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Supreme Court
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SCRU-11-0001089

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
RULES OF THE LAND COURT

ORDER AMENDING RULES 58 AND 62 AND ADOPTING RULE 58.5
AND LD FORM B OF THE RULES OF THE LAND COURT

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rules 58 and 62 of the Rules of the Land Court, are amended, and Rule 58.5 and LD Form B of the Rules of the Land Court, are adopted, effective January 1, 2017, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 58. VOLUNTARY DEALING WITH LANDS.

The assistant registrar shall not record any deed, mortgage or other voluntary instrument unless:

(1) It contains or has [~~endorsed~~]indorsed upon it the full name or names of the grantees or other person acquiring or claiming an interest under the instrument, their marital status and if married, the full names of their spouses, and the address of the grantee or other person acquiring or claiming an interest under the instrument;

(2) The assistant registrar has verified the existence and good standing of any grantee, assignee, lessee or mortgagee which is a corporation, [~~incorporated in the state or a~~] partnership, limited liability company, or other legal entity [~~registered~~] incorporated or organized in th[is]e state; or there is presented as to any grantee, assignee, lessee or mortgagee which is a foreign corporation, [~~or~~]

partnership, limited liability company or other legal entity: (a) evidence that such foreign [~~corporation or partnership~~] entity is registered to do business and in good standing in the state; or (b) evidence (which may be in the form of an opinion of counsel) that such foreign [~~corporation or partnership~~] entity is in good standing in its state or country of incorporation or organization;

(3) It contains a reference to the proper number of the certificate affected or in the case of documents filed concurrently with the deed or other instrument conveying a fee simple interest, a space is provided for the assistant registrar to enter the proper number of the new certificate of title;

(4) Except as otherwise provided by HRS §§ 502-50 to 502-52, there is [~~endorsed~~] indorsed, subjoined or attached thereto a certificate of acknowledgment in the form provided or authorized in any of HRS §§ 502-41, 502-42, 502-43, 502-45 or 502-47;

(5) Every notary public to the instrument places the notary's initials in the margin of the instrument opposite each interlineation, erasure, or change contained in the instrument, if any; and

(6) The instrument can be reproduced legibly under photographic or electrostatic methods, is of a size not larger than 8 ½ inches by 11 inches, and does not contain any exhibit having sheets in excess of such size.

In addition:

(7) On all instruments to be recorded, the top 3 ½ inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of that space, and for the registrar of conveyances on the right half of that space. The following one inch of space shall be reserved for information showing to whom the documents should be returned. (See Rule 67 for the form of the first page of a document.) Each instrument shall be stapled once in the upper left-hand corner and shall not have a cover or backer attached. Nonconforming documents may have a [~~conforming~~] fly_sheet [~~attached~~] that conforms with Rule 58.5 of these Rules. Any document entered in the office of the assistant registrar shall contain a reference to the number(s) of the certificate of title of the land affected, which may be accomplished by indorsement on a conforming fly sheet, as provided by Hawai'i Revised Statutes § 501-108(b); and

(8) All names of signatories in the instrument must be typewritten, stamped or printed beneath all signatures. No discrepancy in the name shall exist between the printed name as it appears in the body of the instrument and in the notary's certificate of acknowledgment. The provisions of this paragraph shall not apply to any deed or conveyance instrument executed prior to January 1, 1990.

NEW RULE

Rule 58.5. FLY SHEET; DEFINITION AND PURPOSE.

A fly sheet is a single sheet of paper affixed onto the first page of a voluntary instrument covered by Rule 58 of these Rules or an involuntary instrument covered by Rule 62(a) to 62(d) of these Rules to be recorded in the bureau of conveyances or office of the assistant registrar of the land court. The fly sheet is counted as a page in the page count of the instrument, but except for

the information required or permitted to be shown on the fly sheet by statute or rule the fly sheet shall not be considered a part of the instrument itself and the instrument shall control in the event of any inconsistency. Except as specifically permitted by this Rule, a fly sheet may not be used to change, correct or add to any information that is not otherwise contained in the instrument being presented for recordation.

Any indorsement permitted by statute or by these rules shall be stated only on a fly sheet in conformance with this Rule.

(a) Form. A fly sheet shall be 8 ½ inches by 11 inches in size with printing on only one side. The fly sheet shall conform to the format and information requirements of Hawai'i Revised Statutes §§ 501-108, 502-31; Haw. Admin. Rule 13-16-4; and Rules 3 and 58(7) of the Rules of the Land Court:

(1) the top 3 ½ inches of space shall be reserved for recording information for the assistant registrar on the left half of that space and for the registrar of conveyances on the right half of that space; and

(2) the following 1 inch of space shall be reserved for information indicating to whom the instrument should be returned. A suggested, but not required, form of a fly sheet is appended to the Appendix of Forms of these Rules as Form LD Form B.

(b) Other Information Permitted to be Shown on a Fly Sheet.

Provided that the instrument itself shall control in the event of any inconsistency, the following information is permitted to be shown on a fly sheet:

(1) the name, address, and telephone number of the person to whom the instrument should be returned; this information shall be included within the 1 inch space described above;

(2) the total number of pages of the instrument including the fly sheet;

(3) if an instrument contains an abbreviation or abbreviations of an initial or initials in place of the first or middle names(s) of an individual who is a party to the instrument, the full legal name of the individual may be stated on the fly sheet by spelling out the name designated by the abbreviation or initial. No name may be added by indorsement on the fly sheet if there is no abbreviation or initial designated in the instrument, and no name may be added or changed by indorsement on the fly sheet if the abbreviation or initial contained in the instrument is incomplete or incorrect;

(4) the fly sheet shall not be used to clarify or add any portion of a name of a corporation, partnership, limited liability company, or other legal entity which is a party to the instrument;

(5) if no marital status is contained in the instrument for any party to the instrument, the party's marital status may be specified for that party. A marital status that is contained in the instrument may not be changed by indorsement on the fly sheet;

(6) if the instrument does not contain the state or jurisdiction of incorporation or organization of a corporation, partnership, limited liability company, or other legal entity which is a party to the instrument, it may be added by indorsement on the fly sheet if authoritative verification of the information is submitted to the Assistant Registrar by way of evidence of good standing which meets the requirements of Rule 58(2) of these Rules;

- (7) if the certificate number contained in the instrument is not current, then the current certificate of title number shall be stated by indorsement on the fly sheet; and
- (8) the current address of a grantee, assignee, or transferee.

Rule 62. FILING LIENS, ETC.

A lien, attachment, order, decree, or other involuntary instrument which contains or has indorsed upon [it] a fly sheet conforming to Rule 58.5 of these Rules a reference to the proper number of the certificate affected may be recorded in the office of the assistant registrar in the bureau of conveyances. The effect of such recordation shall be as provided by law (see HRS § 501-102; see also HRS chapters 231 and 505 concerning state and federal tax liens).

(a) Attachment and Other Liens; Recording of. When a writing of any description [of] or a copy of any writ affecting land issued by a judge of a circuit in which the land is situated is recorded to create or preserve any lien, right, or attachment on land or interest therein, in addition to any particulars required in such papers for recording with the records of deeds, it shall also contain a reference to the number of the certificate to be affected.

(b) Mechanic's Lien. When a mechanic's lien or lien for labor and materials is claimed upon land, and the notice required by law is filed in the circuit court where the land is situated, [it] an attested copy of the order directing the lien to attach which contains or has indorsed upon [it] a fly sheet conforming to Rule 58.5 of these Rules a reference to the certificate affected may be recorded with the assistant registrar. Any such lien may be discharged as provided by law (see HRS § 507-45).

(c) Notice of Bankruptcy. Whenever a certified copy of the petition in bankruptcy under a voluntary bankruptcy, or a certified copy of the order for relief under involuntary bankruptcy filed in a United States Bankruptcy Court for reorganization under Chapter 11 of the bankruptcy code is recorded against the owner of registered land, and the instrument contains or has indorsed upon [it] a fly sheet conforming to Rule 58.5 of the Rules the proper number of the certificate affected, the assistant registrar shall note such fact by entry of an appropriate memorandum on the certificate. After such memorandum has been entered on the certificate, no conveyance by the registered owner shall be recorded unless the conveyance recites that it is made subject to the rights of the trustee in bankruptcy.

(d) Recording Notice of Pendency of Action. In any action concerning land or affecting the title or the right of possession of land, the plaintiff may record with the assistant registrar a certified copy of a notice of pendency of the action of a United States District Court or of a state court, containing the names or designations of the parties, as set out in the summons or pleading, the object of the action or claim for affirmative relief, a description of the land affected thereby, and a reference to the number of the proper certificate affected.

(e) Judgment Lien. Any money judgment or decree of a state court or the United States District Court for the District of Hawai'i, if certified as correct by a clerk of the court where it is entered, may be recorded with the assistant registrar. The effect of such recordation and the duration of any lien created

thereby shall be as provided by law (see HRS § 636-3). A satisfaction of judgment or a copy thereof, certified as correct by a clerk of the court where it is entered, may be recorded with the assistant registrar. Every judgment, assignment of judgment or satisfaction of judgment shall contain a reference to the proper number of the certificate affected.

(f) Foreign Judgment. An exemplified copy of any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, when filed in the office of the clerk of the appropriate court of this state, which contains [~~or has endorsed upon it~~] the proper number of the certificate affected may be recorded with the assistant registrar. The effect of such recordation and the enforceability or satisfaction of the judgment shall be as provided by law (see HRS chapter 636C).

(g) Liens Upon Interests of Heirs and devisees. Proper papers relating to an involuntary lien, charge or lis pendens against the interest of a relict, heir or devisee in the lands of a deceased registered owner, prior to the registration of the title of such relict, heir or devisee, may be recorded with the assistant registrar as in other cases, in which event the assistant registrar shall make entry thereof as a memorial on the certificate entered in the name of the deceased owner, giving the name and the address of the relict, heir or devisee against whom the lien, charge or lis pendens is sought to operate. (See HRS § 501-171(b) concerning the effect and necessity of such recordation.)

DATED: Honolulu, Hawai'i, December 21, 2016.

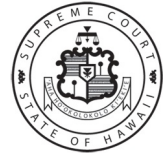
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



Fly Sheet

The following items (a) through (g) correspond to Land Court Rule 58.5.

After Recording, return by mail or pick-up

(a) Name, address and phone number to contact for pick-up

(b) Total Pages: _____
(including this fly sheet)

(c) Name of a party to the instrument (first and middle names may be spelled out but only if abbreviations or initials are indicated in the instrument).

(d) Marital status, either “married” or “unmarried” (marital status may be added but only if not stated in the instrument).

(e) If the interested party is an entity, state the name of the entity and place of organization (place of organization may be added if not stated in the instrument).

(f) Current Certificate of Title number (TCT numbers may be updated but cannot be added if not stated in the instrument).

(g) If applicable, current address of the grantee, assignee, or transferee, if not stated in the instrument.

I hereby certify that the information contained on this fly sheet is true and correct to the best of my knowledge, information and belief.

(Signature)

(Date)

(Name printed or typed)

(State your relationship to interested party)



In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require reasonable accommodations for a disability, please contact the ADA Coordinator at the Land Court at (808) 539-4777 or Fax (808) 539-4713, at least 10 working days prior to your hearing or appointment date. For other related matters please call (808) 539-4777.