

Chapter 1 - History of Land Ownership in Hawaii, Conveying Real Property in Hawaii

This lesson discusses the concept of property ownership. A history of Hawaii land ownership is presented, and certain government rights in relation to real property are reviewed. Methods of property ownership and how property can be conveyed are reviewed. The lesson concludes with a look at Hawaii's recording system and how property is legally described.

Hawaii Land Ownership

Hawaii has a different historical basis for land ownership than the rest of the United States. It was an independent kingdom until the overthrow of the monarchy in 1893.

In the early 1800s, King Kamehameha the Great gained control of all the Hawaiian Islands. He owned all the land and could distribute it as he saw fit.

Land was divided into pie-shaped pieces that went from the mountaintop to the shore. These wedges were called ahupua'a and were thought to provide everything a person might need to survive. Smaller divisions, called ili, either stood alone or within an ahupua'a.

The king appointed chiefs to manage and control the land and the farmers who worked it. The agricultural workers were not serfs; they had the freedom to move at will to other land and were able to profit from their labors. The farmland was called koele.

In 1840, the first constitution of the Kingdom of Hawaii was written. It acknowledged that the people had more of an interest in the land they worked than merely the value of the crops grown on the land.

In 1845 the Land Commission was established to award land claims, and in 1848 the Great Mahele, or great division, abolished the feudal system of land tenure in Hawaii.

King Kamehameha, who had been convinced he should divide up ownership in the land of Hawaii, apportioned it three ways:

1. Crown Lands (approximately a million acres owned by the king):
 - Kamehameha Deeds, executed by the king when he sold crown land, existed prior to the Act of January 1, 1865, at which time the crown lands became inalienable (i.e., not transferable).
 - In 1893, the monarchy was overthrown and all crown land that was left became public land.
2. Government Lands (approximately a million and a half acres for the government to own):
 - When the government disposed of land, a Grant or Royal Patent Grant was issued; there was no need for the Land Commission to issue an award for these lands.
 - Land Patent Grants were issued for government lands sold after the overthrow of the monarchy.
3. Konohiki Lands (approximately one and a half million acres for the chiefs to own outright):
 - A Royal Patent was awarded to the chiefs from the Land Commission, once the chiefs made their land claims to the Land Commission, paid a fee and had a survey done. The patent indicated that the government no longer had an interest in the property.
 - After the overthrow of the monarchy, a Land Patent was issued by the government to indicate the government had no further interest in the land. This patent replaced the Royal Patent.

In 1850, the rights of the commoners were acknowledged, particularly since much land was being sold from all three sectors. It was decided that, if a commoner developed and occupied any part of the Konohiki Land, the Land Commission would award fee simple title to the land to him. This land, known as kuleanas, was productive and quite valuable.

NOTE: Kuleanas can be particularly valuable because developments on those lands are relatively free from strict zoning laws. However, developers of kuleanas may be stopped from developing their land because of native Hawaiian rights or environmental concerns.

After 1850, government land was made available for sale to commoners, as well as to foreigners. Much of the land, from all of the sectors, was purchased or leased to be used for sugar and other crops, and a huge amount of land left the control of the native islanders. Enormous tracts of land were purchased by a few owners, and great tracts were leased under long-term ground leases to a small number of individuals.

Prior to 1967, 49% of the land in Hawaii was owned by the federal and the state governments, and 47% of it was owned by a mere 72 private landowners. In the Land Reform Act of 1967 the legislature provided for a method of redistribution in which the title to property could be taken from the lessor and given to the lessee in fee simple estate through the Land Committee.

Under the theory of eminent domain, and with certain conditions that included the size of the leasehold, individuals who both occupied and worked the lands they leased were able to gain title to these properties as a fee simple freehold estate. A major provision of the 1967 legislation was that either 25 leaseholders, or half of all the leaseholders of a property, had to petition for condemnation and demonstrate that a clear public purpose would be served.

Types of Tenancies in Hawaii

In Hawaii, a person can purchase a parcel of land by himself or with someone else.

Severalty

A person who owns property with no one else holds the property in severalty or have a tenancy in severalty or an estate in severalty. That person can be a natural person or a legal person or entity (e.g., a corporation).

Two or more persons may own the same property at the same time, as:

- tenants in common.
- tenants in general and limited partnerships (a partnership must be registered with the DCCA).
- tenants by the entirety.
- reciprocal beneficiaries.
- joint tenants.

Some states recognize community property; Hawaii does not.

For Example - Tom, Dick and Harry have decided to purchase a condominium at Hilo. Tom is providing 50% of the purchase price. Dick is contributing 30% and Harry is putting in the remaining 20%. Their individual interest in the property is equal to the percentage they have contributed. If one of them dies, his interest becomes part of his individual estate. Tom, Dick and Harry are tenants in common.

Tina, Dixie and Helena purchased a condo in the same building. While their individual contributions were not equal, they have chosen to have their interests divided equally as joint tenants. If one of them passes, the remaining two will receive that person's share under a right of survivorship.

Married couple, Jasper and Jessica, have also purchased a condo. They will hold their property as tenants by the entirety, a form of joint tenancy that is only available to married couples. Upon the death of one spouse, the survivor succeeds to the entire ownership interest in the property.

Elective Share - The elective share concept replaced forms of legal life estates, called dower and curtesy.

Dower & Curtesy - Dower and curtesy provide for a surviving spouse to receive a one-third life estate in the property owned during the marriage by the deceased spouse.

NOTE: Dower and curtesy still apply to property acquired by a married couple on or before July 1, 1977.

DOWER is the right of the wife to a life estate in the deceased husband's property. As such, a wife with dower has an INCHOATE (i.e., incomplete and expected) interest in her husband's property, so her signature is needed if he wants to sell, lease or finance property he owns in severalty (i.e., alone).

CURTSEY is the right of the husband to a life estate in the deceased wife's property, provided the couple had at least one child. It is created only after the wife's death, so she has total discretion to sell, lease or finance property she owns in severalty.

Neither dower nor curtesy is recognized in states which have adopted the Uniform Probate Code. (HRS §533 et seq.)

Uniform Probate Code (HRS §560 et seq.)

Under the Uniform Probate Code, adopted in Hawaii for property acquired after July 1, 1977, dower and curtesy was replaced with the statute providing for an elective share for the surviving spouse. A surviving spouse who is not satisfied with the inheritance left by the deceased spouse can make a claim for an elective share. The claim is from 3% to 50% of the deceased's estate, based on the length of the marriage, and must be made within nine months after the death. The maximum amount would be available for a marriage that lasted 15 years or more. (HRS §560:2-202)

This same right is granted to reciprocal beneficiaries, such as those legally recognized under Hawaii's civil union law, enacted January 1, 2012. Reciprocal beneficiaries are persons who are prohibited from marrying each other, such as a same-sex couple or a parent and child and have registered a declaration of their relationship with the Department of Health.

In Hawaii, married couples and reciprocal beneficiaries also have a right to hold property in tenancy by the entirety. The main advantage of a tenancy by the entirety is its right of survivorship, which provides that, when one spouse or beneficiary dies, the other owns the whole property, without probate, free and clear of any debts solely incurred by the deceased (debts incurred jointly, however, remain owing).

Syndication

Real property may also be owned through participation in a syndicate. A syndicate is a group of investors who join to make and operate a real estate investment. Syndicates can be created through various forms of organization, including:

- tenancy in common.
- joint tenancy.
- general or limited partnership.
- a corporation.
- a trust.
- a joint venture.
- a limited liability corporation.

Partnership (HRS 425 et seq.)

A partnership is an association of two or more persons who operate as co-owners of a business for profit. It may be a general partnership or a limited partnership.

In a general partnership, all partners are equal in terms of ownership and management and have full authority to act on behalf of the partnership and other partners. Specific partnership property may be disposed of by all partners acting together or by one partner acting as an agent of the partnership if the sale is in the ordinary course of business. Each partner is entitled to a share of the profits and is jointly (together) or severally (individually) liable for partnership debts. Therefore, the personal assets of each general partner can be claimed to pay partnership debts.

If a partner dies, withdraws or declares bankruptcy, the partnership is dissolved, but may be reorganized or closed.

In Hawaii, a general partnership used to buy and sell real estate is commonly called a hui.

Corporation (HRS §414 et seq.)

A corporation is a legal entity that will hold title in severalty, if it is the sole owner, or with other corporations or individuals as a tenant in common or as a tenant in partnership.

Trusts

A trust may be created to hold title to property for an unincorporated group or an individual. It is often used to hold title to property left by a deceased trustor until the heirs are old enough to assume responsibility for the property themselves.

A trust is created when a trustor conveys title to property to one or more trustees. If created during the trustor's lifetime through a trust agreement, the trust is called a living trust. If created upon the trustor's death through a Will, it is called a testamentary trust. It may be established for a definite term or for the lifetime of the beneficiary.

In Hawaii, a form of trust, called a land trust, may be created to hold real estate as its only asset. Under a land trust, a real property owner becomes a beneficiary of the trust, converting his real property interest to a personal property interest in the trust by transferring legal title to the land to a trustee. The trustee, a person or a business firm manages the trust assets, as authorized and limited by the terms of the trust document, as a fiduciary on behalf of a beneficiary and would sign any listing, sales agreement or deed on behalf of the trust.

The beneficiary is entitled to all the profits from the trust. His interest in the trust is not disclosed in the public records. The beneficiary enjoys confidentiality and his interest can be:

- transferred to another by assignment or pledged as security for a loan.
- passed to his heirs or legatees upon his death, based on the laws of the state in which he resided, rather than the laws of the state in which the property is located. A nonresident avoids Hawaii probate of his estate.

Much of Hawaii property is owned by land trusts, such as the Bishop and Campbell Estates and the Queen Lili'uokalani Trust, that have

leased their land under long-term ground leases. Conservation groups, such as the Maui Coastal Land Trust and the Maui Open Space Trust, use land trusts to conserve the land.

(<http://www.hilt.org/>)

Conveyances

Adverse Possession (HRS §657-31, -31.5) Adverse possession is a means of acquiring title where the occupant of the land has been in actual, open, notorious, hostile, exclusive and continuous possession of the property under color of title or claim of right for a required statutory period. In Hawaii, that is 20 years.

In Hawaii, three categories of real estate cannot have title claimed by adverse possession:

1. Parcels larger than five acres
2. Property registered in Hawaii's Land Court system
3. Federal, state or county land

<http://dlnr.hawaii.gov/ld/>

Hawaii is a public domain state, meaning the state government controls the disposition of land. In homestead states, people may purchase public land and, with some restrictions, claim public land after living on it and cultivating it for a set number of years.

In order to get marketable title to property, an adverse possessor must obtain a quitclaim deed from the ousted owner or file a quiet title action to obtain a judicial decree clearing the title to the property. (HRS §669 et seq.)

A person who merely uses another's property, openly, notoriously and hostilely for 20 continuous years may not claim title to it but can claim an easement by prescription. Because of the need to show that all elements of adverse possession or prescription have been satisfied, before taking any action, a party involved in such a situation should consult an attorney.

Escheat (HRS §523A et seq.) When a person dies intestate (i.e., without a Will) and no heirs can be found for intestate succession, after a period of 15 years the real property will revert to the government through escheat.

Foreclosure

Judicial Foreclosure (HRS §667-1.5 to 20.1)

In a judicial foreclosure, the creditor must obtain a court order to foreclose on the property of a defaulted debtor. In some states, when the creditor is the former owner of the property, the request may be for strict foreclosure, under which the property owner's rights are terminated and title returned to the creditor.

In most cases, however, the creditor will seek an order for foreclosure and sale. Under such an order, the owner's rights are terminated, and the property is sold by the sheriff to the highest bidder.

Nonjudicial Foreclosure (HRS §667-21 to 60)

When a deed of trust or mortgage contains a power of sale provision, a nonjudicial foreclosure is allowed (i.e., no court order is necessary for the foreclosure process to proceed).

Right of Redemption

In all foreclosure actions, the property owner has an equitable right of redemption. This is the right to keep title to the property by paying off the entire debt prior to the date of the foreclosure.

In Hawaii, there is no statutory right of redemption after a foreclosure (i.e., the right to buy back the property by paying off the debt within a specified timeframe after the foreclosure), except for a one-year right of redemption for property lost through a tax sale.

Agreement of Sale Forfeiture

Property may also be lost as a result of forfeiture under the terms of an agreement of sale. An agreement of sale, or real estate contract, is a contract under which a buyer (the vendee) agrees to pay the seller (the vendor) for the property over a period. Once the buyer has satisfied his contractual obligation, the seller will give him a deed. As

protection, the vendor may include in the contract a provision for forfeiture of the vendee's interest if he defaults, allowing the vendor to reclaim the property without having to resort to foreclosure.

NOTE: Courts in Hawaii generally will not enforce such a provision.

Recordation

Recording gives public notice concerning documents affecting the title to real estate. Once a deed is recorded, the information in the deed is available for public inspection. Escrow companies normally handle the recordation of deeds in Hawaii.

Recording System

http://www.courts.state.hi.us/courts/landtax/land_and_tax_appeal_courts.html

The recording system:

- enables a person to provide constructive notice to the world of his interest in a "particular" parcel of real estate.
- helps prevent forgery in recorded documents.
- establishes legal priority of interests.

Title searches only need to go back to a patent or original land grant from the 1840's.

Hawaii is the only state in the union with a statewide recording system. All maps, surveys and documents are recorded at a division of the Department of Land and Natural Resources, known as the Bureau of Conveyances, located in Honolulu, for properties that are:

- part of the Land Court System, where transfer certificates of title and deeds are registered.
- part of the Regular System, where deeds are recorded.
- are both registered and recorded, in the Double System.

Land Court (HRS §501 et seq.)

The Land Court was established in 1903 to provide a means of guaranteeing ownership of land and assisting in eradicating the confusion over ownership and similar names. Only fee simple ownership and encumbrances relating to such property may be registered in Land Court. Land Court generally will not accept leasehold land for registration.

The registrar of the Land Court certifies title based on an examination of the public record. Once title has been registered, there is no need to search the title on any subsequent transfer for the period prior to the registration. Any unregistered liens on registered property would not be valid against a new owner. This makes later transfers relatively quick.

Land registered under the Land Court is described by its lot number, map number and a reference to the Transfer Certificate of Title (TCT), rather than by metes and bounds. TCTs are registered and numbered sequentially from the first certificate issued in 1903. Title to registered property passes only after the transfer is noted on the original TCT.

For Example - All of that certain parcel of land situated at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1907, area 12.104 acres, as shown on Map 177, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased;

Being all of the land described in Transfer Certificate of Title No. 354,617 issued to MUTUAL WELDING COMPANY, LTD., a Hawaii corporation. TOGETHER WITH an easement over Lots 3159, 425-C-1, 424-C, 172-C, 70-C-1, 84-A-2-A and 2493 for pedestrian and vehicular roadway access to and from Farrington Highway, as set forth in that certain instrument entitled DECLARATION OF ROADWAY AND ACCESS RIGHTS dated January 19, 1998, filed as Land Court Document No. 2435393.

TCTs and lien letters (i.e., supplemental title searches for Land Court property) are unique to the Land Court and, along with a deed, convey title.

Entering property into the Land Court requires an original application and petition, using a specified format, and payment of a fee. Full names must be consistent throughout the documentation. Because of the length of the process and the advent of title insurance, the need for the Land Court has sharply decreased.

Regular System - The Regular System of recording is used to give notice that something is on record. Properties which are held as fee simple, leasehold or a combination of the two are recorded at the Bureau of Conveyances through the Regular System. Every condominium property and timeshare resort has a unique document form.

Under the Regular System, until 1990, documents were numbered according to the liber (i.e., book) and page number, and the book and page number of the most recently recorded deed would be referenced.

For Example - All of that certain parcel of land (portion of the lands described in Royal Patent Grant Number 183 to William P. Alexander and Royal Patent Number 4490, Land Commission Award Number 10474, Apana 6 to N. Namauu no M. Kekuanaoa), situated, lying and being at West Kaupakalua, in the District of Hamakualoa, Island and County of Maui.

Containing an area of 88.45 acres, or thereabouts. Said above described parcel of land being a portion of the same lands that were conveyed to the said Peter J. Allencastre and E. J. Allencastre, Jr. by Joe G. Freitas by Deed dated October 20th, 1936 and recorded in said Registry Office in Liber 1351 on Pages 39-41. The interest of the said Peter J. Allencastre having been by him conveyed to the said E. J. Allencastre, Jr. by Deed dated October 25th, 1938 and recorded in said Registry Office in Liber 1468 on Pages 195-196.

Since 1990, however, documents are numbered by the year, followed by a sequential number for each document recorded. Two digits,

representing the year, are followed by a dash and six numbers (e.g., 04-123456, 04-123457, 04-123458).

Double System

The Land Court System and the Regular System of recording in Hawaii are not necessarily mutually exclusive. In the Double System, property may be both registered and recorded.

Conveyance Tax (HRS §247 et seq.)

A conveyance tax must be paid upon recording a deed on any property transfer, including an agreement of sale, lease option or a commercial lease for five or more years. The tax must be paid within 90 days of the transfer. When an agreement of sale is used, the conveyance tax is paid at the time of the initial recording but is not paid again at the title transfer.

There are a number of transactions where no conveyance tax is due, including:

- devisees' deeds.
- gift deeds.
- transfers under the laws of descent.
- transfers of interests upon the death of a joint owner.
- conveyances with consideration of \$100 or less.

The seller of the property normally pays the tax, and the deed cannot be recorded unless a conveyance tax certificate, or exception from conveyance tax, is filed at the time of recording. The tax due is calculated on a sliding scale based on the actual consideration paid for the property. In addition, a lower rate applies to condominiums and single-family residences if the owner is eligible to claim the county homeowner's exemption.

Notice

Any deed, lease for a term of more than one year, mortgage of any interest in real estate or other conveyance of real estate within the state must be recorded in the Bureau of Conveyances. If recording is

not made, the person's interest in the property is void if a subsequent purchaser, lessee or mortgagee, who in good faith and for a valuable consideration, and who has no actual notice of the prior conveyance, records his conveyance first. However, a party who purchases or leases real estate in the possession of a person who is not his vendor or lessor is chargeable with knowledge of all the rights of the party in possession, even if that party had not recorded his conveyance.

Legal Descriptions

There are three types of property descriptions commonly found on deeds, preliminary title reports and title insurance policies:

1. Plat and parcel (also known as lot and block, or recorded plat)
2. Metes and bounds
3. Rectangular (or government) survey (used only on the mainland)

Other descriptive methods used in Hawaii are:

- the Land Court map number.
- the lot number and number of the Certificate of Title.

Tax Map Keys in Hawaii, identification of real property often references the tax map key, particularly in the listing and sale of real property. Under a tax map key system, real property is mapped and indexed numerically. Tax map keys identify the location of individual pieces of property for tax purposes. The numbers are based on legal descriptions but are not adequate for legally describing a property.

Title companies, escrow companies, real estate licensees and lenders use tax map key numbers (TMK), also referred to as tax bill numbers, to identify a property, along with the mailing address of the property. Anyone can research tax map books at each tax division's real property tax office (RPT) or obtain a set for their company's own use.

A tax map will usually contain:

- the owner's name and tenancy (typically the original owner's name, which is not updated upon subsequent sales).
- the location of easements.

- abutting parcels and streets.
- lot dimensions.
- square footage (written within the boundaries) of blocks, lots and parcels.
- each lot and block number.

Subdivision lot numbers are circled in the upper right of the page, and parcel numbers are double underlined in the lower left of a page that contains a particular lot. Tax map key numbers are assigned under a parcel number format:

Division# (I)–Zone# (Z)–Section# (S)–Plat# (PPP)–Parcel# (ppp)–CPR# (CCCC)

The division number refers to the tax division. The state of Hawaii is divided into four tax divisions:

- Oahu is Division 1.
- Maui County is Division 2.
- The Big Island of Hawaii is Division 3.
- Kauai County is Division 4.

The CPR number is used for a parcel with a condominium to show the condominium unit number.

A colon within a dash indicates multiple parcels (e.g., 1-2-4-6-1:45 would refer to parcel numbers 1 through 45 on Oahu, in Zone 2, Section 4, Plat 6).

When researching parcels using tax map key numbers:

- no division number is shown.
- zone and section numbers will both be one-digit numbers.
- the plat and parcel numbers will both be three-digit numbers.
- any CPR number will be a four-digit number.

For Example - To get information about parcel 1-4-3-12-4 at Honolulu's planning department, enter 43012004, adding 0 in front of the plat number (12) and 00 in front of the parcel number (4) to make both three-digit numbers.

Subdivision Plats

Subdivision plats are recorded at the Bureau of Conveyances in plat books. These are public records of subdivisions and maps and are available for public inspection. They are frequently used as part of the legal description of a property. A recorded plat is now called a file plan.

Once the subdivision is platted, the description of a lot from a file plan would be written as the lot number, block number, the number or the name of the subdivision file plan and the county and state in which the subdivision is located.

Metes & Bounds

A more accurate method of describing the boundaries of a property is provided by a metes (measurements) and bounds (boundaries) description.

To understand directions, picture a circle at the beginning of each line, with the point at which the line starts being the center of the circle. A circle has 360 degrees (360°). Each degree has 60 minutes ($60'$). Each minute has 60 seconds ($60''$). Do not confuse these marks with feet and inches, although they are written the same. The notation N $15^\circ 35' 30''$ E is North 15 degrees, 35 minutes, 30 seconds East.

This method describes the land by providing the measurement and direction (or course or bearing) of each boundary line. It should:

- contain the specific length and direction of each side of the property (measured from north and south points to east or west points).
- have a definite point of beginning and definite corners.
- start and finish at the same identifiable point.

It begins at a permanent reference point (i.e., a point of beginning), which is a monument. If the property is not bounded by this point of beginning, the description will indicate the distance and direction from the point of beginning to a corner of the property, called the true point of beginning (TPOB).

The description will then describe a line that follows the boundary of the property to the corner or terminal (end) point at which the direction of the boundary line changes. The word “thence” in a description indicates a shift to a new direction. The distance (shown in feet, miles, inches or older forms of measurement such as chains, rods and links) and direction of each boundary line is shown continuously from one corner to another until the last boundary returns to the true point of beginning, producing a fully enclosed area. A metes and bounds description is the principal method of describing boundaries in legal descriptions in Hawaii.

Note - A benchmark is a geographic point that has been measured and recorded to a high level of accuracy. Frequently, benchmarks are marked by a metal disk permanently affixed to a solid, stable surface. (www.ngs.noaa.gov)

Encroachments - Sometimes what the legal description describes and what is physically on the property differs. If the difference exists on a property line where a fence, gate, driveway or shed crosses the actual property line, it is called an encroachment.

If an encroachment onto an adjoining property or onto the property by an adjoining owner is revealed or discovered during a sale of the property, the seller must either remove it or obtain an encroachment agreement with the affected adjoining owner that is acceptable to the buyer. If neither occurs within an agreed-upon period, the buyer can rescind the transaction or accept the encroachments. This can present a problem regarding the title to the property. (HRS §669-11)

However, Hawaii law specifies that, when the position of a structure results in a minor, or *de minimus*, discrepancy, it is not considered an encroachment and will be allowed to remain until it is removed or substantially damaged.

The discrepancy is *de minimus* if, for improvements:

- to commercial, industrial or multi-family property, it is three inches or less.
- to other residential property, it is six inches or less.

- to agricultural and rural property, it is nine inches or less.
- to conservation property, it is 18 inches or less.

For Example – Metes & Bounds

All of that certain parcel of land (being a portion of Royal Patent 5588, Land Commission Award 8452, Apana 3, Section 1 to A. Keohokalole), situated on the Southeast side of Ohua Avenue, at Hamohamo, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and more particularly described as per survey of Robert S. Torigoe, Registered Land Surveyor No. 1361, dated December 15, 1977, as follows:

Beginning at the North corner of this parcel of land and on the Southeast side of Ohua Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIKIKI" being 3,426.01 feet South and 2,620.82 feet East, thence running by azimuths measured clockwise from True South:

1. 315 degrees 20 minutes, 110.11 feet along block F of Land Court Application 1856 (Pending), along the remainder of Royal Patent 5588, Land Commission Award 8452, Apana 3, Section 1 to A. Keohokalole;
2. 2.42 degrees 45 minutes, 14.76 feet along the same; 2.42 degrees 45 minutes, 14.76 feet along the same;
3. 45 degrees 00 minutes, 59.95 feet along the same;
4. 135 degrees 20 minutes, 107.74 feet along the same;
5. 222 degrees 45 minutes, 75.02 feet along the Southeast side of Ohua Avenue to the point of beginning and containing an area of 8,160 square feet, more or less.

SUBJECT, HOWEVER, TO: 1. The reservation in favor of the State of Hawaii of all mineral and metallic

Government Survey - The government survey method (or rectangular survey method or section and township system) is used extensively on

the mainland but is not used in Hawaii. It is used to divide land into squares and rectangles, called townships and sections.

Government Land Rights in Hawaii

Mineral Rights (HRS §182, et seq.)

In Hawaii, all mineral rights are owned by the state, including gas, oil, mineral and even geothermal energy rights. Mining leases are issued by the Department of Land and Natural Resources on a royalty basis. Those who receive mining leases must not undermine the subjacent support (support from beneath the surface) of the owner of the surface rights.

Water Rights (<http://dlnr.hawaii.gov/cwrm/aboutus/>)

In Hawaii, the Commission on Water Resource Management (the Commission), which is attached to the Department of Land and Natural Resources, administers the state Water Code of 1987. Its general mission is to protect and enhance the water resources of the State of Hawaii through wise and responsible management. The Department of Health, however, administers the Water Quality Plan.

The following are the branches of the Commission:

- Surveying
- Planning
- Groundwater Regulation
- Stream Protection and Management Branches

The Commission's responsibilities include:

- regulating the use of water resources in water management areas.
- administering the instream use protection program.
- processing permit applications for stream channel alterations, well drilling, pump installations and diversion works construction.
- performing hydrologic investigations and recommending appropriate action regarding the designation of water management areas.

- coordinating activities to protect native Hawaiian water rights.

Native Hawaiian water rights legislation (which does not change any provisions of the Hawaiian Homes Commission Act of 1920 or statutes relating to the Molokai irrigation system) requires that the Commission, with certain constraints, protect adequate reserves of water for Hawaii homelands. Appurtenant water rights of kuleana and taro lands, and traditional and customary rights, may not be lost because a person fails to apply for or receive a permit. Such water rights include:

- cultivating or propagating taro on one's own kuleana.
- gathering of hihiwai, opae, o`opu, limu, thatch, ti leaf, aho cord and medicinal plants for subsistence or cultural and religious purposes. (HRS §174C-101)

State v. Federal Law

Throughout the United States, federal laws control navigable waterways and will pre-empt state law. Even though the State of Hawaii has the power to protect the environment using regulations that are reasonable, its Department of Land and Natural Resources must comply with federal law.

Hawaii Fishing Ponds Hawaii fishing ponds are fed by percolation (through the rocks) from the water table or from freshwater springs. The water table fluctuates as it rises and falls with the tide. The salinity is variable and can range from very salty to fresh water. Some ponds are inaccessible and remain pristine; others are in official preservation areas. Fishing ponds that are on private land may be modified at will. (HRS §183B et seq.)