposited in the state treasury to the credit of the general fund. [L 1905, c 23, §1; am L 1913, c 82, §1; am L 1915, c 68, §1; RL 1925, §3134; am L 1931, c 63, §2; am L 1932 2d, c 31, §1; am L 1933, c 24, §1; RL 1935, §5120; am L 1939, c 242, pt of §11; RL 1945, §12720; am L 1949, c 222, §14; am L 1951, c 271, §4; RL 1955, §343-11; am L 1957, c 316, §25; am L Sp 1959 2d, c 1, §12; am L 1963, c 123, §1; HRS §502-17; gen ch 1985; am L 1987, c 303, §1; am L 1988, c 141, §56; am L 2001, c 130, §2]

Cross References

Functions of surveyor undertaken by the department of accounting and general services, see §26-6.

Modification of fees, see §92-28.

" **§502-18 Description; lot subdivisions.** A metes and bounds description of the exterior boundaries of the parcel or parcels of land sought to be registered as a file plan shall be written upon the plan, or printed or typewritten on unruled good quality white paper 13 inches long by 8 1/2 inches wide, shall be filed in duplicate with the file plan, and shall be dated and signed by the surveyor making the field survey, or under whose supervision the field survey was executed. The boundaries of the land platted shall be described as running from left to right (clockwise) and the azimuth system shall be used in designating the courses of the survey with zero or 360 degrees at due South; 90 degrees at due West; 180 degrees at due North; 270 degrees at due East. Any printed or typewritten description filed separately with the file plan shall be recorded in the registry system and the book and page thereof noted on the file plan. Expense of recordation shall be charged to the owner. The initial point in the description shall clearly show the connection with the government triangulation system, and all outside corners of the tract shall be substantially marked by monuments in the ground, where practicable. In all cases where tracts of land are subdivided into lots, with the intention of conveying separate lots by lot number and reference to the plat, it is necessary to show the true azimuths and lengths of all

principal lines, the lot areas, and a sufficient number of durable monuments shall be placed in the ground so as to accurately identify each lot. [L 1905, c 23, §2; am L 1915, c 68, §2; RL 1925, §3135; am L 1931, c 63, §3; RL 1935, §5121; RL 1945, §12721; am L 1951, c 200, §1; RL 1955, §343-12; HRS §502-18]

Cross References

References to book and page, see §502-31.5.

" **§502-19 Plans on tracing cloth; size; scale.** All plans must be on tracing cloth of good quality, and shall be of one of the following sizes, the figures indicating inches: 10 x 15; 15 x 21; 21 x 32; 30 x 36; 36 x 42; or 42, 48, or 54 wide without restriction as to length; which plans shall be prepared and drawn according to some one of the following scales: 10, 20, 30, 40, 50, 100, 200, 300, 400, 500, 1000, 2000, 3000, 4000, or 5000 feet to an inch. [L 1905, c 23, §3; RL 1925, §3136; am L 1929, c 117, §1; am L 1931, c 63, §4; RL 1935, §5122; RL 1945, §12722; RL 1955, §343-13; HRS §502-19]

" **§502-20 New maps for old.** The registrar at such times when the original tracings of filed plans and land court maps on file in the bureau of conveyances, are found to be in such condition that satisfactory blueprint copies thereof cannot be made, shall forward any such map or plan to the department of accounting and general services of the State, with the request that another tracing thereof be made. The department, on receipt of the request and map or plan, shall prepare another tracing thereof, and shall certify that same is a true copy of the original on file in the bureau of conveyances, and shall file the same, together with two certified blueprint copies, with the registrar. Any such certified tracing of a map or plan shall thereafter be regarded for all purposes as the original. [L 1927, c 167, §§1, 2, 3; RL 1935, §5123; RL 1945, §12723; RL 1955, §343-14; am L Sp 1959 2d, c 1, §12; HRS §502-20]

" **§502-21 Recording of plans unlawful.** It shall not be lawful for the registrar to accept for record any plan of land, whether attached to, made a part of, or independent of, any deed, certified copy of judgment of condemnation, or other instrument; to the end and purpose that there shall be no plans recorded in the record books, but in substitution therefor there shall be a single method of filing plans in the archives of the bureau of conveyances; provided that where sketches, blueprints, or plans of land of a size not larger than 8 1/2 inches by 14

inches which legibly reproduces under photographic, electronic, or electrostatic methods are attached to instruments and made a part thereof by reference to the same in the instrument, the registrar may record the same in the record books by means of the photographic recorder, on payment of the fee as provided in section 502-25. [L 1905, c 23, §4; am L 1909, c 49, §1; RL 1925, §3137; am L 1931, c 63, §5; RL 1935, §5124; RL 1945, §12724; RL 1955, §343-15; am L 1966, c 26, §3; HRS §502-21; am L 2009, c 102, §2(13)]

" **§502-22 Copies of plans furnished by registrar.** The registrar shall furnish, when so requested, copies of any map or plan filed in accordance with sections 502-17 to 502-21, duly certified by the registrar's seal of office, upon payment of the fee hereinafter mentioned. In addition, the registrar may authorize the department of accounting and general services to furnish, when so requested, copies of such maps or plans, subject to the payment of fees applicable to maps or plans furnished by the registrar. The copies of maps or plans may be furnished in photographic, electronic, or electrostatic form. [L 1909, c 49, §2; RL 1925, §3138; am L 1931, c 63, §6; RL 1935, §5125; RL 1945, §12725; RL 1955, §343-16; HRS §502-22; am L 1981, c 146, §2; gen ch 1985; am L 2009, c 102, §2(14)]

" **§502-23 Sale or lease by reference to lots or blocks without filing of plans; penalty.** Whoever lays out or subdivides a tract of land into lots or blocks and sells by lot number or block number or leases by lot number or block number any lot or block in any subdivision without first having filed in the bureau of conveyances a plan thereof, drawn in accordance with sections 502-17 to 502-22, or whoever sells by lot number or block number or leases by lot number or block number any lot or block in any subdivision, the plan of which subdivision is not on record or on file in the bureau of conveyances shall be fined not more than \$50 for each lot or block or part thereof so sold or leased. This section and section 502-24 shall not apply to land held under chapter 501. [L 1911, c 46, §1; am L 1913, c 74, §1; RL 1925, §3139; RL 1935, §5126; RL 1945, §12726; RL 1955, §343-17; HRS §502-23]

" **§502-24 Report of violations.** Whenever it comes to the knowledge of the registrar that section 502-23 has been violated the registrar shall notify the attorney general and the planning department of the county of the fact. [L 1911, c 46, §2; RL 1925, §3140; RL 1935, §5127; am L 1939, c 242, pt of §11; RL 1945, §12727; RL 1955, §343-18; HRS §502-24; am L 1972, c 125, §1(a); gen ch 1985]

" **§502-25 Fees.** (a) Except when otherwise provided, fees for services rendered under this chapter shall be established by rules adopted by the department of land and natural resources, pursuant to chapter 91.

(b) 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.

(c) 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. [CC 1859, §1251; am L 1888, c 13, §1; am L 1911, c 51, §1; am L 1913, c 73, §1; am L 1917, c 41, §1; RL 1925, §3141; am L 1927, c 74, §1; am L 1931, c 63, §7; am L 1932 2d, c 16, §1; am L 1933, c 129, §1; RL 1935, §5128; am L 1937, c 110, §§1, 2 and c 178, §1; RL 1945, §12728; am L 1947, c 157, §1; am L 1951, c 112, §1; am L 1955, c 247, §5; RL 1955, §343-19; am imp L 1966, c 26, §1; HRS §502-25; am L 1980, c 90, §1; gen ch 1985; am L 1989, c 47, §8; am L 1992, c 197, §7; am L 1993, c 6, §28 and c 141, §3; am L 1999, c 125, §3; am L 2002, c 125, §2]

Cross References

Disposition of fees received at the bureau of conveyances, see §501-23.5.

" **§502-26 Copies of instruments, certificates.** The registrar, when applied to, shall furnish an attested copy of any instrument or document recorded in the registrar's office, or of any fact appearing upon the registrar's records. The registrar may also issue nonattested documents or portions of any instrument or document recorded in the registrar's office in photographic, electronic, or electrostatic form. The registrar may issue certificates of search or encumbrance when personnel is available for the making of the certificate.

(b) Within ten days after the end of each week, the registrar shall deliver or forward by mail or electronic transmission, without charge, an image and index of all instruments or documents that have been recorded in the registrar's office during each week relating to 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 by island. [CC 1859, §1264; RL 1925, §3142; RL 1935, §5129; RL 1945, §12729; am L 1951, c 141, §1; RL 1955, §343-20; am L 1966, c 26, §4; HRS §502-26; gen ch 1985; am L 1993, c 141, §4; am L 2009, c 57, §2 and c 102, §2(15)]

" **§502-27 Charges.** (a) Except when otherwise provided, fees for the use of microfilms of documents recorded in the bureau of conveyances for the purpose of making duplicates shall be established by rules adopted by the department of land and natural resources pursuant to chapter 91.

(b) Frame charges for duplicating microfilm shall not be assessed against any agency of the State or counties thereof. [L 1974, c 7, §1; am L 1999, c 125, §4]

Cross References

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

"PART IV. RECORDING

Note

Sections 502-31 to 502-34 designated as Part IV and part heading amended by L 2009, c 102, §2(5).

§502-31 Recording, method. (a) The registrar shall make or cause to be made an entire literal copy of all instruments, with their original signatures, required to be recorded in the registrar's office, and the registrar, the registrar's deputy, or clerk shall certify its correspondence with the original, after which the registrar, the registrar's deputy, or clerk shall certify upon the exterior, or indorse upon the recorded instrument with the original signature, the date of its registry and the document number.

(b) The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as

they first appear in the recorded instrument. All names of all natural persons signing in their individual capacity shall be typewritten, stamped, legibly printed by hand, or by a mechanical or electrical printing method beneath all signatures. The provisions of this subsection shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

(c) The registrar or the registrar's deputy may refuse to accept for record any document of a size larger than eight and one-half inches by eleven inches, or which contains a schedule or inventory sheet in excess of such size.

(d) This section shall apply to all instruments presented for recording in the bureau of conveyances, unless otherwise provided by rules adopted by the department of land and natural resources, pursuant to chapter 91.

(e) All instruments to be recorded shall include the original signature and 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 such space, and for the registrar of conveyances on the right half of such space. The following one inch of space shall be reserved for information showing to whom the document should be returned beginning one and one-half inch from the left margin and not exceeding three and one-half inches per line. 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. Indorsements, if any, may be made on a conforming fly sheet. No papers or materials, written or otherwise, shall be secured or attached to a page in any manner that may conceal any other written text. 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 registrar of conveyances shall be permitted to remove any rivets affixed to any instrument. The registrar may refuse to accept all instruments, papers, or notices presented for recordation that will not reproduce legibly under photographic, electronic, or electrostatic methods. Notwithstanding any other law to the contrary, the 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 department of land and natural resources consistent with this section and chapter 489E. [CC 1859, §1261; am L 1905, c 7, §1; RL 1925, §3143; am L 1931, c 45, §1; RL 1935, §5130; RL 1945, §12730; am L 1945, c 241, §3; RL 1955, §343-21; am L 1961, c 86, §2; am L 1963, c 107, §4; am L 1966, c 26, §5; am L 1977, c 150, §1; HRS §502-31; gen ch

1985; am L 1989, c 47, §9; am L 1992, c 87, §12 and c 197, §8; am L 1995, c 22, §5; am L 2001, c 130, §3; am L 2009, c 120, §13]

Case Notes

Recordation of bill of sale affecting title to realty charges others with notice to ascertain the condition of such title. 58 H. 580, 574 P.2d 524.

" **[§502-31.5] Reference in other sections.** Any reference throughout the Hawaii Revised Statutes to book and page after December 31, 1989, shall also refer to book and page or document number. [L 1989, c 47, §1]

" **§502-32 Instrument recorded as of time of delivery; office hours.** Every instrument entitled by law to be recorded, shall be recorded in the order and as of the time when the same is delivered to the registrar for that purpose, and shall be considered as recorded from the time of such delivery; provided that it shall not be lawful for the registrar to accept or enter for record and record any instrument or other paper on any Sunday or legal holiday, or on any Saturday that the registrar's office remains closed pursuant to law, or on any other day except between the hours of 8:00 a.m. and 3:30 p.m. It is further provided that it shall be lawful for the registrar to enter into a written agreement with any person or association, which agreement authorizes an instrument to be recorded at 8:01 a.m. on a day subsequent to its delivery to the registrar. [CC 1859, §1260; am L 1905, c 7, §2; am L 1911, c 59, §1; am L 1923, c 37, §1; RL 1925, §3144; RL 1935, §5131; RL 1945, §12731; am L 1955, c 152, §1; RL 1955, §343-22; HRS §502-32; am L 1974, c 13, §2; am L 1989, c 47, §10]

" **§502-33 Identification of reference to registration of original.** (a) If the owner of a fee time share interest acquired title thereto pursuant to a deed or other instrument filed or recorded in the land court pursuant to chapter 501, then the registrar need not accept for recording any deed, mortgage, or other voluntary instrument purporting to convey or affect title to such fee time share interest unless the deed, mortgage, or other voluntary instrument contains a reference to the certificate of title number by which the owner of the fee time share interest acquired title thereto. The term "fee time share interest" as used in this subsection shall have the same meaning as in section 501-20.

(b) Except as otherwise provided in subsection (a), the registrar shall not record any instrument requiring a reference to a prior recorded instrument, unless the same contains a reference to the book and page or document number of the registration of the original recorded instrument or a statement that the original instrument is unrecorded, as the case may be. 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 registration of the judgment. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are or are to become fixtures shall be filed unless it complies with the requirements of part 5 of Article 9 of the Uniform Commercial Code. This section does not apply to any document mentioned herein executed prior to April 13, 1915.

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 1915, c 74, §1; RL 1925, §3145; RL 1935, §5132; RL 1945, §12732; RL 1955, §343-23; am L 1966, c 18, §9; HRS §502-33; am L 1972, c 125, §1(b); am L 1989, c 47, §11; am L 1990, c 203, §3; am L 1992, c 197, §9; am L 2001, c 55, §26; am L 2008, c 86, §2; am L 2009, c 5, §3; am L 2012, c 121, §7]

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.

Cross References

Uniform Commercial Code, see chapter 490.

Law Journals and Reviews

Later mortgagee having actual notice of earlier mortgage is not entitled to priority merely because earlier mortgage omitted the book and page references required by this section and §506-4. Haw Supp, 4 HBJ, Nov 1966, at 30.

" **§502-34 Grantee's address in deed.** The registrar shall not record any deed unless it contains or has endorsed upon it the address of the grantee. This section does not apply to any deed executed prior to July 1, 1951. [L 1951, c 38, §1; RL 1955, §343-24; HRS §502-34; am L 1989, c 47, §12]

"PART V. ACKNOWLEDGMENTS; PROOF OF INSTRUMENTS

Note

Sections 502-41 to 502-54 designated as Part V and part heading amended by L 2009, c 102, §2(6).

§502-41 Certificate of acknowledgment; natural persons, corporations. Except as otherwise provided by law, to entitle any conveyance or other instrument to be recorded, there shall be endorsed, subjoined, or attached thereto an acknowledgment in the form provided or authorized in section 502-42, 502-43, or 502-45, or in substantially the following form:

(Begin in all cases by a caption specifying the state or territory and the place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right:

On(insert date), before me personally appeared A.B. (or A.B. and C.D.), to me known to be the person or persons described in and who executed the foregoing instrument, and acknowledged that the person or persons executed the same as the person's or persons' free act and deed.

2. In the case of natural persons acting by attorney:

On(insert date), before me personally appeared A.B., to me known to be the person who executed the foregoing instrument in behalf of C.D. and acknowledged that the person executed the same as the free act and deed of said C.D.

3. In the case of corporations or partnerships:

On(insert date), before me appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that the person is the president (or other officer, partner, or agent of the corporation, or partnership) of

(describing the corporation or partnership), and that the instrument was signed in behalf of the corporation (or partnership) by authority of its board of directors (partners or trustees), and A.B. acknowledged the instrument to be the free act and deed of the corporation (or partnership).

4. In the case of a corporation acknowledging by an individual as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On(insert date), before me personally appeared A.B., to me personally known, who being by me duly sworn (or affirmed), did say that the person is the attorney-in-fact of C.D. (here name the corporation) duly appointed under power of attorney dated, recorded in book...., at page.../as document no.; and that the foregoing instrument was executed in the name and behalf of said C.D. by A.B. as its attorney-in-fact; and A.B. acknowledged the instrument to be the free act and deed of C.D.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words "which power of attorney is now in full force and effect".

5. In the case of a corporation acknowledging by another corporation as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On(insert date), before me personally appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that the person is the president (or other officer or agent of the corporation acting as attorney) of C.D. (here name the corporation acting as attorney) and that C.D. is the attorney-in-fact of E.F. (here name the corporation in whose behalf the attorney is acting) duly appointed under power of attorney dated, recorded in book...., at page.../as document no.; that the foregoing instrument was executed in the name and behalf of E.F. by C.D. as its attorney-in-fact; that the instrument was so executed by C.D. by authority of its board of directors; and A.B. acknowledged the instrument to be the free act and deed of E.F.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words "which power of attorney is now in full force and effect".

6. The following form may be used in lieu of any of the foregoing forms:

On(insert date), before me personally appeared A.B. (or A.B. and C.D.), to me personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

In all cases add signature and title of the officer taking the acknowledgment. [L 1909, c 69, §1; am L 1919, c 30, §1; am L 1923, c 85, §§1, 2; RL 1925, §3146; RL 1935, §5133; am L 1943, c 197, §1; RL 1945, §12733; am L 1945, c 84, §1; RL 1955, §343-25; HRS §502-41; am L 1992, c 197, §10; am L 2006, c 38, §18; am L 2009, c 102, §2(16)]

Case Notes

As between parties acknowledgment and registry of conveyance not necessary. 2 H. 161, 163; 17 H. 56, 58; 49 H. 62, 73, 412 P.2d 326.

Title to land is conveyed by delivery of deed without registry thereof or entry by grantee. 4 H. 674.

Where instrument not entitled to be recorded, recording treated as nullity. 6 H. 538, 541 (single justice); 15 H. 570, 576.

Except as otherwise provided, both acknowledgment and certificate thereof requisite to recording. 15 H. 570, 572.

Presumption of regularity raised by acknowledgment. 25 H. 470, 473; 49 H. 62, 73, 412 P.2d 326.

Acknowledgment containing clerical error in name of party acknowledging held valid. 50 H. 304, 440 P.2d 262.

" **§502-42 Certificate, contents.** The certificate of acknowledgment shall state in substance that the person who executed the instrument appeared before the officer granting the certificate and acknowledged or stated that the person executed the same, and that such person was personally known to the officer granting such certificate to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by the oath or affirmation of a credible witness known to the officer whose name shall be inserted in the certificate. It shall not be ground for the rejection of any such certificate, or for refusing to accept such instrument for record or in evidence, that the certificate fails to state that the person making the acknowledgment stated or acknowledged that the instrument was executed freely or voluntarily by the person or as the person's free act and deed. [L 1872, c 28, §2; RL 1925, §3147; RL 1935, §5134; am L 1943, c 197, §2; RL 1945, §12734; RL 1955, §343-26; HRS §502-42; gen ch 1985]

Case Notes

Policy of law is to uphold certificates of acknowledgment when substance is found. 15 H. 570, 573; 16 H. 294, 299; 18 H. 179, 184.

Deed valid as between parties, even if not properly acknowledged. 49 H. 62, 63, 412 P.2d 326. See 2 H. 161, 163; 17 H. 56, 58.

" **§502-43 Form when person unknown.** When the person offering the acknowledgment is unknown to the officer taking the acknowledgment, the certificate may be substantially in the following form, to-wit:

State of Hawaii) ss.
County of)

On(insert date), personally appeared before me A.B., satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of C.D., a credible witness for that purpose, to me known and by me duly sworn, and the person, A.B., acknowledged that the person executed the same freely and voluntarily for the uses and purposes therein set forth. [L 1872, c 28, §4; RL 1925, §3149; RL 1935, §5135; RL 1945, §12735; RL 1955, §343-27; HRS §502-43; am L 1972, c 125, §1(c); am L 1992, c 197, §11; am L 2006, c 38, §19]

" **§502-44 Married women.** The acknowledgment of a married woman when required by law may be taken in the same form as if she were sole and without any examination separate and apart from her husband. [L 1909, c 69, §2; RL 1925, §3150; RL 1935, §5136; RL 1945, §12736; RL 1955, §343-28; HRS §502-44]

" **§502-45 Acknowledgments without the State.** The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without the State and within any other state, territory, district, or dependency of the United States, may be made before any officer of the state, territory, district, or dependency authorized by the laws thereof to take proof and acknowledgment of deeds and when so taken, and when the certificate of acknowledgment is in a form sufficient to entitle deeds of real property to be recorded in the appropriate office for recording in such state, territory, district, or dependency or in the form provided or

permitted by any of sections 502-41 to 502-43, shall be entitled to be recorded and may be read in evidence in the State. The signature of such officer constitutes prima facie evidence that the acknowledgment is taken in accordance with the laws of the place where made and of the authority of the officer to take the acknowledgment. If the record of any such instrument, or a transcript thereof, is used in evidence in any proceeding the burden shall be on the party relying on such record to prove that the instrument was duly executed, in any proceeding where such fact is asserted by such party and is in dispute. The burden may be met by proof made in the manner provided in section 502-46. [L 1909, c 69, §3; RL 1925, §3151; RL 1935, §5137; am L 1943, c 197, §3; RL 1945, §12737; RL 1955, §343-29; am L 1963, c 83, §1; HRS §502-45]

" **§502-46 Same; certificate of authority of officer.** The burden of proving due execution of any conveyance or written instrument, acknowledged or proved under section 502-45, may be met by any admissible evidence sufficient for that purpose and shall also be met if at the time of recording or thereafter there is indorsed, subjoined, or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of the state or territory, or a certificate of the clerk of a court of record of the state, territory, or district in the county in which the officer resides or in which the officer took such proof or acknowledgment, under the seal of the court, or a certificate of the executive officer or clerk of a court of record of such dependency, authorized to make such certificate, stating that the officer was, at the time of taking the proof or acknowledgment, duly authorized to take acknowledgments and proofs of deeds of lands in the state, territory, district, or dependency, and that the secretary of state, or other authorized executive officer, or clerk of court, is well acquainted with the handwriting of the officer taking the acknowledgment or proof, and that the secretary of state, executive officer, or clerk verily believes that the signature affixed to the certificate of proof or acknowledgment is genuine.

The authentication of the proof or acknowledgment of a deed or other written instrument when taken without the State and within any other state, territory, or district of the United States, shall be in substantially the following form:

(Begin with a caption specifying the state, territory, or district, and county or place, where the authentication is made.)

I,....., clerk of the.....
in and for said county which court is a court of record, having
a seal (or I,....., the secretary of state of
said state or territory) do hereby certify
that..... by and before whom the foregoing
acknowledgment (or proof) was taken, was at the time of taking
the same, a notary public (or other officer) residing (or
authorized to act) in the county, and was duly authorized by the
laws of the state (territory or district) to take and certify
acknowledgment or proofs of deeds of land in the state
(territory or district), and further that I am well acquainted
with the handwriting of....., and that I verily
believe that the signature to the certificate of acknowledgment
(or proof) is genuine. In testimony whereof, I have hereunto
set my hand and affixed the seal of the court (or state)
this...day of...., 19.... [L 1909, c 69, §4; RL 1925, §3152;
RL 1935, §5138; am L 1943, c 197, §4; RL 1945, §12738; RL 1955,
§343-30; am L 1963, c 83, §2; HRS §502-46; gen ch 1985]

Revision Note

In second paragraph, "proof or acknowledgment" substituted for
"proof of acknowledgment".

" **§502-47 Acknowledgment without the United States; by members of the armed forces; recordation where no official authorized to take proof.** (a) The proof or acknowledgment of any deed or other instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without the United States may be made by:

- (1) Any officer now authorized thereto by the laws of the State;
- (2) Any officer of the United States diplomatic or consular service, resident in any foreign country or port, when certified by the officer under the officer's seal of office; and
- (3) Any person authorized by the law of any foreign country to take such acknowledgment or proof, when such acknowledgment or proof is accompanied by a certificate to the effect that the person taking the same is duly authorized thereto and that such acknowledgment or proof is in the manner prescribed by the laws of the foreign country or by treaty or international agreement of the United States. The certificate may be made by a diplomatic or consular officer of the United States under the seal of the

officer's office, or by a diplomatic or consular officer of the foreign country, resident in the State, under the seal of the officer's office with the signature or facsimile of the signature of the diplomatic or consular officer of the United States.

For the purposes of this section diplomatic or consular officer includes any minister, consul, vice-consul, charge d'affaires, consular, or commercial agent, or vice-consular or vice-commercial agent.

(b) Proof or acknowledgment may be made by any person in the armed forces of the United States, or by any person without the United States, before any officer of the armed forces authorized by Congress to exercise the powers of a notary public. The signature without seal of any officer acting as such notary public is prima facie evidence of the officer's authority.

(c) Where it is established to the satisfaction of any judge of a circuit court of the State that any instrument required to be acknowledged or proved has been executed by a person then permanently or temporarily resident at some place where acknowledgment or proof cannot be made as hereinabove provided, such instrument shall be declared acceptable for recordation by order of the judge issued upon such testimony and evidence as are sufficient in the judgment of the judge to establish the genuineness and authenticity thereof, and a certified copy of the order shall be recorded together with and attached to any instrument so ordered acceptable for recordation.

(d) Any instrument so proved, acknowledged, or ordered acceptable for recordation is entitled to be recorded in the State, and may be read in evidence in any court of the State in the same manner and with like effect as if therein duly recorded or acknowledged. [L 1909, c 69, §5; RL 1925, §3153; RL 1935, §5139; RL 1945, §12739; am L 1945, c 53, §1; am L 1947, c 86, §1; RL 1955, §343-31; HRS §502-47; gen ch 1993; am L 1995, c 22, §6]

" **§502-48 Identification of person making.** No acknowledgment of any conveyance or other instrument, except as provided by this chapter, whereby any real estate is conveyed or may be affected, shall be taken, unless the person offering to make the acknowledgment is personally known to the officer taking the acknowledgment to be the person whose name is subscribed to the conveyance or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the officer or by production of a current identification card or document issued by the United States,

this State, any other state, or a national government that contains the bearer's photograph and signature. [L 1909, c 69, §6; RL 1925, §3154; RL 1935, §5140; RL 1945, §12740; RL 1955, §343-32; HRS §502-48; am L 1995, c 141, §4]

" **§502-49 Certificate of officer, or judge, necessary.** Every officer who takes the acknowledgment of any instrument shall indorse, subjoin, or attach a certificate thereof, signed by oneself, on the instrument.

Every judge who takes the proof of any instrument shall indorse, subjoin, or attach a certificate thereof, signed by oneself, on the instrument, giving the names of the witnesses examined before the judge, their places of residence, and the substance of the evidence by them given. [L 1909, c 69, §7; RL 1925, §3155; RL 1935, §5141; RL 1945, §12741; RL 1955, §343-33; HRS §502-49; gen ch 1985]

" **§502-50 How made; proof if not made.** (a) Except as otherwise provided, to entitle any conveyance or other instrument to be recorded, it shall be acknowledged by the person or persons executing the same, before the registrar of conveyances, or the registrar's deputy or before a judge of a court of record or a notary public of the State. If any person having executed an instrument within the State, dies, or departs from the State, without having acknowledged the instrument, or refuses to acknowledge it, or if the person has acknowledged it but such acknowledgment has not been duly certified by the officer before whom made and for any reason neither proper certification nor a new acknowledgment can be secured, the instrument may be entered as of record on proof of its execution by a subscribing witness thereto before the judge of the land court or a judge of a circuit court of the State. If all the subscribing witnesses to the conveyance or other instrument are dead or out of the State, the same may be proved before any court in the State by proving the handwriting of the person executing the same and any subscribing witness. For the purposes of this section a notary public or person who wrongfully undertakes to act as such, may be deemed a subscribing witness.

(b) If there is any interlineation, erasure, or other change in an instrument, not initialed as required by section 502-61, and for any reason compliance with section 502-61 cannot be secured, the instrument may be proved as provided in subsection (c), or, without the bringing of the proceeding therein provided for, the judge of the land court or a judge of a circuit court may certify that the instrument is entitled to be recorded, if it is established to the judge's satisfaction

that such change was made before execution of the instrument, and the instrument thereupon shall be received for record notwithstanding section 502-63. If the record of any such instrument, received for record by reason of such certificate, or a transcript thereof, is used in evidence in any proceeding, the burden shall be on the party relying on such record to prove that such change was made before execution of the instrument, in any proceeding where such fact is asserted by the party and is in dispute.

(c) Any person interested under an instrument which if properly proved or acknowledged would be entitled to record, may institute a proceeding against the proper parties to obtain a judgment proving such instrument. The proceeding shall be brought in a circuit court or the land court. If the instrument affects the title to real property the proceeding shall be brought in the judicial circuit where the property is located. If judgment is obtained a certified copy thereof shall be appended to the instrument. [L 1909, c 69, §8; RL 1925, §3156; RL 1935, §5142; am L 1943, c 197, §5; RL 1945, §12742; RL 1955, §343-34; am L 1963, c 83, §3; HRS §502-50; am L 1972, c 125, §1(d); gen ch 1985]

Case Notes

Presumption of execution and delivery of deed proven for record by subscribing witnesses before circuit judge, when rebutted. 25 H. 470; 27 H. 544.

Certificate of judge under this section, sufficient when. 27 H. 544, 564.

Deed valid as between parties even if not properly acknowledged. 49 H. 62, 73, 412 P.2d 326. See 2 H. 161, 163; 17 H. 56, 58.

" **§502-51 Exemption of instruments offered on behalf of United States.** In the case of any deed, lease, mortgage, lien, notice, agreement, or other instrument offered for recordation by any judicial, executive, or administrative officer of the United States, acting in the officer's official capacity, or by any duly authorized officer or agent of any agency or instrumentality of the United States created by or under federal or state law, acting in the officer's or agent's official capacity, it shall not be necessary that the instrument, where the instrument is required to be signed by the officer or agent, be acknowledged before a notary public by the officer or agent, and the registrar of conveyances shall accept the instrument for recordation, when the signature of the duly authorized officer or agent, together with the official seal, if any, is attached

to the instrument for recordation. [L 1923, c 167, §1; RL 1925, §3157; am L Sp 1933, c 36, §1; RL 1935, §5143; RL 1945, §12743; RL 1955, §343-35; HRS §502-51; gen ch 1985; am L 1993, c 141, §5]

" **§502-52 Signatures of certain state officers, acknowledgments not required.** In the case of an official signature entitled to be judicially noticed pursuant to section 626-1, rule 901 or 902, the signature shall suffice to show due execution by the officer signing the instrument and the officer is not required to acknowledge the instrument in order to entitle it to be recorded. [L 1945, c 84, §2; RL 1955, §343-36; HRS §502-52; am L 1985, c 68, §19]

" **§502-53 No certificate of acknowledgment contrary hereto valid in court or entitled to be recorded; exception.** No certificate of acknowledgment contrary to this chapter is valid in any court of the State, nor is it entitled to be recorded in the bureau of conveyances, but no certificate of acknowledgment executed before July 29, 1872, shall in consequence of anything in this chapter contained be deemed invalid. [L 1909, c 69, §9; RL 1925, §3158; RL 1935, §5144; RL 1945, §12744; RL 1955, §343-37; HRS §502-53]

Case Notes

Cited: 26 H. 121, 123.

" **§502-54 Penalty for false certificate.** Any officer authorized to take acknowledgments to instruments who knowingly incorporates in the certificate of acknowledgment any false or misleading statement as to the facts therein contained, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Nothing in this section shall be construed to do away with the liability for civil damages for such act. [L 1882, c 41; am L 1903, c 8, §2; RL 1925, §3159; RL 1935, §5145; am L 1941, c 22, §1; RL 1945, §12745; RL 1955, §343-38; HRS §502-54]

"PART VI. INTERLINEATIONS, ERASURES, ETC.

Note

Sections 502-61 to 502-64 designated as Part VI and part heading amended by L 2009, c 102, §2(7).

§502-61 Changes noted in instrument. Every notary public or the officer authorized to take acknowledgments to

instruments, before taking any acknowledgment, shall first carefully inspect any instrument proposed to be acknowledged before the notary public or officer, and ascertain whether there are any interlineations, erasures, or changes in the instrument. If there are any interlineations, erasures, or changes, the notary public or officer shall call the attention thereto of the person offering to acknowledge the instrument. If they are approved, the acknowledging officer shall place the officer's initials in the margin of the instrument opposite each interlineation, erasure, or change. The initialing by the officer taking the acknowledgment is prima facie evidence of the extent of the interlineations, erasures, or changes and of the fact that the same were made prior to acknowledgment of the instrument, but does not preclude proof to the contrary. [L 1896, c 55, §1; RL 1925, §3160; RL 1935, §5146; RL 1945, §12746; RL 1955, §343-39; am L 1963, c 83, §4; HRS §502-61; gen ch 1985]

Case Notes

Cited: 26 H. 121, 123.

" **§502-62 Penalty for not noting changes.** Every notary public or other person authorized to take acknowledgments to instruments who takes the acknowledgment of any person to any instrument in which there are interlineations, erasures, or changes, and who fails to observe or perform the requirements, or any of them, of section 502-61, shall be fined not more than \$200. [L 1896, c 55, §2; am L 1903, c 8, §2; RL 1925, §3161; RL 1935, §5147; RL 1945, §12747; RL 1955, §343-40; HRS §502-62]

" **§502-63 Not recorded unless initialed.** No instrument acknowledged in the State of Hawaii in which there are interlineations, erasures, or changes shall be recorded by the registrar, unless the same are duly initialed by the officer or officers taking the acknowledgment or acknowledgments to the same in the State of Hawaii.

No instrument acknowledged outside of the State of Hawaii in which there are interlineations, erasures, or changes shall be recorded by the registrar, unless the same are duly initialed by either:

- (1) The parties to such instrument; or
- (2) The officer or officers taking the acknowledgment or acknowledgments to the same. [L 1896, c 55, §3; RL 1925, §3162; RL 1935, §5148; RL 1945, §12748; RL 1955, §343-41; am L 1963, c 83, §5; HRS §502-63; am L 1992, c 197, §12]

" **§502-64 REPEALED.** L 1992, c 197, §14.

"PART VII. RECORDS OF ACKNOWLEDGMENTS

Note

Sections 502-71 to 502-74 designated as Part VII and part heading amended by L 2009, c 102, §2(8).

§502-71 Record of acknowledgments to be kept. All judges and other officers authorized by law to take acknowledgments to instruments, besides the certificate of acknowledgment indorsed upon the instrument, shall keep a record of every acknowledgment in a book of records. Each record shall set forth at least the date of acknowledgment, the parties to the instrument, the persons acknowledging, the date, and some memorandum as to the nature of the instrument acknowledged. [L 1888, c 18, §1; RL 1925, §3164; RL 1935, §5150; RL 1945, §12750; RL 1955, §343-43; HRS §502-71]

" **§502-72 Disposition of records.** Except as otherwise provided in respect to notaries public by section 456-16, the books of record so kept shall every five years, and upon the resignation, death, or removal from office of such judge or other officer, be deposited with the clerk of the circuit court of the judicial circuit for and in which the judge or other officer was or is authorized to act. [L 1888, c 18, §2; RL 1925, §3165; RL 1935, §5151; am L 1941, c 322, §7; RL 1945, §12751; RL 1955, §343-44; HRS §502-72]

" **§502-73 Same, open to inspection.** The clerks of the circuit courts shall carefully preserve the books of record deposited with them as provided by section 502-72, filing the same with the records of the court. The records, both while in the custody of the acknowledging officers and after such filing, shall be open at all reasonable times to the inspection of any responsible person, without fee or reward. [L 1888, c 18, §3; RL 1925, §3166; RL 1935, §5152; RL 1945, §12752; RL 1955, §343-45; HRS §502-73; am L 1972, c 125, §1(e)]

" **§502-74 Penalty for not keeping.** Any of the officers to take acknowledgments who fails to keep the record directed by section 502-71, or upon failure to deposit the same with a clerk of a court of record as directed, shall be fined not less than \$50 nor more than \$250, which may be recovered of such officer, or the officer's personal representatives. [L 1888, c 18, pt of §4; am L 1903, c 8, §2; RL 1925, §3167; RL 1935, §5153; RL 1945,

§12753; RL 1955, §343-46; HRS §502-74; am L 1976, c 200, pt of §1; gen ch 1985]

**"PART VIII. REQUIREMENT AND EFFECT OF
ACKNOWLEDGING, RECORDING, NOT RECORDING**

Note

Sections 502-81 to 502-85 designated as Part VIII and part heading amended by L 2009, c 102, §2(9).

§502-81 Instruments may be recorded; as evidence. Every conveyance or other instrument, acknowledged or proved, and certified in the manner hereinbefore prescribed, by any of the officers before named, may be read in evidence without further proof thereof, and is entitled to be recorded. [CC 1859, §1258; am imp L 1917, c 207, §1; am L 1921, c 34, §1; RL 1925, §3168; RL 1935, §5154; RL 1945, §12754; RL 1955, §343-47; HRS §502-81]

Case Notes

Deed of corporation admissible in evidence, when. 18 H. 412, 413.

Where due execution shown instrument admissible in evidence even if certificate of acknowledgment invalid. 26 H. 121.

Agreement between grantee named in a deed and another declaring that both had interests in the land and setting out terms of their arrangement, entitled to be recorded. 32 H. 323, 325.

" **§502-82 Record or copy as evidence.** The record of an instrument duly recorded, or a transcript thereof, duly certified, may also be read in evidence, with like force and effect as the original instrument. Neither the certificate of acknowledgment, nor the proof of any instrument, is conclusive, but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of an instrument makes it appear that the proof was taken upon the oath of an interested or incompetent witness, neither the instrument nor the record thereof shall be received in evidence until established by other competent proof. [CC 1859, §1259; RL 1925, §3169; RL 1935, §5155; RL 1945, §12755; RL 1955, §343-48; HRS §502-82]

Case Notes

Record may be offered to impeach original by showing alteration in description after recording. 14 H. 276, 278.

Record or certified copy admissible though original produced. 14 H. 276, 277.

Certificate not conclusive, 16 H. 294, 300. See 18 H. 412, 413.

Presumption of regularity raised by acknowledgment. 25 H. 470, 473; 49 H. 62, 73, 412 P.2d 326.

" **§502-83 Effect of not recording deeds, leases, etc.** All deeds, leases for a term of more than one year, mortgages of any interest in real estate, or other conveyances of real estate within the State, shall be recorded in the bureau of conveyances. Every such conveyance not so recorded is void as against any subsequent purchaser, lessee, or mortgagee, in good faith and for a valuable consideration, not having actual notice of the conveyance of the same real estate, or any portion thereof, or interest therein, whose conveyance is first duly recorded. [CC 1859, §1262; RL 1925, §3170; RL 1935, §5156; RL 1945, §12756; RL 1955, §343-49; am L 1963, c 83, §6; HRS §502-83]

Law Journals and Reviews

Later mortgagee having actual notice of earlier mortgage is not entitled to priority merely because earlier mortgage omitted page and book references required by §§502-33 and 506-4. Haw Supp, 4 HBJ, Nov 1966, at 30.

Case Notes

Under early law, time for recording was limited. See 1 H. 67 (114) (single justice); 1 H. 229 (409) (single justice).

Subsequent deed or lease, though recorded, will not prevail against unrecorded deed or lease of which there was actual notice. 2 H. 166 (single justice); 3 H. 274; 4 H. 384. But will prevail where no actual notice. 4 H. 675.

Actual possession under unrecorded deed is constructive notice; subsequent purchase not in good faith. 5 H. 298; 25 H. 494, 505; 26 H. 342, 349. See 19 H. 602, 611.

Assignment of lease good against creditors though levy made before recording of assignment. 16 H. 731. Compare 26 H. 342.

Mortgage of a leasehold must be recorded under this section. 23 H. 706, 709.

Recording is notice to one bound to search the records, otherwise not. 26 H. 809, 820.

Subsequent purchaser not protected, though in good faith, unless purchaser records first. 32 H. 323, 326; 32 H. 883, 895.

Knowledge of negotiations for a sale of no significance and such notice does not defeat mortgage. 32 H. 883.

Cited: 6 H. 114 (single justice).

Mentioned: 920 F. Supp. 1080.

Cited: 911 F. Supp. 2d 916 (2012).

Hawaii Legal Reporter Citations

Recordation of conveyance documents required. 79 HLR 79-0425.

" **§502-84 Powers of attorney, etc.** All articles of marriage settlement and powers of attorney for the transfer of real property within the State shall be recorded in the bureau of conveyances, in default of which no such instrument shall be binding to the detriment of third parties or conclusive upon their rights and interests. [CC 1859, §1263; am L 1911, c 20, §1; am imp L 1915, c 47, §§2, 3; am L 1919, c 3, pt of §1; RL 1925, §3171; RL 1935, §5157; RL 1945, §12757; RL 1955, §343-50; HRS §502-84; am L 1972, c 125, §1(f)]

Case Notes

Section inapplicable to instrument not within its terms. 8 H. 8.

Lack of recording does not affect validity of lease as between parties. 17 H. 87, 89.

Purchaser at execution sale prevails as against prior deed executed under unrecorded power of attorney even if purchaser at execution sale had knowledge of the power of attorney. 18 H. 25.

Unrecorded power of attorney for transfer of real estate is valid for some purposes. 18 H. 25, 26.

Cited: 71 F. Supp. 1, 4, aff'd 172 F.2d 384.

" **§502-85 Agreements of sale; priority.** (a) The rights of a buyer under an agreement of sale which has been duly recorded 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 recorded after the recordation 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 recorded prior to the recordation 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 recording of a transfer of title to such real estate from the seller to the buyer.

(c) For the 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 other 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.

"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.

"Recorded" or "recording" means recorded in accordance with this chapter.

"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 recorded written agreements and recorded written consents, if any, with claimants whose claims are superior or subject to the rights of the buyer, and with all recorded 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 recorded, 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.

(d) 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, §2; am L 1985, c 247, §2; am L 2006, c 38, §20]

"PART IX. PRIOR RECORDS

Note

Sections 502-91 to 502-95 designated as Part IX and part heading amended by L 2009, c 102, §2(10).

§502-91 Old records. All records of instruments made in the bureau of conveyances, before July 10, 1850, whether in the book required by law or otherwise, are deemed to have been duly recorded.

All conveyances of real and personal property made and executed before April 27, 1846, and all pledges of property, real and personal, executed before such date, the conditions of which had not been fulfilled before the promulgation of the Act of April 27, 1846, shall, if not recorded in the bureau of conveyances at the instance and expense of the grantee or mortgagee, within ninety days after the promulgation, be void in law as against subsequent grantees and mortgagees of the same property, not having notice of the existence of such previous conveyances or pledges. [L 1846, p 249; CC 1859, §1265; CC 1859, p 374; RL 1925, §3173; RL 1935, §5159; RL 1945, §12760; RL 1955, §343-53; HRS §502-91]

" **§502-92 Copies of old records.** The registrar shall prepare photographic, electronic, or electrostatic copies of the records and record books in the bureau of conveyances which by reason of age, usage, or otherwise are in such condition that they can no longer be conveniently used or consulted without danger of destruction thereof, and certify to the correctness of such copies. The certified copies, and prints made from them

and similarly certified, may be read in evidence with the same force and effect as the original instrument. The correctness of such copies is not conclusive but may be rebutted. All such records and record books from which the copies are made shall be deposited with the department of accounting and general services in its public archives. The registrar may convert into electronic form information or documents recorded before the registrar was given the authority to record electronic documents. [L 1931, c 45, §2; RL 1935, §5160; RL 1945, §12761; RL 1955, §343-54; am L 1963, c 107, §5; am imp L 1966, c 26, §1; HRS §502-92; am L 2009, c 102, §2(17)]

" **§502-93 Retyping judgment registers.** The registrar of conveyances may, when retyping the old circuit court and district court judgment registers, delete from the retyped registers all those entries which the registers show have theretofore been fully paid, released, or discharged, and also delete from the retyped registers any judgment entries which have theretofore expired by reason of the statute of limitations and which shall be considered duly paid and discharged. [L 1955, JR 26, §1; RL 1955, §343-54.5; HRS §502-93]

" **§502-94 Translation of Hawaiian documents, recording.** The registrar may appoint such number of qualified translators at such compensation as may be provided for by appropriations of the legislature from time to time for the purpose of translating into English, conveyances and other instruments filed or recorded in the bureau of conveyances, including, but not limited to, conveyances and other instruments affecting title to property. The translators shall be persons expert in the knowledge and usage of both the Hawaiian and the English languages. The translations into English shall be recorded in the bureau of conveyances in books bearing the same book and page numbers as the Hawaiian instruments from which they have been translated and any reference in conveyances or otherwise to such documents by book and page number shall be deemed to refer equally to the Hawaiian and the English versions of such documents. Each such English translation and copies thereof duly certified by the registrar may be used in evidence in the same manner as the original instrument in the Hawaiian language and shall constitute prima facie evidence as to the true meaning and intent of the Hawaiian instrument from which it has been translated. [L 1945, c 54, §1; RL 1955, §343-55; HRS §502-94]

Cross References

References to book and page, see §502-31.5.

" **§502-95 Validation of defective certificates.** The record made prior to May 14, 1943, in the bureau of conveyances at Honolulu of any instrument otherwise authorized to be recorded therein, notwithstanding any defect in the form of the certificate of acknowledgment or proof, or the failure to make the notations required by section 502-61, or the failure to append thereto the certificate of authority required by section 502-46, or any defect in the form of the certificate, shall be in all respects as valid and effectual as though the certificate of acknowledgment or proof or certificate of authority had been in proper form or the certificate or authority had been appended to the instrument, or such notations had been made; provided that in any case of a defect in the certification of the authority of the officer to take the acknowledgment or proof, at the time of taking and in the place where the same was taken (whether because of a defect in the officer's certificate or because of a defect in or failure to append the certificate of the officer's authority, when required), the burden shall be on the party relying on such record to prove such authority, in any proceeding where such fact is in dispute; provided further that with respect to any interlineation, erasure, or other change, not initialed and noted as required by section 502-61, the burden shall be on the party relying on such record, to prove that the change was made before acknowledgment of the instrument, in any proceeding where such fact is asserted by such party and is in dispute. [L 1943, c 197, §6; RL 1945, §12762; RL 1955, §343-56; HRS §502-95; gen ch 1985]

"PART X. VETERANS CERTIFICATES

Note

Section 502-101 designated as Part X and part heading amended by L 2009, c 102, §2(11).

§502-101 Veterans certificates. The bureau of conveyances, upon request of a veteran, resident in Hawaii, or the veteran's next of kin, shall record any honorable discharge certificate or other separation or discharge document from the military or naval service of the United States of the veteran.

No charge shall be made for the recording. [L 1943, c 205, §§1, 2; RL 1945, §12763; RL 1955, §343-57; am imp L 1966, c 26, §1; HRS §502-101; am L 1969, c 11, §1; gen ch 1985; am L 1993, c 141, §6]

"PART XI. OTHER PROVISIONS

Note

Sections 502-111 designated as Part XI and part heading amended by L 2009, c 102, §2(12).

§502-111 Family child care homes; permitted uses 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 the section, "family child care home" means a private residence, including an apartment, unit, or townhouse, as 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, §4; am L 1999, c 242, §§6, 8(2); am L 2001, c 225, §3; am L 2005, c 20, §1]

" **[§502-112] 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 recorded or filed, 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 recorded 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 recorded 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 pursuant to chapter 501. [L 2010, c 169, §§2, 5; am L 2013, c 42, §2]

Cross References

Land court; prohibition of transfer fees, see §501-232.

"[PART XII.] UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

[\$502-121] Definitions. As used in this part:

"Document" means information affecting title to real property that is eligible to be entered into the public records, including any plan of land prepared pursuant to section 502-17.

"Electronic" means relating to technology having electric, digital, magnetic, wireless, optical, electromagnetic, or similar properties.

"Electronic document" means a document that is stored in an electronic medium.

"Electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a document and executed or adopted by a person with the intent of affixing a signature on the document.

"Paper document" means a document that is inscribed on a tangible medium such as paper.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [L 2009, c 102, pt of §2(1)]

" **[\$502-122] Electronic document and electronic signature; validity.** (a) The registrar may accept an electronic document for recording. The electronic document shall be exempt from any requirement under this chapter that a document or instrument be:

- (1) The original document or instrument;
- (2) On paper, cloth, or other tangible medium; or

(3) In writing.

(b) When a law requires as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) Any requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath shall be satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. It shall not be necessary to accompany an electronic signature with a physical or electronic image or a stamp, impression, or seal.

(d) In a proceeding, evidence of a document or signature shall not be excluded solely because it is in electronic form. [L 2009, c 102, pt of §2(1)]

" **[§502-123] Recording of documents.** (a) Notwithstanding any other law to the contrary, and subject to rules adopted by the department of land and natural resources pursuant to chapter 91, the registrar may:

- (1) Accept, make, keep, enter, file, index, store, archive, and transmit electronic documents; provided that the registrar shall also continue to accept paper documents for recording and shall place entries for both types of documents in the same index;
- (2) Convert or copy paper documents that are accepted for recording into electronic form;
- (3) Convert or copy prior records of documents made in the bureau of conveyances into electronic form;
- (4) Accept fees for services rendered under this chapter electronically; and
- (5) Enter into agreements with other officials of states or political subdivisions thereof, or of the United States, on procedures or processes to electronically satisfy prior approvals and conditions precedent to recording and to facilitate the electronic payment of fees.

(b) This part shall also apply to any document that is received by the registrar of the bureau of conveyances or filed at the bureau of conveyances by the registrar of the land court pursuant to chapter 501.

(c) The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purposes of this part, including to determine when an electronic document shall be considered delivered to the registrar pursuant to section 502-32.

(d) To keep the standards and practices of recording in the State in harmony with the standards and practices of recording offices in other jurisdictions that enact provisions substantially similar to this part, and to keep the technology used by the registrar compatible with technology used by recording offices in other jurisdictions that enact provisions substantially similar to this part, the department of land and natural resources, so far as is consistent with the provisions of this part, in adopting rules under chapter 91, shall consider:

- (1) The standards and practices of other jurisdictions;
- (2) The most recent standards adopted by national standard setting bodies such as the Property Records Industry Association;
- (3) The views of interested persons and governmental officials and entities;
- (4) The needs of jurisdictions of varying size, population, and resources; and
- (5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering. [L 2009, c 102, pt of §2(1)]

" **[§502-124] Uniformity of application and construction.** In applying and construing this uniform Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [L 2009, c 102, pt of §2(1)]

" **[§502-125] Relation to federal Electronic Signatures in Global and National Commerce Act.** This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, or authorize electronic delivery of any of the notices described in section 103(b) of that Act. [L 2009, c 102, pt of §2(1)]