

ACT 277

H.B. NO. 424

A Bill for an Act Relating to Timeshare Conveyances.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
TIME SHARE COMMISSIONERS OF DEEDS**

§ **-1 Commissioners; appointment.** The governor may appoint commissioners who shall serve for four years from the date of the individual commissioner’s respective appointment, unless removed by the governor.

§ **-2 Oath and seal.** (a) Within three months of appointment, a commissioner shall:

- (1) Cause an official seal to be prepared, upon which seal shall appear the commissioner’s name and the words “commissioner of deeds for Hawaii”; and
- (2) Take and subscribe an oath to faithfully perform the duties of the commissioner’s office; provided that the oath shall be taken before:

- (A) A notary public in the State or any other state;
- (B) 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; or
- (C) Any person authorized by the law of any foreign country to take an acknowledgement or proof; provided that the acknowledgement or proof shall be accompanied by a certificate to the effect that the person taking the acknowledgement or proof is duly authorized to do so and that the acknowledgement or proof is in a manner prescribed by the laws of the foreign country or a treaty or international agreement of the United States; provided further that a certificate under this subparagraph may be issued by:
 - (i) A diplomatic or consular officer of the United States under the seal of the officer's office;
 - (ii) A diplomatic or consular officer of the foreign country 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; or
 - (iii) An apostille in the case of a foreign country that is party to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents.

(b) A commissioner's oath of office, the commissioner's signature, and an impression of the commissioner's seal shall be transmitted to and filed with the office of the lieutenant governor.

(c) For purposes of this section, a diplomatic or consular officer includes any minister, consul, vice consul, charge d'affaires, consular or commercial agent, or a vice consular or vice commercial agent.

§ -3 Powers; charges. A commissioner, in any foreign country; in international waters; and in any possession, territory, or commonwealth of the United States, may administer oaths and take acknowledgements and proofs of execution of any deed, assignment of lease, apartment deed and ground lease, condominium conveyance document, mortgage, deed of trust, contract, power of attorney, or any other instrument or writing to be used or recorded in the State in connection with:

- (1) A time share interest;
- (2) Any property subject to a time share plan; or
- (3) The operation of a time share plan that includes any property located within the State;

provided that the instrument or writing is executed outside of the fifty states and the District of Columbia. Oaths, acknowledgements, and proofs of execution shall be taken or made in the manner provided by the laws of the State, including but not limited to sections 502-42, 502-43, 502-48, 502-61, 502-62, and 502-63, and shall be certified by the commissioner under the commissioner's official seal. The certification shall be endorsed on or attached to the instrument or writing and shall have the same effect as if made or taken in the State by a notary public commissioned in the State. Charges made by commissioners for services rendered shall be no higher than the rates authorized by any law governing similar services rendered by notaries within the jurisdictions in which the services are performed.

§ -4 **Records.** Each commissioner shall keep a record of every acknowledgement, oath, and proof of execution in a book of records. Each record shall set forth, at a minimum, the date of the acknowledgement, the parties to the instrument, the persons making the acknowledgements, and a memorandum as to the nature of the instrument acknowledged. For oaths and affidavits, the record shall set forth, at a minimum, the names of the parties making the oath or affidavit, the date of the oath or affidavit, the nature of the instrument, and the date the oath was administered.

§ -5 **Instructions.** The lieutenant governor shall prepare and forward to each commissioner instructions and forms in conformity with law and a copy of this chapter.

§ -6 **Construction of statutes.** This chapter shall not be construed as repealing or amending chapter 502.

§ -7 **Notice of legal effect.** (a) A commissioner shall provide to each person whose signature is witnessed or acknowledged by the commissioner a written notice in substantially the following form:

“LEGAL EFFECT OF CERTIFICATION BY A COMMISSIONER OF DEEDS

A certification by a Hawaii commissioner of deeds is intended only to confirm that a document was signed by a person whose signature appears on it. It does not validate the substance, contents, or legal effect of the document, nor indicate that the document has been approved or endorsed by any governmental authority, including the State of Hawaii. The documents that you are signing may have legal consequences, and you may have rights under Hawaii law. By signing below, you acknowledge that you have read and understand this.”

(b) If the person whose signature is witnessed or acknowledged by the commissioner does not speak English, a translation of the notice required by subsection (a) shall be provided to the person in the predominant language spoken in the country in which the execution or acknowledgement takes place; provided that:

- (1) The content of the notice may be varied as necessary to convey the intended concepts in the other language; and
- (2) Neither the commissioner nor any other person shall be liable for errors in translation of the notice required by subsection (a) so long as a good faith effort to accurately translate the notice was made.

(c) A commissioner of deeds shall retain, for three calendar years from the date upon which the notice was executed, the original executed notice or a copy made by any means capable of providing an accurate reproduction of the executed notice.

(d) Failure to provide the notice required by subsection (a) shall subject the commissioner of deeds to a penalty in an amount to be established by the lieutenant governor by rule adopted pursuant to chapter 91 but shall not render any agreement void or voidable, nor shall it constitute a defense to any action to enforce the agreement or any action for breach of the agreement by any party to the agreement.

§ -8 **Bond.** (a) Each commissioner forthwith and before entering upon the duties of the commissioner’s office shall execute at the commissioner’s own expense an official surety bond or deposit with the lieutenant governor a cash bond, which in either case shall be in the sum of \$1,000. Each bond shall be approved by the office of the lieutenant governor.

(b) The obligee of each bond shall be the State and the condition contained therein shall be that the commissioner will well, truly, and faithfully perform all the duties of the commissioner's office that are then or may thereafter be required, prescribed, or defined by law or by any rule made under the express or implied authority of any statute, and all duties and acts undertaken, assumed, or performed by the commissioner by virtue or color of the commissioner's office. The surety on any surety bond shall be a surety company authorized to do business in the State. After approval, the bond shall be deposited and kept on file in the office of the lieutenant governor. The lieutenant governor shall keep a book to be called the "bond record", in which the lieutenant governor shall record the data in respect to each of the bonds deposited and filed in the lieutenant governor's office.

(c) A commissioner who files a cash bond may cancel the bond by giving thirty days notice in writing to the lieutenant governor; provided that the security for the bond shall not be returned for a period of six years after the effective date of cancellation of the bond or upon posting a surety bond meeting the requirements set forth in this section, whichever shall occur first.

§ -9 Liabilities; limitations on; official bond. (a) In the performance of a commissioned act, a commissioner's liability shall be limited to a failure by the commissioner to perform properly the actions required for oaths, acknowledgements, and proofs of execution. The commissioner's liability shall not be based on statements in a document apart from the commissioner's certificate.

(b) For the official misconduct or neglect of a commissioner or breach of any of the conditions of the commissioner's official bond, the commissioner and the surety on the commissioner's official bond shall be liable to the party injured thereby for all the damages sustained. The party shall have a right of action in the party's own name upon the bond and may prosecute the action to final judgment and execution. The liability of the surety shall not exceed the amount of the bond issued to the commissioner of deeds for whom the bond was issued."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$60,000 or so much thereof as may be necessary for fiscal year 2013-2014 and the same sum or so much thereof as may be necessary for fiscal year 2014-2015 for expenses incurred by the office of the lieutenant governor related to establishing and administering the commissioners of deeds program.

The sums appropriated shall be expended by the office of the lieutenant governor for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2013; provided that the governor shall appoint commissioners pursuant to section 1 of this Act no later than July 1, 2014.

(Became law on July 9, 2013, without the governor's signature, pursuant to Art. III, §16, State Constitution.)