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The Newsletter of the Real Property & Financial
Services Section of the Hawaii State Bar Association

June 2001

From the Chair

The Real Property & Financial Services Section's purposes are listed in our Bylaws (hsba.org/sections/rpfs/bylaws). The happiest of these, I think, is this: *"To provide a forum for the exchange of experiences, ideas and opinions with respect to real property and financial services through discussion, study and publication."* Section members are invited to attend and encouraged to participate in such a forum each month at our regularly scheduled Board meetings, where we are fortunate to enjoy the give-and-take of some lively discussions about recent case law, upcoming legislation and other developments in our area of practice.

Another way in which your Board tries to help Section members share in an ongoing *"forum for the exchange of experiences, ideas and opinions"* is to help arrange and sponsor seminars of current interest. We have some great ones lined up again this year, including one on Thursday morning, June 14th, when nationwide expert Steve Weise will speak to us again about the (revised) Article 9 of the Uniform Commercial Code and take questions from an audience of lawyers and financial professionals. Next, on Thursday July 19th, Deb Chun will again chair our annual Legislative update, focusing on laws passed during the 2001 Legislature that may affect your real estate and financial services practice. Also, look for the Section's new and improved Conveyance Manual, which will be available

at this year's HSBA Bar Convention when, on Friday morning, September 28th, Gino Gabrio and Gail Tamashiro will co-chair a half-day program designed to introduce this publication to our members.

Once again, the Board and I invite you to become involved in the activities of your Section, and to share with other members involved in the ongoing *"exchange of experiences, ideas and opinions"* that, we believe, makes our area of practice one of the most exciting.

Trudy Burns Stone, Chair
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The New UCC Article 9

On July 1, 2001, Hawaii's existing version of Uniform Commercial Code Article 9 will be repealed and replaced in its entirety by a new UCC Article 9, Hawaii Revised Statutes Section 490:9-101, *et seq.*

The new Article 9 makes a number of significant changes to the laws governing security interests in personal property and fixtures. Major changes include:

- The types of transactions that are covered under Article 9 have been expanded to

include, among other, (i) sale of payment intangibles and promissory notes; (ii) security interests in health-care insurance receivables; and (iii) commercial tort claims.

- Security agreements can be "authenticated" rather than actually signed by the debtor. A debtor can, therefore, electronically agree to be bound by the terms of the security agreement.

- There is a new, standard form of financing statement which will be accepted nation-wide (*see* Section 490:9-521, H.R.S.).

- To perfect a security interest in collateral that is perfected by filing, the financing statement must be filed in the debtor's "location". If the debtor is an individual, the debtor's location is where the debtor's principal residence is located. If the debtor is an entity formed by a filing with a state (such as a corporation), the debtor's location is that state. And if a debtor is an entity not created by a filing (for example, an unregistered joint venture), its location is the place where its chief executive office is located.

- If the debtor is an entity formed by a filing with a state, the debtor's name as shown on the financing statement *must* be exactly as shown in the public records of the debtor's jurisdiction of organization.

- In order to facilitate electronic filing, so long as the debtor has authorized the filing of a financing statement, the debtor is no longer required to actually sign the financing statement.

- A real estate mortgage may serve as a financing statement with respect to real-estate related collateral, as long as the mortgage

satisfies the requirements of a financing statement. Such a mortgage can be effective as a financing statement for its full term, rather than the typical five-year term of a financing statement.

The new Article 9 also contains special provisions for consumer transactions, consumer goods transactions, and other transactions in which the collateral is consumer goods. There are also detailed provisions in Part 7 of the new Article 9 addressing the transition from the prior law.

These are only a few of the major changes what will take effect on July 1, 2001. To bring Section members up to speed on these and other changes, the Section has scheduled a seminar on the new Article 9 entitled "What a 'Dirt Lawyer' Needs to Know About The New UCC Article 9." This informative seminar will be held on Thursday, June 14, from 8:30 a.m. to 11 a.m. at the HEI Training Center in the Pacific Tower in Honolulu, and will feature Steven Weise, who was the American Bar Association's Advisor to the revised Article 9 Drafting Committee and who is a member of the Permanent Editorial Board for the Uniform Commercial Code. Cost of the seminar is \$50.

For those unable to attend, a videotape of this seminar will be available from the Hawaii State Bar Association for \$50. For information on purchasing this video, contact Paulette Suwa of the HSBA at psuwa@hsba.org. The Section will also be encouraging each of the neighbor island Bar Associations to purchase a copy of the video for use by neighbor island practitioners.

New Computerized Business Registration System

The Department of Commerce and Consumer Affairs has implemented a new, computerized system for faster processing of business registration documents. Using the new system requires use of the DCCA's new, bar-coded forms, which can be down-loaded from the D C C A ' s w e b s i t e a t www.BusinessRegistrations.com.

New Laws

A number of new laws were enacted this year that directly affect real estate and banking practitioners and their clients. All of these Acts, together with their legislative history and other information, can be accessed through www.hsba.org/sections/rpfs/legis.html.

New laws which Section members should be aware of include:

- **Suspension of Iniki Fee.** Act 153 suspends the Special Mortgage Recording Fee effective July 1 thru December 31, 2001. Act 153 also gives the Hawaii Hurricane Relief Fund the power to continue the suspension after December 31.

- **Mortgage Broker Licensing.** Act 4 amends the Chapter 454, H.R.S., to reduce the amount of the bond mortgage brokers are required to maintain from \$50,000 to \$15,000, and to make various changes to mortgage broker licensing laws.

- **Time Share.** Act 17 amends the definition of "acquisition agent" in Chapter 514E, H.R.S., to exclude employees and independent contractors of licensed real estate brokers or acquisition agents, and to exclude those employees and independent contractors from time share registration requirements. Act 18 changes the disclosures that must be included in time share promotional materials and sales contracts. Act 27 amends the registration requirements applicable to acquisition and sales agents. Act 68 exempts time share contracts which do not charge more than 18% interest from usury laws, and exempts time share plans from the requirements of the Planned Community Association Act, Chapter 421J, H.R.S. Act 70 exempts out-of-state time share sales from Hawaii's rescission right and disclosure statement laws. Act 71 repeals the requirement that time share agents wear identification badges.

- **Land Court.** Act 23 amends Section 501-173, H.R.S., to allow an acknowledgment of authority to be used in cases where a foreign personal representative is distributing registered property to a decedent's heirs, thereby eliminating the need for an ancillary probate where there is a probate already filed in another state and a domiciliary personal representative has been appointed. Act 23 also makes other housekeeping amendments to the Land Court laws.

- **New Debt Collector Disclosure Requirements.** Act 25 amends Section 443B-18, H.R.S., to conform debt collector disclosure requirements to federal requirements, and to exclude pleadings from disclosure requirements.

- **Financial Institution Statements of Assets and Liabilities.** Act 28 requires that

financial institutions file their statements of assets and liabilities with the banking commissioner, rather than publishing them.

- **Payment of Costs in Abandoned Lease-Fee Conversions.** Acts 38 and 60 require residential lessees who abandon or fail to complete fee conversions to reimburse the fee owner and the Housing Finance and Development Corporation, respectively, for certain costs.

- **Bank Sales of Insurance Permitted.** Act 49 permits banks to sell insurance, subject to compliance with the State insurance code.

- **Strengthening the Nonconsensual Common Law Lien Law.** Act 96 provides that nonconsensual common law liens against private parties cannot be recorded unless they are accompanied by a certified court order permitting the recording.

- **New Proxy Requirements for Planned Community Associations.** Act 191 amends the Planned Community Association Act, Chapter 421J, H.R.S., to impose additional requirements when association funds are used to solicit proxies for the election of directors.

- **Longer Plant-Closing Notices Required.** Act 211 amends Section 394B-9, H.R.S., to increase the plant-closing notice period from 45 to 60 days.

This is only a brief summary of some of the 2001 legislation that the Governor has signed into law as of June 6 (through Act 220). A number of other bills that will affect Section members and their clients were passed this year, but have not been signed by the Governor as we go to press.

These and other new laws will be discussed in detail at the Section's annual **Real Property Legislative Update** that is scheduled for **Thursday, July 19, 2001, from 11:30 a.m. to 1:30 p.m.** at the HEI Training Room in the Pacific Tower. Coordinated once again by **Deborah Macer Chun**, this year's speakers will include **Donna Leong, Andrew Char** and **Mitchell Imanaka**.

Finally, check the Section's website, www.hsba.org/sections/rpfs/legis.html, or the Legislature's list of 2001 Acts at www.capitol.hawaii.gov/site1/archives/docs/2001.asp, for detailed information on these and other new laws.

New Broker Rules

As part of the Lieutenant Governor's effort to reduce red-tape, the Real Estate Commission amended the rules governing Real Estate Brokers and Salespersons effective May 21, 2001. The amended rules, Chapter 99, H.A.R., are available at the Commission's website, www.state.hi.us/hirec/, under the "News" heading, or by calling the Commission at 586-2643.

New Board Member

Nancye Bethurem has resigned from the Board due to her return to the mainland. At its May meeting the Board voted to appoint **Janel M.N. Yoshimoto** to fill the vacancy created by Nancye's departure.

Janel practices at Oshima Chun Fong & Chung LLP, where she focuses on representing both lenders and borrowers in real

estate and asset based secured transactions. Janel is a 1996 graduate of the Santa Clara University School of Law and did her undergraduate work at UH.

Welcome to the Board Janel!

What Has Your Board Been Up To?

March 2001

At the Board's March meeting, Chair Trudy Burns Stone reported that she has been working with Melissa Pavlicek of the Business Law section on possible seminars at the HSBA's Convention in September. Because of the major changes which will occur to UCC Article 9, the Board discussed the possibility of doing a seminar on those changes, either at the Bar Convention or earlier. Trudy Stone and Sheila Sakashita agreed to help organize an Article 9 seminar including, if possible, a mainland speaker.

Grace Kido updated the Board on House Bill 532, which proposes to amend the new Article 9 by requiring the debtor to authenticate a financing statement. Because this requirement would make Hawaii's version of the new Article 9 inconsistent with Article 9 as adopted in all other states, which may in turn result in ineffective financing statements, the Board voted to authorize Mark Hazlett to submit testimony opposing the bill (and any companion bills) on behalf of the Section.

Rick Kiefer reported that the first issue of the Section newsletter for 2001 was published and mailed in March. By changing

to desk-top publishing and switching printers, costs of publishing the issue were significantly reduced.

April 2001

At the Board's April meeting, Chair Trudy Burns Stone reported that the Section was successful in inviting Steve Weise, Esq., one of the authors of the new UCC Article 9, to present a seminar on June 14, 2001.

The Board and Steven Nakashima, Chair of the HSBA's Continuing Legal Education Committee, had a lengthy and spirited discussion with regarding pricing of the Article 9 seminar. The HSBA's position is that it needs to commit administrative resources to provide CLE and therefore it is entitled to set the price of the seminar and retain the revenues generated in excess of expenses. In light of the HSBA's position, the Board debated the fundamental question of whether seminars should be sponsored by the Section without the direct involvement of the HSBA; however, no consensus was reached at this time. For the Article 9 seminar, Steven Nakashima said that he would recommend to the HSBA that it put on the Article 9 seminar at the price recommended by the Board.

May 2001

At its May meeting, the Board discussed what, if anything, should be done about the budget surplus that the Section is currently running. In light of uncertainties about future costs of producing the Section's newsletter, and a desire to retain flexibility in sponsoring seminars and other Section activities, the Board decided to take no action at this time.

Real Property and Financial Services Section

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**CALENDAR
OF EVENTS**

June 14, 8:30 to 11:30 a.m.

New UCC Article 9 Seminar
HEI Training Center, Pacific Tower, 8th Floor

June 15, Noon to 1:30 p.m.

Board of Directors' Meeting
Pacific Tower, 22nd Floor

July 19, 11:30 to 1:30 p.m.

Annual Legislative Update Seminar
HEI Training Center, Pacific Tower, 8th Floor

July 20, Noon to 1:30 p.m.

Board of Directors' Meeting
Pacific Tower, 22nd Floor

July 24, 8:00 a.m. to 4:00 p.m.

Landlord-Tenant Law & Procedure Manual Seminar
HEI Training Center, Pacific Tower, 8th Floor