

A Bill for an Act Relating to Land Court Proceedings, Amending Chapter 501 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 501 of the Hawaii Revised Statutes is amended as follows:

(a) Section 501-1 is amended by changing the words “probate practices” in the caption to read “practice”, by deleting the comma at the end of the seventh line, by deleting the comma in the eighth line, by inserting in the third paragraph, preceding the word “Sundays” in the second line, the word and punctuation “Saturdays,” and by inserting a comma after the word “Sundays” in that line.

(b) Section 501-1 is further amended by amending the fifth paragraph to read as follows:

“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.”

(c) Section 501-11 is amended by deleting from the fifth and sixth lines the words “in term or vacation”.

(d) Section 501-21 is amended by amending the seventh paragraph to read as follows:

“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.”

(e) Section 501-25 is amended by deleting from the fourth line the word “judicial” and by changing the period at the end of that line to a comma and adding the following: “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.”

(f) Section 501-28 is amended by deleting from the ninth and tenth lines the words “rules laid down by the” and inserting in lieu thereof “the rules of”.

(g) Section 501-30 is amended by deleting from the first line the words "court may by general rule" and inserting in lieu thereof "rules of court may".

(h) Section 501-42 is amended by amending the first sentence of the second paragraph to read as follows:

"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."

(i) Section 501-45 is amended by deleting from the last line the words "rules laid down by the" and inserting in lieu thereof "the rules of".

(j) Section 501-51 is amended by deleting from the fourteenth line the words "by the judge of the circuit court in chambers" and inserting in lieu thereof the following: "in a matter within the jurisdiction of a circuit court as set forth in sections 603-21.6, 603-21.7, and 635-14".

(k) Section 501-51 is further amended by deleting from the sixth and seventh lines of the fourth paragraph the words "make such additional rules and instructions in regard to surveys as it deems proper" and inserting in lieu thereof the following: "may issue such additional instructions in regard to surveys as it deems proper or as are called for by the rules of court."

(l) Section 501-61 is amended by inserting a comma in the fifth line of the second paragraph after the figures "501-218" and by changing the word "therefore" in the thirteenth line of that paragraph to read "theretofore".

(m) Section 501-63 is amended to read as follows:

"Sec. 501-63. Appeal to supreme court. In all cases an appeal to the supreme court shall lie from the final decree of the land court on behalf of any party aggrieved by the decree. The record on appeal may include the proceedings in the circuit court, if any, as well as those in the land court."

(n) Section 501-64 is amended by deleting from the caption the words "as in equity" and by inserting in the third line, preceding the word "equity", the words "actions in the nature of suits in".

(o) Section 501-75 is amended by deleting from the fifth and sixth lines of the second paragraph the words "within the same judicial district" and by deleting the comma after the word "application" in the seventh line of the second paragraph and inserting the following: "as permitted by section 501-25,".

(p) Section 501-81 is amended by deleting from the twelfth and thirteenth lines the words "an assignee" and inserting in lieu thereof the words "a trustee".

(q) Section 501-82 is amended by deleting from the fifth and sixth lines of paragraph numbered (2) thereof the words "January 1 of the tax year involved" and inserting in lieu thereof the following: "the date on which the lien attached".

(r) Section 501-82 is further amended by amending paragraph numbered (6) to read as follows:

"(6) The possibility of reversal or vacation of the decree of registration upon appeal."

(s) Section 501-85 is amended by deleting from the next to the last line and the last line the words "sections 65-21 to 65-26 or the county ordinances where any of these provisions apply" and inserting in lieu thereof the following: "the laws and regulations covering subdivisions in the county concerned, applicable thereto."

(t) Section 501-101 is amended by amending the last sentence to read as follows: "The rules of court may provide for forms of conveyances respecting registered land."

(u) Section 501-106 is amended by deleting from the seventeenth line the words "legal and equitable".

(v) Section 501-118 is amended by changing the semicolon in the second line to a period and deleting the remainder of the first paragraph; by deleting from the first and second lines of the second paragraph the words "suit as provided by sections 667-1 to 667-4" and inserting in lieu thereof "action"; by deleting from the second line of the second paragraph the word "decree" and substituting "judgment"; by deleting from the second line of the third paragraph the words "decree of court" and inserting in lieu thereof the word "judgment"; and by deleting from the ninth line of the third paragraph the words "bill in equity" and inserting in lieu thereof "action".

(w) Section 501-132 is amended by deleting from the fourth line of the second paragraph the word "decree" and inserting in lieu thereof "judgment"; by deleting from the fourth and fifth lines of the second paragraph the words "on a bill for instructions or other proceeding"; and by deleting from the sixth line of the second paragraph the word "decree" and inserting in lieu thereof "judgment".

(x) Section 501-133 is amended by deleting from the fourth line the word "decree" and inserting in lieu thereof "order".

(y) Section 501-141 is amended by deleting from the twelfth line the words "or suit".

(z) Section 501-144 is amended by deleting from the next to the last line the words "legal and equitable".

(aa) Section 501-151 is amended to read as follows:

"Sec. 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 occupation 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 certificate of title of the land affected, and the volume and page of the registration book where it is entered, is filed and registered, and a copy thereof sent by the assistant registrar by registered mail to the registered owner and holder of the certificate of title of the land affected, at his last known address. 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 State court, may be filed and registered."

(bb) Section 501-152 is amended by deleting from the second line the words "or decree", and by deleting from the next to the last line the words and punctuation ", as provided in section 501-62,".

(cc) Section 501-153 is amended by deleting from the first line the word "real".

(dd) Section 501-154 is amended to read as follows:

"Sec. 501-154. Writ of possession, service, time limit for registration. 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 officer, he shall cause a copy of the writ, with a return of his doings 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 he 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."

(ee) Section 501-155 is amended to read as follows:

"Sec. 501-155. Judgment directing conveyance. Any judgment of a court of competent jurisdiction affecting title or rights in registered land, may be registered, whether the claim adjudicated was legal or equitable in nature. The court entering the judgment upon application of the plaintiff may require the registered owner to deliver his duplicate certificate to the plaintiff to be canceled or to have a memorandum entered upon it by the assistant registrar. 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 registered 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 registered with like force and effect."

(ff) Section 501-156 is amended by deleting from the first line the words "all proceedings" and inserting in lieu thereof "an action", and by deleting from the second, fourth, fourteenth, sixteenth, and nineteenth lines the words "or decree".

(gg) Section 501-157 is amended by deleting from the second line the words "or decree".

(hh) Section 501-159 is amended to read as follows:

"Sec. 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 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 to him, and the certificate of the trustee shall be surrendered."

(ii) Section 501-171 is amended by deleting from the eighth line the word “judge” and inserting in lieu thereof “court”; by deleting from the eighth and ninth lines the words “a certified copy of the order or decree of the circuit judge closing the probate proceedings, or”; by deleting from the tenth line the word “judge” and inserting in lieu thereof “circuit court”; by deleting from the nineteenth line the words “order or decree” and inserting in lieu thereof “judgment”; by deleting from the twentieth line the words “judge in equity” and inserting in lieu thereof “court in an action”; by deleting from the twenty-first line the word “judge” and inserting in lieu thereof “circuit court”; and by deleting from the sixth line of the second paragraph the words “in law or equity”.

(jj) Section 501-172 is amended by deleting from the second line the words “a judge of” and by deleting from the third line the words “in chambers”.

(kk) Section 501-173 is amended by deleting from the tenth line the word “judge” and inserting in lieu thereof “court”.

(ll) Section 501-211 is amended by amending the second sentence to read as follows: “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.”

(mm) Section 501-212 is amended to read as follows:

“Sec. 501-212. Actions for compensation for fraud, mistake, etc. Any person who, without negligence on his 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, he 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 he 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 his tort claim and also his 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.”

(nn) Section 501-213 is amended by deleting from the first line the words “action of contract” and inserting in lieu thereof “contract claim”; by deleting from the second line the word “brought” and inserting in lieu thereof the word “prosecuted”; and by deleting from the sixth line the words and punctuation “or the registrar.”

(oo) Section 501-214 is amended by deleting from the seventh and eighth lines the words "a judge of"; by deleting from the seventh line of the second paragraph the words "the judge of"; and by deleting from the seventh line of the second paragraph the word "whom" and inserting in lieu thereof "which".

(pp) Section 501-216 is amended by amending the second sentence to read as follows: "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 he suffered the loss, damage, or deprivation thereof."

(qq) Section 501-217 is amended by deleting from the first line the words "of contract" and inserting in lieu thereof "on contract claims"; by deleting from the seventh line the words "of contract for compensation" and inserting in lieu thereof "on the contract claim"; by deleting from the eighth line the word "the" preceding "action" and inserting in lieu thereof "that"; and by deleting from the eighth line the words "action of contract" and inserting in lieu thereof the words "contract claim".

(rr) Section 501-218 is amended by changing the period at the end of paragraph numbered (4) to a comma and adding the following: "or the value of the same as determined under section 501-211 when the land was not separately assessed."

(ss) Section 510-218 is further amended by deleting from the paragraph numbered (17) the words "appeal and".

(tt) The subtitle preceding section 501-151 is changed to read "Pending Actions; Judgments and Partitions; Recording".

SECTION 2. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 3. This Act upon its approval shall take effect July 1, 1973.

(Approved May 19, 1972.)