

ACT 38

H.B. NO. 2476

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

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

SECTION 1. Section 6E-11, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in ~~chapter 6E,~~ section 6E-2, except as permitted by the department.”

SECTION 2. Section 40-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The judiciary, from time to time, may prepare lists of all delinquent receivables that in its judgment are uncollectible. The delinquent receivables that the judiciary finds to be uncollectible shall be entered in a special record and be deleted from the other books kept by the judiciary, and the judiciary shall thereupon be released from any further accountability for their collection; provided that no ~~account~~ shall be so deleted until it has been delinquent for at least two years. Any delinquent receivables so written off may be transferred back to the judiciary’s accounts receivable if the judiciary finds that the facts as alleged and previously presented to it were not true, or that the delinquent receivables are in fact collectible, or that the delinquent receivables have become collectible. Nothing in this subsection shall preclude a person to whom restitution is owed from pursuing collection of the debt.

As used in this section, “delinquent receivables” means fines, restitution, monetary assessments, fees, surcharges, penalties, sanctions, court costs, and other payment that is past due.”

SECTION 3. Section 87D-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In addition to any liability that a fiduciary may have under this chapter, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

- (1) If the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of the other fiduciary, knowing that act or omission is a breach;
- (2) If, by the fiduciary’s failure to comply with subsection (a) or (b), the fiduciary ~~has enabled~~ such other fiduciary to commit breach; or

- (3) If the fiduciary has knowledge of the breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

If the assets of the plan are held by two or more trustees, each shall use reasonable care to prevent a co-trustee from committing a breach, and each shall be responsible for jointly managing and controlling the assets of the plan.”

SECTION 4. Section 201G-441, Hawaii Revised Statutes, is amended to read as follows:

“§201G-441 Expenditures of revolving funds under the administration exempt from appropriation and allotment. Except as to administrative expenditures, and except as otherwise provided by law, expenditures from these revolving funds administered by the administration under subpart [I, N,] O[, P,] or Q or section 201G-170, 201G-223, [~~201G-401,~~] 201G-411, [~~201G-421,~~] or 516-44 may be made by the administration without appropriation or allotment of the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any revolving fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended. Nothing in sections 37-31 to 37-41 shall require the proceeds of the revolving funds identified in subpart [I, N,] O[, P,] or Q or section 201G-170, 201G-223, [~~201G-401,~~] 201G-411, [~~201G-421,~~] or 516-44 to be reappropriated annually.”

SECTION 5. Section 302A-1133.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The failure of a student to meet the requirements for regular attendance and punctuality shall subject the student’s parent, parents, or guardian to the penalties provided in section 302A-1135. Destruction of school property by a student, in addition to all other legal action that may be taken, shall subject the student’s parent, parents, or guardian to proceedings under section [~~302A-1130~~] 302A-1130.5 or 302A-1153, as appropriate.”

SECTION 6. Section 302A-1186, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall adopt guidelines for multi-year evaluations of charter schools that have been chartered for four or more years, or for special evaluations at any time, including a schedule of such evaluations.

- (1) Based upon the findings of an evaluation, the board may place a new century charter school on probationary status. The board shall adopt guidelines for placing new century charter schools on probation, provided that:
- [1] (A) The new century charter school and the charter school administrative office are involved in substantive discussions with the board regarding the evaluation;
- [2] (B) The notice of probation is delivered to the new century charter school and specifies the deficiencies requiring corrections, the probation period, and monitoring and reporting requirements; and
- [3] (C) For deficiencies related to student performance, a new century charter school shall be allowed two years to improve student performance; and

- [(4)] (D) For deficiencies related to financial plans, a new century charter school shall be allowed one year to develop a sound financial plan.
- (2) The new century charter school shall remain on probationary status until the board votes to either remove the new century charter school from probationary status or revoke the charter. If a new century charter school fails to resolve deficiencies by the end of the probation period, the board may, by two-thirds vote, revoke the charter. The board may revoke the charter for serious student or employee health or safety deficiencies in accordance with guidelines adopted by the board, provided that:
 - [(1)] (A) The new century charter school is given notice of specific health or safety deficiencies and is afforded an opportunity to present its case to the board;
 - [(2)] (B) The chairperson of the board appoints a task group to visit the new century charter school and conduct meetings with its local school board and its school community to gather input;
 - [(3)] (C) Two-thirds of the board vote to revoke the charter;
 - [(4)] (D) The best interest of the school's students guide all decisions; and
 - [(5)] (E) After a decision to revoke a charter, the new century charter school shall be allowed to remain open until a plan for an orderly shut-down or transfer of students and assets is developed and executed.
- (3) If there is an immediate concern for student or employee health or safety at a new century charter school, the board, in consultation with the charter school administrative office, may adopt an interim restructuring plan that may include appointment of an interim local school board, and interim local school board chairperson, or a principal to temporarily assume operations of the school.
- (4) For the purposes of this subsection, "organizational viability" means that a new century charter school:
 - [(1)] (A) Has been duly constituted in accordance with its charter;
 - [(2)] (B) Has a local school board established in accordance with law and its charter;
 - [(3)] (C) Employs sufficient faculty and staff to provide the necessary educational program and support services and to operate the facility in accordance with its charter;
 - [(4)] (D) Maintains accurate and comprehensive records regarding students and employees as determined by the charter school administrative office;
 - [(5)] (E) Meets appropriate standards of student achievement;
 - [(6)] (F) Cooperates with board requirements in conducting its function as charter authorizer;
 - [(7)] (G) Complies with applicable federal, state, and county laws and requirements;
 - [(8)] (H) In accordance with the charter school administrative office guidelines and procedures, is financially sound and fiscally responsible in its use of public funds, maintains accurate and comprehensive financial records, operates in accordance with generally accepted accounting practices, and maintains a sound financial plan;
 - [(9)] (I) Operates within the scope of its charter and fulfills obligations and commitments of its charter;
 - [(10)] (J) Complies with all health and safety laws and requirements; and

- [(44)] (K) Complies with all charter school administrative office directives, policies, and procedures.”

SECTION 7. Section 302A-1312, Hawaii Revised Statutes, is reenacted as follows:

“§302A-1312 Six-year program and financial plan for school repair and maintenance. (a) The department of education shall prepare a six-year program and financial plan for school repair and maintenance that shall be:

- (1) Based on:
 - (A) Estimated preventive and scheduled maintenance costs;
 - (B) Budgeted recurring maintenance;
 - (C) Health and safety requirements; and
 - (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section 514B-148; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.

(b) The department of education shall develop and maintain a facilities physical analysis report and a facilities financial analysis report for each public school. These reports shall be posted electronically on the Internet.

(c) For the purposes of this section, the superintendent of education shall develop and implement appropriate planning procedures and follow-up accountability reports to ensure sound planning, control, and accountability in the use of moneys allocated by the legislature, as prescribed by section 302A-1309. The department of education shall submit an annual report to the legislature that shall include:

- (1) The priority listing established by section 302A-1505;
- (2) List of projects initiated by the department of education; and
- (3) List of projects completed with associated actual cost.”

SECTION 8. Section 325-9, Hawaii Revised Statutes, is amended to read as follows:

“§325-9 Quarantine without removal; duty of police officers to assist in removals and enforcement of quarantine. If the department of health or its agent determines that the removal of the person infected or suspected of being infected would directly and seriously aggravate the disease so as to endanger the person’s life, the department, or its agent may make provision for the person, as directed in section 325-8, in the house in which the person may be; and, in such case, the department or its agent may cause the persons in the neighborhood to be removed, and may take such other measures as it judges necessary for the public health and safety. The department or its agent, in effecting any removal or quarantine under this [F]section[F] or section 325-8, may require any sheriff, deputy sheriff, chief of police, or police officer to aid and assist it, and such force as is reasonably necessary to effect any such removal or quarantine may be used.

Every sheriff, deputy sheriff, chief of police, or police officer who is so required to aid and assist the department or its agent shall immediately aid and assist it.”

SECTION 9. Section 353-61, Hawaii Revised Statutes, is amended to read as follows:

“**§353-61 Hawaii paroling authority; appointment; tenure; qualifications.** Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, the director, the president of the Hawaii Criminal Justice Association, the president of the bar association of Hawaii, a representative designated by the head of the Interfaith Alliance Hawaii, a member from the general public to be appointed by the governor, and the president of the Hawaii chapter of the ~~[national association of social workers.]~~ National Association of Social Workers. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairperson or as a member, for each vacancy. The governor shall appoint, in the manner prescribed by section 26-34, a paroling authority to be known as the Hawaii paroling authority, to consist of three members one of whom shall be designated chairperson. ~~[Of the members first appointed after May 13, 1976, the member designated as chairperson shall be appointed for a term of four years, one member shall be appointed for a term of three years, and one member shall be appointed for a term of two years; thereafter all appointments]~~ Appointments shall be made for terms of four years, commencing from the date of expiration of the last preceding term. Any vacancy in an unexpired term shall be filled by appointment for the remainder of the unexpired term. Nominees to the authority shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed.”

SECTION 10. Section 501-6, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“**§501-6 Registrar and assistants[;]; appointment, tenure, powers, and duties.**”

SECTION 11. Section 501-23, Hawaii Revised Statutes, is amended to read as follows:

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

State of Hawaii.

To the Honorable Judge of the Land Court:

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

- (1) That I am (or we are) the owner (or owners) in fee simple of a certain parcel of land, with the buildings (if any, and if not, strike out the clause), situate in (here insert accurate description).
- (2) That the land at the last assessment for taxation was assessed at.....dollars; and the buildings (if any) at.....dollars.
- (3) That I (or we) do not know of any mortgage or ~~in~~encumbrance affecting the land, or that any other person has any estate or interest therein, legal or equitable, in possession, remainder, reversion, or expectancy. (If any, add "other than as follows," and set forth each clearly.)
- (4) That I (or we) obtained title (if by deed, state name of grantor, date, and place of record, and file the deed, or state reason for not filing. If in any other way, state it).
- (5) That the land is.....occupied (state name in full, residence and post office address of occupant and the nature of ~~his~~ the occupancy. If unoccupied, insert "not").
- (6) That the names in full and addresses as far as known to me (or us) of the occupants of all lands adjoining the land are as follows: (give post office address, street, and number wherever possible. If names not known, state whether inquiry has been made, and what inquiry.)
- (7) That the names and addresses so far as known to me (or us) of the owners of all lands adjoining above land are as follows: (same directions as above.)
- (8) That I am (or we are) married (follow literally the directions given in section 501-23.)
- (9) That my (or our) full name (or names), residence and post office address are as follows:

Dated [this.....day of.....in the year 19.....] : (Schedule of documents.)

.....
(Signature).

State of Hawaii } ss.

Dated:[,19.....]

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

....., Notary Public."

SECTION 12. Section 501-41, Hawaii Revised Statutes, is amended to read as follows:

"§501-41 Notice of application. If, in the opinion of the examiner, the applicant has a good title as alleged, and proper for registration, or, if the applicant after an adverse opinion of the examiner, elects to proceed further, the registrar shall,

immediately upon the filing of the examiner's opinion, or the applicant's election, cause notice of the filing of the application to be published in some newspaper of general circulation. The notice shall be issued by the order of the court, attested by the registrar, and shall be in form substantially as follows:

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

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

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

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

Witness, the Presiding Judge of the court[~~- this.....day of~~]. Dated:
.....[19.....]

Attest:

.....
Registrar.

The description included in the notice in addition to the number of award, patent, and grant and name of awardee or original grantee need not be by metes and bounds, but may be a brief general description of the land sufficient to identify the same. The notice shall contain a statement that the map of the land and the description thereof by metes and bounds are on file in the land court and are open to inspection."

SECTION 13. Section 501-71, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

or portions thereof or interest therein at the time of filing the decree, and subject to all encumbrances affecting all or any portion thereof.

Every decree of registration of absolute title shall bind the land, and quiet the title thereto, subject only to the exceptions stated in section 501-82. It shall be conclusive upon and against all persons, including the State, whether mentioned by name in the application, notice, or citation, or included in the general description “to all whom it may concern.” The decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding for reversing judgments or decrees; subject, to the right of any person deprived of land or of any estate or interest therein by a decree of registration obtained by fraud to file a petition for review within one year after the entry of the decree; provided no innocent purchaser for value has acquired an interest. If there is any such purchaser the decree of registration shall not be opened but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided. Any person aggrieved by the decree in any case may pursue [his] remedy by action of tort against the applicant or any other person for fraud, in procuring the decree.”

SECTION 14. Section 501-139, Hawaii Revised Statutes, is amended to read as follows:

“**§501-139 Assistant registrar as official recorder.** All the provisions of law relating to attachments of real estate and leasehold estates on mesne process apply to registered land, except that the duties required to be performed by the registrar of conveyances shall be performed [by him] as the assistant registrar, who shall register the facts required to be recorded, and for that purpose shall keep books similar to those required to be kept for attachments [by him] as the registrar of conveyances, if any, and the fees for registering attachments shall be the same as are provided for recording.”

SECTION 15. Section 501-186, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 16. Section 501-217, Hawaii Revised Statutes, is amended to read as follows:

“§501-217 Limitation of actions. All actions on contract claims for compensation under this chapter by reason of any loss or damage or deprivation of land, or any estate or interest therein, shall be begun within the period of six years from the time when the cause of action accrued, and not afterwards; provided that the plaintiff in an action for the recovery of the land or estate or interest therein in accordance with section 501-213, may bring the action on the contract claim within one year after the termination of that action. The contract claim herein provided shall survive to the personal representatives of the registered owner, unless barred in [his] the registered owner’s lifetime, but the proceeds thereof shall be treated as real estate.”

SECTION 17. Section 502-16, Hawaii Revised Statutes, is amended to read as follows:

“§502-16 Decennial indexes. The registrar shall cause a reclassification and consolidation of the yearly indexes [~~referred to in section 502-15~~] 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 [~~the section.~~] 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 [~~the section.~~] section 502-15.”

SECTION 18. Section 502-41, Hawaii Revised Statutes, is amended to read as follows:

“§502-41 Certificate of acknowledgment; natural persons, corporations. Except as otherwise provided by sections 502-50 to 502-52, 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 any of sections 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 this.....day of....., 19.....,] 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 [~~he (or she) (or they)~~] the person or persons executed the same as [~~his (or her) (or their)~~] the person’s or persons’ free act and deed.

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

[On this.....day of....., 19.....,] 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 [~~he (or she)~~] the person executed the same as the free act and deed of said C.D.

3. In the case of corporations or partnerships:

[On this.....day of....., 19.....,] On(insert date), before me appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that [~~he (or she)~~] 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 this.....day of....., 19.....,] On(insert date), before me personally appeared A.B., to me personally known, who being by me duly sworn (or affirmed), did say that [he-(or-she)] the person is the attorney-in-fact of C.D. (here name the corporation) duly appointed under power of attorney dated [the.....day of....., 19.....,] 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 this.....day of....., 19.....,] On(insert date), before me personally appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that [he-(or-she)] 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 [the.....day of....., 19.....,] 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 this.....day of....., 19.....,] 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,] (or affirmed), did say that such [person(s)] person executed the foregoing instrument as the free act and deed of such [person(s),] 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.”

SECTION 19. Section 502-43, Hawaii Revised Statutes, is amended to read as follows:

“§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 this.....day of....., 19.....,] 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 [~~he (or she),~~] the person, A.B., acknowledged that [~~he (or she)~~] the person executed the same freely and voluntarily for the uses and purposes therein set forth.”

SECTION 20. Section 502-85, Hawaii Revised Statutes, is amended to read as follows:

“§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."

SECTION 21. Section 507-49, Hawaii Revised Statutes, is amended to read as follows:

"§507-49 Exceptions. (a) Anything contained in this part to the contrary notwithstanding, in connection with any repairs or improvements made or performed on property which before the repairs or improvements was used primarily for dwelling purposes, no lien shall exist either for the furnishing of materials to a general contractor as defined in this chapter or [his] the general contractor's subcontractor either of whom was required to be licensed but was not licensed pursuant to chapter 444 or if unreasonable advancement of credit was given by the furnisher of materials to the general contractor or subcontractor whether such person is licensed, unlicensed or exempted under chapter 444.

The issue of reasonable advancement of credit shall be decided by the circuit judge at the return day hearing provided for in section [507-43(e);] 507-43(a); provided that if a party affected by the lien does not appear at the return day hearing, [he] the party may raise the issue of unreasonable advancement of credit at any time prior to the entry of a final or interlocutory decree of foreclosure in the proceeding brought to enforce the lien under section 507-47. For the purposes of this section, if the furnisher of materials has secured a credit application form from the general contractor or the subcontractor to whom the materials were furnished or has reasonably inquired into the credit status of the general contractor or subcontractor, the advancement of credit by the furnisher of materials shall be prima facie reasonable.

The credit application referred to herein shall be current and shall include at least the following information:

- A. For all persons:
 1. Name
 2. Address
 3. Type of business (Example - plumbing subcontractor)
 4. Date business started
 5. Contractor's license number
 6. Bonding companies generally used
 7. Banks used
 8. List of current creditors
 9. Balance sheet
 10. Total of all outstanding construction contracts \$.....
 11. Incompleted portion of all contracts \$.....
- B. In addition, for corporate accounts:
 1. Names of officers

2. Authorized capital

3. Paid in capital

C. In addition, for noncorporate accounts:

1. Names of partners, co-venturers, etc.

(b) Anything contained in this chapter to the contrary notwithstanding, no general contractor as defined in this chapter or [his] the general contractor's subcontractor or the subcontractor's subcontractor who is required to be licensed pursuant to chapter 444[,] shall have lien rights unless [such] the contractor was licensed pursuant to chapter 444 when the improvements to the real property were made or performed, and no subcontractor or subcontractor's subcontractor so licensed shall have lien rights if [his] the work was subcontracted to [him] them by a general contractor as defined in this chapter or [his] the general contractor's subcontractor who was required to be licensed but was not licensed pursuant to chapter 444."

SECTION 22. Section 514B-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A declaration shall describe or include the following:

- (1) The land submitted to the condominium property regime;
- (2) The number of the condominium property regime map filed concurrently with the declaration;
- (3) The number of units in the condominium property regime;
- (4) The unit number of each unit and common interest appurtenant to each unit;
- (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
- (6) The permitted and prohibited uses of each unit;
- (7) To the extent not shown on the condominium property regime map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
- (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
- (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
- (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the approval of the owners of at least sixty-seven per cent of the common interest shall be required for all amendments to the declaration;
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium property regime map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
- (13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting require-

ments pursuant to section 514B-5, and specifying in the case of a property that includes one or more existing structures being converted to condominium property regime status:

- (A) Any variances that have been granted to achieve the compliance; and
- (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures;

except that a property that is registered pursuant to section 514B-51 shall instead provide this declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain."

SECTION 23. Section 514B-91, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§514B-91**~~]]~~ **Escrow of deposits.** All moneys paid by purchasers shall be deposited in trust under a written escrow agreement with an escrow depository licensed pursuant to chapter 449. An escrow depository shall not disburse purchaser deposits to or on behalf of the developer prior to closing except:

- (1) As provided in sections 514B-92 and 514B-93; or
- (2) As provided in the purchaser's sales contract in the event the sales contract is canceled.

An escrow depository shall not disburse a purchaser's deposits at closing unless the escrow depository has received satisfactory assurances that all blanket mortgages and liens have been released from the purchaser's unit in accordance with section 514B-45. Satisfactory assurances shall include a commitment by a title insurer licensed under chapter 431 to issue the purchaser a title insurance policy ensuring the purchaser that the unit has been conveyed free and clear of the liens."

SECTION 24. Section 514B-140, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§514B-140**~~]]~~ **Additions to and alterations of condominium.** (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.

(b) Subject to the provisions of the declaration, no unit owner may make or allow any material addition or alteration, or excavate an additional basement or cellar, without first obtaining the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval. The declaration may limit the board's ability to approve or condition a proposed addition or alteration; provided that the board shall always have the right to disapprove a proposed addition or alteration that the board reasonably determines could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.

(c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this subsection:

“Nonmaterial additions and alterations” [5] means an addition to or alteration of the common elements or a unit that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

“Solar energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and be ready to be made operational in order to qualify as a “solar energy device”; provided further that “solar energy device” shall not include skylights or windows.

“Townhouse” means a series of individual houses, having architectural unity and a common wall between each unit, provided that each unit extends from the ground to the roof.

(d) Notwithstanding any other provisions to the contrary in this chapter or in any declaration or bylaws:

(1) Regarding the installment of telecommunications equipment:

(A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and

(B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34; provided that no such installation shall directly affect any nonconsenting unit owner; and

(2) Regarding the abandonment of telecommunications equipment:

(A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and

(B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equiva-

lent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34.

As used in this subsection:

“Directly affect” means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect a unit owner in a manner not common to the unit owners as a whole.

“Television signal distribution” and “telecommunications equipment” shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology.”

SECTION 25. Section 514B-149, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) (1) All funds collected by an association, or by a managing agent for any association, shall be:

[~~(1)~~] (A) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;

[~~(2)~~] (B) Held by a corporation authorized to do business under article 8 of chapter 412;

[~~(3)~~] (C) Held by the United States Treasury; or

[~~(4)~~] (D) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation.

(2) All funds collected by an association, or by a managing agent for any association, shall be invested only in:

[~~(1)~~] (A) Deposits, investment certificates, savings accounts, and certificates of deposit;

[~~(2)~~] (B) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or

[~~(3)~~] (C) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year’s association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board."

SECTION 26. Section 514E-1, Hawaii Revised Statutes, is amended by reenacting the definition of "blanket lien" as follows:

"“Blanket lien” means any mortgage, deed of trust, option to purchase, master lease, vendor’s lien or interest under a contract or agreement of sale, or any other lien or encumbrance that (i) affects more than one time share interest either directly or by reason of affecting an entire time share unit or the property upon which the time share unit to be used by the purchasers is located, and (ii) secures or evidences the obligation to pay money or to sell or convey the property and that authorizes, permits, or requires the foreclosure and sale or other defeasance of the property affected; provided that for the purpose of this chapter, the following shall not be considered blanket liens:

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority and that are not yet due and payable;
- (3) A lien for common expenses under chapter 514B or a lien on an individual time share unit for similar expenses in favor of a homeowners or community association;
- (4) An apartment lease or condominium conveyance document conveying or demising a single condominium apartment or a lease of a single cooperative apartment; and
- (5) Any lien for costs or trustee’s fees charged by a trustee holding title to time share units pursuant to a trust created under section 514E-19; provided that the costs or trustee’s fees are not yet due and payable.”

SECTION 27. Section 516-28, Hawaii Revised Statutes, is amended to read as follows:

“§516-28 Disposition, generally. It shall be the policy of the Hawaii housing finance and development administration to encourage the widespread fee simple ownership of residential lots situated within a development tract. Where necessary or desirable, the administration may lease the residential lots. Not more than one lot shall be sold in fee simple or leased to a purchaser or lessee. A husband and [his] wife together, unless separated and living apart under a decree of separation issued by a court of competent jurisdiction, shall be entitled to only one lot.”

SECTION 28. Section 523A-22, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Unless the director considers it to be in the best interest of the State to do otherwise, all securities presumed abandoned under section 523A-10 and delivered to the director shall be held for at least three years before the director may sell them. If the director sells any securities delivered pursuant to section 523A-10 before the expiration of the three-year period, any person making a claim pursuant to this part before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to section [523A-23(b).] 523A-23.5(b). A person making a claim under this part after the

expiration of this period is entitled to receive either the securities delivered to the director by the holder, if they still remain in the hands of the director, or the proceeds received from sale, less any amounts deducted pursuant to section ~~[523A-23(b),]~~ 523A-23.5(b), but no person has any claim under this part against the State, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the director.”

SECTION 29. Section 46-16.7, Hawaii Revised Statutes, is repealed.

SECTION 30. Act 33, Session Laws of Hawaii 2005, is amended by amending the prefatory language in section 1 to read as follows:

“SECTION 1. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:”

SECTION 31. Act 129, Session Laws of Hawaii 2005, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Act 261, Session Laws of Hawaii 2000, as amended by Act 68, Session Laws of Hawaii 2002, section 2~~[, as amended by]~~ and Act 103, Session Laws of Hawaii 2002, section 1, is amended by amending section 5 to read as follows:”

SECTION 32. Act 202, Session Laws of Hawaii 2005, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval~~[-];~~ provided that the amendments made to section 89-6, Hawaii Revised Statutes, by this Act, shall not be repealed when section 89-6, Hawaii Revised Statutes, is reenacted on July 1, 2008, pursuant to Act 245, Session Laws of Hawaii 2005.”

SECTION 33. Act 236, Session Laws of Hawaii 2005, is amended by amending section 27 to read as follows:

“SECTION 27. This Act shall take effect on July 1, 2005; provided that ~~[section 2]~~ sections 2, 20, and 24 of this Act shall take effect on June 30, 2005.”

SECTION 34. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 35. This Act shall take effect on July 1, 2006; provided that:

- (1) Section 30 shall take effect retroactive to April 27, 2005;
- (2) Section 31 shall take effect retroactive to June 29, 2005;
- (3) Section 32 shall take effect retroactive to July 6, 2005; and
- (4) Section 33 shall take effect retroactive to June 30, 2005.

(Approved April 27, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.