

BRIEF HISTORY OF LAND TENURE SYSTEM IN HAWAII
(Kazutaka Saiki)

When Kamehameha I finally united all of the islands under his rule in 1810, this lifestyle remained feudal and no private land ownership was recognized. No written form of the Hawaiian language existed. In 1820 when the first Missionaries arrived in Hawaii, they had great difficulty communicating with the natives. It was through their efforts that in 1829 the written form of the Hawaiian language was adopted.

The King had a very unique method of parceling out land to his favored Chiefs. Every island was divided into mokus or districts. Parcels of land called ahupuaas situated within the mokus have distinct names whose boundaries extended from the sea to the top of the mountain usually along natural monuments such as streams and top of ridges. The Chiefs had full use of the ahupuaa and its products and ruled over the natives living within but they did not have title to the land. The Chief in turn

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could assign portions of his assigned lands to a lesser Chief and so on down the line. These ahupuaas had no distinct size or shape.

As more and more foreigners arrived in the islands, King Kam III was faced with increased pressure for change. In 1839, the first Bill of Rights was adopted and in 1840 the first Hawaiian Constitution was adopted creating a Legislative Monarchy Government. Included in this constitution was the right of private land ownership. However, because the King made no attempt to divide his lands to the Chiefs and Konohiki and to the native tenants, very few land transactions were consummated. Thus up to this point very few land surveys were performed.

In December of 1845 a very important legislation was passed creating the "Board of Commissioners to Quiet Land Titles", more commonly called the Land Commission. The Commissioners were required to promulgate rules as to who would be eligible to file claims for land ownership, where to file, etc. The duties of the Land Commission included the acceptance of all claims, assigning numbers in numerical order of receipt, holding hearings throughout the islands, receiving testimony then

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rendering decisions to either approve or reject each claim. Upon rendering a favorable decision, the Land Commission issued a Land Commission Award using the number initially assigned to the claim. Also included in the rules was a provision whereby before any claims for lands could be adjudicated by the Land Commission, the land had to be surveyed and a metes and bounds description provided.

The Rules also required all those Chiefs and Konohikis filing claims with the Commission to pay in cash or land at 1/3 the unimproved value of the land, as commutation to the Government. Upon satisfaction of this requirement, the Minister of Interior issued a Royal Patent on award. John Voss was the first person to file a claim. The Commission determined that his claim was not a legitimate claim for Title and, therefore, issued a lease to him dated March 4, 1846. A check of L.C.Aw. 2 reveals that the award went to Robert Kilday (haole) dated March 31, 1847. Upon satisfying the commutation requirement, the new owner, R. Boyd, was issued Royal Patent 1. The L.C.Aw. confers title to the land although the document denotes that a Freehold Title is issued that is less than allodial indicating that the

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Government's claim must be extinguished before absolute title is derived. The Royal Patent issued on award is the document for this purpose.

The rules promulgated by the Commission was enacted into law and initially was to expire on February 14, 1848. All claims had to be filed before this date and the claimant was required to furnish a metes and bounds map and description prepared by a land surveyor before the Ld.Comm. would adjudicate the claim. This sudden demand for land surveys in a society that only a few years before had no survey requirements created hardships for the claimants, especially the native tenants.

In the first two years, the Ld.Comm. adjudicated only a few claims because of the uncertainty of the land ownership situation. The King made no real attempt to relinquish his interests in the lands. In late 1847, after much discussion in the Privy Council, a committee was appointed to assist King Kamehameha III in the partitioning of the lands in the Hawaiian Kingdom.

Beginning on January 27, 1849 and continuing through March 7, 1848, the King met with over 240 Chiefs and

Konohikis in the documentation of the Land Division known as the Great Mahele of 1848. These transactions are recorded in the Mahele Book, the original is located at the Archives and a copy is available for Public use at the Land Management Division of DLNR. These transactions were quit-claims wherein the Chief would quit-claim his interest in certain named ahupuaa's and Ili's, and the King doing the same. The Mahele did not confer title to the Chiefs and Konohikis. They were required to present their claims to the Ld.Comm. and receive Land Commission Awards (L.C.Aws.) to obtain title to the land.

On March 8, 1848, the day after the final Mahele, the King listed the lands he retained for himself in this Mahele Book and in turn listed the bulk of the lands quit-claimed by the Mahele participants and declared these lands to be Government lands.

In the meantime, the Privy Council extended the term of the Land Commission to allow them to complete their task. However, it did not extend the February 14, 1848 deadline for the filing of claims for the native tenants. They did extend the time for the claimants to have their lands surveyed and obtain a

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metes and bounds description.

With the severe shortage of experienced surveyors and the vast number of parcels of land that required maps and descriptions, it became apparent that very few of the larger land parcels claimed by the participants in the Mahele could have their land claims surveyed. Thus, the Legislature in June of 1850, passed an Act that allowed them to file their claims with the Ld.Comm. by name only, using the names of the Ahupuaa's and Ili's as listed in the Mahele Book. *Upon ratifying their commutation requirements, they were issued Royal Patent on Award by name only*

In 1854, another Legislature ^{ive} ~~ture~~ Act enabled these same privileged group who had failed to file their initial claim by the February 14, 1848 deadline another opportunity to file their claim with the Ld.Comm. In fact, they were given two more opportunities in 1860 and 1892 to perfect their claims. The native tenants were denied this right.

The Land Commission finally completed their task after 10 years and terminated their tenure in March of 1855 after receiving more than 12,000 claims.

The lands that were declared Government lands as

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well as the lands surrendered to the Government as commutation were sold by issuing Royal Patent Grants and after becoming a Territory by Land Patent Grants.

The Lands that King Kam III reserved for himself were known as the King's Lands. King Kamehameha III and IV sold their land holdings at will by issuing warranty deeds referred to as Kamehameha Deeds. During King Kamehameha V's reign, the Legislature in January of 1865 made these Kings Lands inalienable and appointed a Commissioner of Crown Lands to administer these lands. Upon the overthrow of the Monarchy Government in 1893, these Crown Lands were designated Government Lands.

All privately owned lands in the Hawaiian Islands must have an original land title, such as L.C.Aw., Mahele Award (M.A.), L.C.Aw.#F.L., Minister of Interior Deeds, Royal Patent Grant, Land Patent Grant, School Grants, Public Works Grants, Kam deeds, etc. Included with this paper are Tables 1 through 5 that can be utilized as a reference which shows the various types of land titles.

The early surveys performed during the late 1840's

and into the 60's were conducted using a magnetic compass to measure directions and Gunter's Chain to measure distances. Although mainly Caucasians were performing these early surveys, the documents were issued in Hawaiian. Each surveyor did his survey independent of the others and, therefore, many discrepancies arose creating gores or gaps and overlaps between parcels.

In 1871, the Hawaiian Government established the survey department appointing W.D. Alexander as the first Surveyor General. He was mandated to survey each island and develop a uniform method of survey to be utilized by all surveyors practicing in Hawaii and to survey and identify all of the Government lands. While performing this task, they were instructed to determine by actual survey or by Kamaaina testimony the location of all identifiable Kuleana parcels and show them on these maps. He also placed a tide gauge in Honolulu Harbor to establish benchmarks for the uniform measurements of elevations. He adopted the azimuth method of surveying using True South as 0 and going clockwise 360. Mean Sea Level as 0.00 feet elevation was adopted as the datum for measuring vertical distances. This same office is known today as the

Land Court
Unregistered
Lands

Survey Division, Department of Accounting and General Services. Most of the field notes and large maps known as Registered Maps are on file in this office.

We continue to use azimuths measured clockwise from True South and measure our distances in feet and tenths or hundredths of a foot. Area is normally square feet or acres. With all the new electronic theodolites and distance measuring equipment, surveyors are able to produce more accurate surveys. However, it is not the equipment that resolves old boundary problems. It requires the skill and knowledge of the surveyor and a lot of research and computations to resolve these discrepancies.

In Hawaii we have a dual system of recording land. One is the Land Court or Torrens system of land registration and all other lands not registered in the Land Court are referred to as unregistered lands and are recorded under the Regular System. The method of survey for both types are the same but the mapping and the requirements for metes and bounds descriptions for the land is different.

1. Let me briefly describe the Land Court system first. This system was adopted in 1903 mainly to resolve land title and boundary problems. The erratic and unreliable surveys that were first conducted in the 1850s, the lack of probates and marital information resulting in questions of dower rights, errors in translating Hawaiian documents and the lack of understanding of the importance of recording documents, created problems for the Title Companies and Attorneys. They had great difficulty preparing land transaction documents. Therefore, a committee was formed and recommended the Land Court system to alleviate these problems. Chapter 501, Hawaii Revised Statute, covers the Land Court System.

The Land Court Judge is appointed by the Chief Justice of the State Supreme Court selecting one Circuit Court Judge from the 1st Circuit and another as an alternate. The Registrar of the Land Court and staff handle the day to day transactions. There are procedures that must be followed to file a new application and be accepted by the Judge of the Land Court. Because of the lack of time, I will not explain

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this phase today.

Once the application is adjudicated by the Court, the land it encompasses remains in the system forever. Currently there are 1900 applications in the system, some with an area of only 5,000 square feet and others with several thousand acres. Some applications would have only a single map that was initially filed and accepted, while other applications such as Land Court Application 1074 would have several hundred maps, each map either showing a subdivision of a previously approved lot or a consolidation of one or more existing lots. Designation of easements may also be shown. A Land Court Transfer Certificate of Title is issued for each lot that is transferred to a new owner.