

LEGAL NOTES

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NOTICE

During December and January, our offices will be closed on the following dates:

- ★ Friday, December 23, 2005 (from 12:00 noon)
- ★ Monday, December 26, 2005 (all day)
- ★ Friday, December 30, 2005 (from 12:00 noon)
- ★ Monday, January 2, 2006 (all day)



Adding Someone to Title or Changing the Persons on Title

We are often asked to change the title to real property.

This request may come for many different reasons. Someone may want to add their spouse to the title after they get married. Parents may wish to add someone on title to have the property go to specific persons. Sometimes, the request is based on a decision to facilitate financing.

It is mechanically easy to add someone on title. It involves the preparation of a conveyance document to transfer title from the present owners to the new owners. What is typically needed is a recorded copy of the document by which the parties first acquired title, the preparation of the transfer document, the signing of the document by all the relevant parties and the recording of the document in the appropriate recording system for the State of Hawaii.

Adding people to title does have legal consequences. There may be concerns with the lender if the property is subject to a mortgage. Anyone who is a title holder has legal rights to the property. One of the rights is the potential to force the sale of the property. Present title holders should be careful and consider whether there may be disagreements in the future with the person being added to this property. This could possibly result in the future loss of control of the property or the property itself.

We also get requests to remove someone from title. If the person is willing to be removed from title, the documents are prepared. The process is similar to the process of adding someone to the title. Problems, however, may arise if the person does not want to be removed from title. They may have made contributions for which they feel they are entitled to certain rights or compensation. There may be a desire to receive part of the appreciation in the property. The relationship between the parties may no longer be a friendly one. Furthermore, if the person on title is a minor, the minor cannot legally sign the document to convey that minor's interest unless a guardian is legally appointed by the Court or until the minor becomes an adult.

The foregoing is not meant to discourage people from adding or removing someone on title. It is merely to remind people that there are legal and practical consequences to such actions. Careful consideration should be given to these consequences before proceeding. Some of the problems may be avoided if the parties have a properly drafted written agreement signed by all parties prior to putting someone on title.

Are you Adequately Protected from Disaster?

Hawaii did not experience the physical devastation that occurred in the Gulf Coast states this year.

We recommend that you periodically review your insurance coverage to ensure you are adequately protected from disasters. Most homeowner's insurance policies do not provide protection against damage due to hurricane or flood. You typically have to buy separate insurance for protection against the perils of hurricane and flood. Owners of real property, especially those who own property in areas susceptible to flooding and hurricanes should consider acquiring hurricane and flood insurance. The cost of such insurance is modest compared to the economic loss one could sustain.

As we have reminded condominium owners, it is a risk to gamble on whether the loss you might sustain is covered by the Association's master policy. We advise condo owners to not fall prey to the current fallacy that because the Association has coverage, you are protected. There are many instances in which the Association's policy does not afford the individual homeowner any coverage or relief. The following are some typical situations in which an individual condo owner is not protected under the Association's policy:

1. Liability for an injury to a person within an individual owner's unit.
2. Legal fees in the event of lawsuit.
3. Damage caused to other property owners in the building due to a fire or water leaks emanating from within your apartment.

With our increasing real property values, you should also check your fire and liability insurance to see if it provides for **replacement** costs and whether your policy has inflation guard protection.

Resolving Encroachment Concerns

You are about to complete the sale or purchase of your property. The survey reveals the neighbor's fence is partly on your property. Escrow advises you this will prevent the sale from closing. What do you do?

Encroachments are unauthorized intrusions (such as a fence or part of a wall) upon another's property. The sales contract requires that marketable title be delivered as part of the sales transaction. Unless the encroachment problem is solved, marketable title is not being delivered and the sale cannot close.

There are several ways to resolve an encroachment problem.

1. **Remove that which is encroaching.**

This is simple to say, but it may be difficult or impractical to do. For example, the Buyer may be attracted to the encroaching lava rock wall and wants the problem cured, but does not want to have the wall removed. There may also be legal complications, such as liability issues if the encroachment is removed. The wall may not only be an attractive feature, but it may also serve an important function such as preventing one's property from falling onto the other property. It may be expensive to remove the encroachment. Also, sometimes the ownership of the wall is not clear. It could be a common wall that belongs to more than one party.

2. **De Minimus Statute**

Hawaii state law offers a solution for minor encroachments. For **residential** properties, if the encroachment is 6 inches or less, it is considered de minimus and is not considered an encroachment. Nothing further needs to be done. There are no exceptions though. The encroachment must be six inches or less.

3. **Encroachment Agreement.**

Encroachments are often resolved with an encroachment agreement. This is a written agreement between the two adjoining property owners. An encroachment agreement requires the consent of the two adjoining parties. The encroachment agreement typically allows the encroachment to remain and sets forth terms, conditions and the responsibilities of the owners. The encroachment agreement is recorded and this typically is a final solution.

Why would the parties enter into an encroachment agreement? The parties are neighbors and may wish to maintain a friendly relationship. There is also a legal incentive for both parties to resolve the encroachment problem. As long as there is an encroachment, the owners of both properties have a title problem. An encroachment agreement resolves the problem for both property owners.

FROM THE DESK OF HAROLD CHU



At this time of the year, people commonly comment on how this year has passed so quickly. Time seems to speed up as one grows more mature in years. I have on occasion reflected on why that is. When one gets older, we assume more responsibility. These responsibilities include greater responsibility at work. We also may have greater responsibilities for one's children and for one's parents. These all take up part of our available time.

We tend to take time for granted. There are events which cause us to pause and reflect. This generally occurs upon the passing of a loved one or when a child becomes an adult and leaves the home or gets married. We all have daily concerns, such as personal problems, bills and health issues, but there are many things in life for which we should be grateful. During this busy holiday season, we encourage you to stop and appreciate the things and people that are important to you.

Our firm is very grateful for you, our clients. We want to thank you and express our appreciation to you for being our clients and for giving us the opportunity to be of service to you. Thank you for your business and for your support.

From myself and my firm, we wish each and everyone of you much joy and contentment this holiday season and hope the New Year brings even more blessings to you and your loved ones.

NOTICE RE: BILLING CYCLE

Due to the holiday season, our billing cycle this month will end on December 20 rather than December 25. For clients with continuing legal matters, any legal services rendered after December 20, 2005 will be reflected in the January, 2006 Invoice.



Hawaii Starter Home



HANDY MAN SPECIAL



HUMOR

A Rabbi, a Hindu, and a lawyer were driving late at night in the country when they experienced car trouble. They set out to find help, and came to a farmhouse. When they knocked at the door, the farmer explained that he had only two beds, and one of the three had to sleep in the barn with the animals. The three quickly agreed.

The Rabbi said he would sleep in the barn and let the other two have the beds. Ten minutes after the Rabbi left, there was a knock on the bedroom door. The Rabbi entered exclaiming, "I can't sleep in the barn; there is a pig in there. It's against my religion to sleep in the same room with a pig!"

The Hindu said he would sleep in the barn, as he had no religious problems with pigs. However, about five minutes later, the Hindu burst through the bedroom door saying, "There's a cow in the barn!" I can't sleep in the same room with a cow! It's against my religion!"

The lawyer, anxious to get to sleep, said he'd go to the barn, as he had no problems sleeping with animals.

In two minutes, the bedroom door burst open and the pig and the cow entered...



Two attorneys took a long safari vacation in the African bush. One day, they took a rest, removed their packs, and leaned their rifles against a tree. They were startled when a large, hungry-looking lion emerged from the jungle and began eyeing them with anticipation. It was clear that the attorneys' rifles were too far away to do them any good. One attorney began to remove his shoes, and was asked by the other why he was doing that. The man replied, "Because I can run faster without them."

The first lawyer told him, "I don't care how fast you can run, you'll never outrace the lion."

The now-barefoot attorney told him, "I don't have to outrun the lion. I just have to outrun you."

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What to Give an Optimist and Pessimist

A family had twin boys whose only resemblance to each other was their looks. If one felt it was too hot, the other thought it was too cold. If one said the TV was too loud, the other claimed the volume needed to be turned up. Opposite in every way, one was an eternal optimist, the other a doom and gloom pessimist.

Just to see what would happen, on the twins' birthday their father loaded the pessimist's room with every imaginable toy and game. The optimist's room he loaded with horse manure.

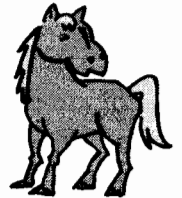
That night the father passed by the pessimist's room and found him sitting amid his new gifts crying bitterly.

"Why are you crying?" the father asked.

"Because my friends will be jealous, I'll have to read all these instructions before I can do anything with this stuff, I'll constantly need batteries, and my toys will eventually get broken." answered the pessimist twin.

Passing the optimist twin's room, the father found him dancing for joy in the pile of manure. "What are you so happy about?" he asked.

To which his optimist twin replied, "There's got to be a pony in here somewhere!"



"Thank You" for your business! We wish you a happy holiday season and a new year of health, happiness and prosperity.



Harold,



Cora & Jan

