

Hawaii - Recording a Deed in Regular System or Land Court System

Documents affecting real property in Hawaii can be recorded in either the Land Court, also referred to as the Torrens system, or in the Regular System (also referred to as the Abstract system). A document recorded in both is referred to as "dual system recording." Both are managed by Hawaii's single statewide recorder, the Bureau of Conveyances, situated in Honolulu (there are no county offices of the recorder).

An easy way to check whether a deed or other instrument affecting real property should be recorded in Land Court or Regular System is to look at the top margin of the prior deed. The Registrar of Conveyances, which maintains Regular System documents, uses the upper right margin for its labels, while the Office of the Assistant Registrar of the Land Court, which maintains Land Court system documents, uses the top left margin.

The Torrens system has nautical origins; it was originally used to trace the ownership interests of vessels, and eventually the system was applied to parcels of real estate. In the late 19th and early 20th centuries, 21 states elected to adopt Torrens systems for land recording [1]. Only a handful, including Hawaii, still use it today.

The Hawaii Land Court is governed by Chapter 501 of the Hawaii Revised Statutes. Upon submittal of application, examination, and issuance of a decree of registration in the Land Court, the subject real property is assigned a certificate of title, on file with the assistant registrar. **With that certificate, the State of Hawaii guarantees absolute title to the owner** (Haw. Rev. Stat. 501:71, 501:87). After the initial registration, the chain of title is kept current on the certificate associated with the property, and a purchaser can simply examine the certificate rather than conduct a title search [2].

Individuals claiming to own rights in land in fee simple, or authorized agents, may file an application for new registration with the assistant registrar in the Land Court, so long as the source of title given in the application is legally sufficient (501:21). The requirements are found at Haw. Rev. Stat. 501:23.

Applications must be signed by the applicant in the presence of a notary public; if the applicant is an authorized agent, supporting documentation, such as a statement of authority, may be needed. Once the application is submitted, the registrar files a memorandum including the date and time of filing, and a legal description of the land contained in the application (501:22).

Changes to the certificate of title are made through petition of the land court. Such changes include but are not limited to any name changes, errors in recording, transfers or new interests, and changes in marital status. Only by order of the court can the registrar or assistant registrar amend the certificate of title. After accepting a petition, the court "may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or . . . any other relief . . . as it may deem proper" (501:96). Detailed directions for petitioning the land court are available at the Hawaii

State Judiciary website. Land Court petitions also must be signed by the applicant in the presence of a notary public.

Once submitted, the applications moves on to an examiner of title, who reviews the facts presented and renders an opinion (501:32). Upon an opinion of good title, or an applicant's election to proceed in the case of an adverse opinion, public notice of application must be given, according to the instructions set out in 501:41-42.

If no one makes any claim to the property, the applicant's application is considered "confessed" (501:46), and a decree for confirmation and registration under 501:71 is entered. Upon entry of the decree of registration by the registrar, a certified copy is sent to the assistant registrar in the bureau of conveyances, who transcribes the decree in the registration book (501:75). This entry is the original certificate of title, and is numbered consecutively within the registration book.

The certificate is considered effective from the date of the transcription of the decree. Pursuant to 501:71(d), "Every decree of registration of absolute title shall bind the land, and quiet the title thereto, subject only to the exceptions stated in 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.'" Requirements for the decree of confirmation are established in 501:74.

Recording in the regular system is governed by Chapter 502 of the Revised Statutes. In the regular system, all documents are accepted by the registrar of conveyances in the Bureau of Conveyances for recording, as long as they meet the statutory requirements for recording in the State of Hawaii, as outlined in 502-31. The form must follow margin requirements and specify, by title, the type of document. As well, pages need to be numbered sequentially, with the first page displaying the names of the grantors and names and addresses of the grantees, and the tax map key number of the real property.

Instruments in the Regular System are recorded in the order of delivery, and unlike deeds submitted to the Land Court, are not subject to a judicial process. Since documents filed in the Regular System affecting real property "are not verified as to truth or genuineness," parties who may not have a valid interest in the land can still record, and the title may contain defects [1]. It is easier and less time-consuming to record documents in the regular system, but buyers will need to conduct a title search when purchasing unregistered land.

Recording fees for each system differ, and fees for both systems are available via the Bureau of Conveyances website. The outline of fees does not include the costs of court processes for registering land in the Land Court.