

Hawai'i's Status under International Law: *Impact on Land Titles Today*

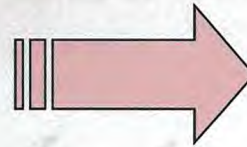
Dr. Keanu Sai
Political Scientist



RECEIVED AT PSLU MEETING ON 8/21/19

Hawaiian State & Government

State Sovereignty
Hawai'i (1843)



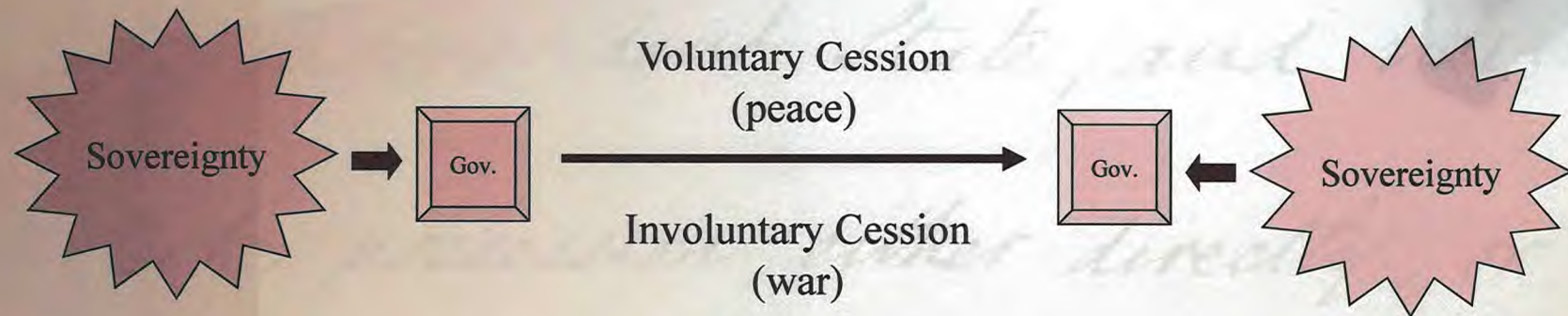
Illegally
Overthrown
Hawaiian
Kingdom
1893
Government



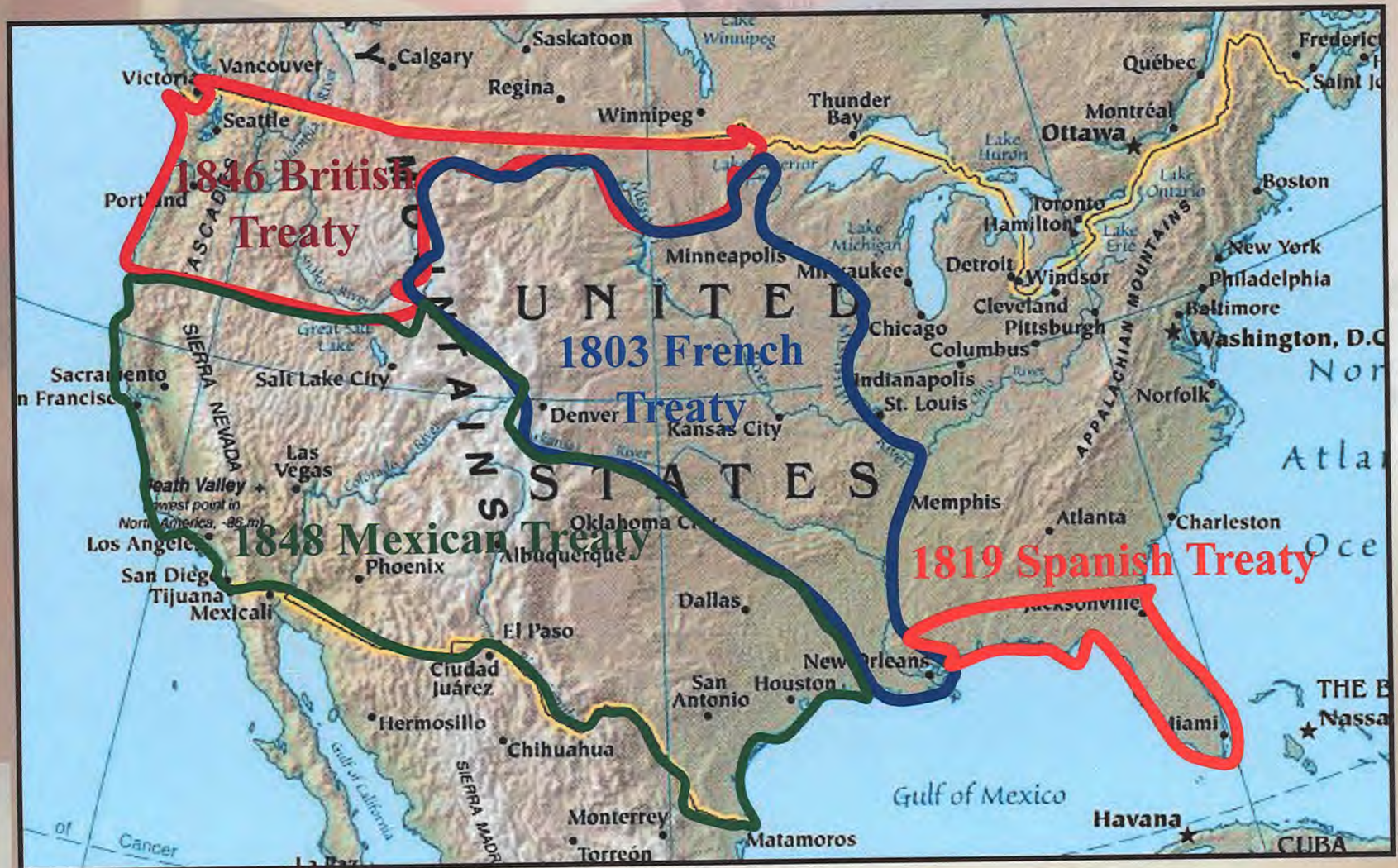
Annexation under International Law

According to Professor Oppenheim, a leading expert in international law:

“Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State” and the “only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State”



Territory Annexed by the United States



Authority of Hawai‘i’s Annexation?

July 7, 1898.

[No. 55.] Joint Resolution To provide for annexing the Hawaiian Islands to the United States.

Annexation of the
Hawaiian Islands.
Preamble.

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

- The 1898 *Joint Resolution of Annexation* is a municipal law of the United States enacted by the Congress
- A joint resolution is not a treaty



Maui News, Oct. 20, 1900

PALAPALA HOOPII KUE HOOHUIAINA.

I ka Mea Mahaloia WILLIAM McKINLEY, Peresidena,
a me ka Aha Senate, o Amerika Huipuia.

ME KA MAHALO:—

NO KA MEA, ua waihoia aku imua o ka Aha Senate
o Amerika Huipuia he Kuikahi no ka Hoohui aku ia
Hawaii nei ia Amerika Huipuia i oleloia, no ka noonooia
ma kona kau mau iloko o Dekemaba, M. H. 1897; nolaila,

O MAKOU, na poe no lakou na inoa malalo iho, he
poe makaainana a poe noho oiwi Hawaii hoi no ka
Apana o Waialae, Moku-puni o

Maui, he poe lala no ka
AAHUI HAWAII ALOHA AINA O KO HAWAII PAE-
AINA, a me na poe e ae i like ka manao makee me ko
ka Ahaui i oleloia, ke kua aku nei me ka manao ikaika
loa i ka hoohuiia aku o ko Hawaii Paesina i oleloia ia
Amerika Huipuia i oleloia ma kekahi ano a louna paha.

IKAA-ATTEST:

Sept. 11, 1897. Enoch Johnson

Kakoualele. Secretary.

PETITION AGAINST ANNEXATION. ¹⁴⁰

To His Excellency WILLIAM McKINLEY, President,
and the Senate, of the United States of America.

GREETING:—

WHEREAS, there has been submitted to the Senate of
the United States of America a Treaty for the Annexation
of the Hawaiian Islands to the said United States of
America, for consideration at its regular session in Decem-
ber, A. D. 1897; therefore,

WE, the undersigned, native Hawaiian citizens and
residents of the District of _____,
Island of _____, who are members
of the HAWAIIAN PATRIOTIC LEAGUE OF THE HAWAII-
AN ISLANDS, and others who are in sympathy with the
said League, earnestly protest against the annexation of
the said Hawaiian Islands to the said United States of
America in any form or shape.

James Keauiluna Kaula
Peresidena - President.

INOA—NAME.	AGE.	INOA—NAME.	AGE.
<u>Thomas Oluia Kaula</u>	<u>42</u>	<u>Kapunaia Kaula</u>	<u>33</u>



known to law, and it was absolutely necessary to annex the islands
at the time it was done. And further, Thomas, if it becomes
necessary to annex Cuba, it will be done quicker than a wink. It
is but fair to give you credit for being honest in your views.
Thomas, but you don't quite understand the American people just
yet, hence you are very misleading.

Congressional Records

~~Public Law 86-3~~

~~United States, to overthrow the indigenous and lawful Govern-~~
ment of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Govern-
ment of Hawaii, the United States Minister and the naval rep-
resentatives of the United States caused armed naval forces of

to the United States;

Whereas the Republic of Hawaii also ceded 1,800,000 acres of
crown, government and public lands of the Kingdom of Hawaii,
without the consent of or compensation to the Native Hawaiian
people of Hawaii or their sovereign government;

~~Whereas the Congress, through the Newlands Resolution, notified~~
ers, descendents of missionaries, and financiers deposed the
Hawaiian monarchy and proclaimed the establishment of a Provi-
sional Government;

Whereas the United States Minister thereupon extended diplomatic
recognition to the Provisional Government that was formed by
people of Hawaii in the election held on November 7, 1950, is hereby
found to be republican in form and in conformity with the Constitu-
tion of the United States and the principles of the Declaration of
Independence, and is hereby accepted, ratified, and confirmed.

~~Sec. 2. The State of Hawaii shall consist of all the islands together~~

void."

Territory.



Limitation of U.S. Congressional Law

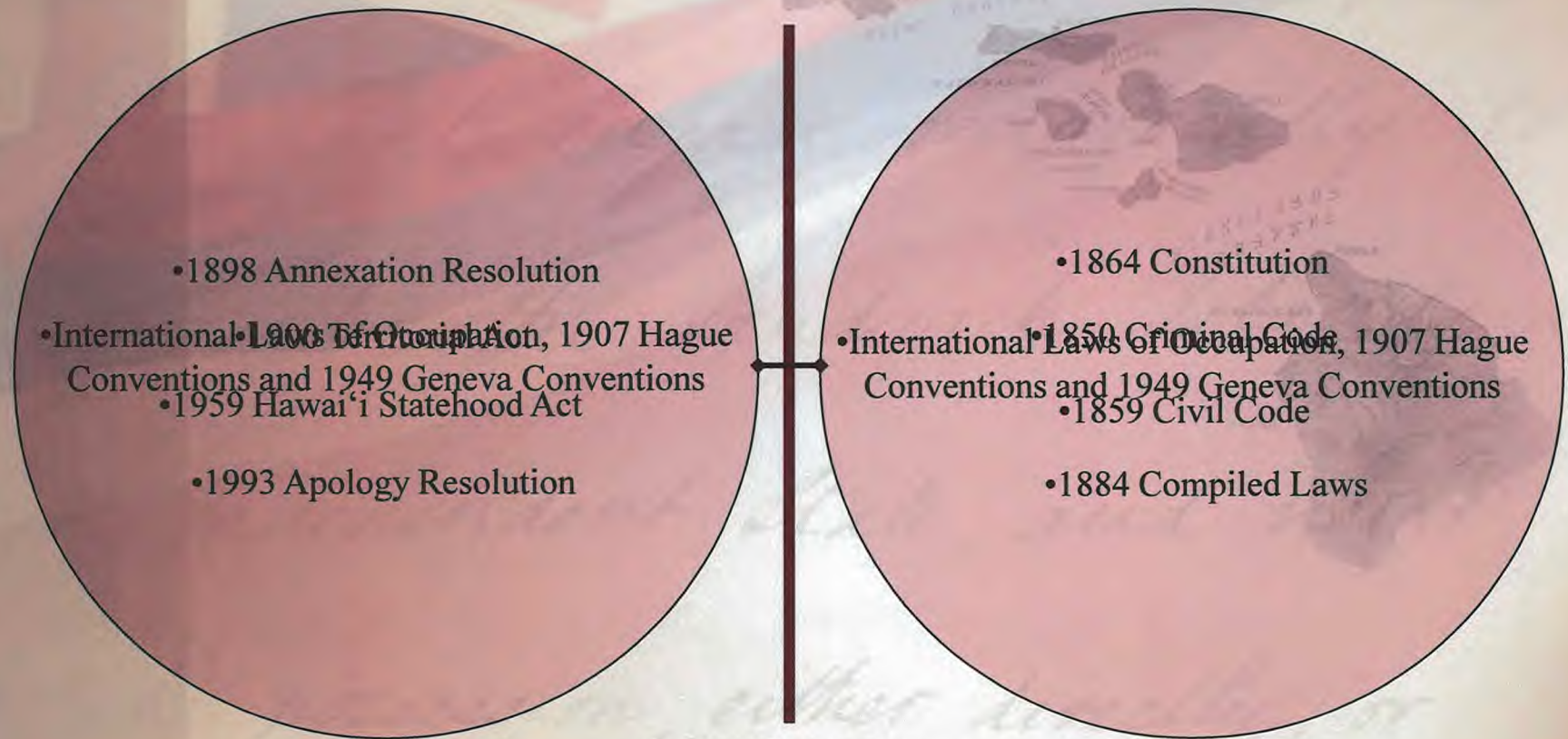


Limitation of United States Laws

- United States Supreme Court:
 - “The laws of no nation can justly extend beyond its own territories. ...They can have no force to control the sovereignty...of any other nation” *The Apollon*, 22 U.S. 362, 370 (1824)
 - “Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory...and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law” *U.S. v. Curtiss-Wright Export*, 299 U.S. 304, 318 (1936)



National Laws and International Laws



International Law



United States of America
(Sovereign & Independent State)

Hawaiian Kingdom
(Sovereign & Independent State)

The Hawaiian Government

State of
Hawai'i

Governor

Legislative
Branch

Executive
Branch

Judicial
Branch



DOJ Unclear On Hawai'i Annexation

- Ninety years later in 1988, the U.S. Department of Justice concluded in a legal opinion:
 - “[Despite] these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898”
 - “Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable”
 - “It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution”



Legal Opinion on the Hawaiian Kingdom

The implications of continuity in case of Hawai'i are several:

- a) That authority exercised by US over Hawai'i is not one of sovereignty i.e. that the US has no legally protected 'right' to exercise that control and that it has no original claim to the territory of Hawai'i or right to obedience on the part of the Hawaiian population. Furthermore, the extension of US laws to Hawai'i, apart from those that may be justified by reference to the law of (belligerent) occupation would be contrary to the terms of international law.
- b) That the Hawaiian people retain a right to self-determination in a manner prescribed by general international law. Such a right would entail, at the first instance, the removal of all attributes of foreign occupation, and a restoration of the sovereign rights of the dispossessed government.
- c) That the treaties of the Hawaiian Kingdom remain in force as regards other States in the name of the Kingdom (as opposed to the US as a successor State) except as may be affected by the principles *rebus sic stantibus* or impossibility of performance.
- d) That the Hawaiian Kingdom retains a right to all State property including that held in the territory of third states, and is liable for the debts of the Hawaiian Kingdom incurred prior to its occupation.



Legal Opinion on War Crimes

Legal opinion on war crimes related to the United States occupation of the Hawaiian Kingdom since 17 January 1893

Statutory limitation of war crimes is prohibited by customary law.⁶ The prohibition of statutory limitation for war crimes has been proclaimed in several resolutions of the United Nations General Assembly.⁷ In a diplomatic note to the Government of Iraq in 1991, the Government of the United States declared that ‘under International Law, violations of the Geneva Conventions, the Geneva Protocol of 1925, or related International Laws of armed conflict are war crimes, and individuals guilty of such violations may be subject to prosecution at any time, without any statute of limitations. This includes members of the Iraqi armed forces and civilian government officials.’⁸

application of the relevant rules of international law, particularly those set out in the Hague Conventions of 1899 and 1907 and the fourth Geneva Convention of 1949. This legal opinion is confined to the definitions and application of international criminal law to a situation of occupation. The terms “Hawaiian Kingdom” and “Hawai‘i” are synonymous in this legal opinion.



International Law of Occupation

- *First* rule is to maintain the *status quo* of the occupied country: its territory, laws and citizenry
- *Second* rule is for the occupying country to administer the laws of the occupied country through a military government similar to the occupation of Japan from 1945-1952
 - A military government takes over an already existing government in the occupied country by establishing a military governor
- *Third* rule is that occupations are regulated by international law and not the laws of the occupying country



Obligatory Nature of Hawaiian Law

COMPILED LAWS

CHAPTER II.

OF THE EFFECTS OF LAWS.

Const., Art. 16.
Norton v. Pa-
hana. 3d H. R.
300.

§5. No law shall have any retrospective operation.

§6. The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.

HONOLULU:

PRINTED AT THE HAWAIIAN GAZETTE OFFICE,

. 1884

Land Titles in the Kingdom



AN ACT

TO RELIEVE THE ROYAL DOMAIN FROM ENCUMBRANCES, AND TO
RENDER THE SAME INALIENABLE.

WHEREAS, by the Act entitled "An Act relating to the lands of His Majesty the King, and of the Government," passed on the 7th day of June, A. D. 1848—it appears by the Preamble that His Most Gracious Majesty Kamehameha III. the

SECTION 4. The Commissioners of the Crown Lands shall have full power and authority to make good and valid leases of the said lands for any number of years not exceeding thirty ;

as, by the same Act it was declared that certain lands therein named, shall be the private lands of Kamehameha III., to have and to hold to himself, his heirs and successors forever ; and that the said lands shall be regulated and disposed of according to his royal will and pleasure, subject only to the rights of tenants. *And whereas*, by the proper construction of the said statute the words "Heirs and Successors," mean the heirs and successors to the Royal Office. *And whereas*,

Government Lands

100	LAWS NOT EXPRESSLY REPEALED.				ACT RELATING TO LANDS.				401
	NAMES OF LANDS.	AHUPUAA.	DISTRICTS.	ISLANDS.	NAMES OF LANDS.	AHUPUAA.	DISTRICTS.	ISLANDS.	
	Halaula, - -	Ahupuaa,	Koolau,	Kauai.	Puunui 1, - -	Ili no Honolulu,	Kona,	Oahu.	
	Ulakui, Ili no Kapaa	"	Puna,	"	Puunui 2, - -	"	"	"	
	Paikahawaii, Ili no Kapaa,	"	"	"	Puunui 3, - -	"	"	"	
	$\frac{1}{2}$ Olehana, - -	"	"	"	Palikea, - -	"	"	"	
	Kikiaola, - -	Ili no Waimea,	Kona,	"	Niupaipai, - -	"	"	"	
	Niihau, - -	Ka Mokupuni,	"	Niihau.	Kaolu Kawananakoa,	"	"	"	
	Pohueloa, - -	Ahupuaa,	"	"	Kahui	"	"	"	

Made over to the Chiefs and People, by our Sovereign Lord the King, and we do hereby declare those lands to be set apart as the lands of the Hawaiian Government, subject always to the rights of tenants. And we do hereby appoint the Minister of the Interior and his successors in office, to direct, superintend, and dispose of said lands, as provided in the Act to organize the Executive Departments, done and passed at the Council House in Honolulu, the 27th day of April, A. D. 1845 :

Kuwili, - -	Ili no Honolulu,	Kona,	Oahu.	Waihinale, - -	"	"	"
Kuhimana, - -	"	"	"	Kumuulu, - -	"	"	"
Hauhaukoi, - -	"	"	"	Kahoiwai, - -	"	"	"
Aala, - -	"	"	"	Kaunalea, - -	"	"	"
Kuaiaula, - -	"	"	"	Waihi, - -	"	"	"
Laukalo, - -	"	"	"	Hapuna, - -	"	"	"
Kunawai, - -	"	"	"	Kaunooa, - -	"	"	"
Kuaipaako, - -	"	"	"	Waiaka, - -	"	"	"
Apowale, - -	"	"	"	Pahupahuapuaa, - -	"	"	"
Oloku, - -	"	"	"	Nukunukuaula 1, - -	"	"	"
Alewa, - -	"	"	"	Nukunukuaula 2, - -	"	"	"

Land Commission Award

C. No. 511. J. J. Parker.

This is a Claim for two ilis of Land in the district of Kohala on the Island of Hawaii, known by the names of "Makanihaka" & "Ahu Lanikahi".

These lands were conveyed to the Claimant on the 1st of January 1843 by Kamehameha III and the late Premier Keikaula, to have and to hold, to him and his Hawaiian born heirs for ever; upon the Condition, that he should never transfer said lot to any alien or non-resident of the Hawaiian Islands.

This is equivalent to a fee simple title; and we do hereby Award to J. J. Parker, and his Hawaiian born heirs said lands, according to the metes and bounds of the annexed Survey, to have and to hold for ever; subject only to the Condition expressed in the Deed from the King and late Premier - viz. that said land shall never be transferred to any alien, or non-resident of the Hawaiian Islands.

Royal Patent

N^o 950 ✓ ✓

325

ROYAL PATENT.

KAMEHAMEHA III. By the grace of God, King of the Hawaiian Islands, by this His Royal Patent, makes known unto all men, that he has for himself and his successors in office, this day granted and given, absolutely, in Fee Simple unto *Robert Robinson*, his faithful and loyally disposed subject for the consideration of *three hundred and nineteen dollars*, paid into the Royal Exchequer, all that certain piece of Land, situated at *Maunaloa* in the Island of *Hawaii*, and described as

Reserving the rights of Native, Tenants,

Traverse of the parcel S. 47° N. 160 feet, S. 50° E. 182 feet, S. 50° E. 336 feet, S. 49° N. 450 feet, S. 17½° N. 2448 feet, to a kukui tree, thence S 10° N. 2300 feet to a stake on the top of a hill near an ancient ditch, thence on N 32° N. 3570 feet, across to the parcel which forms the Western boundary of this land, thence down the middle of said parcel, along the boundary of Kakaalana and Paukii N. 20° E. 568 feet, N. 47° E. 748 feet, N 12½° E 300 feet, N 12½° N. 228 feet, N 12½° E. 455 feet, N 20½° E. 466 feet, N 46½° E 415 feet, N 15½° E. 370 feet, N 52½° E. 370 feet, N 20½° E. 500 feet, N 31½° E. 615 feet to the point of commencement.

Reserving the rights of Native, Tenants,

Conveyances under Hawaiian Law

§1262. All deeds, leases for a term of more than one year, or other conveyances of real estate within this Kingdom, shall be recorded in the office of the Registrar of Conveyances, and every such conveyance not so recorded shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, not having actual notice of such conveyance, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded.

Aimes v. Makulu, 2 H.R. 160

Ellis v. White 3 H. R. 205.

§1267. No person who is not a subject of this Kingdom shall be eligible to the office of notary public; and every person appointed to that office shall, before entering thereon, take and subscribe an oath for the faithful discharge of his duties, which oath shall be filed in the Department of the Interior.

Conveyances Prevented since 1893

- Deeds of conveyance of real property and mortgages after January 17, 1893 cannot be considered lawfully executed because:
 - the Registrar of Conveyances and notaries public were insurgents and members of the so-called provisional government and its successor the Republic of Hawai‘i
- President Cleveland in his Message to the Congress on December 18, 1893 stated:
 - “When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety...declared it to exist. It was neither a government *de facto* nor *de jure*”

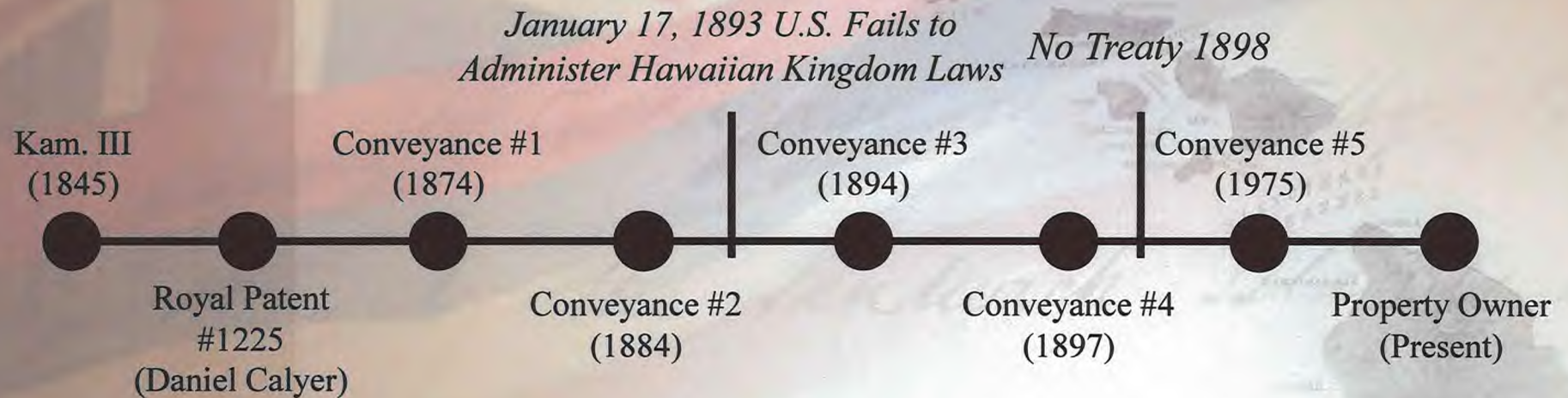
Conveyances Prevented since 1893

- Hawaiian Kingdom law was to be administered by the President, through a military government, in accordance article 43, 1907 Hague Convention, IV, and article 64, 1949 Geneva Convention, IV
- The United States failed to administer Hawaiian Kingdom laws, which is an obligation under international law
- Consequently, this failure renders all conveyances of real estate and mortgages securing the repayment of loans within Hawaiian territory since January 17, 1893 to the present null and void

Titles Originate from RPs and LCAs



Chain of Title to Real Estate



Break in the Chain of Title:
Incompetent Notary & Registrar



Real Estate Terms

- *Promissory note*
 - A written document in which a borrower agrees (promises) to pay back money loaned by a lender according to specified terms
- *Mortgage*
 - A mortgage is a *lien*, which is a right to keep possession of property belonging to another person until a debt owed by that person is discharged
- *Deed*
 - A legal instrument that is used to assign ownership of real property

Promissory Note

ADJUSTABLE RATE NOTE (LIBOR Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. THIS LOAN HAS A PREPAYMENT PENALTY PROVISION.

December 12, 2005

Indio

CA

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 290,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Argent Mortgage Company, LLC.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 10.700 %. This interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on February 1, 2006.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on, January 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my payments at: 505 City Parkway West, Suite 100, Orange, CA 92868

Mortgage

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances.

STATE OF HAWAII
REGISTRAR

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **December 12, 2005**, together with all Riders to this document.

(B) "Borrower" is **KALE KEPEKAIO GUMAPAC and DIANNE DEE GUMAPAC, Husband and Wife, As Tenants By the Entirety**



Borrower is the mortgagor under this Security Instrument.

also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **December 12, 2005**, together with all Riders to this document.

(B) "Borrower" is **KALE KEPEKAIO GUMAPAC and DIANNE DEE GUMAPAC, Husband and Wife, As Tenants By the Entirety**

Deed

	<p>L-206 STATE OF HAWAII OFFICE OF ASSISTANT REGISTRAR RECORDED FEB 24, 2003 08:01 AM Doc No(s) 2895104 on Cert(s) 505,052 Issuance of Cert(s) 637,651 /s/ CARL T. WATANABE ASSISTANT REGISTRAR CONVEYANCE TAX: \$177.02</p>		
 7 1/2 Z4	LAND COURT	REGULAR SYSTEM	
W	AFTER RECORDATION. RETURN BY: MAIL <input checked="" type="checkbox"/> PICK-UP ()		Lc
	Mr & Mrs Kale Gumapac 16-643 #15 Kipimana Street Keaau, HI 96749	TG: 200023300-13 TGE: A0-302-0454 Yvonne Santos	①
(Total Document Pages = 7)			
Affects TMK: (3) 1-5-055-062 and TCT No. 505,052			
<u>WARRANTY DEED</u>			
THIS DEED is made this <u>17th</u> day of <u>April</u> , 2002, by and between the following parties:			
"Grantor": LINDA VIVIAN LITTLE, single, and ALICE EVELYN LITTLE, unmarried, both whose address is 1206 E. Turner Drive, Longview, Texas 75601-6705.			
"Grantee": KALE KEPEKAIO GUMAPAC and DIANNE <u>DEE</u> GUMAPAC, husband and wife, whose address is 16-643 Kipimana Street # 15, Keaau, Hawaii 96749.			

Real Estate Terms

- *Title Insurance*

- A policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of its search against claims of title defects
- Title insurance is an indemnity contract that does not guarantee the state of land titles but covers loss incurred from a *defect* in land titles
 - *Defect* is the want or absence of some legal requisite; deficiency; imperfection; insufficiency

Real Estate Terms

- *Lender's Title Insurance Policy*
 - A policy that protects the lender from losses incurred as a result of a defect in title
 - Lender's require borrower to purchase a lender's policy at escrow as a condition of the loan
- *Owner's Title Insurance Policy*
 - A policy that protects the owner from losses incurred as a result of a defect in title

Lender's Title Insurance Policy

LENDERS' INSTRUCTIONS

TITLE POLICY REQUIREMENTS

1. The title policy must insure the mortgage as a good and valid lien of the type shown on Page 1 in accordance with your Preliminary Commitment for Title Insurance. We must have the original and two copies of the policy.
2. THERE MUST BE NO OTHER LIENS AGAINST THE PROPERTY OTHER THAN THOSE SHOWN ON PAGE 1, unless approved by us in writing.
3. No past-due taxes or special assessments are to be shown as exceptions. The title policy must show current year's taxes "not yet due and payable," or current half paid.
4. In examining the title, if you find any violations of restrictions, easements, or encroachments, secure our approval prior to the closing.
5. Vestee name spelling(s) must be identical to mortgage/deed of trust.
6. Marital status must be shown.
7. We require two copies of conditions, covenants, and restrictions and of any recorded exceptions not covered by FHA/VA/FNMA/FHLMC General Waivers.
8. All conditions of our loan commitment have not been met.
9. **SIGNATURES** Please insure that the Borrowers sign ALL loan documents EXACTLY AS THEIR NAMES ARE TYPED ON THE DOCUMENTS, EVEN IF THIS IS NOT THEIR USUAL SIGNATURE. Please pay special attention to middle initials and middle names, and Junior and Senior. You should review the signature on each document CAREFULLY. IF THERE IS ANY QUESTION AS TO THE READABILITY OF THE SIGNATURE OF AN INDIVIDUAL, YOU SHOULD OBTAIN A NOTARIZED SIGNATURE AFFIDAVIT and return it with the other documents.
10. **TAX CERTIFICATION** This form must be completed and signed by YOU and have the LEGAL DESCRIPTION ATTACHED OR ENTERED AT THE BOTTOM OF THE FORM. Please be sure that ALL information is complete and correct and that you show an amount of taxes next due, even an estimated amount.

Lender's Title Insurance Policy

ALTA Loan Policy (6-17-06) as modified by TIRBOP (4-1-07)

LOAN POLICY OF TITLE INSURANCE ISSUED BY



Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:
 - (a) A defect in the Title caused by:
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection

Countersigned:



Authorized Countersignature

Company Name

City, State



Senior Chairman of the Board

Chairman of the Board

President

File No.:

Page 1 Serial No.: M-5441-

If you want information about coverage or need assistance to resolve complaints, please call our toll free number: 1-800-726-1902. If you make a claim under your policy, you must furnish written notice in accordance with Section 3 of the Conditions. Visit our World-Wide Web site at <http://www.stewart.com>

Owner's Title Insurance Policy



Policy No. 7407011 - 40150056

Policy of Title Insurance

Hawaii Standard
Owner's Policy
(1998)

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, TICOR TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated herein;

2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

This policy shall not be valid or binding until countersigned below by an authorized signatory of the Company.

Issued by:



Title Guaranty of Hawaii Inc
235 Queen Street
Honolulu Hawaii 96813
Telephone (808) 533-6261
Fax (808) 521-0221
Email title@tghawaii.com

TICOR TITLE INSURANCE COMPANY

By:

ATTEST

[Signature]
[Signature]

President

Secretary

HUD-1 Statement

A. Settlement Statement		U.S. Department of Housing and Urban Development			
B. Type of Loan					
1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input type="checkbox"/> Conv. Unins.		6. File Number:		7. Loan Number: 	
4. <input type="checkbox"/> VA 5. <input checked="" type="checkbox"/> Conv. Ins.				8. Mortgage Insurance Case Number:	
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.					
D. Name & Address of Borrower: 		E. Name & Address of Seller: 		F. Name & Address of Lender: WELLS FARGO HOME MORTGAGE 1357 KAPIOLANI BLVD STE 910 HONOLULU HI 96813	
G. Property Location: 		H. Settlement Agent: TITLE GUARANTY ESCROW SERVICES, INC. 235 QUEEN STREET HONOLULU, HAWAII 96813		I. Settlement Date: 5/28/2004	
		Place of Settlement: MAIN OFFICE 235 QUEEN ST HONOLULU HI 96813			

HUD-1 Owner's Policy

900 ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE

901 Interest from 5/27/04 to 6/1/04 @ \$ [REDACTED] /day

1000 RESERVES DEPOSITED WITH LENDER

1001 Haz Insurance 03 Mo @\$ [REDACTED] /Mo WELLS FARGO

1005 Cnty Prop Taxes 06 Mo @\$ [REDACTED] /Mo WELLS FARGO

1010 Aggregate Adj. 00 Mo @\$ [REDACTED] /Mo

1100 TITLE CHARGES

1101 Escrow fee to TITLE GUARANTY ESCROW

1108 Title insurance prem to TITLE GUARANTY OF HAWAII

(includes Above Item Numbers: 1102 Abstract of Title or Title Search

1109 Lender's Coverage [REDACTED]

1110 Owner's Coverage [REDACTED]

1200 GOVERNMENT RECORDING AND TRANSFER CHARGES

1201 Record'g/filing fee

DEED

\$ [REDACTED]

MORTGAGE

\$ [REDACTED]

1300 ADDITIONAL SETTLEMENT CHARGES

1301 Insurance Premium to LLOYDS OF LONDON

1302 Refund of Buyers Deposits to [REDACTED]

1303 Refund of Excess Loan amt to [REDACTED]

1304 Interest Earned to [REDACTED]

1400 TOTAL SETTLEMENT CHARGES (ENTER ON LINE 103, SECTION J)


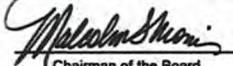
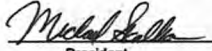
Lender's Title Insurance Policy

ALTA Loan Policy (6-17-06) as modified by TIRBOP (4-1-07)

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
3. Unmarketable Title.

Company Name _____		 Chairman of the Board
City, State _____		 President
File No.: _____		
<div>Page 1 Serial No.: M-5441-</div>		
<small>If you want information about coverage or need assistance to resolve complaints, please call our toll free number: 1-800-729-1902. If you make a claim under your policy, you must furnish written notice in accordance with Section 3 of the Conditions. Visit our World-Wide Web site at http://www.stewart.com</small>		

Insurance Policy §2(a)(3)...Notary

- Complete Loss of title because a Deed was not properly notarized
- In *Basil v. Vincello*, 50 Ohio St. 3d 185 (1990) the Ohio Supreme Court stated:
 - The *legal title* to a parcel of real property did not pass where the grantors signed the deed outside the presence of both witnesses and did not appear before the notary public who certified the acknowledgement;
 - thus, the purchasers at most had an equitable interest in the property still titled in the grantors that was created upon the payment of consideration

Owner's Policy of Insurance



5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damaged signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation with regard to the matter or matters requiring such proof of loss or damage.

Issued by:



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235 Queen Street
Honolulu Hawaii 96813
Telephone (808) 533-6261
Fax (808) 521-0221
Email title@tghawaii.com

TICOR TITLE INSURANCE COMPANY

By:

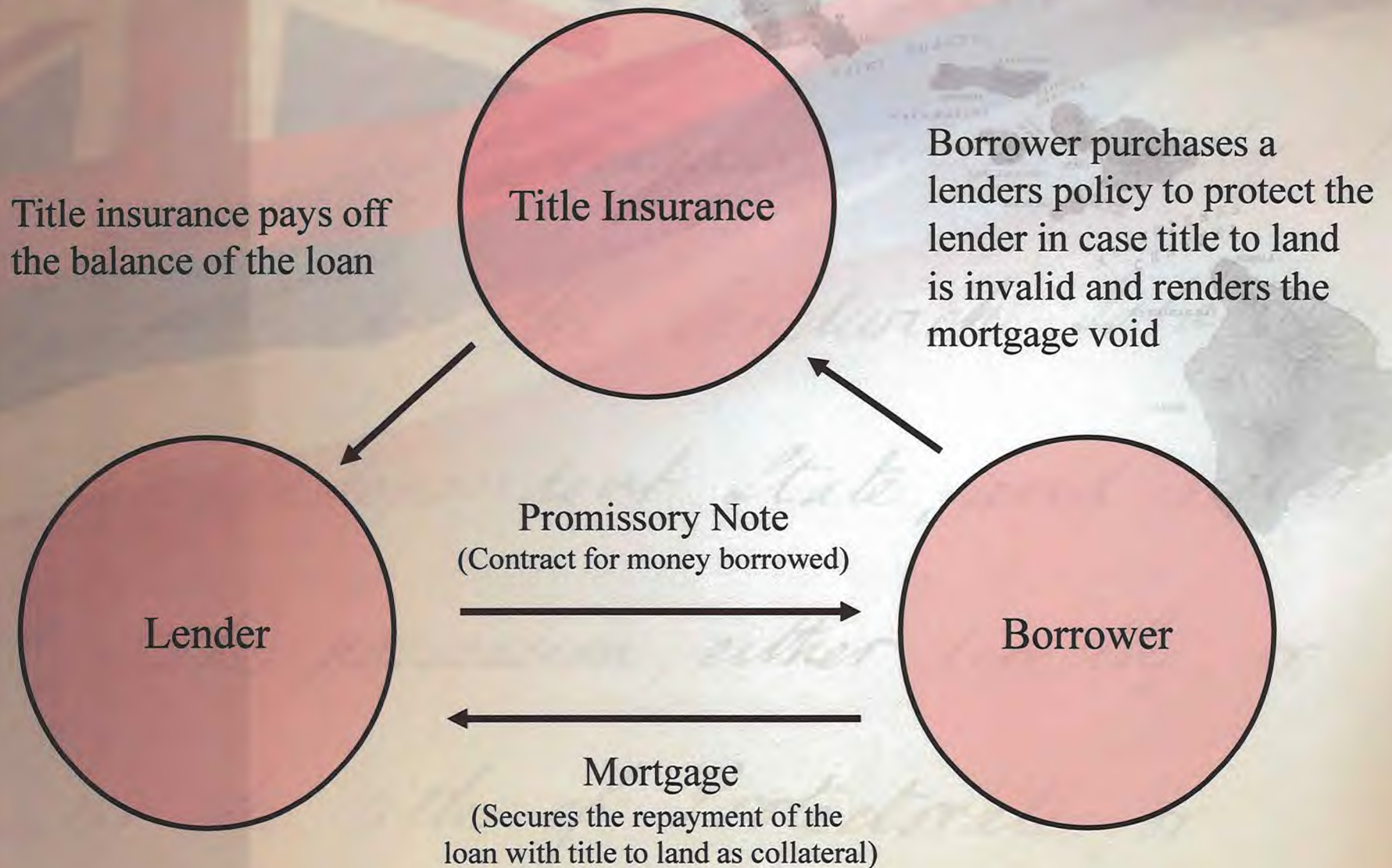
ATTEST

[Signature]
[Signature]

President

Secretary

Escrow Process



1880 Co-partnership Statute

- 1880 Hawaiian statute provides that co-partnerships must be registered with the Bureau of Conveyances

Ch. XXVIII. ~~AN~~ ACT TO PROVIDE FOR THE REGISTRATION OF CO-PARTNERSHIP FIRMS.

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled :

“Whenever any two or more persons shall carry on business in this Kingdom in co-partnership, it shall be incumbent for such persons to file in the office of the Minister of the Interior (Bureau of Conveyance)...”

each co-partnership at least twice in the Hawaiian and English languages, in two newspapers published in Honolulu.

SECTION 5. The Minister of the Interior shall cause a book to be kept in his office, in which shall be recorded the several particulars hereinbefore required to be filed in his office; and which book shall be open for public inspection on payment of a fee of twenty-five cents for each inspection.

Perfect Title Company

- Established *Perfect Title Company* on December 10, 1995 to expose the impact of the overthrow on land titles

70

R-405

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

NOV 27, 1995 02:00 PM

Doc No(s) 95-153346

RECORDATION REQUESTED BY:

Perfect Title Company
P.O. Box 88438
Honolulu, Hawaii 96810-8438

“The abovementioned parties have agreed to form a general partnership under the firm name of Perfect Title Company in the business of researching, manufacturing and selling of land title reports...”

b. Macintosh, Power Mac 6100/60 serial #1PM3576LL/B
c. Macintosh, Powerbook 165 serial #SFC351DOS1QS
f. Hewlett Packard, Scan Jet 111C serial #US000003501
g. Hewlett Packard, Deskwriter 520 serial #3410333610

1 of 3

Perfect Title Company Goes Public

Aloha!

Partly
cloudy,
85°-79°
Weather, A4



Title firm d made since

By Jean Christensen
Advertiser Staff Writer

Keanu Sai and Donald Lewis don't see any reason why their title company should pay state or federal taxes.

They say they are not scofflaws — they are merely following the law of the Kingdom of Hawaii.

The business, Perfect Title Co., considers any certificate transferred after the 1893 over-

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customers — each of whom is

“Perfect Title considers any certificate transferred after the 1893 overthrow of Queen Lili`uokalani to be invalid because it passed through individuals or institutions treasonous to the Crown.”

See Titles, Page A5

vertiser



Perfect Title Creates Firestorm

A-24 □ Friday, December 19, 1997 ●

Honolulu Star-Bulletin

JULY 17, 1997

B2

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AAA

Rupert E. Phillips,

John M. Flanagan, Editor

David Shapiro
Managing Editor

Frank Bridgewater and Mike
Assistant Managing Editor

A.A. Smyser, Contributor

Courts should land title scan

FAILING to persuade judges in civil court that current land title is by the alleged illegality of the U.S. laws, co-founders of a title-searching company, Perfect Title Co. principals and Donald A. Lewis were indicted by a grand jury on charges of attempted theft. The indictment came a year after they began luring homeowners with the promise of fool's gold.

As the Star-Bulletin's Rob Perez reported, Lewis, charging \$1,500 for a title search, convinced homeowners that their titles were defective and that courts established after the overthrow of the monarchy in 1893 lacked authority to probate wills and transfer property.

Perfect Title's challenge of the state's authority to establish a federal detention center was viewed by Judge David Ezra as "utterly and completely frivolous." Ezra added: "I don't like to see the people of Hawaii and that's what's happening here."

Michael and Carol Simafranca also face burglary charges. The Simafrancas lost their home through foreclosure, then attempted to gain entry to the house, moved back in to keep out the family that had bought the house. The new owners eventually obtained a restraining order against the couple.

Undeterred by defeats in civil court, Perfect Title has caused havoc in the state's real estate industry for families that have seen their home investments evaporate. The company has gone so far as to file suits with the U.S. Supreme Court that is as half-baked as the lying premise. Criminal prosecution appears to be the only way to bring an end to this incredible scheme and prevent people from creating more victims.

"Perfect Title has created chaos in Hawai'i's real estate industry with its claims that current land titles are no good. The company reaches those conclusions using 19th century Hawaiian Kingdom law, which it says is still in effect, and by searching property records dating to the 1840s."

the state Bureau of Conveyances, casting clouds on ownership of hundreds of parcels throughout the state.
PLEASE SEE PROBE, A-6

starting to a
s.
Title office
SEE TIT

properties at the state Bureau of Conveyances and some clients have cited the firm's

RIALS

y 20, 1997

o more titles

research in refusing to make mortgage payments.

Of course, mortgage lenders are operating under today's laws, so failure to make mortgage payments on one's home ultimately results in loss of the home.

Perfect Title's business consists of charging a property owner around \$1,500 to research a title's bona fides under monarchy law, making various claims and filings that might make perfect sense under monarchy law, calling hundreds of titles into question and creating general havoc.

Of course, it's the state's responsibility to ensure the stability and validity of the transfer of real estate. Until the unlikely day that a judge or some other authority validates Perfect Title's theories, the state is deficient in failing to protect consumers from its activities.

Perfect Title Company Raided

A-6 □ Saturday, September 6, 1997 ●

Star-Bulletin

FROM PAGE ONE . . .

TITLE: Judge bars firm's of title search

FROM PAGE

The title searchers, 19th-century Hawaiian law, basically concluded waii's existing land was good — a claim that has caused havoc in the real estate market.

Some Perfect Title Company clients are on the verge of losing their property because they have used the company's reports — which are often incorrect — as justification for paying mortgages.

As part of a state criminal investigation, Honolulu Police yesterday morning arrested Donald A. Lewis, David Keanu Sai and a company secretary for investigation of theft, racketeering and tax evasion.

Lewis and Sai said they would figure a way to complete title searches they were hired to do.

kingdom subjects claim not to rec-

“As part of a state criminal investigation, Honolulu Police yesterday morning arrested Donald A. Lewis, David Keanu Sai and a company secretary for investigation of theft, racketeering and tax evasion.”

ing released. No charges were filed.

Lewis and Sai, who as Hawaiian

the 1893 overthrow of the monarchy have been illegal and therefore cannot convey property.

Bronster said the company's liens create problems when affected properties are put up for sale.

her office would seek court approval to expunge past filings affecting state land.

She said the petition seeking the expungement can be filed by anyone whose property has been af-

The company has more than 100 clients.

Bronster, however, said it would be improper for the company to continue operating and tell people it can file reports.

IN SAKAMOTO, Star-Bulletin office. The men were arrested during investigation.

Indicted for Attempted Theft

Four face arrest in land title case

“Perfect Title Co. executives Donald Lewis and David Keanu Sai and two other people indicted on theft charges this week can expect to be arrested within days if they don’t turn themselves in first, the attorney general’s office said today.”

The company has challenged the legality of land titles issued since the overthrow of the Hawaiian monarchy in 1893. Some

home to commit an illegal act. The Simafrancas allegedly claimed title to the home based on Perfect Title documents.

Theft Statute

- According to Joseph Cook and Paul Markus, *Criminal Law* (1995):
 - The subject of theft at common law is personal property. Interest in real property is not included, nor objects attached to the soil, such as trees and crops
- The American Law Institute, *Model Penal Code and Commentaries* (1980):
 - A theft prosecution can be possible where the criminal actor, having power as a trustee, attorney, or otherwise to dispose of another's real estate, does so to his own benefit in violation of his trust

Fearful Jury Convicts

Title: Thr

FROM PAGE ONE

verdict," said Deputy Attorney General Dwight Nadamoto. "I think the evidence was sufficient for those charges."

The verdict culminates the state's investigation into the now defunct company, which stirred widespread anxiety in the real estate industry when it challenged property titles based on the laws of the Hawaiian kingdom before the 1893 overthrow of Queen Lili'uokalani.

Based on its research, Perfect Title filed claims with the state Bureau of Conveyances that cast doubt on the legality of modern

"The verdict culminates the state's investigation into the now defunct company, which stirred widespread anxiety in the real estate industry when it challenged property titles based on the laws of the Hawaiian kingdom before the 1893 overthrow of Queen Lili'uokalani."

ted theft

Earlier in the trial, Lewis was acquitted by Simms, who ruled that the prosecution's evidence did not support the charge against him.

"I don't think it's a good verdict," said Lewis, who appeared at the courthouse to support his former co-defendants yesterday. "This is really a civil matter. It shouldn't have been in this court, criminalizing challenges to titles."

Lewis still faces a trial in January on two misdemeanor charges of failing to obtain a license to conduct business in Hawaii and failing to file a general excise tax return in 1996.

Legal Opinion on War Crimes

Legal opinion on war crimes related to the United States occupation of the Hawaiian Kingdom since 17 January 1893

Elements of the war crime of deprivation of fair and regular trial

1. The perpetrator deprived one or more persons in an occupied territory of fair and regular trial by denying judicial guarantees recognized under international law, including those of the fourth Geneva Convention and the International Covenant on Civil and Political Rights.
2. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

is confined to the definitions and application of international criminal law to a situation of occupation. The terms "Hawaiian Kingdom" and "Hawai'i" are synonymous in this legal opinion.



Lease for

THIS INDENTURE OF LEASE, made this 21st day
of June, 1968, by and between the STATE OF

H

SUPPLEMENT TO THE STATUTE LAWS.

NAMES OF LANDS.	AHUPUAA.	DISTRICTS.	ISLANDS.
Made over to the Chiefs and People, by our Sovereign Lord the King, and we do hereby declare those lands to be set apart as the lands of the Hawaiian Government, subject always to the rights of tenants. And we do hereby appoint the Minister of the Interior and his successors in office, to direct, superintend, and dispose of said lands, as provided in the Act to organize the Executive Departments, done and passed at the Council House in Honolulu, the 27th day of April, A. D. 1845 :			
Paauhau,	Maunaloa,	Maunaloa,	Maunaloa,
Paauilo,	Ahupuaa,	Hamakua,	“



ises, herein mentioned and described, unto the said Lessee,
for and during the term of sixty-five (65) years, to commence
from the 1st day of January, 1968, and to terminate on the
31st day of December, 2033.

UH's Sublease to TMT is Invalid

- The Hawaiian Government did not consent to any conveyance of the ahupua'a of Ka'ohe
- The University of Hawai'i cannot claim to have a valid lease from the State of Hawai'i in 1968
- TMT cannot claim to have a valid sublease from the University of Hawai'i
- Goodfellow company cannot claim to have a valid contract to build TMT within the ahupua'a of Ka'ohe
- Building the TMT without the consent of the Hawaiian Government is the war crime of destruction of property and pillaging



Legal Opinion on War Crimes

Elements of the war crime of confiscation or destruction of property

1. The perpetrator confiscated or destroyed property in an occupied territory, be it that belonging to the State or individuals.
2. The confiscation or destruction was not justified by military purposes of the occupation or by the public interest.
3. The perpetrator was aware that the owner of the property was the State or an individual and that the act of confiscation or destruction was not justified by military purposes of the occupation or by the public interest.
4. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

opinion.



Now, therefore, We, the acting Council of Regency of the
Hawaiian Kingdom, serving in the absence of the Monarch and

And, We do hereby proclaim that from the date of this
proclamation all laws that have emanated from an unlawful
legislature since the insurrection began on July 6, 1887 to the
present, to include United States legislation, shall be the
provisional laws of the Realm subject to ratification by the
Legislative Assembly of the Hawaiian Kingdom once assembled,
with the express proviso that these provisional laws do not run
contrary to the express, reason and spirit of the laws of the
Hawaiian Kingdom prior to July 6, 1887, the international
laws of occupation and international humanitarian law, and if
it be the case they shall be regarded as invalid and void;

and other acts of like nature, must, in general, be regarded as
invalid and void;



Implementation of Provisional Laws

- County Councils, to include Maui County Council, enact legislation implementing Council of Regency's proclamation of provisional laws for the four Counties' ordinances
- State of Hawai'i enacts legislation implementing Council of Regency's proclamation of provisional laws for the State of Hawai'i statutes
- State of Hawai'i works with the Council of Regency to resolve all land titles that derive from Government and Crown lands



Legal Opinion on War Crimes

Elements of the war crime of usurpation of sovereignty during occupation

1. The perpetrator imposed or applied legislative or administrative measures of the occupying power going beyond those required by what is necessary for military purposes of the occupation.
2. The perpetrator was aware that the measures went beyond what was required for military purposes or the protection of fundamental human rights.
3. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

opinion.

