SUNSET EVALUATION REPORT
BOARD OF EXAMINERS FOR ABSTRACT MAKERS

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

Under the "sunset law," licensing boards and commissions are terminated at specified times unless they are reestablished by the Legislature. Nationally, the first sunset law was passed in 1976. Within three years, 30 more states had enacted similar legislation. The rapid spread of sunset legislation reflects increasing public concern with what it sees as unwarranted government interference in everyday activities.

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, terminated 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of abstract makers under Chapter 436, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate abstract makers to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

Our approach to the evaluation of the regulation of abstract makers is described in Chapter 1 of this report under "Framework for Evaluation." That framework will also serve as the framework for conducting subsequent evaluations. We used the policies enunciated by the Legislature in the Sunset Law to develop our framework for evaluation. The first and basic test we apply is whether there exists an identifiable potential danger to public health, safety, or welfare arising from the conduct of the occupation or profession being regulated. If the program does not meet this first test, then the other criteria for evaluation are not applied. However, if potential harm to public health, safety, or welfare exists, then all of the evaluation criteria are applied.

We acknowledge the cooperation and assistance extended to our staff by the Board of Abstract Makers, the Department of Regulatory Agencies, and other officials contacted during the course of our examination.

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TABLE OF CONTENTS

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. This is our evaluation of Chapter 436, Hawaii Revised Statutes, on the licensing of abstract makers, which statute is scheduled by the Sunset Law to expire on December 31, 1980.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 436.

Scope of the Evaluation

This report examines the history of the statute on licensing of abstract makers and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our analysis, evaluation, and recommendation.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies are:

1. The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose must be the protection of the public welfare, not that of the regulated profession or vocation.

2. Even where regulation is reasonably necessary, government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted.

3. Regulation shall not be imposed except where necessary to protect relatively large numbers of consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the service.

4. Evidence of abuses by providers of the service shall be accorded great weight in determining whether government supervision is desirable.

5. Regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.

2. The public that is likely to be harmed is a substantial portion of the consuming public.

3. The potential harm is not one against which the public can reasonably be expected to protect itself.

4. There is a reasonable relationship between licensing and protection of the public from potential harm.

5. Licensing is superior to other optional ways of protecting the public from the potential harm.

6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.[1] In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.[2] The court held that mere interest in

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits", Sec. 14.

2. *Terr. v. Fritz Kraft*, 33 Haw. 397.

maintaining honesty in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to his employer, but his workmanship ultimately affects the consumer who brings a car in to his employer for repairs or who rents a car from his employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

The law further requires that the consuming public that may potentially be harmed be relatively large in number. This requirement rules out those situations where potential harm is likely to occur only sporadically or on a casual basis.

Consumer disadvantage. The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected adequately to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of consumer characteristic which may cause the consumer to be at a disadvantage. Highly technical and complex nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were

the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, the posting of bond, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

State government began licensing abstract makers in 1929 by the enactment of Act 146. The act (codified in Chapter 436, Hawaii Revised Statutes) says no person may sign an abstract or certificate concerning title to property in Hawaii, or advertise as a maker of abstracts or certificates of title, unless that person has been licensed by the Board of Examiners for Abstract Makers.

Abstract Makers Defined

Abstract makers provide a service to those who wish to establish ownership in real property. Abstract makers examine public records of ownership and issue certificates of title and abstract documents.

A certificate of title is a statement of opinion on the status of title to property. It does not guarantee title but does certify title as of the date the certificate is issued.

An abstract is a chronological summary of all conveyances, transfers, and other facts appearing on the public record which bear on title to a property. To prepare an abstract, the searcher traces a chain of titles beginning with the original grant of title. His search extends as far back as the Land Commission Awards and the Royal Patents issued after the Great Mahele of 1848. Like the certificate of title, an abstract does not guarantee title. Further, unlike the certificate of title, an abstract does not provide any opinion as to title or the soundness or marketability of title. The information contained in the abstract only provides evidence of title. Usually, an attorney will need to be engaged to interpret the abstract and render an opinion on the status of title.

In the case of both a certificate of title and an abstract, the searcher examines all relevant public documents that impact on title, such as deeds, liens, assessments, and judgments. He conducts his search at such places as the Bureau of Conveyances, the Department of Taxation, the Department of Health, and the courts.

The Statute and the Licensing Requirements

The law requires that for a person to be licensed as an abstract maker, he must be of good moral character and pass an examination prepared by the Board of Examiners for Abstract Makers.[1]

The board is composed of three members: the judge of the Land Court, the Registrar of Conveyances, and the Attorney General. It is lodged within the Department of Regulatory Agencies (DRA) for administrative purposes and is supported by DRA's Professional and Vocational Licensing Division.

The examination for abstract makers, although prepared by the board, is administered by the Examination Branch of the division. It is given in three parts. The first part, prepared by the registrar at the Bureau of Conveyances, deals with a range of conveyance problems. The second part, prepared by the Land Court, deals with the Land Court system. The third part, prepared by the Attorney General, covers legal terminology, case law, and Hawaii statutes.

Between July 1, 1971 and June 30, 1975, no exams were given. The policy at that time was to give the exam only when there were five or more applicants. In August 1975, there were 39 applicants, and the policy was changed to offering the exam twice a year. However, applications fell off sharply thereafter. There were four applicants for the February 1976 exam, three for the August 1976 exam, two for the February 1977 exam, and two for the August 1977 exam. The board agreed at the September 20, 1977 meeting to hold exams only in August of each year. At the last exam, there were six applicants.

DRA records show that, as of August 1979, there were 67 licensed abstract makers. Most are employed by private title companies. The remainder are with government agencies such as the State Department of Transportation or the county departments of public works, or are inactive or retired.

The Board of Examiners of Abstract Makers is responsible not only for examining applicants for and issuing abstract maker's licenses but also for revoking or suspending licenses upon proof of malpractice, fraud, deceit, gross carelessness, or misconduct. The

1. Originally, the law also required that an applicant for an abstract maker's license be a citizen of the United States. The Attorney General rendered an opinion in 1974 that this requirement is unconstitutional (Attorney General Opinion 74–18), and the requirement is no longer enforced.

board, however, has rarely met for this purpose. Indeed, the board has met quite infrequently for any purpose. The records show that the board met only five times in the last five years. It met once in 1976 and three times in 1975. The main purpose of these meetings was to review and discuss exam results.

Systems for Recording Land Title

An assessment of the continuing need for the law on licensing abstract makers is facilitated by an understanding of current practices concerning recording and registration of land titles and certifying title to land. In this and the next sections we briefly discuss these practices.

In Hawaii, there are two systems of recording documents affecting title to real property: the regular system and the Land Court system.

Recording is an act of entering on the public records the written documents affecting title. When properly done, recordation constitutes notice to all of the existence and contents of the recorded document. Even though a person may not actually know about the existence or contents of the document, the law charges him with notice once the document is recorded.

The primary purpose of recordation is to protect innocent purchasers for value. A conveyance (deed, lease, or mortgage), if not recorded, is void as against a subsequent purchaser, lessee, or mortgagee who buys, leases, or takes a mortgage on the property in good faith, for a valuable consideration, and without actual notice of the unrecorded conveyance and records his subsequent interest in the property. Recordation protects the innocent purchaser for value from secret and unrecorded transfers and liens.

The regular system of recording is maintained at the Bureau of Conveyances, a unit within the Department of Land and Natural Resources. The bureau is headed by the Registrar of Conveyances.

The Land Court system is controlled by the State Land Court. It is administered by the Registrar of the Land Court who is appointed by the Land Court judge. The Registrar of Conveyances of the Bureau of Conveyances and his deputy are by law designated as assistant registrars of the Land Court. This makes filing convenient for the public. It enables the public to file all documents, whether of the regular system or of the Land Court system, at one location—the Bureau of Conveyances.

The regular system. In the regular system, recording is accomplished by filing the original copy of the document affecting title (deed, lease, mortgage, etc.) at the Bureau of Conveyances. A photocopy is made of the document and the copy is placed in a book at the bureau. The original document is then returned to the grantee, lessee, or mortgagee.

A search of title to property in the regular system entails an examination of the grantor–grantee indexes and the books in which copies of documents affecting title to property are kept.

This regular system is the system generally found throughout the United States. This regular recording system began in Plymouth about 1624.[2]

The Land Court system. Hawaii adopted the Land Court (or Torrens) system in 1903. The Land Court system was first established in South Australia in 1858 and enjoyed a degree of popularity in the United States around the turn of the century.

An 1898 report to the Hawaii Legislature provides some of the reasons why Hawaii adopted the Land Court system. The report noted that there were difficulties with the regular system. It said that conveyances involving native Hawaiians sometimes could not be ascertained "due partly to the fact that children do not take the names of the parents and also because in certain conveyances the name of the grantor is that of the commissioner appointed to partition or sell lands." The report also said, "Another evil is that of persons being known by two and in some instances three different names, conveyancing lands sometimes by one name and sometimes by another."[3] The report noted other problems including missing deeds, tracing Hawaiian relationships, and tracing interests in undivided huis. The report theorized that the task of searching titles under the regular system would become increasingly cumbersome and costly.

Recording under the Land Court system applies only to land registered with the Land Court. Any person who wants to have his land brought within the Land Court system must apply for registration by filing a claim with the Registrar of the Land Court. The claim must be accompanied by a survey, a complete abstract of title, and all evidence supporting the applicant's claim of title. The application and the abstract are referred to an

2. Blair C. Schick and Irving H. Plotkin, *Torrens in the United States*, Lexington Books (Lexington, Mass: 1978).

3. Report to the 1898 Legislature. Quoted in Hawaii Land Court, *Land Court Registration in Hawaii*, 1935, p. 3.

attorney approved to examine titles by the State Supreme Court for his opinion. If the court grants the claim, a decree is issued confirming and registering title for the land in the applicant. The decree extinguishes all undeclared claims or interests in the property as of the time of registration. A certified copy of the decree is sent to the Registrar of Conveyances, who prepares a certificate of title and places it in the registration book. He makes a duplicate copy of the certificate for the applicant-owner. The certificate certifies title to the land in the applicant. The certificate also notes any encumbrances on the applicant's title.

To record a document affecting title to land registered in the Land Court system, the original document and the duplicate certificate of title must be presented to the Registrar of Conveyances. If the document transfers the fee simple title to the property, the registrar issues a new certificate of title (or a new transfer certificate of title) in the new owner's name and cancels the old certificate. The original copy of the new certificate is inserted in the registration book, and a duplicate copy is furnished the new owner.

If the document does not transfer the fee title (e.g., leases, mortgages), the registrar notes a memorandum concerning the document on the original and the duplicate copies of the certificate and returns the duplicate copy to the owner.

In all cases, the original document is not returned, but is given a document number and kept at the Bureau of Conveyances.

A search of title to land in the Land Court system is simplified because the Land Court Certificate of Title is the only instrument needed to prove ownership of or interests in the land. No title passes and, with few exceptions, no interest attaches to the land unless noted on the original certificate of title, and the certificate is conclusive as to all matters noted therein. The government guarantees the accuracy of the register, and the law provides a procedure for bringing a suit against the State for a loss sustained due to an error in the certificate of title made by the registrar.

Documents Providing Evidence of Title

The Land Court Certificate of Title or Transfer Certificate of Title provides proof of title. The abstract of title is another form of proof of title, although it does not certify title in anyone. Other documents which provide evidence of title are regular system certificates of title and lien letters. Title insurance is commonly used for title protection.

Regular system certificates of title. A certificate of title is issued by a title company. The certificate is a statement of opinion on the status of title to property based on a search of the records. Title companies will guarantee against losses that may result from errors in the search up to the amount of the purchase price where the certificate is issued to a buyer, and up to the amount of the loan where the certificate is issued to a mortgagee. Certificates of title do not protect against matters which are not part of the public record, such as forgeries, fraud, and undisclosed heirs. Certificates of title must be signed by licensed abstracters.

Lien letters. Lien letters are prepared by title companies in conjunction with Land Court certificates of title or transfer certificates of title (TCTs). They are supplemental title searches on registered land. Although the Land Court Certificate of Title is conclusive evidence of title, the certificate does not show all possible encumbrances of record. Improvement assessments, judgments, and involuntary liens are not noted on the certificate. A lien letter ensures against uncertainties in the title which may arise from matters of public record not shown on the certificate. Here, again, title companies will assume liability against losses up to the amount of the purchase price. Although there is no legal requirement that lien letters be signed by licensed abstracters, in practice this is generally done.

Lien letters are also used in agreements of sale, which are treated as conveyances and recorded at the Bureau of Conveyances. Agreements of sale are installment contracts; legal title does not pass to the buyers until the purchase price is paid in full. Title companies do not issue certificates of title to purchasers under agreements of sale. They issue instead lien letters which provide protection identical to that offered by regular system certificates of title. Again, the title companies will assume liability for errors up to the amount of the purchase price.

Title insurance. A title insurance is an indemnity contract under which the insurer agrees to reimburse the insured for any loss sustained if title is not as represented in the policy. Title insurance may be issued in conjunction with or in place of a certificate of title or lien letter. Title insurance ensures against defects in the title or errors in title searches. Title insurance may also ensure against defects which are not part of the public record, such as forgeries and fraud. Title insurance policies are generally required by lending institutions for mortgage loan purposes, even where the property is registered in the Land Court system. This is because lending institutions frequently discount their loans to mainland investment companies which require title policies as a matter of course.

Chapter 3

EVALUATION OF THE LICENSING OF ABSTRACT MAKERS

This chapter contains our evaluation and findings on the need for the licensing of abstract makers, and our recommendation on the regulation of abstract makers.

Summary of Findings

We find that Chapter 436, Hawaii Revised Statutes, is no longer needed. There is no real threat to public health, safety, or welfare which would justify the licensing of abstract makers.

The Purpose of Regulation

There are few records available on the reasons for licensing abstract makers in 1929. The committee report on the original bill, House Bill No. 332, noted that the usual practice was to use certificates of title in purchasing land or securing mortgage loans. The report observed that unless these certificates were prepared by trained individuals it was possible that homeowners might run serious risks of loss. The committee gave two purposes in recommending passage of the bill:

> "1. To protect homebuyers and borrowers from risk of loss when they depend upon certificates and abstracts of title; and
>
> "2. To protect persons who are qualified, and who are legitimately in the title business for their livelihood, from having their business infringed upon and brought into disrepute by persons unqualified."

The legislation backers said licensing would not hinder any business "but rather will protect them and the public as well."[1]

A second source of information on the reasons for licensing is a memorandum from L. J. Warren, a local attorney who drafted the original bill.[2] He discussed the conditions

1. Standing Committee Report No. 360 on H.B. No. 332, submitted by the Committee on Judiciary, 1929.

2. L. J. Warren, "Memorandum Regarding Purposes of Act 146, S.L. 1929, to Regulate the Business of Making Abstracts and Certificates of Title, etc., and Re: Qualification of Applicants," June 6, 1929.

which led to his drafting and proposing the bill to the 1929 Legislature. Warren said he knew of a number of instances where incorrect certificates of title had been offered to banks and trust companies as security. The certificates had been prepared by a "realtor" and furnished in connection with sales of property. Warren said the realtor in question was not only deficient in the elementals of title searching but was also "unusually illiterate." Warren reported another instance where an incorrect abstract had resulted in a court case which was then pending. Warren also was concerned that reputedly responsible abstracters did not always check the work of their searchers before signing certificates, resulting in errors.

This sparse record indicates the intent of legislation was to protect purchasers and mortgage money lenders from losses they might sustain in relying on defective certificates of title and abstracts.

The Current Need for Protection

Times have changed. The problems and dangers that existed in 1929 are minimal today. The reasons for this are: *First*, individual abstract makers have been replaced by title insurance companies. *Second*, abstracts of title are rarely used today and, when used, are used in a very limited fashion. *Third*, most titles are assured by title insurance policies.

Title insurance companies. The title-searching business is now dominated by title insurance companies. Prior to 1950 there were only a handful of title insurance companies. Since 1952 when title insurance was first offered in Hawaii, the number of title insurance companies has grown to 11. There are no longer any listings in the yellow pages of the telephone directory for individual abstracters or abstract companies.

While the main objective of title insurance companies is to sell title insurance, they perform all the functions precedent to issuing a policy, including title searching, furnishing certificates of title and lien letters, and providing escrow services.

Title insurance companies have substantial financial resources to back up their work. Thus, prospects of recovery are great for purchasers and mortgage money lenders who rely on certificates of title or lien letters issued by title insurance companies and who sustain economic losses due to errors in the certificates and lien letters. Indeed, title insurance companies routinely guarantee against such losses up to the amount of the purchase price or the amount of the mortgage loan. Every title insurance company has

a licensed abstracter in its employ to sign certificates of title, but this is so only because the law requires that a licensed abstracter sign every certificate of title. The title insurance company assumes responsibility for the errors of its abstracter.

The title insurance companies' financial resources, their guarantees, and their ability to respond to claims for indemnification for losses account in a large measure for their current dominant position in title searches. Coupled with this is the insistence in almost every case of sale or mortgage that the seller or borrower procure a certificate of title from a responsible issuer.

The financial accountability of title insurance companies and the predominance of title insurance companies in the business of title searching and issuing certificates of title have muted to a large degree the potential dangers of economic loss that purchasers and mortgage money lenders may sustain as a result of errors in certificates of title. Moreover, title searching is a competitive business among title insurance companies. This competitiveness and the fact that title insurance companies guarantee their work are reasons enough for title insurance companies to maintain a high level of competence among its searchers and staff, even without the state licensing examination requirements. Finally, title insurance companies are regulated in their operations by Chapter 432, Hawaii Revised Statutes, and by the state insurance laws.

Abstracting. Abstracts are not widely used in the State today mainly because they are time-consuming and expensive to prepare. Abstracts are now used almost exclusively for Land Court purposes. As described earlier, an abstract is required by law when an application is made to register land in the Land Court system.

The registration of land in the Land Court system is itself rarely pursued today. The registration process takes time and is costly for the average landowner.

Abstracting, further, appears to serve limited useful purpose in light of the present extensive use of certificates of title, lien letters, and title insurance policies issued by title insurance companies. Abstracts offer no opinion on the status of titles, nor do they provide any guarantee against losses. Certificates of title, lien letters, and title insurance, on the other hand, do.

Then, where abstracting is done, potential losses resulting from errors in the abstract are minimal, since abstracting, like the issuance of certificates of title, is now done mainly by title insurance companies with substantial fiscal resources.

Title insurance. Title insurance offers the best protection to purchasers of real property and to lenders of money on the security of real property. Title insurance not only protects against errors in search (as certificates of title and lien letters do) but also protects against "off record risks," such as forgeries and fraud (which certificates of title and lien letters do not do).

Title insurance is an invention of the United States. Its use has grown rapidly since World War II.

The use of title insurance has grown because land transactions today generally involve mortgage financing, and lending institutions have insisted that they be protected by title insurance. Local lending institutions have insisted on title insurance, even in the case of Land Court titles, because they sell their mortgages to larger mainland financial and investment institutions and these mainland institutions require title insurance, notwithstanding the issuance of regular certificates of title or Land Court certificates of title.

Local lending institutions, except the Employees' Retirement System, commonly require the use of a standard title insurance policy developed by the American Land Title Association, known as the ALTA Extended Coverage Policy. This standard policy is required by the mainland lending institutions.

Conclusion and Recommendation

The rise of title insurance companies in the field of title searching and abstracting and issuing certificates of title and lien letters, their financial strength, their regulation by other state laws, the general decline in the use of abstracts of title, and the popularity of title insurance have all combined to blunt potential dangers of economic loss to purchasers and lenders from errors in searches and certificates of title and lien letters. The essential purpose of Chapter 436 has, thus, ceased to exist. There is today no public health, safety, or welfare to be promoted by Chapter 436.

At least two of the members of the Board of Examiners of Abstract Makers agree with this conclusion. They have indicated that they see no particular benefit arising from the licensing of abstract makers.

Some licensed abstracters, however, feel that the licensing requirement should be continued. They have expressed their belief that licensing is good for the profession; that without licensing anyone can engage in title searching. They contend that licensing

does no harm. Under the Sunset Law, these reasons are, of course, insufficient justification for the continuance of the licensing regulation.

There being no public health, safety, or welfare considerations to justify the continued existence of Chapter 436, an examination of the chapter in light of the other criteria set forth in our framework is academic. Inquiry into such matters as the size of the public that is potentially in danger of harm, the relationship of licensing to the prevention of harm, and the relative costs and benefits of imposing licensing requirements is warranted only where there exists a continuing, identifiable potential danger to public health, safety, or welfare.

There being no public health, safety, or welfare to be served by Chapter 436, it should be allowed to expire as scheduled on December 31, 1980. By "sunsetting" Chapter 436, Hawaii will join 38 other states which do not require the licensing of abstract makers. Utah recently terminated its board of abstracters, and Montana let the sun set on its board of abstracters in 1979.

Recommendation. We recommend that Chapter 436, Hawaii Revised Statutes, be allowed to expire as scheduled on December 31, 1980.