



# A Word Glossary Guide for Quiet Title & Adverse Possession



*This glossary was created as a reference guide to better understand concepts, words, and phrases concerning Quiet Title and Adverse Possession. This glossary is indexed into four main sections: A) Quiet Title, B) Adverse Possession, C) Land Court, and D) County Tax Records.*

## **A. Quiet Title**

This segment of the glossary provides definitions, examples, and diagrams for words and phrases having to deal with the quiet title process.

## **B. Adverse Possession**

This segment of the glossary defines what adverse possession is and summarizes its origin and use implemented in Hawai'i. The requirements that qualify a property to be adversely possessed and the type of evidence needed to demonstrate proof are listed and defined.

## **C. Land Court**

This segment of the glossary explains the significance of Land Court and provides definitions for words and phrases having to deal with the Land Court system.

## **D. County Tax Records**

This segment of the glossary provides definitions and examples for words and phrases concerning county tax records.

# Quiet Title

## glossary

*This segment of the glossary provides definitions, examples, and diagrams for words and phrases having to do with the quiet title process.*

### Quiet Title Action



The purpose of a quiet title action is for a court to determine who the owners are of a particular property where it is unclear. A quiet title occurs when there is some kind of cloud on the title. This can occur when there is a dispute over title. In other instances, an individual doing title research may discover that there's a break in title and it is uncertain that the person who believes that they are the owner of a property is truly the rightful owner. Instances when the true owner of a property is unclear, quiet title is a way to determine who the owners are.

### Writ of Ejectment

A process issued by a party claiming land or other real estate, against one who is alleged to be unlawfully in possession. If you are the owner of the parcel and someone else is in possession of that parcel, a writ of ejectment is an action that requires the court to grant an order that the sheriff can then use to remove or "eject" somebody wrongfully in possession from land.

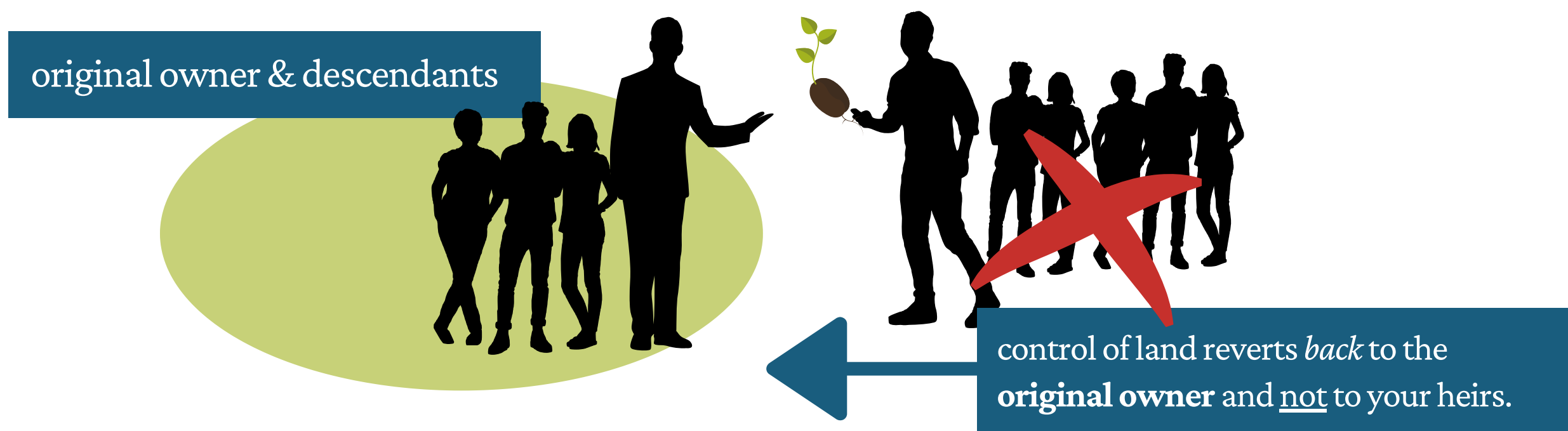


## Feudal Title

Citation: Collins, Lance D.  
2020 "Quiet Title and  
Adverse Possession." 'Āpana  
'Ōhana Workshop  
Presentation, Huliauapa'a,  
November 07, 2020.

Feudal Title is a system of land control where the King owns all land and delegates control of the land to vassals/lords. A number of peasants were also associated with particular land. Those lords delegated a portion of control over different parts of land to lesser lord who would then control the land and peasants. In this system, the people lower had particular obligations to the people who delegated control, such as military service, portion of the harvest, etc.,. Legally, only the highest level lords could transfer their rights in land to another. The rights of all others would revert to the higher lord upon passing away. Feudal Title is a chain of control that though you lived on a parcel of land, you did not control it.

This is a historical land system that has been replaced in England by the allodial system. It never existed in the U.S. and it never existed in Hawai'i.



## Allodial Title

Citation: Collins, Lance D.  
2020 "Quiet Title and  
Adverse Possession." 'Āpana  
'Ōhana Workshop  
Presentation, Huliauapa'a,  
November 07, 2020.

Allodial title, in contrast to feudal title, gives the owner total control to transfer the property to another. Your interest is yours to do with as you please. This system of land control eliminated any of the feudal obligations such as military service, portion of the harvest, etc., that previously were connected to control of land. You can decide (and plan) for who succeeds you to title. If you pass away, title passes to your legal heirs as opposed to a higher lord.

All title in  
Hawai'i is  
Allodial



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## Lifetime Transfer

A way to transfer land during one's life. A lifetime transfer can occur in 3 ways:

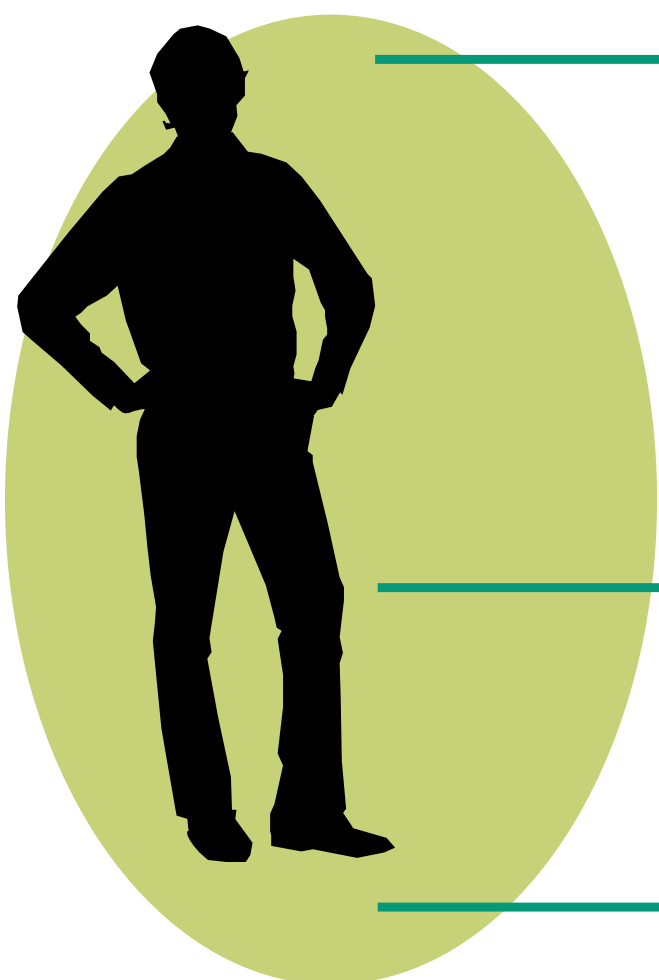


- 1 Warranty Deed: A deed that guarantees a clear title to the buyer of the property. You are the rightful owner and can convey it to someone else with no encumbrances.
- 2 Quitclaim Deed: Releases a person's interest in a property and conveys it to someone else.
- 3 Foreclosure Deed: Document that transfers the title of a property from the property owner to their lender in exchange for being relieved of the mortgage debt.

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## Transfer After Death

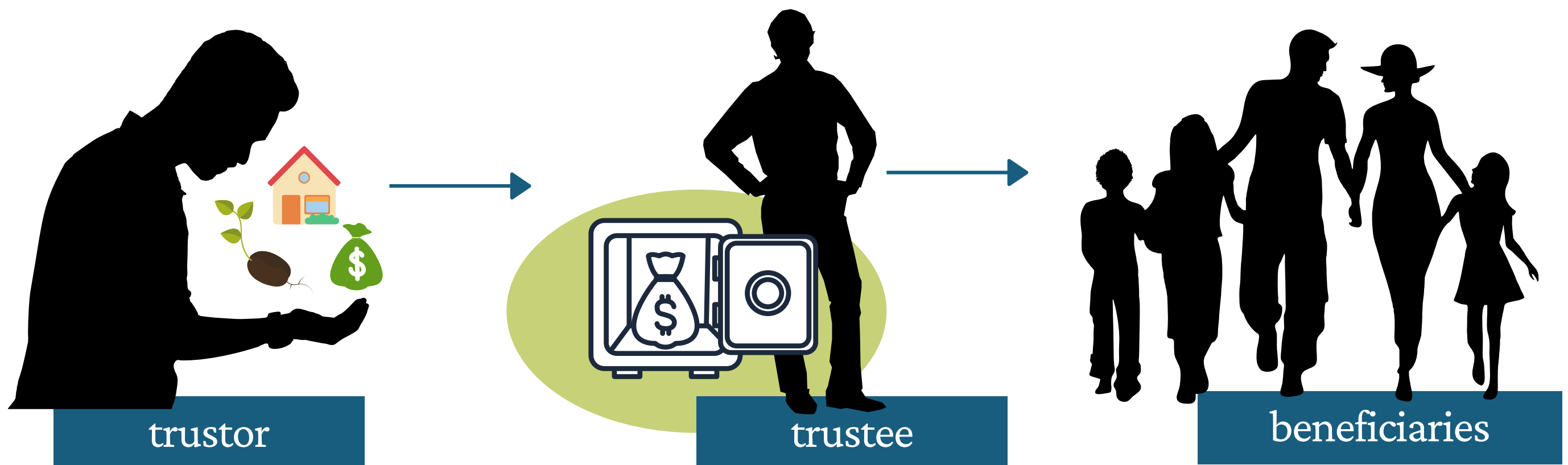
A way to transfer land after one's death. Land can be transferred after death in 3 ways:



- 1 Will: A legal document that sets forth your wishes regarding the distribution of your property and assets after your death, as well as the care of any minor children you may have. Failure to prepare a will typically leaves decisions about your estate in the hands of judges or state officials, and may also cause family strife.
- 2 Intestate Succession: Intestate refers to dying without a legal will. When a person dies in intestacy, determining the distribution of the deceased's assets then becomes the responsibility of a probate court.
- 3 Trust: A fiduciary relationship in which one party, known as a *truster*, gives another party, the *trustee*, the right to hold title to property or assets for the benefit of a third party, the beneficiary.

## Trust

A trust is a fiduciary relationship in which one party, known as a trustor, gives another party, the trustee, the right to hold title to property or assets for the benefit of a third party, the beneficiary. Trusts are established to provide legal protection for the trustor’s assets, to make sure those assets are distributed according to the wishes of the trustor.



## Private Trust

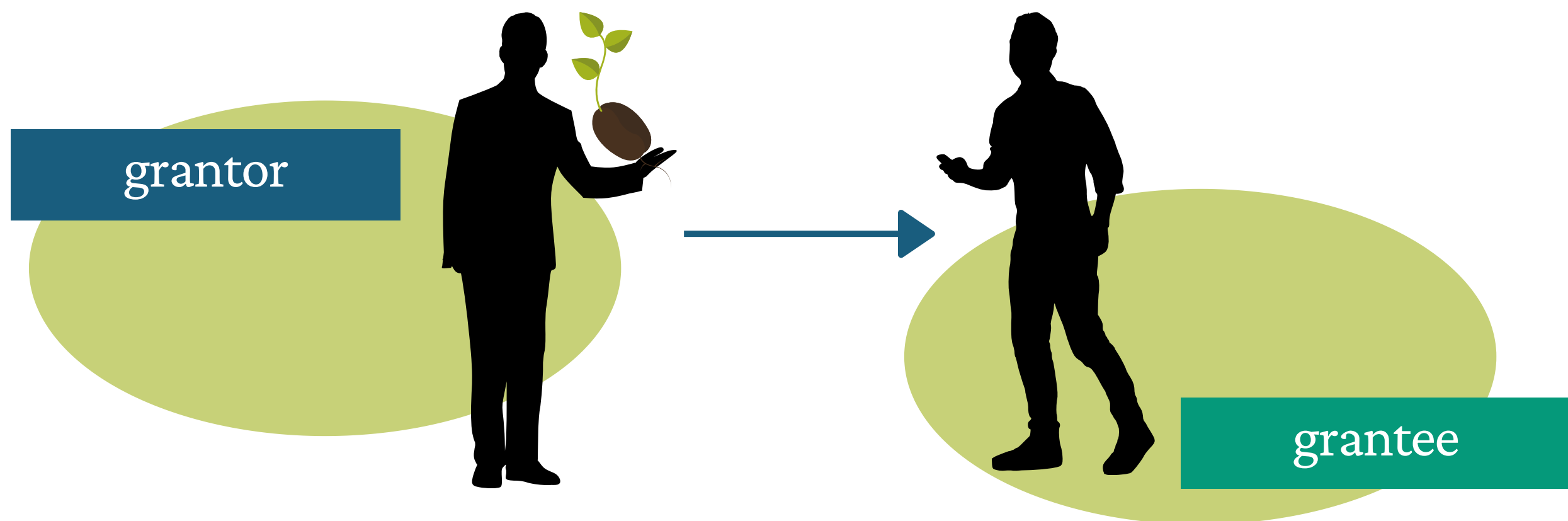
A trust created for the benefit of individuals as opposed to the public. There are limitations to a private trust. These limitations are called the rules against perpetuities which means that when a trust is created, it cannot exist for more than 21 years after a life in being. When the trust is created, the trust has to identify somebody as "a life in being." Within 21 years after the death of that "life-in-being," the trust has to terminate.

## Charitable Trust

A trust created for charitable benefit. This type of trust is not subject to the rules against perpetuities. A great example of a charitable trust is Princess Bernice Pauahi's trust. In her will she allowed all of her family, friends, and favorites who were living on different parcels of land to continue living on those lands for the remainder of their lives. At the end of their life, the life estate and the land would then be transferred to her trust for charitable use. This trust was for the benefit of orphaned Hawaiian children and their education, realized as the establishment of Kamehameha Schools. Because Pauahi established a charitable trust, her trust was not subject to the rules against perpetuities, meaning it could/can exist forever.

## Grantor

The Grantor is the individual who has given rights or interests of a property to another person or entity. The Grantor is the one giving.

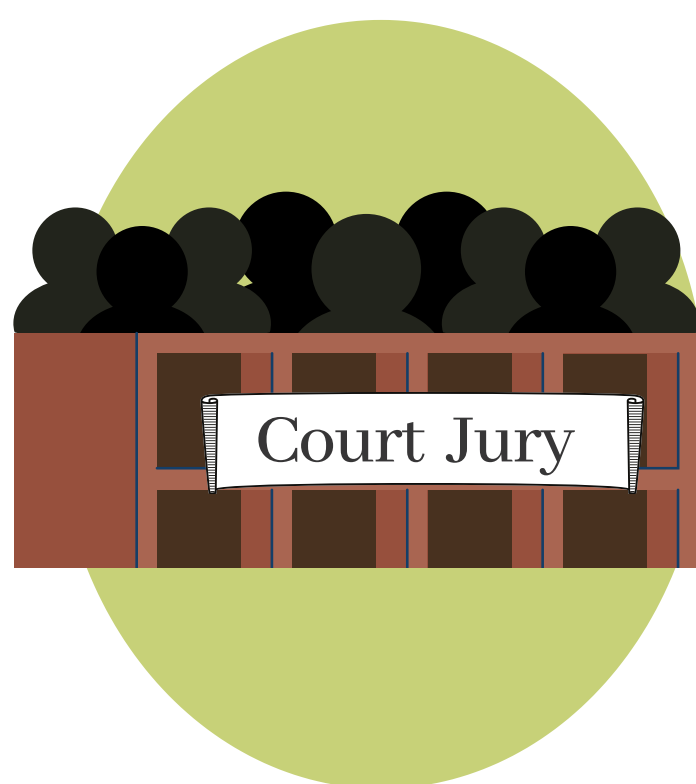


## Grantee

The Grantee is the individual who the property is given to. The grantee is the recipient.

## Bill of Peace

Bill of Peace was a way to resolve title issues. At the end of the 19th century within American and Hawai'i law, the bill of peace was replaced by statute with the legal action of "quiet title". It was the way to settle who the owner was of a particular parcel. In Hawai'i, quiet title is considered a legal action so you are entitled to have a jury.



It is infrequent to have a jury decide the facts in a case for quiet title. In Hawai'i, most quiet title actions are decided by judges. As many Hawaiians appear as defendants, they are generally unrepresented and usually do not demand a jury. If you do not have an attorney, it can be very risky because if you make mistakes in front of a jury the judge will have to inform the jury when you've made a mistake. The jury is instructed not to consider whatever mistake was presented. This could possibly undermine your ability to present your case.

It can be great to have a jury trial in quiet title actions but if you do not have an attorney to do it then it could be harmful to your case.

# Adverse Possession

## glossary

*This segment of the glossary defines what adverse possession is and summarizes its origin and use implemented in Hawai'i. The requirements that qualify a property to be adversely possessed and the general standards of evidence needed to demonstrate proof are listed and defined.*

### Adverse Possession

Adverse possession allows someone who has been in possession of another person's land for an extended period of time the ability to legally claim title to the land. It is a way that someone in possession of land owned by someone else, may acquire valid title to it.

#### → Its Origin

In the English system, adverse possession was used when somebody made a mistake in a deed. It was used when somebody believed that they were the true owners of a property because they had a deed or they were in the chain of deeds, however, the person who wrote the deed made some kind of error that stopped there from being a true transfer of land. Adverse possession was created to allow the people who were on the parcel and believed that they were the actual owners of it to go into court and get a court judgment acknowledging the mistake and receive the title of being the true owner. In England, adverse possession was used for a very small and technical purpose to correct the mistakes of handwritten deeds.

Overtime, when adverse possession is adopted into the American system and later utilized in Hawai'i during the 1870s, it changed to no longer be a corrective measurement but instead a way for people to become the owner of land even if they were not actually the owner. To claim adverse possession, you need to have actual possession of the land for the prescriptive period. In Hawai'i, you need to have possession of the land for at least 20 years before being able to adversely possess it.

#### → Requirements

- 1 Possession must be open.
- 2 Possession must be hostile.
- 3 Possession must be notorious.
- 4 Possession must be continuous.
- 5 Possession must be exclusive.

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*Possession must be*  
**Open**

If you are to claim adverse possession, possession over the disputed piece of land must be open. The individual claiming possession must demonstrate to a court that his or her possession is an actual invasion of, or infringement upon, the true owner's property rights.

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*Possession must be*  
**Hostile**

In the adverse possession, "possession must be hostile" which means that the individual claiming possession of a disputed piece of land must demonstrate to a court that his or her possession is an actual invasion of, or infringement upon, the true owner's property rights.

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*Possession must be*  
**Notorious**

An individual's possession over a disputed land parcel must be notorious. It cannot be a secret. You cannot claim you are the owner and then hide behind it.

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*Possession must be*  
**Continuous**

The statutory period in Hawai'i for adverse possession is 20 years. "Possession must be continuous" means that you have to be the owner continuously for 20 years. Continuous possession does not have to be continuous individual possession. Possession of the disputed parcel can be inherited from one generation to the next or through any other combination, so long as you can tack the possession of land onto each other to show continuous possession for the total statutory period.

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*Possession must be*  
**Exclusive**

The adverse possessor does not share control of the property with any one else. He excludes others from possession, as if he was actual owner.

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## Clear & Convincing Evidence



To adversely possess land you have to have clear and convincing evidence. In courts, there's different standards of evidence.

→ Preponderance of the evidence

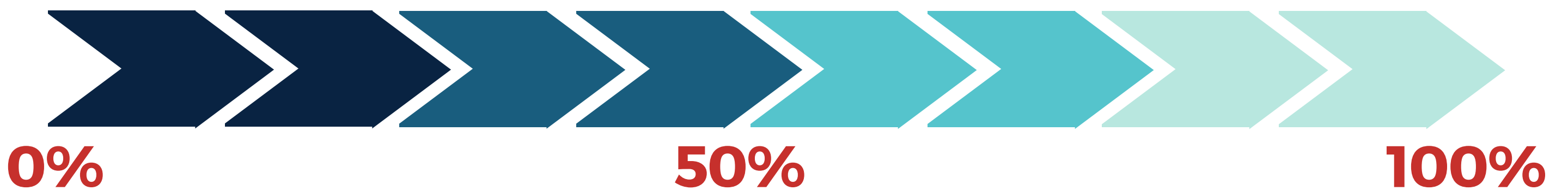
→ Beyond a reasonable doubt

Clear and convincing evidence falls between these two listed standards (preponderance of evidence and beyond a reasonable doubt). For adverse possession you must have clear and certain evidence that proves that it's very likely that what you are saying is true--not beyond a reasonable doubt that it is true -- but very likely.

Preponderance of Evidence

Beyond Reasonable Doubt

Clear & Convincing Evidence



## Preponderance of Evidence

Standard of evidence that shows more than 50% what you're saying is true. The facts you're saying are true

## Beyond Reasonable Doubt

Standard of evidence that whatever fact and evidence are being presented are so clear that there is beyond reasonable doubt that they are true.

# Land Court



## *glossary*

*This segment of the glossary explains the significance of Land Court and provides definitions for words and phrases having to deal with the Land Court system.*

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### Land Court

Land court is a way of keeping track of ownership of land. It was originally developed in Australia in the 19th century. Once land is registered or once title is transferred in the land court system you have just ONE YEAR to address it. After the registered land is in the land court system after a year, you have no remedy to get the land itself back. You can only be compensated by the government because the government now guarantees the title.

So the difference between a quiet title in the normal system and in land court is at the end of a quiet title in land court, one year after the judgment is issued in land court, they can never be challenged. You can never get the property back. Land court is very powerful.

**1** *year*  
*to address before title is permanent!*



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## Torrens System



The Torrens title system is a method of registering titles to real estate adopted originally into Australia.

Early European settlers arriving in Australia were selling off pieces of land they did not own to newer people settling into Australia. As a result, people were generating a lot of money with these fake land schemes (Collins, 2020). Robert Richard Torrens, a government official at the time, decided to implement the concept of registration to ensure that title was given to land in order to prevent people from stealing and selling land they never really owned.

Similar to the way ships were registered at the time, and similar to the way cars are sold today, Torrens adopted the same principle for land and created a system for registering title for property. It does not matter how long you live somewhere, you must have a certificate of title from the government. Land court operates in the same system.

Citation: Collins, Lance D. 2020 "Quiet Title and Adverse Possession." 'Āpana 'Ōhana Workshop Presentation, Huliauapa'a, November 07, 2020.

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## Default Judgement

Default judgment is a binding judgment made by the court judge in favor of either party based on some failure to take action by the other party. A default judgement is commonly made when one of the parties has failed to appear in court.

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## Void Judgement

Void judgement is a ruling that is invalid and has no binding or legal effect.

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## Affidavit

A written statement confirmed by oath or affirmation, for use as evidence in court.

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# County Tax Records

## glossary

*This segment of the glossary provides definitions and examples for words and phrases concerning county tax records.*

### County Tax Records

County tax records are tax documents required of each county. County tax records concerning property taxes can be used as evidence in a quiet title action but does not establish ownership.

### Tax Map Key

A Tax Map Key, also referred to as TMK is an identifier for a property in Hawai'i. TMKs are found on your property tax statement and is used when an owner sells their property.

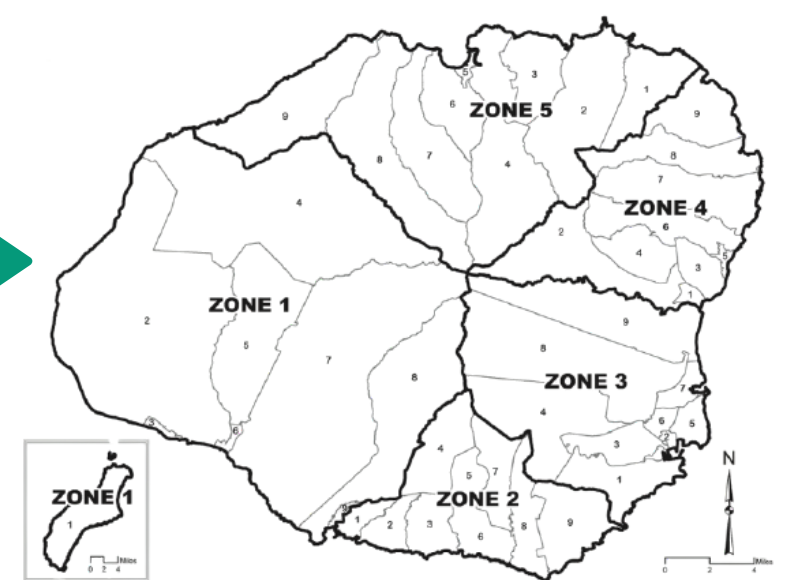
Arising from a concern at the way that people paid property taxes, Tax Map Keys were created. Some of the larger landowners or people claiming to own the land were not disclosing the full amount of their landholdings and were underpaying taxes. Government officials recognized that people were not paying their fair share and wanted to have a more accurate tax record.

**Tax Map Keys**  
TMKs

You can look up TMK maps on County websites

- **Hawai'i County**  
<http://www.hawaiicounty.gov/departments/planning/tmk-maps>
- **Maui County**  
<http://www.mauicounty.gov/1193/Tax-Map-Zone>
- **Honolulu County**  
<http://geportal.hawaii.gov/datasets/ccchnl-view-tax-plot-maps/data>  
Honolulu County offers an interactive map tool to search and download data. It seems useful, but it is NOT very intuitive. Follow directions for a "How-To"
- **Kaua'i County**  
<https://www.kauai.gov/Tax-Maps>

TMK example for the  
Kaua ' i County

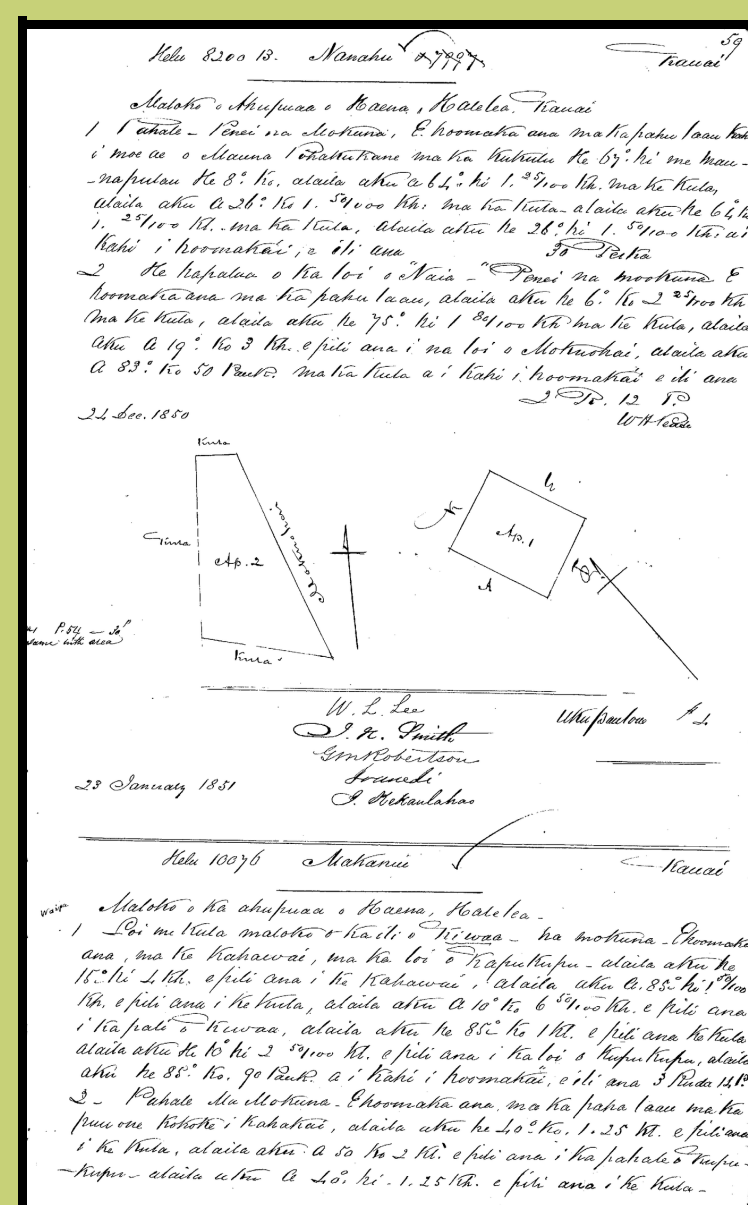
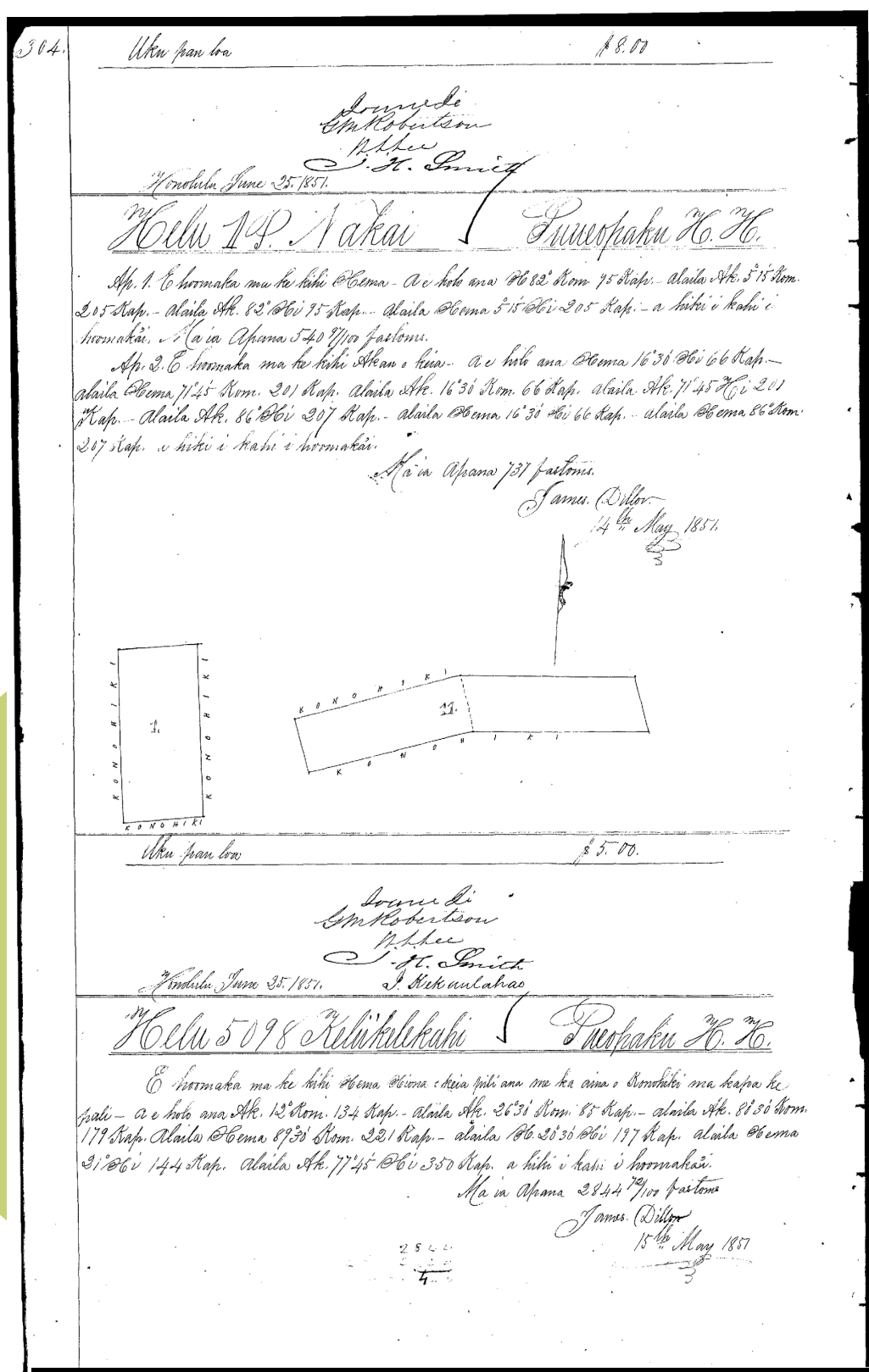


Check out our [Maps & Where to Find Them](#)  
Handout for a How-to Guide for Finding  
County Tax Map Keys!

## Land Commission Award

A Land Commission Award is a certificate awarded to a parcel by the Land Commission that granted title to the awardee or his/her heirs. Allodial title was confirmed by the issuance of a royal patent. Land Commission Awards (LCA) can be found written in English and/or Hawaiian.

During the mid-1800s, the Hawaiian Kingdom initiated a formal process to quiet title land ownership. Claimants who went through the process of registering property needed to submit formal land claims, testimonies validating the claim. A survey of the property was conducted to confirm property boundaries. All documents were reviewed by the Land Commission Board and if approved, the claim was either awarded a Land Commission Award.



### Example of Land Commission Awards

Check out Papanilo Database to explore more LCAs!

<https://www.papanilodatabase.com>

## Boundaries

References that mark the limits of an area. Boundaries serve to designate the perimeters of a land parcel.