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TWO LAND RECORDING SYSTEMS

Jean Kadooka Mardfin
Researcher

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Legislative Reference Bureau
State Capitol, Room 004
Honolulu, Hawaii 96813

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FOREWORD

This report examines two land recording systems in Hawaii: the regular system, and the Torrens, or land registration system. House Resolution No. 47, H.D. 1, adopted during the 1987 legislative session requested the Legislative Reference Bureau and the Attorney General to examine chapters 501 and 502, Hawaii Revised Statutes, to determine (1) whether there is a reason for maintaining two separate systems for holding and recording land titles, and (2) whether consolidating the two systems would result in financial savings.

The legal issues have been examined by Randall Young, Deputy Attorney General, in Chapter 4. The Legislative Reference Bureau prepared the rest of the report.

We wish to acknowledge with sincere gratitude the assistance and advice received from the following people: Rupert Chun, Registrar, and Matt Ramos, Assistant Registrar, Land Court; Charles Neumann III, Registrar of Conveyances, Archie Viela, Deputy Registrar, and Sandy Furukawa, Assistant Registrar, in the Bureau of Conveyances; George Stepp, Chief, Management Services Branch, Mike Noda, Management Analyst, and Ed Roggoff, Program and Budget Analysis Manager in the Department of Budget and Finance; Mary Ann Teshima, Research Statistician, Judiciary; Paul Nuha, Chief, Survey Division, Department of Accounting and General Services; Judge Robert Klein of the Land Court; Judge Norito Kawakami; attorneys: Page Anderson (retired), Bruce Graham, Galen Leong, and Keith Steiner; Grace Phillips, Manager, Escrow Department, and Elia W. Long, Vice President of Long & Melone Ltd.; David Pietsch, Jr., President, Title Guaranty Escrow; Michael Pietsch, President of Title Guaranty of Hawaii; Libert Landgraf, Deputy Director, Department of Land and Natural Resources; Johnson Wong, Deputy Attorney General.

SAMUEL B. K. CHANG
Director

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Chapter 1

INTRODUCTION

Objectives of the Study

House Resolution No. 47, H.D. 2 (see Appendix A) requested the Legislative Reference Bureau (Bureau) and the Attorney General to examine chapters 501 and 502, Hawaii Revised Statutes, to determine (1) whether there is a reason for maintaining two separate systems for holding and recording land titles, and (2) whether consolidating the two systems would result in financial savings.

Nature and Scope of the Study

In order to examine the purpose and cost-effectiveness of maintaining two systems for holding and recording land titles, the Bureau interviewed the principals directly involved in implementing the requirements of chapters 501 and 502, individuals in the Bureau of Conveyances (BOC) of the Department of Land and Natural Resources (DLNR), the Land Court of the Judiciary, and other state departments such as the Department of Budget and Finance (B&F). Individuals in the title, escrow, and legal professions were also interviewed to determine the effect these systems have on their primary users. Inquiries were made of other states with Torrens (land court systems) laws to determine usage patterns, and, in the case of a few states, the reasons for repeal of their Torrens law.

Organization of the Report

The report is presented as follows:

Chapter 2 begins with a short explanation of conveyancing; describes the provisions of chapter 502, Hawaii Revised Statutes, the regular system of land recordation which predated the Torrens system in Hawaii; describes the

TWO LAND RECORDING SYSTEMS

provisions of chapter 501, Hawaii Revised Statutes, beginning with a history of the Torrens system in Hawaii, followed by a description of the procedures for registering in the Land Court of Hawaii and the procedures for recording documents in the land court registration branch of the BOC.

Chapter 2 continues by describing how the differences between the regular system and the Torrens system affect recordation of instruments in the two branches of the BOC. Chapter 2 concludes with a review of the recent efforts to reduce the backlog and streamline procedures in the land court registration branch of the BOC.

Chapter 3 reports the Bureau's findings from other states which have a Torrens law and the experiences of a few states which have repealed their Torrens law. It continues with a review of the workload, costs, and revenues of the regular system and the Torrens system in Hawaii.

Chapter 4, written by Deputy Attorney General Randall Young, is the Department of the Attorney General's assessment of the legal implications of repeal of Hawaii's Torrens law.

Chapter 5 reports the findings, conclusions, and recommendations of the Legislative Reference Bureau.

The Appendices contain copies of relevant documents pertaining to this study, including a copy of H.R. No. 47, H.D. 2 (1987).

Terminology

In order to reduce confusion, the following terms are defined for the reader's convenience:¹

Certificate of title (CT) or transfer certificate of title (TCT): in the Torrens system, a certificate issued to the titleholder of land registered under the Torrens system, where title is guaranteed by the State of Hawaii.

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Claim: the assertion of a right to money or property which must be proved and perfected to be legally valid.

Fee simple: the least limited interest and the most complete and absolute ownership in land; of indefinite duration, freely transferable, and inheritable.

Interests: the legal concern of a person in the property, or in the right to some of the benefits or uses from which the property is inseparable, such as a leasehold estate, revealed in formal documents.

Land Court: a special court established in 1903 to administer the Torrens system of land registration. The Land Court registers all documents affecting title to registered land in Hawaii, including easements or other rights in the land.

Recording, recordation: the act of entering into the book of public records the written instruments affecting the title to real property, such as deeds, mortgages, contracts for sale, options, and assignments. In Hawaii, instruments in writing affecting any estate, right, title, or interest in land are recorded in the Bureau of Conveyances (BOC). The purpose of this is to give to everyone interested in the title to a parcel of real estate notice of the various interests of all parties. From a practical point of view, the recording acts give legal priority to those interests that are recorded first.

Title: the right to or ownership of land; also, evidence of ownership.

Title insurance: a comprehensive contract of indemnity under which the title company agrees to reimburse the insured for any loss sustained if title is not as represented in the policy. In addition to insuring the title, the title company also agrees to defend the title against any lawsuits.

Title search: an examination of the public records to determine what, if any, defects there are in the chain of title.

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Torrens system: a legal system for the registration of land, used to verify the ownership of land and establish the status of the title, including ownership and encumbrances, without the necessity of an additional search of the public records. Its purpose is to establish an indefeasible title free from all rights or claims not registered with the registrar of title.

In this study, the term "registered land" instead of the terms "Torrenized" or "land courted land" is used to mean land that has been registered through the land court system. The phrase "regular system" refers to the recording system in the Bureau of Conveyances for unregistered land.

Chapter 2

CONVEYANCING IN HAWAII

The proper conveyance of title to real property establishes a chain of title showing successive ownership beginning with the original source¹ from grantor to grantee, to and including the present owner. Documents showing ownership, encumbrances, and liens are filed in a government office, such as the Bureau of Conveyances.² When a document has been recorded in the BOC, it gives constructive notice to everyone of its existence and its contents. When there is a gap in the chain of title, there is a "cloud" on the title and the ownership must be established by a court action called a suit to quiet title.

A break in the chain of title can occur when a prior owner failed to record a deed. A subsequent buyer's ownership may be challenged if, for example, the prior owner sold the same property to two different buyers and the second buyer also makes claim to the property. Under these circumstances the second buyer's right to the property depends on whether the first buyer had recorded his deed in the recording office. If properly recorded, the second buyer will not have a valid claim to that property. On the other hand, the second buyer if a good faith purchaser, can establish ownership by filing the deed of ownership before the first buyer has done so. When a piece of property has "good" or valid title, it is marketable or can be mortgaged for a loan.³

Real property often has encumbrances such as a mortgage, lien, or judgments which affect title, or the property may have restrictions such as an easement or a lease. These encumbrances or restrictions may not prevent the sale of the property but may affect the value or use of the property so a buyer would be interested in a title search which revealed such rights or interests held by anyone who was not the legal owner of the property or others whose right or interest derived from the owner. A buyer seeks a

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property which does not have any cloud on the title because such imperfections impair marketability and invite litigation.

Whenever real property is bought and sold in Hawaii, evidence of ownership of that real property and notice of encumbrances can be established through one of two ways. One way is the method established by the Civil Code of 1859, where the instruments of conveyance, such as deeds, are recorded in the Bureau of Conveyances (BOC) in the DLNR. The act of recordation provides evidence of title (or ownership) in the new buyer. This system is referred to as the "regular system" and is codified in chapter 502, Hawaii Revised Statutes.

A second way of establishing ownership to real property is provided in chapter 501, Hawaii Revised Statutes, where the actual title to the property is registered. This second method is called the Torrens system (also known as the "land court" system), established in 1903 by the Territorial Legislature after a 1898 study which described the existing recording system "cumbersome, uncertain, unreliable, and entirely unfitted to the needs of the growing country (and) the peculiar conditions existing in these islands."⁴ A judicial proceeding is necessary to register title to land under the Torrens system and is similar to the procedure for quieting title.⁵

Government offices are involved in both the regular and the Torrens system. However, the judiciary makes the initial determination of title in the Torrens system. The difference between the two systems of proof of ownership to real property is that in the first, it is only evidence of title (e.g., the deed) that is recorded so that such evidence are mere assurances of ownership which must still be verified by the new buyer. In the Torrens system, however, the title to property has been registered much like the way automobile ownership is registered with the appropriate government agency, usually the county finance department, or a stock certificate is registered by a corporation.

In the regular system, "The buyer takes title from his or her seller on the basis of a deed executed in conformance with legal standards but must

take steps⁶ independent of governmental processes to identify and evaluate the nature of the interest the seller is conveying. The deed is then recorded and indexed to signal the new ownership to others."⁷

On the other hand, in the Torrens system it is the title itself which is registered after the land owner has properly established rightful title to the property in the Land Court and has been issued a certificate of title. This "...certificate of title reflects the current status of the title to the property. ...Unlike the regular system of recording, delivery of a deed registered in Land Court does not pass title until the new transfer is noted on the original certificate of title. The act of registration, rather than delivery, is the operative act to effect the transfer of title to land court property." (Emphasis added)⁸

It is important to understand the conceptual differences between the regular system and the Torrens system in order to appreciate the following examination of chapters 501 and 502, Hawaii Revised Statutes, and analysis of operations under these chapters.

The Regular System of Recordation

The recordation system in existence very early in the history of Hawaii was the regular system, established in 1859. The purpose of this law, like others extant in many states, was to provide constructive notice to everyone who might have an interest in the title to a piece of real estate of the existence of an encumbrance, if any, on that property.

Chapter 502, Hawaii Revised Statutes, and its predecessors therefore provided a mechanism for filing documents in the BOC which would give notice that certain claims have been recorded against that property. As stated in section 502-83: "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." Recordation thereby establishes a system of priority or ranking of claims against the property by the date the claim was recorded. Chapter 502 also serves a prospective buyer by tracing the chain of title for a particular parcel of land although there is no guarantee that a recorded deed is valid. A flow chart showing the process of recording documents in the regular system is described in Figure 1.

Chapter 502 provides that a registrar of conveyances assisted by a deputy be responsible for recording documents. Indexes of grantors and grantees are available to access these records.⁹ Other provisions relate to file plans,¹⁰ and the description of subdivision boundaries.¹¹

Instruments and documents which are accepted into the regular system for filing must meet certain requirements of size, legibility, etc.¹² In addition, a grantee's address must be on a deed.¹³ In general a document is checked at the front counter for the following items before being accepted for filing: (a) names of grantor and grantee, (b) grantee's residence and post office addresses, (c) description of the property, (d) signature of grantor, and (e) acknowledgment of grantor's signature (notary).

Chapter 502 further provides for the nature of acknowledgment and proof on instruments;¹⁴ effect of interlineations and erasures;¹⁵ effect of acknowledging, recording, or not recording instruments.¹⁶

While the nature of claims made upon properties in either the registered or regular system may be the same (mortgages, liens, etc.), there are some fundamental differences in the priority of these claims depending on whether the land is in the regular system or the Torrens system. In general, legal priority is determined by earliest recording date.

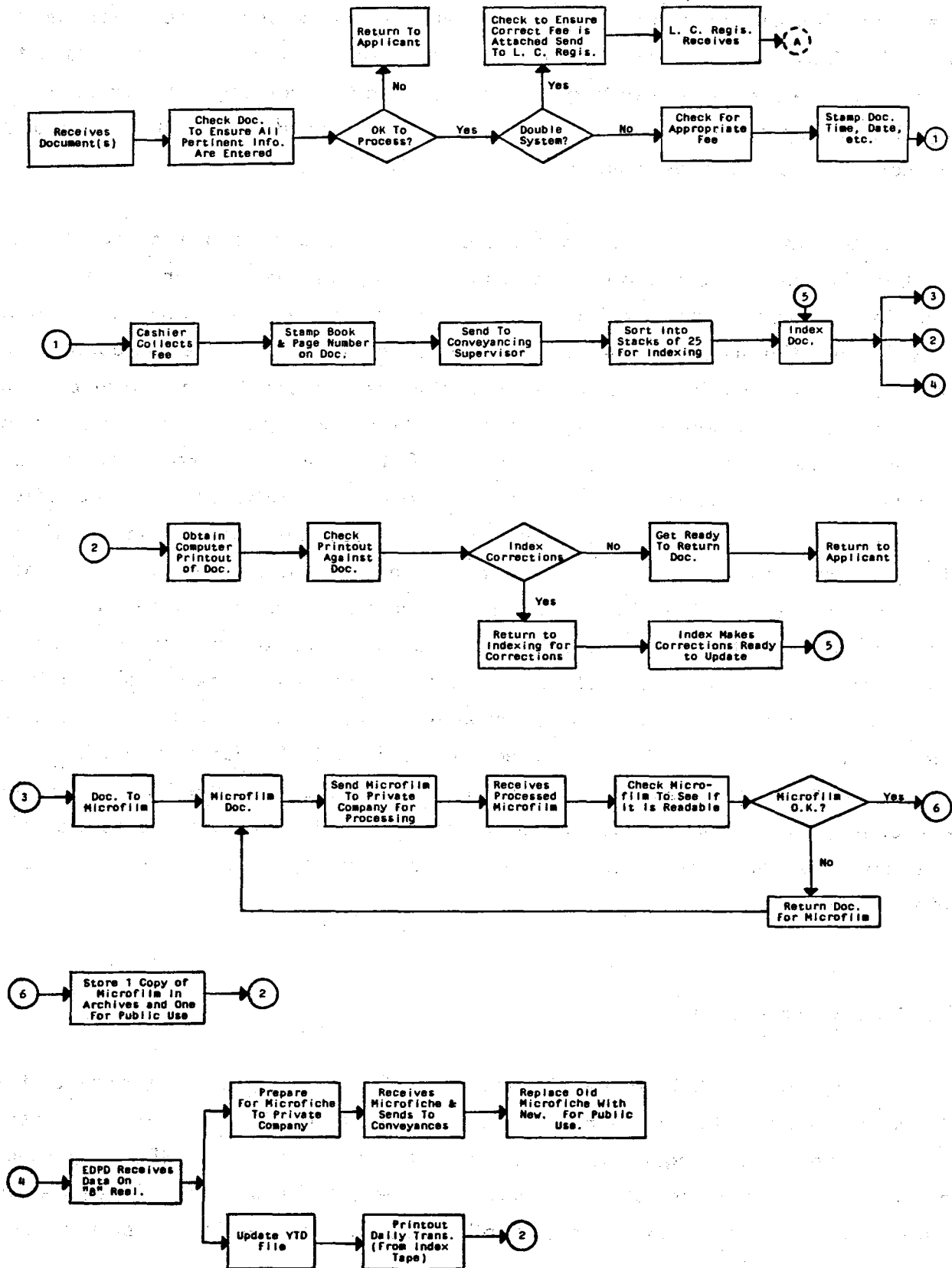
History of the Torrens System in Hawaii

The Hawaii Torrens system is an adaptation of a land registration system devised in 1857 by an Australian, Sir Robert Richard Torrens. The basic

Figure 1

REGULAR REGISTRATION BUREAU OF CONVEYANCES

April 30, 1984



Verified By the Deputy Registrar Of Conveyances Mr. A Viela

principle advocated by Sir Torrens' system is "the registration of the title to the land, instead of registering as under the old system, the evidence of title."¹⁷ The Hawaii Torrens law, like other American versions of this act, sought to reform the existing system of land recording by creating a registration system whereby land title would be "absolute and indefeasible and the conveyance would be simple and inexpensive."¹⁸

In the 1890's, a commission studied the Torrens system and reported to the Legislature that the problems of conveyancing in the regular system were due to "children (not taking) the names of parents...(and) in certain conveyances the name of the grantor is that of a commissioner appointed to partition or sell lands. Another evil is that of persons being known by two ...(or)...three different names, conveying land sometimes by one name and sometimes by another." Another critic of the regular system, Henry E. Cooper, "blamed the evils on missing deeds; the difficulty if not utter impossibility to identify many properties or trace through the labyrinth of Hawaiian relationships for interest in shares in undivided hui." Other problems identified with the existing system were "surveys with inaccurate instruments" and the use of the Hawaiian language on documents recorded in the Bureau of Conveyances (BOC).¹⁹ Despite the identification of problems in the regular system, the 1898 Commission did not recommend the adoption of the Torrens system, although it recommended that if adopted, the Torrens system be made compulsory.²⁰ It was not until 1903 that the legislature was sufficiently convinced by advocates to adopt the Torrens system as Act 56. The law as adopted was made optional, not compulsory, and administered as a statewide system.

Land Court Procedure

Today chapter 501, Hawaii Revised Statutes, guides the operations of the Torrens system. Two government offices, the Land Court in the Judiciary and the land court registration branch of the BOC in the DLNR, play major roles in the land registration (Torrens) system. The process of registering land with the Land Court from application, notice, hearings, reviews, and

issuance of decrees is described in sections 501-21 through 501-75, Hawaii Revised Statutes. Administration of the process of recording documents in the BOC is described in sections 501-1 to 501-13, Hawaii Revised Statutes.

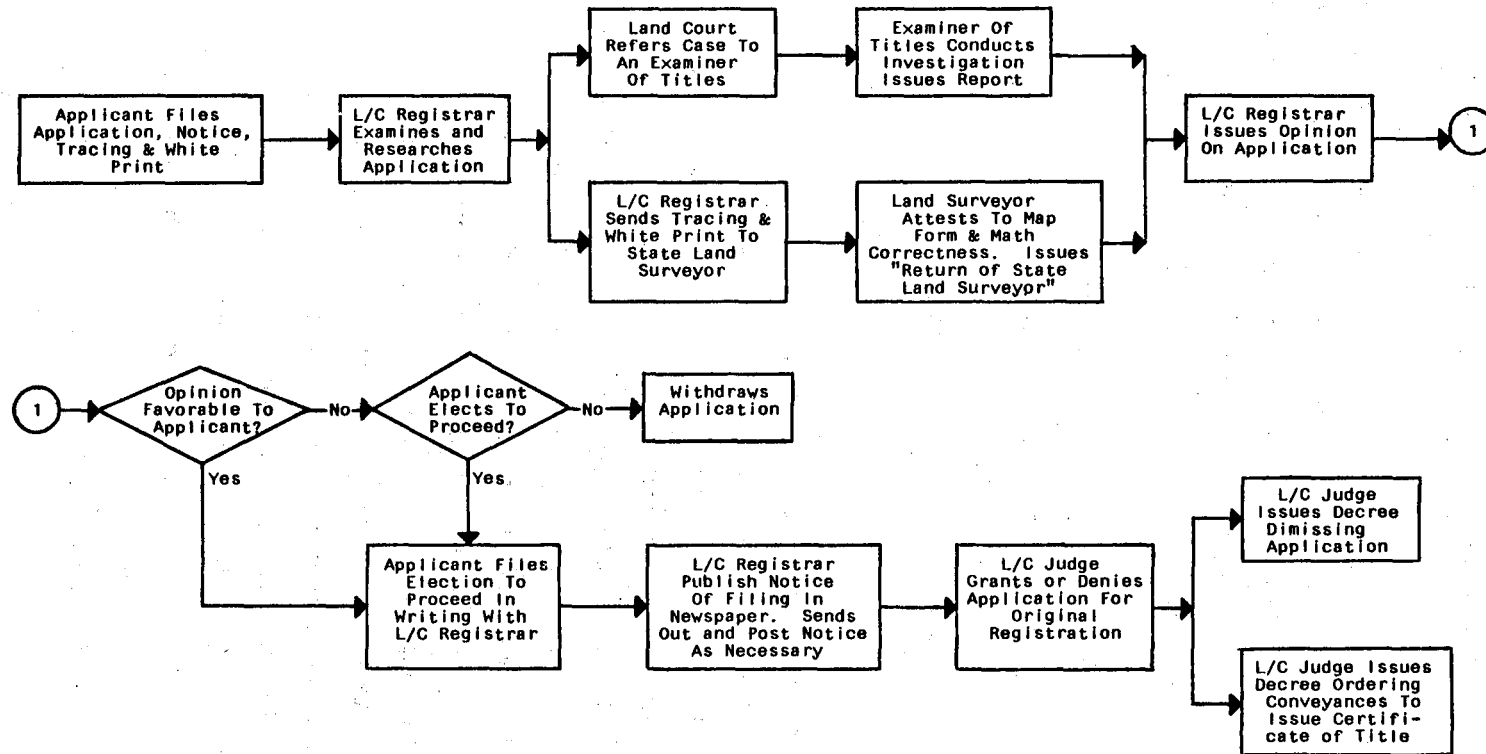
Land is originally registered in the Land Court because judicial intervention in the Torrens system is necessary to fulfill constitutional requirements of the due process clause of the Fourteenth Amendment of the United States Constitution. After the court-related aspects of land registration have been completed, the decree of registration and other documents which mortgage, lease, or encumber the land are recorded in the land court registration branch of the Bureau of Conveyances.²¹ As will be seen later in this report, most of the problems with the present land registration system in Hawaii involve the administrative and not the judicial part of the system. The procedure for registering land can be briefly described and tracked through the flow charts in Figure 2.

The process for registering land begins with an application to the Land Court by one or more persons who claim to own property in fee simple. The application must be accompanied by a map or plan of the land, and a complete abstract of title of the land as prepared by a title company, and must follow a prescribed form as to contents, signatures, etc.²² The Land Court registrar, upon acceptance of these papers refers the application to a court-appointed examiner of title who after searching records, presents a certificate of the examiner's opinion upon the title of the property.²³ Simultaneously, the registrar sends the map to the Department of Accounting and General Services (DAGS) for a state surveyor to verify the accuracy of the map.²⁴ This verification is done by a ground check of the property boundaries. If both the examiner of title and DAGS surveyor issue favorable opinions, the application proceeds to the judicial process of notice,²⁵ and hearings in the Land Court.²⁶ Notice is given by registered mail, publication, posting, and any other means the court deems proper. Individuals and other parties including the State or county, may dispute the applicant's claim at court hearings.

Figure 2

LAND COURT ORIGINAL REGISTRATION PROCESS

January 30, 1984



Verified by the Land Court Registrar Mr. R. Chun

CONVEYANCING IN HAWAII

Determination of title is decreed by the Land Court judge when the judge finds that the applicant has title and it is proper for registration.²⁷ If the applicant's title is encumbered, for example, by a mortgage, the decree is issued subject to any current encumbrances. Thereupon, "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."²⁸

As Shick and Plotkin pointed out, when the decree of registration is issued:²⁹

A claim or interest not reflected on the certificate can have no legal effect against the property unless it is of a kind excepted by statute or judicial decision. As a matter of law, then, the certificate is the exclusive determinant of the ownership interest and of the threshold for enforceability of certain other claims and interest that can attach to the land. A good-faith purchaser is entitled to rely on the information stated in and on the certificate as accurate and complete as to all nonexcepted interests.

Registration runs with the land and registered land cannot be acquired by adverse possession.³⁰

Of course few applications to register land proceed as smoothly as described. Successful completion of the basic procedure, however, results in a decree of registration which is then filed in the BOC.³¹ Any party who is aggrieved by the court's final decree can appeal to the supreme court.³²

After the land court issues the decree of registration, a certified copy of the decree is sent to the assistant registrar of the BOC. Most of the judicial aspects of land registration ends with the issuance of a decree. The BOC is responsible for handling the administrative aspects of filing the original certificate of title and therefore handles both regular system instruments under chapter 502, Hawaii Revised Statutes, and after judicial determination, Land Court instruments under chapter 501, Hawaii Revised Statutes. The registrar of the Land Court is appointed by the judge of the

Land Court³³ and is assisted by assistant registrars in the BOC who serve also as the registrar of conveyances³⁴ and deputy registrar of conveyances³⁵ under the regular system.

The decree is transcribed in the registration book and an exact duplicate of the original certificate with the words "owner's duplicate certificate" is delivered to the owner. Except for other miscellaneous provisions covered in sections 501-81 through 501-89, Hawaii Revised Statutes, the new owner of registered land probably will now have only limited future dealings with the Land Court. For example, if the owner's copy of the certificate of title has been lost, a petition to the Land Court is required in order for a new owner's duplicate to be issued by the BOC.³⁶ Once a parcel has been registered in the Torrens system, it cannot be removed and placed back into the regular system. Thus, any subsequent transfer of the property will be recorded in the land court registration branch and not in the regular system branch of the BOC.

The Operation of Chapter 501, Hawaii Revised Statutes, Under the Bureau of Conveyances

The BOC in the DLNR is the administrative agency which is responsible by law to maintain all decrees and original certificates of registration and indexes of applications.³⁷ The assistant registrar of the Land Court is also required to keep all other instruments which have been filed and which affect registered land, such as a conveyance, a lien, a deed, an attachment, an order, a mortgage, an agreement of sale, etc.,³⁸ because such filing serves as notice to all persons regarding an action taken against registered land.³⁹

Other provisions of the law describe agreements of sale,⁴⁰ registration of mortgages,⁴¹ foreclosure,⁴² leases,⁴³ transfer in trust,⁴⁴ partitions,⁴⁵ bankruptcy, eminent domain,⁴⁶ descent and devise,⁴⁷ which are various occurrences which can affect land title. Most of those provisions are directed to the BOC where it involves filing or recording of documents affecting registered land. Other provisions such as lost duplicate certificates,⁴⁸ adverse claims after original registration,⁴⁹ amendments of certificates of

title,⁵⁰ etc., are directed to the Land Court for certain judicial determinations (see section 501-191, Hawaii Revised Statutes, among others). For a flow chart depicting the procedure followed in recording a document in the land court registration branch of the BOC, see Figure 3.

A final and very important provision of the Torrens system is the State guarantee of title and the provision for a recovery fund designed to compensate any person who sustains loss or damage or is deprived of land by the registration of any other person as owner of such land or in consequence of any error in the registration book.⁵¹ The recovery fund is maintained by a fee upon the original registration of land of one tenth of one per cent of the assessed value of the land and improvements which is paid into the State general fund.⁵²

How Differences Between Chapters 501 and 502 Affect the Procedures in the BOC

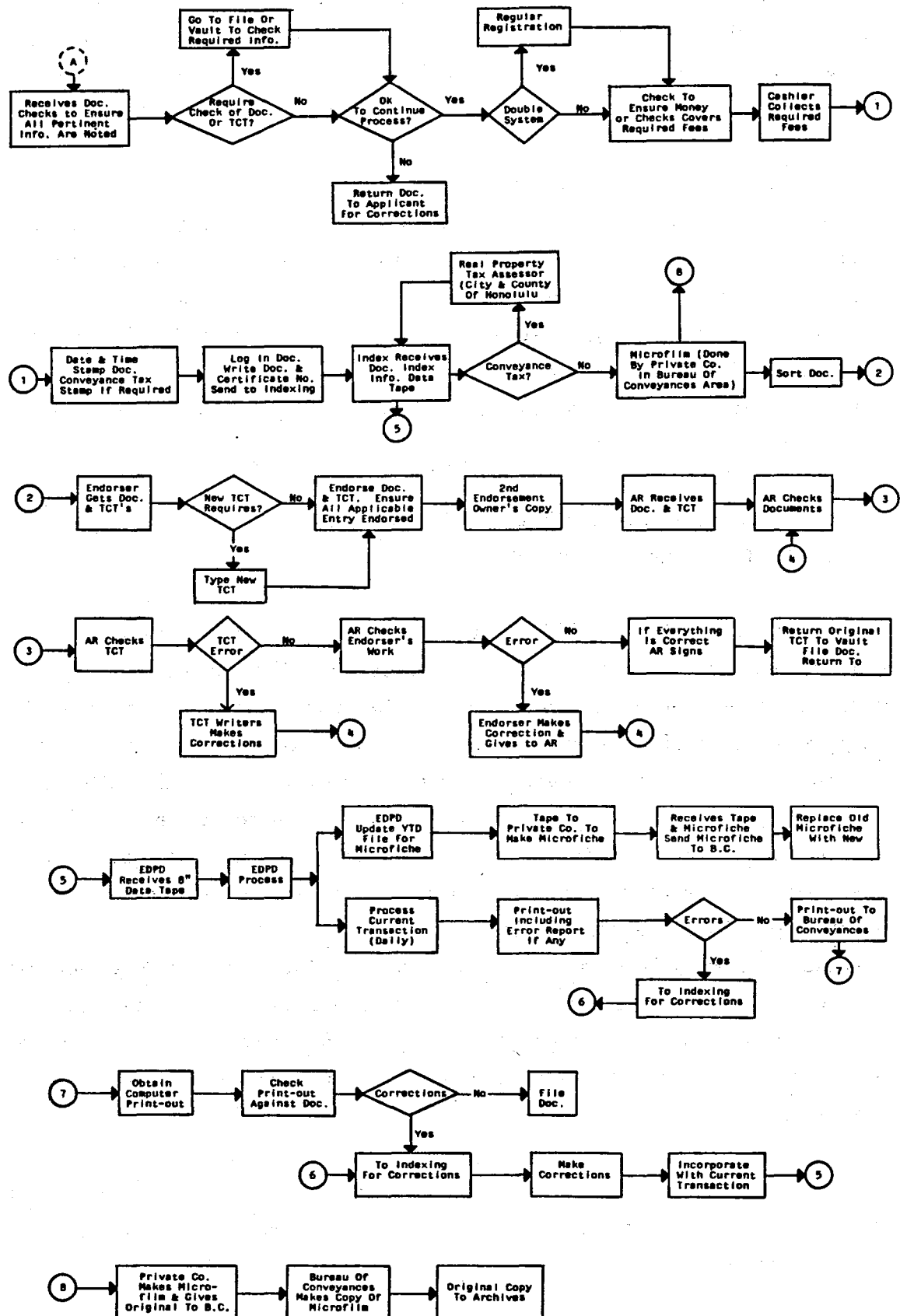
Chapters 501 and 502, Hawaii Revised Statutes, describe the State's role in recording documents. Compliance with the provisions of chapter 501 gives a landowner registered title, while compliance with chapter 502 gives only assurances of title which must be verified by carefully checking all these assurances. What this means in practical terms is that the title searcher for a buyer interested in property that has been registered need only look at the original certificate of title to determine the whole legal status of the title to that piece of real property (with a few statutory exceptions). On the other hand, the title searcher for a buyer interested in unregistered (i.e., "regular system") land must look at records which may or may not have been recorded in the BOC (for example, probate and vital statistics records). This information must then be verified for accuracy and truth before developing a complete title history. As described by a law review commentary:⁵³

There are numerous other shortcomings of the record system. For instance, the record system provides no means of verifying the genuineness of signatures, either of the grantor or witnesses. In

Figure 3

LAND COURT REGISTRATION: RECORDING IN BUREAU OF CONVEYANCES

May 8, 1984



Verified By the Assistant Registrar Of Conveyances Mr. A Viale

addition, the mere fact that a deed appears of record raises only a presumption that the deed was in fact delivered. Questions of incapacity to contract are not determined by the recordation of a deed. Again, these difficulties are eliminated under the provision of the Torrens Act. Title to land is submitted to a court of land registration which adjudicates and determines by a decree "forever binding and conclusive upon all persons" the rightful owner of the land.

Records for both systems are filed in the Bureau of Conveyances. Depending on which system is affected, regular or registered, documents are channeled through different branches and treated differently. Documents filed in the regular system branch are not verified as to truth or genuineness; they are accepted if the document has the name of a grantor and a grantee, a return address, signatures which have been acknowledged (notarized), and applicable fees have been paid. In specified instances such as a lease or a release of a mortgage, reference must be made to the original lease or to the original mortgage.⁵⁴ An entire literal copy is made on microfilm and a grantor-grantee index made for the item. The original document is then returned to the individual who submitted the instrument for recording.

Compared to the procedures in the regular system, documents submitted for filing in the Torrens system must be treated in the BOC with greater attention to detail. The reasons are twofold: first, the act of registration is the operative act to convey or affect the land⁵⁵ and second, the State of Hawaii insures the accuracy of the title.⁵⁶ The result is that the staff in the Torrens section of the BOC must deal with a paper and labor intensive system to verify the genuineness of signatures and accuracy of information that is to be recorded. They must also know what kind of document is being filed: whether it is a deed, a lease, a mortgage, etc. Since the certificate of title is the relevant reference to which every instrument must relate, every deed or other instrument filed with the registrar must be numbered, indexed, and endorsed with a reference to the correct number on the certificate of title.

Every instrument submitted for filing in the Torrens system must be noted as received with the year, month, day, hour, and minute of receipt because it is from this point that the instrument is regarded as registered.⁵⁷ Until recently, the original instrument was retained by the BOC. But since May 29, 1986, original documents are being returned after microfilming, pursuant to Session Laws of Hawaii 1986, Act 246.⁵⁸ Documents are stored at the BOC so that anyone interested in a property can review the document. Memoranda of encumbrances, showing the document number, class of document, name of party instrument is in favor of, terms, date of instrument, and date and time of registration, which are noted on the certificate of title must also be noted on the owner's duplicate certificate of title.⁵⁹

The owner's duplicate certificate of title must be presented in order to register any voluntary instrument or to enter a new certificate of title--for example when the property is sold to a new owner. Where the duplicate certificate is not presented, the assistant registrar will refuse to record the document and in some cases is authorized to request production of the duplicate. If presentation of the duplicate is refused, the assistant registrar may request that the Land Court order the production of the duplicate certificate after notice and by suitable process.⁶⁰ In the case of involuntary instruments (for example attachments or liens on the property), information of the lien will be noted on the original certificate of title and no similar encumbrance noted on the owner's duplicate. Upon registration of the lien, the assistant registrar will notify the registered owner by mail, of the filing of the lien and will request that the owner produce the duplicate certificate for such notation. Accordingly, in case of dispute between the original and the owner's duplicate certificate, it is always the original certificate of title that controls.

Because each document must be handled, checked, accurately noted, and filed, it has been more time consuming to record and process documents in the land court registration branch of the BOC. As a result, this branch of the BOC has taken longer to complete all procedural actions for each document submitted for registration. That is, examination, acceptance for recordation, indexing, microfilming, and the like have been completed, but

the memoranda of each document, showing the document number, class of document, name of party instrument is in favor of, terms, date of instrument, and date and time of registration, have not been entered on both the original and owner's duplicate certificate of title, or in some cases the issuance of a new certificate of title, the return of certified copies of the recorded documents to the requestor and the filing of the original documents into file drawers have not been accomplished as quickly as title companies and mortgagees wish. And until these processes are completed, title companies must spend more time conducting searches of land court titles in order to insure a correct chain of title, free from encumbrances, so that they can record documents for their clients. The added cost is passed on to the owner or buyer of the property. This is the nature of the "backlog" which has plagued the land court registration branch of the BOC. In July 1983, this "backlog" was about six months.⁶¹ By February 1985, this backlog was seven months.⁶² As of August 1987, the backlog had increased to twenty-two months, despite a variety of administrative actions, including use of word processors, reassignment of personnel, and use of overtime.⁶³

It should be repeated that this backlog is not due to failure to register documents because the statutes provide that every conveyance, lien, order, decree, instrument, or entry affecting registered land, shall, if registered, filed, recorded, or entered in the office of the assistant registrar, be notice to all persons from the time of such registering, filing, recording, or entering. The statutes also provide that the act of registration shall be the operative act to convey or affect the land. The nature of the backlog is because memoranda of each document have not been entered on the affected certificates or new certificates issued to buyers have not been completed. A backlog of twenty-two months therefore means that the average person submitting a document for filing must wait twenty-two months before his documents are returned to him, not before any action is taken on the document. During the last three fiscal years, the land court registration branch registered 62,812 (1984/85), 79,831 (1985/86), and 99,945 (1986/87) documents, respectively. The steady workload increase without any appreciable increase in staff also contributed to the backlog.

For comparison, the backlog in the regular system branch as of August 1987 was six months, which means that when an instrument has been submitted for recordation in the regular system branch, at least six months elapse before the document is returned to the owner or requestor after being indexed and microfilmed.

The backlog in 1983 and consequent delays to the users of the system (realtors, title companies, and others) prompted the DLNR to ask the Department of Budget and Finance (B&F) in July 1983 for a review of the two systems.

Management Review by Department of Budget and Finance

In July 1984, one year after the request from DLNR, B&F made suggestions in a 14-page memorandum to improve the existing land court registration system. B&F concluded that "the Torrens system was a good system (which) should be continued with modifications."⁶⁴

Suggestions from B&F to improve the land court system included:

- (1) Developing a written procedures manual describing how to process documents for registration for public use as well as for internal use;
- (2) Reviewing chapters 501 and 502 to possibly make changes to the law to allow administrative rules to govern procedural requirements and fee schedules;
- (3) Improving the position organization chart to clearly delineate functional authority and responsibility, and by utilizing personnel effectively and efficiently;
- (4) Evaluate the possible reorganization of BOC;

- (5) Reviewing chapter 501 and possibly making changes to Land Court procedures regarding condominiums and time-share units (changes were implemented by the Land Court judge).

Other suggestions were made regarding layout of the office, change in office hours and use of other state employees to improve productivity and reduce the backlog.

Some of the suggestions from B&F have been implemented. One of the results of the B&F review was the development of a project viability assessment (PVA) study in May 1985 to justify the computerization of land court records in the BOC. In 1986 the Legislature passed Act 246 (S.B. No. 934) which:

- (1) Appropriated \$255,000 for FY 86/87 to computerize the land court registration branch;
- (2) Revised sections of chapter 501 in order to allow microfilming of documents;
- (3) Increased fees for registration of land court documents which would generate about \$360,000 in revenues per year; and
- (4) Authorized the Supreme Court to adopt, amend, and repeal rules relating to the processing of land court documents and instruments.

The conversion of land court registration branch records to microfilm and the computerization of the storage and retrieval of documents began in February 1987 and was still in progress as of August 1987. It was estimated that approximately 150,000 documents would be converted by the end of this project. In 1985, the DLNR had estimated that when the system was in full operation, the processing time would be reduced to a 10-day period.⁶⁵

Another result of the B&F review was a revision of the rules of the Land Court, a draft of which was completed by a committee and sent to the Land

TWO LAND RECORDING SYSTEMS

Court judge for review and comment in December 1986. The proposed Land Court rules relate to:

- (1) Filing of documents and other papers with the Land Court, including such documents as applications, abstracts of title, etc.
- (2) Recordation in the BOC; and
- (3) Rules and regulations for surveyors licensed to practice before the Land Court.

The purpose of these Land Court rules was to clarify the procedures and other requirements which applicants, attorneys, and land surveyors, must follow in the Land Court. As of August 1987, the proposed rules had not been adopted by the Supreme Court.

A third result of the B&F review was a change in the certificate of title to a simpler format, showing encumbrances on the same sheet as the registered title. The result facilitates microfilming and will eventually reduce the bulkiness of the registration volumes stored in the BOC, because after the conversion and microfilming, old sheets of memoranda can be discarded. A sample certificate of title is displayed in Appendix C.

Hawaii Real Estate Center (HREC) Study

In October 1987, the HREC granted preliminary approval for a study project on the BOC to: (1) identify operational strengths and weaknesses of the procedures in the BOC, and (2) determine the feasibility of using tax map keys as identifiers of parcels for recording in the BOC. The HREC study was intended to complement and not supplant the Bureau's study. In November 1987, the HREC decided to postpone a final decision on this study until the next fiscal year in view of "recent changes in top level personnel and organizational structure" at the BOC and the indication from the head of the department responsible for BOC that corrective action through the

administrative route has been accorded the department's highest priority.⁶⁶ Therefore, pending administrative efforts to correct the problems in the BOC, the HREC study will be held in abeyance.

The dissatisfaction with the Torrens system which has surfaced in recent years is a result of a general feeling that the registration system is not serving its original purposes of providing speedy, inexpensive, and secure title. This feeling is primarily the result of the twenty-two month backlog at the BOC.

House Resolution No. 47, H.D. 2 (1987), asked whether consolidating the two systems would result in financial savings. Before addressing this question, the Bureau looked at the experiences of other states with Torrens laws and then examined the cost of operating two systems in Hawaii.

Chapter 3

THE TORRENS SYSTEM

The Torrens System in Other States

Altogether twenty-one states in the United States adopted Torrens legislation between 1895 and 1917. These states are: Illinois (1895), Ohio (1896), California* (1897), Massachusetts (1898), Minnesota (1901), Oregon (1901), Colorado (1903), Hawaii (1903), Washington (1907), New York (1908), North Carolina (1913), Mississippi* (1914), Nebraska* (1915), Virginia (1916), South Carolina* (1916), Georgia (1917), Tennessee* (1917), North Dakota* (1917), South Dakota (1917); Utah* (1917). The states identified by asterisks subsequently repealed their Torrens statutes.¹ In 1915, Pennsylvania passed a constitutional amendment which authorized Torrens registration, but no enabling legislation was ever passed. Seven states are believed to have repealed their Torrens laws. The Torrens system is used to varying degrees in the remaining 13 states.

Shick and Plotkin's 1978 Report

The most comprehensive and still relevant study of the Torrens system in the United States is the 1978 publication by Shick and Plotkin. Shick and Plotkin reported that in most states with a viable Torrens law, there was almost nonexistent to minimal usage except in a few states like Illinois, Massachusetts, and Minnesota (Shick and Plotkin did not review Hawaii's Torrens law in detail).² Hawaii and Massachusetts are unique in having a statewide system (Hawaii's law was patterned after the law in Massachusetts). In other states, the land registration system is maintained by the separate county governments.

Torrens land registration is not mandatory in any of these states. Shick and Plotkin found that registered land has been characteristically property destined for development³ and more likely to be urban than rural.⁴

The title clearing aspects of the registration system makes the Torrens system a desirable option for many developers.

According to Shick and Plotkin:⁵

Because of differences in the individual histories of the jurisdictions that have attempted land registration, it is difficult to generalize about all user patterns. It is clear, however, from the urban systems we examined, and from the literature available on other jurisdictions, that land registration was and is sought for reasons peculiar to the particular land involved. The predominant reason is to clarify an ambiguity or resolve a potential conflict over the status of title or ownership. Specifically, registration is used to eliminate problems or resolve doubts that would render land unmarketable. This purpose is more than just predominant. It is so overwhelmingly the justification for the use of Torrens as to be its American *raison d'etre*.

In this regard, the prime attribute of the Torrens approach is the extent to which the initial registration decree eliminates unrecorded prior history as a consideration that affects land title. Because of constitutional, statutory, and judicially imposed exceptions, a registration decree is not legally conclusive as to all possible claims and interests in the land. However, it is sufficiently exhaustive in its coverage to offer the potential to resolve or eliminate a great many of the problems associated with "bad" or unclear title histories.

The fact that title clarification is the primary reason for using Torrens helps to describe the nature of the land being placed into registration and the motivation of the landowners involved. Historically, much of the land that went into registration was undeveloped or relatively undeveloped and the reason for seeking registration was to enable its sale for (or after) development. This continues to be the pattern in Massachusetts, where the statewide jurisdiction of the land court includes currently developing semirural areas. In built-up urban areas, some current use of registration is more

oriented toward the transfer of property for redevelopment. Thus, the primary category of Torrens users includes landowners who stand to enjoy the enhancement of value occasioned by development opportunities--speculators, developers, and builders. This was particularly true during periods of rapid urban growth early in the century.

The Legislative Reference Bureau surveyed two groups of states with Torrens legislation. The first group included states which had repealed their Torrens law. These states were asked what problems, legal, mechanical, or practical were encountered upon repeal. The second group of states were those which still maintain Torrens legislation. These states were asked whether they had considered repeal of their Torrens laws due to infrequent use or high administrative costs.

Even if their land registration system is little used today, states which have the Torrens law reported no intention to repeal this law. Where the Torrens system is little used, the responses indicate that this has been due to lack of familiarity with the program (Georgia); court decisions which have eroded the indefeasibility of Torrens (North Carolina); permitting withdrawal of land from the Torrens system (Ohio); or preference for using statutory quiet title actions (Georgia). However, Torrens registration has been useful for developers who want clear title for large parcels of land which are then subdivided and sold without costly title searches.⁶

In addition, absentee landowners of large tracts of timberlands have used the registration system to protect themselves against adverse possession by squatters.⁷ As explained in Chapter 2, land registered in the Torrens system cannot be acquired through adverse possession.

States which have repealed their Torrens law due to non-use were Utah (repealed in 1933) and Tennessee (repealed in 1932). In Oregon (repealed in 1971) and California (repealed in 1954), the repeals came after expressions by county clerks, recorders, and title companies, that the Torrens system was expensive to maintain. In Oregon's case the conversion to the regular system after repeal of the Torrens law was done without charge to landowners.

Officials could not recall having had any problems with the repeal of the Torrens law.⁸

In California, when the Torrens system was repealed after approval by the vote of the general electorate in 1950, the system was described as "unsatisfactory, cumbersome and a costly expense to the general taxpayer." The California assurance fund had been insolvent for years and the dual system was described as "confusing".⁹ With the passage of more than thirty years since the repeal in California, it is difficult to find more than anecdotal information about the effects of repeal.

In four states: Mississippi, Nebraska, North Dakota, and South Carolina, there is conflicting information about whether or not Torrens legislation was ever adopted and therefore whether there was any Torrens law to repeal. Nebraska, North Dakota, and South Carolina are listed in Shick and Plotkin as having made little or no use of their Torrens legislation.¹⁰ This may explain why letters from North Dakota and South Carolina to the Bureau indicated no Torrens law ever existed in these states.¹¹ More than seventy years have passed since the probable passage of Torrens law in North Dakota and South Carolina, so it is possible that this information has been lost and cannot be verified.

No replies have been received from Mississippi and Nebraska. Shick and Plotkin reported that the bankruptcy of the Torrens insurance funds in Nebraska led to "the cessation of further use of Torrens in that part of the country."¹² Mississippi is reported to have repealed its Torrens law "within fifteen years (after enactment) because of lack of use."¹³

In summary, the Bureau's review of the Torrens system in the United States revealed that the Torrens concept initially accepted by 21 states at the turn of the century is now moribund in many states. This confirms the general findings of Shick and Plotkin. In those states which have repealed their Torrens law, no one recalled having any problems upon repeal. Those states with a Torrens law reported no intention or plan to repeal their statute, even if the law to register land is little used today, probably

because the law still serves a useful purpose of clearing title. The Bureau's inquiries, which tried to update the Schick and Plotkin study, did not add more information than what is available in the 1978 publication.

Hawaii's Experience with the Torrens Law

Registered Lands in Hawaii

As of August 31, 1987, there have been 1,846 original decrees issued by the Land Court over the past 84 years (1903-1987). This represents about 533,203 acres of land or 13 per cent of the total land area of the State of Hawaii (see Table 1). If the findings of Schick and Plotkin are correct that lands destined for development are more likely to be registered,¹⁴ then this 13 per cent may represent a portion of the more valuable lands in Hawaii.

Table 1 shows the percentage of registered land by island. Nearly all of Lanai which is owned primarily by Castle and Cooke is registered. Oahu, the most urbanized island, has a little more than 50 per cent of all of its acreage registered in the Torrens system.

Another way to appreciate the amount of land which has been registered is to compare it against acres in the State which are not owned by the federal and state governments. Since adverse possession cannot be held against the government, the title clearing function of the Torrens law would be most important against all other landowners--that is, privately owned lands. Privately owned land in the State in 1985 was 2,399,551 acres.¹⁵ Therefore, 533,203 acres of registered land accounts for about 22 per cent of the privately owned lands in Hawaii (assuming that no registered lands have been reacquired by governmental condemnation action).

The Recovery Fund

The Bureau could not find data for the total amount of fees collected and deposited for protection against loss or damage.¹⁶ Instead, the Bureau made

Table 1

LAND COURT DECREES OF REGISTRATION

| Island | Total Land Area of Island* (In Acres) | Land Registered in Land Court System (In Acres) (As Per Cent of Island) | | Assessed Value** |
|-------------------|--|--|-----|------------------|
| Hawai i | 1,573,400 | 125,154 | 5% | \$ 5,019,665.16 |
| Kauai | 353,900 | 26,964 | 8% | 2,598,297.40 |
| Lana i | 90,500 | 89,166 | 99% | 1,641,116.42 |
| Mau i | 465,800 | 13,455 | 3% | 2,079,534.35 |
| Mo lo kai | 165,800 | 74,627 | 45% | 1,528,076.42 |
| Oahu | 386,188 | 203,837 | 53% | 102,763,170.75 |
| Palmyra Island | | | | 5,000.00 |
| TOTAL: | 3,035,588 | 533,203 | 13% | \$115,634,860.50 |

*Hawaii, State Department of Planning and Economic Development, 1986 Data Book (Table 192)

**Represents an estimate as assessed value data for more recent Land Court applications was not available. (No assessed value assigned to land courted property registered to the Territory of Hawaii or State of Hawaii.)

Source: Land Court, Judiciary of Hawaii.

an estimate based on property assessment figures collected and tabulated by the Land Court when each decree of original registration was noted in the book of original decrees. This information has been maintained by the Land Court since 1904, when the first decree of registration was issued.

Without correcting for inflation, the total assessed value of registered lands at the time of original registration was \$115,634,860. This generated about \$115,634 (1/10th of 1 per cent) for deposit into the general fund for the use of the recovery fund.¹⁷

In the 84-year history of the Torrens system in Hawaii, only one successful claim has been made against the State for an error in recordation, for which the State paid \$110,000 in 1986.¹⁸ It is not known how many other potential claims there may have been as a claimant must exhaust all other remedies (such as may be available under title insurance) before resorting to a contract claim against the State under this provision.

This means that the single claim of \$110,000 paid in 1986 by the State, pursuant to the provisions of section 501-212, Hawaii Revised Statutes, has nearly depleted the total amount of fees estimated to have been collected for the fund (not corrected for interest earned, if any, and for similar fees due for more recent decrees issued by the Land Court).

Cost of Registering Land: Land Court Data

While there are no confirmed figures, it was estimated in 1975 that "the entire registration process takes approximately 4 months...costing perhaps \$5,000 including survey and legal fees."¹⁹

It would seem that the registration process actually takes longer than four months. Table 2 indicates that at least thirteen applications pending on June 30, 1986, had been pending for at least three years, since July 1, 1983. (Sixteen original land registration cases pending on July 1, 1986, minus one filed during 1984-85 and two terminated during 1985-1986).

Table 2
LAND COURT CASELOAD

| | FY 1983-84 | FY 1984-85 | FY 1985-86 | FY 1986-87 |
|--|---------------|---------------|---------------|------------------------|
| Original Land Registration Cases | | | | |
| Pending on July 1 | 20 | 15 | 16 | 14 |
| Filed during fiscal year | 0 | 1 | 0 | 0 |
| Terminated during fiscal year | 5 | 0 | 2 | 0 |
| Pending on June 30 | 15 | 16 | 14 | 14 |
| Exparte petitions filed during fiscal year | 3,395 | 4,020 | 4,746 | 5,572 |
| Contested Cases | | | | |
| Pending on July 1 | 53 | 41 | 22 | 42 |
| Filed during fiscal year | 59 | 36 | 46 | 14 |
| Terminated during fiscal year | 71 | 55 | 26 | 13 |
| Pending on June 30 | 41 | 22 | 42 | 43 |
| Number of contested case hearings held | 91 | 83 | 52 | 27 |
| Land Court Permanent Personnel | | | | 5 ¹ |
| Program cost | | | | \$104,752 ² |
| Revenues | | | | \$20,649 |

1. These employees serve dual functions in both Land and Tax Appeals Courts.
2. This figure represents an estimated 70% of the total \$149,645 cost appropriated to the Land and Tax Appeals Courts functions.

Source: Land Court, Judiciary of Hawaii.

Figure 4, which represents the contents sheets of an applicant's file in the Land Court, shows an application filed May 11, 1972; state surveyor's report filed September 25, 1972; examiner's report filed August 21, 1973; decision filed on April 10, 1974; and the decree issued on May 16, 1974, two years after application was made to the Land Court. Whether or not this is a typical case was not an issue of this study, but this is not an unreasonable interval, because of the number of legal steps which must be taken to properly notify all potential defendants of the claim to clear title by land registration.

There are five full-time employees in this court who also perform duties in the tax appeals court. It was estimated that 70 per cent of the staff's time is spent on Land Court activities and 30 per cent on tax appeals. The total cost of operating the Land Court in 1986-87 was therefore estimated at 70 per cent of \$149,645, or \$104,752 (see Table 2). In 1987-1988, the total appropriation was \$175,818 of which 70 per cent is \$123,073.

Table 2 shows the caseload of the Land Court for fiscal year 1983-84 through fiscal year 1986-87. This table indicates that the number of original registrations has not changed very much in recent years. Instead, more activity occurred after original registration, for example, ex parte petitions. Ex parte petitions are petitions to the Land Court which are uncontested and do not require judicial determination. Typically, these ex parte petitions which are handled administratively by the registrar, include petitions for replacement of an owner's lost duplicate certificate of title, petition noting that the registered owner has married, or divorced, or changed his name, or died.²⁰ Table 3, which shows the caseload activity in the Land Court since fiscal year 1972-1973, does not indicate substantial changes in caseload over the past fifteen years.

Table 4, which shows the number of original registration decrees issued since the Torrens law was passed in 1904, reveals that many more decrees (upwards of 20 or more) were being issued annually until about 1960, when the number (except for 1962-63) of new decrees issued dropped to below 20

Figure 4

In the Land Court of the State of Hawaii

IN THE MATTER OF THE APPLICATION OF

ALLAN DALE STARR, to register title
to land situate at seashore at
KAOHAI, Island of Lanai, District
of Lahaina, County of Maui, State
of Hawaii.

Application No. 1881

INDEX SHEET

| DATE | | DOCUMENT | PAGE NO. |
|--------|----|--|-------------|
| May 11 | 72 | Application | 1 |
| " " | " | Notice of Filing | 6 |
| " " | " | Partial Abstract of Title (Under separate cover) | |
| Sep 6 | 72 | Amended Application executed by Applicant's Attorney to conform to signature on map and description filed w/ application | 10 |
| Sep 25 | 72 | Ltr. to Hon. Judge of Ld. Ct. from Surveyor 9/13/72 | 15 |
| | | Map | 17 |
| | | Portion of Map 2 Ld. Ct. App. No. 862 | 18 |
| Sep 25 | 72 | Return of the State Land Surveyor | 20 |
| Oct 18 | 72 | Reference to Examiner | 21 |
| Aug 21 | 73 | Report of Examiner | 22 |
| | | Copy of Receipt August 22, 1973 | 26 |
| Aug 24 | 73 | Election to Proceed | 27 |
| Aug 29 | 73 | Citation | 29 |
| Sep 11 | 73 | Printed Citation | 34 |
| " " | " | Registered Mail List | 35 |
| Sep 17 | 73 | Notice Showing No Delinquent Taxes Owing | 36 |
| Sep 20 | 73 | Sheriff's Return | 37 |
| Sep 24 | 73 | Answer and Claim of Harold A. K. Cathcart | 38 |
| Sep 25 | 73 | Affidavit of Publication | 44 |
| | | Minutes 9/28/73 | 45 |
| Oct 2 | 73 | Motion for General Default | 46 |
| Oct 29 | 73 | Answer and Claim of Joseph Kahaleanu | 47 |
| | | | |

Table 3

LAND COURT CASELOAD ACTIVITY
FISCAL YEAR 1972-73 THROUGH 1986-87*

| | <u>1986-87*</u> | <u>1985-86</u> | <u>1984-85</u> | <u>1983-84</u> | <u>1982-83</u> | <u>1981-82</u> | <u>1980-81</u> | <u>1979-80</u> | <u>1978-79</u> | <u>1977-78</u> | <u>1976-77</u> | <u>1975-76</u> | <u>1974-75</u> | <u>1973-74</u> | <u>1972-73</u> |
|-------------------------------|-----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| A. CASES PENDING AT START | 56 | 38 | 56** | 73 | 71 | 70 | 73 | 10 | 89 | 83 | 87 | 76 | 65 | 56 | 61 |
| Original Registration | 14 | 16 | 15 | 20 | 27 | 27 | | | | | | | | | |
| Contested Case | 42 | 22 | 41** | 53 | 44 | 43 | | | | | | | | | |
| B. CASES FILED | 14 | 46 | 37 | 75 | 46 | 62 | 39 | 104 | 46 | 53 | 44 | 57 | 49 | 34 | 50 |
| Original Registration | 0 | 0 | 1 | 0 | 2 | 0 | | | | 4 | 0 | 3 | 2 | | |
| Contested Case | 14 | 46 | 36 | 75 | 44 | 62 | | | | 49 | 44 | 54 | 47 | | |
| C. TOTAL CASELOAD (A+B) | 70 | 84 | 93 | 148 | 117 | 132 | 112 | 114 | 135 | 136 | 131 | 133 | 114 | 90 | 111 |
| Original Registration | 14 | 16 | 16 | 20 | 29 | 27 | | | | | | | | | |
| Contested Case | 56 | 68 | 77 | 128 | 88 | 105 | | | | | | | | | |
| D. CASES TERMINATED | 13 | 28 | 55 | 72 | 44 | 61 | 42 | 41 | 125 | 47 | 48 | 46 | 38 | 25 | 55 |
| Original Registration | 0 | 2 | 0 | 5 | 9 | 0 | | | | 1 | 4 | 1 | 5 | | |
| Contested Case | 13 | 26 | 55 | 67 | 35 | 61 | | | | 46 | 44 | 45 | 33 | | |
| E. CASES PENDING AT END (C-D) | 57 | 56 | 38 | 76 | 73 | 71 | 70 | 73 | 10 | 89 | 83 | 87 | 76 | 65 | 56 |
| Original Registration | 14 | 14 | 16 | 15 | 20 | 27 | | | | | | | | | |
| Contested Case | 43 | 42 | 22 | 61 | 53 | 44 | | | | | | | | | |
| F. EXPARTE PETITIONS | 5,572 | 4,746 | 4,020 | 3,395 | 3,200 | 2,925 | 3,134 | 3,426 | 3,097 | 2,801 | 2,467 | 2,467 | 1,955 | 2,300 | 2,523 |

*Represents a preliminary estimate

**Revised

SOURCE: The Judiciary, State of Hawaii, Annual Report, for Fiscal Year 1972-73 through Fiscal Year 1985-86.

Table 4

LAND COURT: DECREES OF REGISTRATION ISSUED
FISCAL YEAR 1903-04 THROUGH 1986-87*

| | | | | | | | | | | | | | |
|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| <u>1903-04</u> | <u>1904-05</u> | <u>1905-06</u> | <u>1906-07</u> | <u>1907-08</u> | <u>1908-09</u> | <u>1909-10</u> | <u>1910-11</u> | <u>1911-12</u> | <u>1912-13</u> | <u>1913-14</u> | <u>1914-15</u> | <u>1915-16</u> | <u>1916-17</u> |
| 5 | 16 | 39 | 39 | 19 | 24 | 16 | 19 | 15 | 32 | 26 | 39 | 10 | 17 |
| <u>1917-18</u> | <u>1918-19</u> | <u>1919-20</u> | <u>1920-21</u> | <u>1921-22</u> | <u>1922-23</u> | <u>1923-24</u> | <u>1924-25</u> | <u>1925-26</u> | <u>1926-27</u> | <u>1927-28</u> | <u>1928-29</u> | <u>1929-30</u> | <u>1930-31</u> |
| 31 | 30 | 41 | 34 | 35 | 22 | 31 | 44 | 49 | 50 | 70 | 64 | 37 | 42 |
| <u>1931-32</u> | <u>1932-33</u> | <u>1933-34</u> | <u>1934-35</u> | <u>1935-36</u> | <u>1936-37</u> | <u>1937-38</u> | <u>1938-39</u> | <u>1939-40</u> | <u>1940-41</u> | <u>1941-42</u> | <u>1942-43</u> | <u>1943-44</u> | <u>1944-45</u> |
| 41 | 40 | 14 | 18 | 25 | 31 | 45 | 36 | 50 | 40 | 38 | 32 | 22 | 20 |
| <u>1945-46</u> | <u>1946-47</u> | <u>1947-48</u> | <u>1948-49</u> | <u>1949-50</u> | <u>1950-51</u> | <u>1951-52</u> | <u>1952-53</u> | <u>1953-54</u> | <u>1954-55</u> | <u>1955-56</u> | <u>1956-57</u> | <u>1957-58</u> | <u>1958-59</u> |
| 22 | 19 | 26 | 38 | 25 | 29 | 29 | 24 | 24 | 18 | 15 | 16 | 12 | 21 |
| <u>1959-60</u> | <u>1960-61</u> | <u>1961-62</u> | <u>1962-63</u> | <u>1963-64</u> | <u>1964-65</u> | <u>1965-66</u> | <u>1966-67</u> | <u>1967-68</u> | <u>1968-69</u> | <u>1969-70</u> | <u>1970-71</u> | <u>1971-72</u> | <u>1972-73</u> |
| 24 | 12 | 18 | 23 | 9 | 14 | 8 | 8 | 4 | 5 | 4 | 2 | 4 | 6 |
| <u>1973-74</u> | <u>1974-75</u> | <u>1975-76</u> | <u>1976-77</u> | <u>1977-78</u> | <u>1978-79</u> | <u>1979-80</u> | <u>1980-81</u> | <u>1981-82</u> | <u>1982-83</u> | <u>1983-84</u> | <u>1984-85</u> | <u>1985-86</u> | <u>1986-87*</u> |
| 1 | 5 | 1 | 4 | 1 | 3 | 7 | 1 | 0 | 9 | 5 | 0 | 2 | 0 |

*Represents a preliminary estimate

SOURCE: Land Court, Decrees of Registration

new decrees per year. Beginning in 1965-66 the number of new decrees fell to less than 10 per year (see Figure 5).

The decrease in new registrations was also one of Shick and Plotkin's findings:²¹

Except in Cook County, where new registrations have almost ceased, there is a clear pattern of diminishing use. Beginning around the mid-1960s, the decline in applications for new registrations has been steady, but gradual. The decline appears to be attributable to several factors; the need for registration is diminishing, since land with obvious title defects has already been identified and the defects cured by registration or other means; there is little land left with ambiguous title histories (usually undeveloped and held within the same family for many years); and suburban expansion and related development is slowing.

These reasons may be applicable in Hawaii as well, as the experience in Hawaii of new registrations seem to track the national experience.

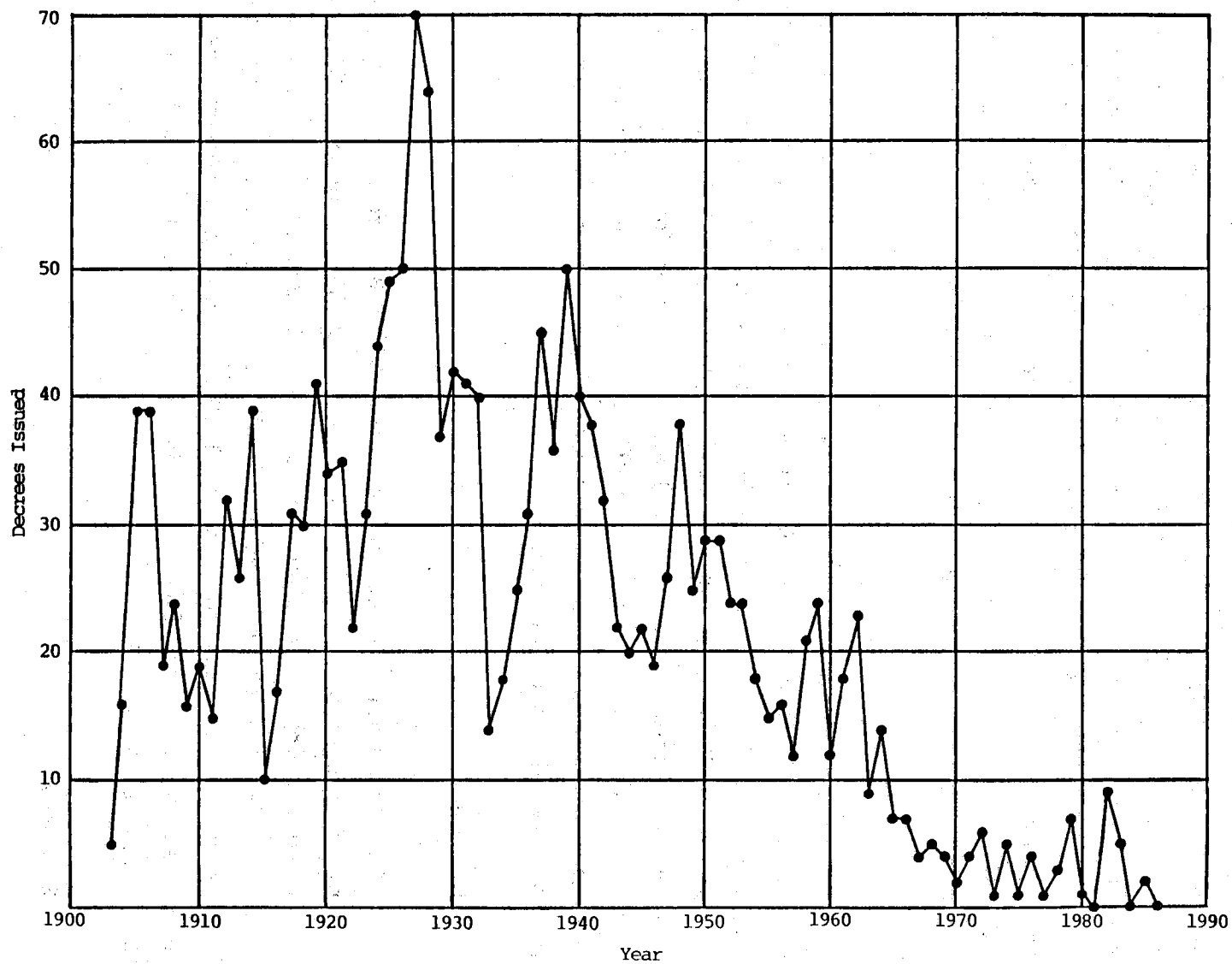
The Bureau tried to determine whether statutory quiet title actions²² have increased during this period, in contrast to new decrees issued by the Land Court. While no official records are maintained for statutory quiet title actions, the average number per year for each of the islands of Maui, Hawaii, and Kauai, is said to be less than 10 per year. For Oahu, the number is less than 5 per year.²³ There may be a statewide total of about 35 quiet title actions per year, but since there are no historical data or official record of an increase or decrease of quiet title actions, it is not possible to determine whether persons who wish to quiet title to land are favoring a suit to quiet title under chapter 669, Hawaii Revised Statutes, instead of the more expensive Land Court method.

Costs in the BOC, Land Court Section

In the Bureau of Conveyances where the documents are recorded for the Land Court, the operating budget for fiscal year 1986-87 was \$961,023. Both

Figure 5

LAND COURT: DECREES OF REGISTRATION ISSUED (GRAPH)



Source: Table 4, Decrees of Registration Issued.

branches of the BOC, land court registration branch and regular system branch, share equally in the expenditure of these funds.²⁴ That is, 50 per cent of the operating budget, or about \$480,500, is spent on the land court registration branch of the BOC. However, fewer than half of the 44 positions, or nineteen employees, are assigned to the land court registration branch. As of August 1987, there were two vacancies in this branch and two other positions were located in the indexing section, indexing both regular and land court documents. Over the past 10 years, the land court registration branch of the BOC was increased by one position, a receiving clerk.²⁵

In contrast, there has been a twofold increase in the number of documents received and filed between 1975 and 1986 (from 45,642 to 99,945). Workload data show a fluctuation in the statistics, with gradually increasing numbers since fiscal year 1981-82 (see Table 5). In 1986-87, the number of transfer certificate of titles (TCTs) alone accounted for 14,693 documents. A transfer certificate of title, or TCT, is issued when registered property changes hands (see terminology section of chapter 1). Regular system workload has also been increasing annually.

Revenues

The Land Court (Judiciary) collected \$20,649 in fees in fiscal year 1986-87, an increase from \$13,332 in fiscal year 1985-86.²⁶ In the BOC, revenues in the land court registration branch were \$1,346,402 in 1986-87 while the regular system branch collected \$1,211,324 during the same period (see Table 6). In the BOC, fees collected in 1986-87 handling documents dealing with registered lands were 280 per cent more than the cost of operation (\$1,346,402 to \$480,511).

Summary

The total cost of operating the Torrens system for fiscal year 1986-87 was \$585,263 (Land Court: \$104,752 and BOC: \$480,511). Total revenues collected during the same period was more than \$1.3 million (Land Court:

Table 5

**DOCUMENTS RECEIVED AND LAND COURT
CERTIFICATES OF TITLE ISSUED**

| Fiscal Year | DOCUMENTS RECEIVED | | | Land Court Certificates of Title Issued |
|----------------|--------------------|-------------------|----------------------|--|
| | Total | Regular System | Land Court System | |
| 1965-66 | 77,011 | 46,640 | 30,371 | 6,000 |
| 1966-67 | 67,689 | 42,833 | 24,856 | 5,549 |
| 1967-68 | 84,818 | 56,760 | 28,058 | 6,006 |
| 1968-69 | 90,502 | 61,095 | 29,407 | 6,146 |
| 1969-70 | 92,638 | 64,838 | 27,800 | 6,437 |
| 1970-71 | 111,737 | 72,842 | 38,895 | 7,873 |
| 1971-72 | 139,661 | 95,763 | 43,898 | 8,277 |
| 1972-73 | 149,633 | 100,727 | 48,906 | 9,896 |
| 1973-74 | 146,221 | 94,899 | 51,322 | 9,267 |
| 1974-75 | 129,774 | 91,843 | 37,931 | 6,687 |
| 1975-76 | 149,616 | 103,974 | 45,642 | 7,636 |
| 1976-77 | 169,627 | 116,998 | 52,629 | 8,006 |
| 1977-78 | 191,307 | 131,231 | 60,076 | 10,133 |
| 1978-79 | 210,394 | 145,649 | 64,745 | 11,324 |
| 1979-80 | 228,471 | 157,008 | 71,463 | 12,323 |
| 1980-81 | 191,115 | 136,674 | 54,441 | 8,599 |
| 1981-82 | 164,810 | 121,217 | 43,593 | 6,630 |
| 1982-83 | 187,310 | 131,701 | 55,609 | 8,932 |
| 1983-84 | 219,238 | 152,470 | 66,768 | 11,107 |
| 1984-85 | 202,813 | 140,001 | 62,812 | 11,192 |
| 1985-86 | 236,769 | 156,938 | 79,831 | 11,474 |
| 1986-87 | 290,054 | 196,145 | 99,945 | 14,693 |

Source: DLNR Annual Reports for fiscal years 1965-66 through 1986-87.

Table 6

RECEIPTS OF THE BUREAU OF CONVEYANCES

| Fiscal Year | RECEIPTS | | |
|-------------|----------------|-------------------|-----------|
| | Regular System | Land Court System | Total |
| 1965-66 | \$278,451 | \$134,468 | \$412,919 |
| 1966-67 | 225,595 | 121,206 | 346,801 |
| 1967-68 | 282,400 | 128,562 | 410,962 |
| 1968-69 | 326,576 | 133,114 | 459,690 |
| 1969-70 | 342,879 | 130,880 | 473,759 |
| 1970-71 | 374,531 | 184,208 | 558,739 |
| 1971-72 | 518,236 | 204,182 | 722,418 |
| 1972-73 | 557,988 | 231,608 | 789,596 |
| 1973-74 | 524,029 | 236,114 | 760,143 |
| 1974-75 | 508,859 | 177,402 | 686,261 |
| 1975-76 | 562,064 | 208,988 | 771,052 |
| 1976-77 | 598,363 | 233,110 | 831,473 |
| 1977-78 | 707,056 | 259,676 | 966,732 |
| 1978-79 | 804,281 | 284,340 | 1,088,621 |
| 1979-80 | 907,147 | 327,541 | 1,234,688 |
| 1980-81 | 803,293 | 470,050 | 1,273,343 |
| 1981-82 | 753,842 | 413,397 | 1,167,239 |
| 1982-83 | 734,756 | 460,247 | 1,195,003 |
| 1983-84 | 848,104 | 562,184 | 1,410,228 |
| 1984-85 | 782,073 | 543,071 | 1,325,144 |
| 1985-86 | 902,447 | 654,922 | 1,557,369 |
| 1986-87 | 1,211,324 | 1,346,402 | 2,557,726 |

Source: DLNR Annual Reports for fiscal years 1965-66 through 1986-87.

THE TORRENS SYSTEM

\$20,649 and BOC \$1,346,402). These figures do not include costs to the applicant for original registration of land.

The cost of operating the regular system during fiscal year 1986-87 was \$480,511 and revenues collected were about \$1.2 million. Thus, the operations of both systems can be described as self-supporting. This finding is contrary to that of Shick and Plotkin who described the Torrens system as requiring subsidy in each Torrens program examined.²⁷ However, the Bureau's findings do agree with Shick and Plotkin that documents relating to registered land "require both greater numbers of staff and a higher degree of professional and managerial talent than conventional recording systems."²⁸ In fact, Shick and Plotkin go on to say that "...because of the degree of care needed and the extra number of documents involved, Torrens requires between two and three times the number of administrative personnel as conventional recording requires to handle the same number of transactions."²⁹

Based on figures in Table 5, it is evident that the ratio of number of documents received by the regular system branch to the number of documents received by the land court registration branch of the BOC has been consistently about two to one. If Shick and Plotkin are correct, the number of personnel handling Land Court documents should be at least twice the number presently working in the land court registration branch (that is, at least 38) in order to handle the current workload. This finding explains why the backlog reached a level of 22 months. While increasing personnel would raise the cost of operations for the land court registration branch of the BOC, the revenues collected would seem to easily offset this increase in costs.

Chapter 4

by the

Department of the Attorney General

Recordation of title to real property in Hawaii is done in two ways: Land Court registration or regular system. Land Court registration is governed by Hawaii Revised Statutes (hereinafter "H.R.S."), Chapter 501. Recordation of regular system property is governed by H.R.S., Chapter 502.

LAND COURT

Parties claiming to own land apply to register their title to said land with the Land Court pursuant to H.R.S. §§ 501-21 to 501-30. These applications are examined by an examiner of title who searches the records and investigates the facts stated in the application. If everything appears satisfactory, a notice to show cause why the application should not be granted is published, and a hearing to show cause is held.

At the hearing, a judge of the Land Court decides whether an applicant has proper title for registration. An applicant has the burden of proof, In re Application of State of Hawaii, 50 Haw. 507, 444 P.2d 909 (1968), In Re Land Title, Wong, 47 Haw. 472, 391 P.2d 403 (1964). If the court is not convinced that the applicant has clear title, the application may be dismissed. H.R.S. § 501-53.

If an application is granted, a certificate of title issues and the decree of registration runs with the subject land. H.R.S. § 501-87. Subdivision of the land can only be done after Land Court approval. Sales and mortgages of the registered property must be filed with Land Court.

Any party with an adverse claim to Land Court registered property may contest the registration. However, the adverse claimant is subject to being assessed double costs if after a hearing, the Land Court finds the adverse claim was frivolous or vexatious. H.R.S. § 501-186.

All subsequent transactions, such as sale or a subdivision of the property, relate back to the original application. For a sale, a transfer certificate of title is issued. Other changes affecting ownership of the land, such as easements, are also filed with Land Court.

REGULAR SYSTEM

In the regular system of recording title to real property, there are fewer safeguards and levels of review. Recordation under this system is done at the Bureau of Conveyances in Honolulu, Oahu.

TWO LAND RECORDING SYSTEMS

Essentially, any deed or instrument conveying title to property may be recorded at the Bureau of Conveyances, although the "grantor" may not have title. The only substantive, statutory restriction on what may be recorded is found at H.R.S. § 502-33 which requires a reference to the book and page of the original mortgage in any assignment or release of mortgage. Requirements as to form of documents which may be recorded are found at H.R.S. §§ 502-31, and 502-41 to 64. Priority of ownership is normally governed by the maxim "First to file, wins." See H.R.S. § 502-83.

IS THERE ANY REASON FOR MAINTAINING TWO SEPARATE SYSTEMS FOR RECORDING LAND TITLES?

Statutes exist establishing two separate systems, and choice of systems is an optional matter with each individual landowner. Simply put, as the law currently exists, two systems must be maintained because two systems have been created by statute.

Moreover, as a practical matter, this office has encountered problems with property in the past that was under the regular system. Because safeguards exist in the Land Court System that do not exist in the regular system, it is not uncommon for title to regular system property to be cloudy. For example, in the recent Makapuu Lighthouse incident, the Kaawa family claimed "title" to the property by a "self-serving" deed recorded at the Bureau.

This office has also encountered situations where several deeds exist to the same property. The problem is exacerbated when one or more of the deeds cannot be traced from the chain of title at the Bureau of Conveyances, but are filed by strangers to the chain of title. These multiple deeds, known to this office as "wild deeds," can be resolved only with a great deal of painstaking work.

WOULD CONSOLIDATING THE TWO SYSTEMS RESULT IN FINANCIAL SAVINGS?

This office does not see any legal questions arising from savings to the State which might result from consolidation of the two systems. As such, this question is left to discussion by the Legislative Reference Bureau. As a practical matter, we would note that registering property in Land Court can be a more lengthy and costly process than recordation under the regular system. Abolition of the regular system would thus compel landowners who currently own regular system property to incur

court costs and attorneys' fees to register their property in Land Court.

It may be questioned whether an abolition of the land court system would result in a cost to the State if the State had to compensate the owners of land court registered property. That is, hypothetically, if land court property were more valuable than regular system property because of the additional safeguards which attach to land court property, and this value was reflected in the price of the property, would eliminating the land court system with its safeguards be a "taking" of some of a property owner's value?

The State of Hawaii's Constitution provides at Article I, Section 20 that:

Private property shall not be taken or damaged for public use without just compensation.

This most recent term of the United States Supreme Court provided several cases indicating how courts might view a landowner's claim for compensation, if the land court system was abolished. These cases are Keystone Coal Association v. De Benedictis, 480 U.S. ____, 94 L. Ed. 2d 472, 107 S. Ct. 1232 (1987), First Lutheran Church v. Los Angeles County, 482 U.S. ____, 96 L. Ed. 2d 250, 107 S. Ct. 2378 (1987), and Nollan v. California Coastal Commission, 483 U.S. ____, 97 L. Ed. 2d 677, 107 S. Ct. 3141 (1987).

In Keystone, Pennsylvania restricted mining operations to prevent subsidence damage, and it required a certain amount of coal be left in the ground for support. In First Lutheran, Los Angeles County passed an interim ordinance banning all construction in a flood-protection area which included a church's property. In Nollan, the California Coastal Commission required homeowners to dedicate an easement between two public parks along the beach side of their property as a condition of allowing the homeowners to build a new house on the property.

These cases have clarified what governmental use constitutes a compensable taking of real property. Thus, it appears that a regulation taking all use of real property, even if of only limited duration, requires that a landowner be compensated (First Lutheran case). Also, requiring surrender of a traditionally accepted property right, such as an easement, if not done pursuant to a state's police power requires compensation to a landowner (Nollan case).

TWO LAND RECORDING SYSTEMS

However, where a state:

- acts to further a legitimate public interest;
- does not make it impossible for a landowner to profitably use its land, i.e. does not destroy all profitable uses of land; and
- does not take a separate property interest for purposes of constitutional analysis,

the state's actions may be upheld as constitutional (Keystone case). It should be noted that two of these cases were decided by 5-4 votes among the Supreme Court justices, so one cannot say with any degree of certainty that these cases will not be later modified by the Court.

Applying these cases to the proposed abolition of Land Court, we do not feel that such an abolition would subject the State to liability under the Hawaii or United States Constitution. We feel that abolishing Land Court would not work a destruction of all profitable uses of property. Therefore, the most any landowner could claim would be a partial diminution of value as a result of Land Court's abolition. Our opinion is that this partial diminution of value would not trigger a constitutional requirement of just compensation.

Generally, a mere diminution in value, as opposed to a total destruction of value, will not suffice to require governmental compensation, so long as that diminution is in furtherance of legitimate and independent public interests. We presume that if the Legislature decided to abolish the Land Court system, such a step would be documented by valid reasons for doing so, such as the cost of maintaining two separate land recordation systems.

CONCLUSION

Notwithstanding the cost of the land recordation system which can be passed off to the landowners by increasing the fees, this office feels that the Land Court system for recordation of title to real property offers tangible advantages over the regular system, but that the regular system offers cost savings to small landowners. We see no legal reason why both systems should not be retained.

Chapter 5

FINDINGS AND RECOMMENDATIONS

House Resolution No. 47, H.D. 2 (1987), requested the Bureau to determine whether there was a reason for maintaining two separate systems for holding and recording land titles. The Bureau found that the Torrens system and the regular system are two different methods for recording land titles and the features of these two systems are not interchangeable. By adopting the Torrens system, the 1903 Territorial Legislature provided Hawaii's landowners with a land reform measure which became an option to the regular land recording system.

The essential features of a Torrens system are: (a) indefeasible title adjudicated by a court; (b) title guaranteed by the State of Hawaii; (c) a program which when properly administered, gives speedy and accurate indication of ownership and encumbrances on a parcel of real property; and (d) real property which cannot be acquired by adverse possession. The regular system provides a means to record instruments or documents relating to land. Recording in the regular system does not guarantee that an instrument is legally sound or accurate. However, recording in the regular system is designed to provide constructive notice of conveyance of real estate, or an interest therein. In case of dispute, generally the first to record prevails.

House Resolution No. 47, H.D. 2 (1987), also requested the Bureau to determine whether consolidating the two systems would result in financial savings. The Bureau concludes that the differences between the two systems preclude a consolidation of functions. If the two land recording systems are not continued as presently constituted, the consideration should be whether there should be only one system, either the regular system, or a mandatory Torrens system, because the two systems cannot be combined. Since the costs incurred to operate two separate systems are not duplicative, the elimination of one or the other system would have to result in "financial

TWO LAND RECORDING SYSTEMS

savings", if financial savings is defined as "not having to expend funds for the operation of the system that is eliminated". But "financial savings" alone, should not be the single criterion upon which to judge the value of having two separate land recording systems. When the 1903 Territorial Legislature provided for the Torrens method of registering land in Hawaii, it made a policy decision to add a new and different method of conveying land in Hawaii.

Findings

The Bureau's interviews with lawyers, judges, title company abstractors and managers, state employees in the Land Court and Department of Land and Natural Resources offered suggestions ranging from elimination of the regular system (which would make the Torrens system mandatory) to elimination of the Torrens system. Interviewees who felt that a mandatory Torrens system would be ideal for Hawaii because land transfers would be faster, clearer, and less likely to be the source of disputes said that the Torrens system is superior to the regular system. Interviewees who felt that the regular system would suffice for recording instruments relating to land, pointed to ease of recordation because fewer checks are required in the regular system. This results in a quicker turnaround time from submittal, to filing, and return of documents. They also pointed to other states which have repealed their Torrens laws apparently without any problems.

The general consensus, however, was that having two separate systems worked well and provided a choice to landowners. The current dissatisfaction with the Torrens system is not with the law or the system, but with the process, because of the backlog in the BOC. The interviewees who favored retention of both chapters 501 and 502, Hawaii Revised Statutes, felt that even if there are no figures to show that registered lands command a better price in the real estate market over similarly situated regular system lands, it is preferable to own or buy registered land. Interviewees who advocated the continuation of the Torrens system would like to see the budget increased in the land court registration branch of the BOC so that the registration system can operate in the manner originally intended by the Torrens law. These

FINDINGS AND RECOMMENDATIONS

interviewees said that the BOC staff in the land court registration branch have been doing an admirable job to meet statutory requirements of the Torrens law while at the same time converting the manual system to a computerized one. Continued support of the computerized storage and retrieval system which was started in February 1987, along with microfilming, they said, would help to reduce this backlog. Additional staff, training programs for personnel, and creation of procedure manuals, as recommended by the Department of Budget and Finance, can reduce errors and omissions in record keeping.

The current "backlog" in the BOC threatens one of the major features of the Torrens system, that of State guarantee of title. The potential for making errors increases when the backlog is nearly two years long, and when the staff, working under pressure without adequate personnel, must be accurate in making notations and checking documents against the certificates of title. The State's recovery fund, although a part of the general fund, has been estimated to have been depleted to about \$5,000. The depletion of this fund could lead to the demise of Hawaii's Torrens system in much the same way as occurred in California through repeal or Nebraska through non-use.

In summary, most of the interviewees felt that while it is evident that the original goals of simple, inexpensive, rapid, and secure land conveyancing through the Torrens system is not a reality, the solution to the problems in the BOC does not lie in a repeal of the Torrens law. They reiterated that a fully staffed and computerized program in the BOC which reduces the turnaround time for recording land court documents to a more reasonable level would help to eliminate the frustrations of users of the system.

Recommendations

The legislature can choose among three alternatives in determining the future direction of land recording and registration systems in Hawaii. These are:

TWO LAND RECORDING SYSTEMS

1. Repeal chapter 502, Hawaii Revised Statutes, so that the Torrens system is the only and mandatory method for land registration. As discussed earlier, there are advantages to finally clearing title to all lands in Hawaii through the Torrens system, but this would be a costly alternative which many landowners may not be able to afford. This alternative would be the least likely to be successfully implemented.

2. Repeal chapter 501, Hawaii Revised Statutes, so that only the regular system prevailed. This choice with its shorter turnaround time would appear to be a viable choice. According to the Attorney General's consideration of the possible abolition of the Land Court, there appears to be no anticipated difficulty if the Torrens law is repealed. But the Attorney General also sees no legal reason for abolishing either system (see Chapter 4).

The repeal of the Torrens system has apparently worked in other states. Registered property could be gradually withdrawn from the Torrens system and returned to the regular system as parcels are resold or transferred. It has been estimated by the Bureau that there is very little recovery fund monies remaining in the general fund. Thus, another reason for retaining the Torrens system, that of what to do with the fund, would not be a valid concern if the Torrens system were eliminated.

3. Retain both systems, but provide more budgetary support to the BOC so that its land court registration branch can function properly. This alternative is favored by the Bureau because its findings indicate that the frustrations and dissatisfaction among users of the two systems do not result from a widespread feeling that there are flaws in the principles of the Torrens system. This choice would also give the recently implemented computerization project an opportunity to be completed.

Furthermore, as indicated earlier, Hawaii's Torrens system, unlike other similar programs in other states is financially self-sufficient. The revenues collected from fees more than adequately cover costs, even assuming an moderate increase in personnel at the BOC's land court registration branch.

FINDINGS AND RECOMMENDATIONS

Retention of two systems provides Hawaii landowners with a choice for clearing title. Even though the statutory quiet title action is available, there are different benefits to having land registered through Land Court. Also, the Bureau was unable to determine with certainty that statutory quiet title actions under chapter 669, Hawaii Revised Statutes, have been increasing at the expense of Land Court applications.

FOOTNOTES

Chapter 1

1. Definitions were developed from the following legal dictionaries: Steven H. Gifis, Law Dictionary (Woodbury: Barrons, 1975), John W. Reilly, The Language of Real Estate in Hawaii (Honolulu: Reilly, 1975), and John W. Reilly, The Language of Real Estate (2d ed.; Chicago: Real Estate Education Company, 1982).

Chapter 2

1. See Jon J. Chinen, Original Land Titles in Hawaii (Honolulu: 1961), for a history of the land system in Hawaii.
2. In many states these documents are filed in the county public recorder's office.
3. The author is indebted to definitions of "chain of title" and "recording" in John W. Reilly, The Language of Real Estate (2d ed.; Chicago: Real Estate Education Company, 1982), pp. 74-75 and pp. 396-397.
4. Hawaii, Land Court, Land Court Registration (Torrens Titles) and Conveyancing in Hawaii (2d ed.; Honolulu: 1946), p. 9 (hereinafter Land Court Registration).
5. See: Keith J. Steiner, "Adverse Possession Against Unknown Claimants Under Land Court and Quiet Title Procedures", 2 Haw. Bar J. 4 (1964), for a comparison of a quiet title action and a land court proceeding.
6. Such steps include conducting a title search and a check of public records which may not be on file in the recording office, e.g., marriage records in the office of vital statistics, probate records for names of heirs, and taxes and judgments in other government offices.
7. Blair C. Shick and Irving H. Plotkin, Torrens in the United States (Toronto: Lexington Books, 1978), p. 21 (hereinafter: Shick and Plotkin).
8. John W. Reilly, The Language of Real Estate in Hawaii (Honolulu: Reilly, 1975), pp. 184-185.
9. Hawaii Rev. Stat., secs. 502-12 to 502-16.
10. Hawaii Rev. Stat., sec. 502-17.
11. Hawaii Rev. Stat., sec. 502-18.
12. Hawaii Rev. Stat., sec. 502-31.
13. Hawaii Rev. Stat., sec. 502-34.
14. Hawaii Rev. Stat., secs. 502-41 to 502-54.
15. Hawaii Rev. Stat., secs. 502-61 to 502-64.
16. Hawaii Rev. Stat., secs. 502-81 to 502-85.
17. Comment, "Yes Virginia--There is a Torrens Act," 9 U. Rich. L. Rev. 301, p. 303 (1975) (footnotes omitted).
18. Ibid., p. 303.
19. Land Court Registration, p. 9.
20. Ibid., p. 9.
21. Hawaii Rev. Stat., secs. 501-81 to 501-221.
22. Hawaii Rev. Stat., secs. 501-21 to 501-30.
23. Hawaii Rev. Stat., sec. 501-32.
24. Hawaii Rev. Stat., sec. 501-51.
25. Hawaii Rev. Stat., secs. 501-41 to 501-46.
26. Hawaii Rev. Stat., secs. 501-51 to 501-53.
27. Hawaii Rev. Stat., sec. 501-71.
28. Hawaii Rev. Stat., sec. 501-71.
29. Shick and Plotkin, pp. 30-31.
30. Hawaii Rev. Stat., secs. 501-86 and 87.
31. Hawaii Rev. Stat., secs. 501-74 to 501-75.
32. Hawaii Rev. Stat., sec. 501-63.
33. Hawaii Rev. Stat., sec. 501-6.
34. Hawaii Rev. Stat., sec. 502-1.
35. Hawaii Rev. Stat., sec. 502-3.
36. Hawaii Rev. Stat., sec. 501-181.
37. Hawaii Rev. Stat., secs. 501-89 to 501-191.
38. Hawaii Rev. Stat., sec. 501-107.
39. Hawaii Rev. Stat., sec. 501-102.
40. Hawaii Rev. Stat., sec. 501-101.5.
41. Hawaii Rev. Stat., sec. 501-116.
42. Hawaii Rev. Stat., sec. 501-118.
43. Hawaii Rev. Stat., sec. 501-121.
44. Hawaii Rev. Stat., secs. 501-131 to 501-135.
45. Hawaii Rev. Stat., secs. 501-156 to 501-159.
46. Hawaii Rev. Stat., secs. 501-166 to 501-167.
47. Hawaii Rev. Stat., secs. 501-171 to 501-174.
48. Hawaii Rev. Stat., sec. 501-181.
49. Hawaii Rev. Stat., sec. 501-186.
50. Hawaii Rev. Stat., sec. 501-196.

51. Hawaii Rev. Stat., secs. 501-211 to 501-217.
52. Hawaii Rev. Stat., sec. 501-211.
53. Comment, "Yes, Virginia--There is a Torrens Act," 9 U. Rich. L. Rev. 301, p. 317 (1975) (footnotes omitted).
54. Hawaii Rev. Stat., sec. 502-33.
55. Hawaii Rev. Stat., sec. 501-101.
56. Hawaii Rev. Stat., sec. 501-212.
57. Hawaii Rev. Stat., sec. 501-107.
58. Rev. Laws of Hawaii, sec. 501-1 et seq. (Suppl. 1986), as amended.
59. Hawaii Rev. Stat., sec. 501-106.
60. Hawaii Rev. Stat., sec. 501-137.
61. Letter from Edgar Hamasu (for Susumu Ono) Chair, DLNR, to Jensen S.L. Hee, Director of Finance, Department of Budget and Finance, July 27, 1983.
62. Memo from Susumu Ono, Chair, DLNR, to Senator Anthony K.U. Chang, Chair, Judiciary Committee, February 20, 1985, re: SB 934.
63. Ibid., p. 2.
64. Memorandum from Jensen S.L. Hee, Director of Finance, to Susumu Ono, Chair, DLNR, July 17, 1984.
65. Memo from Susumu Ono, Chair, DLNR, to Senator Anthony K.U. Chang, Chair, Judiciary Committee, February 20, 1985, re: SB 934.
66. Letter from Susumu Ono, Associate Director, HREC, to Samuel B. K. Chang, Director, LRB, undated, received December 14, 1987.
7. Letter from H. Joseph Scheuer, Deputy Legislative Counsel, Office of the Legislative Counsel, Atlanta, Georgia, July 8, 1987.
8. Letter from Roger S. Wood, Research Analyst, Oregon Legislative Research Office, Salem, Oregon, July 23, 1987.
9. Cal. General Laws Code Section 8589 (Deering) Stats. 1955, ch. 332.
10. Shick and Plotkin, p. 18.
11. Letter from Peter Lang, Research Clerk, Legislative Council of the General Assembly, Columbia, South Carolina, July 14, 1987, and letter from Jeffrey N. Nelson, Counsel, North Dakota Legislative Council, Bismarck, North Dakota, July 1, 1987.
12. Shick and Plotkin, p. 63.
13. Ibid., p. 147.
14. Ibid., p. 53.
15. Hawaii Department of Planning and Economic Development, The State of Hawaii Data Book, 1986 (Honolulu: 1986), Table 195, p. 201.
16. Hawaii Rev. Stat., sec. 501-211. The recovery fund provided by this section is sometimes referred to as the "assurance fund" but all monies are deposited into the State's general fund and is not separately earmarked as an assurance fund.
17. Hawaii Rev. Stat., secs. 501-211 to 501-217.
18. Telephone interview with Johnson Wong, Deputy Attorney General, July 22, 1987.
19. John W. Reilly, The Language of Real Estate in Hawaii (Honolulu: 1975), p. 185.
20. Hawaii Rev. Stat., sec. 501-196.
21. Shick and Plotkin, pp. 46-47.
22. Hawaii Rev. Stat., ch. 669.
23. Telephone interview with Mary Ann Teshima, Research Statistician, Judiciary, October 16, 1987.
24. Telephone interview with Charles Neumann III, Registrar of Conveyances, BOC, September 14, 1987.
25. Telephone interview with Archie Viela, Deputy Registrar, BOC, August 19, 1987.
26. Data from Rupert Chun, Registrar, Land Court.
27. Shick and Plotkin, p. 58.
28. Ibid.
29. Ibid.

Chapter 3

1. U.S., Congress, House, Subcommittee on Housing of the Committee on Banking and Currency, Hearings on Real Estate Settlement Costs, FHA Mortgage Foreclosures, Housing Abandonment, and Site Selection Policies, 92nd Cong., 2d Sess., 1972, Part 2, p. 22, and Blair C. Shick and Irving H. Plotkin, Torrens in the United States (Toronto: Lexington Books, 1978), p. 18.
2. Shick and Plotkin, p. 18.
3. Ibid., p. 53.
4. Ibid., p. 19.
5. Ibid., p. 53.
6. Richard W. Laugesen, "The Torrens System in Colorado," 39 Dicta 40 (1962) (Univ. of Colorado Law Review).
7. Shick and Plotkin, pp. 46-47.
8. Hawaii Rev. Stat., ch. 669.
9. Telephone interview with Mary Ann Teshima, Research Statistician, Judiciary, October 16, 1987.
10. Telephone interview with Charles Neumann III, Registrar of Conveyances, BOC, September 14, 1987.
11. Telephone interview with Archie Viela, Deputy Registrar, BOC, August 19, 1987.
12. Data from Rupert Chun, Registrar, Land Court.
13. Shick and Plotkin, p. 58.
14. Ibid.
15. Ibid.

HOUSE OF REPRESENTATIVES
FOURTEENTH LEGISLATURE, 1987
STATE OF HAWAII

H. R. NO. 47
H. D. 1

HOUSE RESOLUTION

REQUESTING AN EXAMINATION OF THE NEED FOR TWO LAND RECORDING SYSTEMS.

WHEREAS, there are two separate systems in the State for holding title and recording title to land; and

WHEREAS, chapter 501, Hawaii Revised Statutes, provides for the registration of title to land through the land court; and

WHEREAS, chapter 502, Hawaii Revised Statutes, provides for the recording of all instruments relating to real property through the bureau of conveyances; and

WHEREAS, there should be an examination as to the purpose and cost effectiveness of maintaining two separate systems for holding and recording land titles; now, therefor,

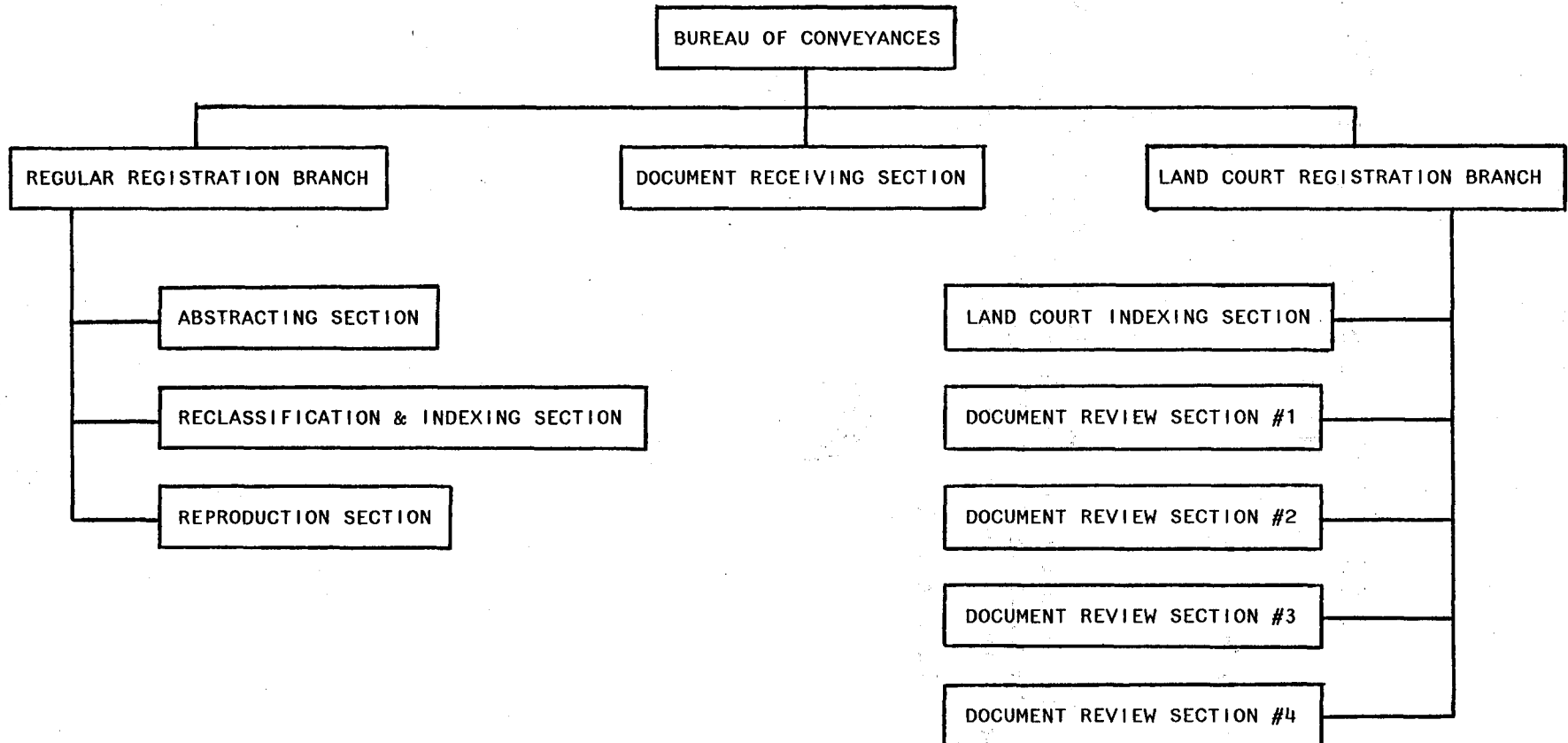
BE IT RESOLVED by the House of Representatives of the Fourteenth Legislature of the State of Hawaii, Regular Session of 1987, that the Legislative Reference Bureau and the Attorney General are requested to examine chapters 501 and 502, Hawaii Revised Statutes, to determine (1) whether there is a reason for maintaining two separate systems for recording land titles, and (2) whether consolidating the two systems would result in financial savings; and

BE IT FURTHER RESOLVED that the land court and the bureau of conveyances are requested to cooperate with the Legislative Reference Bureau and the Attorney General in the review of the two systems; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of the Legislative Reference Bureau and the Attorney General, the Chief Justice, and the Chairperson of the Board of Land and Natural Resources.

Appendix B

BUREAU OF CONVEYANCES Organization Chart



2007 11 03
2007 11 03
2007 11 03
2007 11 03

Land Court Certificate of Title
(State of Hawaii)

From Certificate No.

No.

Document No.

I hereby certify that pursuant to Chapter 501 of the Hawaii Revised Statutes, the REGISTERED OWNER below is the owner in fee simple of the LAND described, subject, however to encumbrances mentioned in Section 501-82 of the Hawaii Revised Statutes and subject also to such exceptions, encumbrances, interests and entries as may appear under ENCUMBRANCES.

Attest with the Seal of Said Court.



ISSUED

ASSISTANT REGISTRAR