

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 178

ADMINISTRATIVE SPECIAL MORTGAGE RECORDING
FEE GUIDELINES

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§16-178-1 Introduction. Chapter 431P, Hawaii Revised Statutes, established the hurricane reserve trust fund, which is funded, in part, by a special mortgage recording fee. This chapter establishes guidelines for the special mortgage recording fee. [Eff 2/13/98] (Auth: HRS §431P-5) (Imp: HRS §431P-16)

§16-178-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Additional charge mortgage" means a mortgage which increases the principal amount of the secured debt owed to the mortgagee that holds an existing mortgage on the property described in that mortgage and which is recorded in the bureau of conveyances of the State or filed with the assistant registrar of the land court of the State.

"Additional security mortgage" means a mortgage of additional property to secure an existing debt which is recorded in the bureau of conveyances of the State or filed with the assistant registrar of the land court of the State.

"Debt" means the stated principal amount of the obligation secured by the mortgage.

"HHRF" means the Hawaii hurricane relief fund.

"Mortgage" means every transfer of an interest in real property, except fixtures, made as security for the performance of another act or subject to

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defeasance upon the payment of an obligation, whether the transfer is made in trust or otherwise.

"SMRF" means a special mortgage recording fee imposed on each mortgage and each amendment to a mortgage which increases the principal amount of the secured debt which is recorded in the bureau of conveyances of the State or filed with the assistant registrar of the land court of the State.

"SMRF transmittal form" means a document, in the form available from the bureau of conveyances, showing the calculation of the SMRF, which shall accompany each mortgage or amendment to a mortgage to be recorded and the payment of the SMRF. [Eff 2/13/98] (Auth: HRS §431P-5) (Imp: HRS §§431P-1, 431P-16)

§16-178-3 Fee calculation. (a) The SMRF shall be an amount equal to one-tenth of one per cent of the stated principal amount of the debt secured by the mortgage or, in the case of an amendment of a mortgage, one-tenth of one per cent of the increase of the stated principal amount of the debt, if any. For example:

- (1) For a mortgage securing a debt of \$250,000, the calculation would be:

$$\begin{array}{r} \$250,000 \\ \times \quad .001 \\ \hline \$ \quad 250 \end{array}$$

- (2) For an amendment to a mortgage increasing the secured debt from \$150,000 to \$200,000, the calculation would be:

$$\begin{array}{r} (\$200,000 - \$150,000) = \$50,000 \\ \times \quad .001 \\ \hline \$ \quad 50 \end{array}$$

(b) For a home equity loan or other open-end revolving loan secured by a mortgage, the SMRF shall be calculated on the maximum amount which may be borrowed under the loan.

(c) If a mortgage recites the full amount of the debt, but does not specify that the mortgage secures only a portion of the debt, the SMRF shall be calculated on the full amount of the debt. If a mortgage specifies that the mortgage secures only a portion of a debt, the SMRF shall be calculated on the amount specified as being secured by the mortgage. For example, where a business obtains a \$500,000 loan, secured by certain assets, including a leasehold interest which has a minimal value, if the mortgage of the lease states that the mortgage secures \$100,000 of the \$500,000 loan, the SMRF for that mortgage shall be calculated on \$100,000.

(d) A refinancing occurs when an existing debt is extinguished and a new loan is made. When a loan is refinanced, the new mortgage shall be subject to the SMRF. The SMRF shall be calculated on the entire amount of the debt secured by the new mortgage.

(e) If a mortgage states the amount of the secured debt, and also includes a reference to the maximum amount of additional protective advances which the lender may, but is not obligated to, make to protect its interests (e.g., for taxes, insurance, and lease rent), the SMRF shall be calculated only on the debt and not on the maximum amount of protective advances.

(f) When a mortgage secures a non-monetary or inchoate obligation, the SMRF shall be calculated on a dollar value which the mortgagee attributes to the non-monetary obligation.

(g) If the debt is stated in a foreign currency and is not stated in U.S. dollars, the debt shall be converted to U.S. dollars, using an exchange rate as published in the foreign exchange section of the money section of The Honolulu Advertiser, and which was in effect within one week prior to recordation of the mortgage. [Eff 2/13/98] (Auth: HRS §§431P-5, 431P-16) (Imp: HRS §431P-16)

§16-178-4 Fee paying procedures. (a) The SMRF transmittal form shall be used to pay the SMRF, and may be obtained from the bureau of conveyances at 1151 Punchbowl Street, Room 120. Although the SMRF applies to documents recorded in the bureau of conveyances of the State or filed with the assistant registrar of the land court of the State, payment of the SMRF for all documents shall be submitted to the bureau of conveyances. Payment shall be made by the mortgagor or its agent.

(b) The SMRF transmittal form and the SMRF payment shall be submitted to the bureau of conveyances at the time of recordation of a mortgage or an amendment to a mortgage.

(c) The SMRF shall be paid by check made payable to the "Bureau of Conveyances". One check representing the total SMRF for any number of mortgages may be submitted.

(d) In the event all or part of the SMRF is not paid at the time of recordation, due to an exception provided under section 16-178-5, additional documentation or information may be required by the HHRF.

(e) SMRF transmittal forms sent by facsimile transmission and computerized versions of the SMRF transmittal form, which contain the same language and are in the same form as the SMRF transmittal form available from the bureau of conveyances, may be used. [Eff 2/13/98] (Auth: HRS §431P-5) (Imp: HRS §431P-16)

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§16-178-5 Non-applicability and exemption criteria. (a) The SMRF is not applicable to a document which does not constitute a mortgage. These documents include, but shall not be limited to:

- (1) A document confirming, amending, or correcting a mortgage without an increase in the debt;
- (2) An assumption of a mortgage;
- (3) A negative pledge;
- (4) An agreement of sale; and
- (5) Such other documents as determined by the HHRF or the bureau of conveyances in their sole discretion.

(b) The SMRF shall be payable only once for a mortgage recorded concurrently with both the bureau of conveyances of the State and with the assistant registrar of the land court of the State.

(c) The SMRF shall be collected only once with respect to the same debt secured by multiple mortgages which are recorded, provided that there is no increase in the amount of the debt.

- (1) Except as provided in paragraphs (2) or (3), if the SMRF based on the full debt is paid when the first mortgage securing the debt is recorded, the SMRF shall not be collected when further mortgages securing the same debt are recorded, provided that there is no increase in the amount of the debt.
- (2) If the SMRF was not previously paid when the prior mortgage securing the debt was recorded (e.g., the first mortgage was recorded prior to July 1, 1993 when the SMRF was implemented), the SMRF shall be paid when an additional security mortgage securing the same debt is recorded. The SMRF shall be calculated based on the amount of the then outstanding principal balance of the debt as stated in the additional security mortgage (or the then applicable maximum commitment in the case of an open-end revolving loan as stated in the additional security mortgage).
- (3) The following chart demonstrates the calculation of the SMRF when additional charge mortgages and additional security mortgages are recorded:

<u>Amount of Debt Secured by an Original Mortgage Recorded On or Before July 1, 1993</u>	<u>Post July 1, 1993 Changes</u>	<u>SMRF Calculated On:</u>
1. \$10,000	Additional charge mortgage adding \$2,000 debt	\$ 2,000
2. \$10,000	Additional security mortgage to secure existing debt	\$10,000
3. \$10,000	Additional security mortgage plus additional charge mortgage adding \$2,000 debt	\$12,000

<u>Amount of Debt Secured by an Original Mortgage Recorded After July 1, 1993</u>	<u>Post July 1, 1993 Changes</u>	<u>SMRF Calculated On:</u>
4. \$10,000	Additional charge mortgage adding \$2,000 debt	\$ 2,000
5. \$10,000	Additional security mortgage for existing debt where there is no increase in debt and the SMRF has been previously paid on \$10,000	0
6. \$10,000	Additional security mortgage plus additional charge mortgage adding \$2,000 debt and the SMRF has been previously paid based on \$10,000	\$ 2,000

[Eff 2/13/98] (Auth: HRS §431P-5) (Imp: HRS §§431P-5, 431P-16)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 16-178, Hawaii Administrative Rules, on the Summary page dated December 11, 1997, was adopted on December 11, 1997, following a public hearing held on December 2, 1997, after public notices were given in The Honolulu Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, and the Hawaii Tribune-Herald on October 20, 1997.

The adoption of chapter 16-178 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Janis C. Akuna

JANIS C. AKUNA, Chairperson
Hawaii Hurricane Relief Fund
Board of Directors

APPROVED AS TO FORM: Date 1/20/98

/s/ James F. Nagle

Deputy Attorney General

APPROVED: Date 1/20/98

/s/ Kathryn S. Matayoshi

KATHRYN S. MATAYOSHI, Director
Commerce and Consumer Affairs

APPROVED: Date 2/2/98

/s/ Benjamin J. Cayetano

BENJAMIN J. CAYETANO
Governor
State of Hawaii

February 3, 1998

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-178
Hawaii Administrative Rules

December 11, 1997

SUMMARY

Chapter 16-178, Hawaii Administrative Rules, entitled "Administrative Special Mortgage Recording Fee Guidelines" is adopted.