

---

---

# A BILL FOR AN ACT

RELATING TO SECURITY INTERESTS IN REAL PROPERTY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the records of the  
2 bureau of conveyances reflect numerous instruments evidencing  
3 assignments of borrower's interests in leases and rents that  
4 were given as security for mortgage loans, and that the records  
5 for many of these assignments have not subsequently been  
6 reassigned or released even though the underlying loans have  
7 been fully paid or otherwise satisfied. By Act 143, Session  
8 Laws of Hawaii 1988, the legislature found that it is in the  
9 public's interest to clear the public record of unreleased  
10 mortgages and authorized title insurers or underwritten title  
11 companies as defined in section 431:20-102, Hawaii Revised  
12 Statutes, to make a demand on the mortgagee and, in the absence  
13 of compliance, to execute and record a release of a fully  
14 satisfied mortgage under certain conditions. There is, however,  
15 no comparable provision for compelling and accomplishing a  
16 release of a recorded assignment of leases or rents, which  
17 sometimes accompanies the mortgage as additional security for



1 the loan. Accordingly, many unenforceable assignments continue  
2 to exist in the public record and may cloud title to real  
3 estate.

4 The purpose of this Act is to amend section 506-8, Hawaii  
5 Revised Statutes, to supplement the procedure for clearing  
6 titles by adding a reference to recorded assignments of leases  
7 and rents for which the underlying debt has been fully paid or  
8 satisfied, in order to promote the clarity of the public record.

9 SECTION 2. Section 506-8, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§506-8 Release of mortgages of real property or  
12 fixtures[-] and reassignment of security interests. The  
13 mortgagee of real property or the record assignee of a mortgage  
14 interest shall provide to the mortgagor a release of mortgage  
15 upon full satisfaction of the mortgage and discharge of any  
16 secured debt. If the debt secured by the mortgage is also  
17 secured by an assignment of the borrower's or mortgagor's  
18 interest in leases or rents to the mortgagee, then the mortgagee  
19 or record assignee shall also provide to the borrower or  
20 mortgagor, as applicable, a reassignment or release of the  
21 security interest upon full satisfaction and discharge of the



1 secured debt. The instrument or instruments shall be duly  
2 acknowledged, shall sufficiently describe the mortgage or  
3 assignment that has been satisfied, and be recordable in the  
4 bureau of conveyances or office of the assistant registrar of  
5 the land court, or both, as appropriate. If the mortgagee or  
6 record assignee fails to provide a release of the mortgage and  
7 reassignment or release of security interest as required by this  
8 section within sixty days from the date of a request made in  
9 writing by any party in interest, and sent by certified or  
10 registered mail to the mortgagee or record assignee at its last  
11 known address, then:

12 (1) Any title insurer or underwritten title company as  
13 defined in section 431:20-102 may execute the release  
14 of mortgage or reassignment or release of the  
15 mortgagee's security interest in leases and rents on  
16 behalf of the mortgagee or record assignee; provided  
17 that:

18 (A) The release or reassignment shall have attached  
19 to it an affidavit setting forth proof, such as a  
20 canceled check or written confirmation from the  
21 mortgagee [7] or recorded assignee, that



1 reasonably establishes that the [~~mortgage~~] debt  
2 secured by the mortgage or assignment of leases  
3 and rents has been discharged and the mortgage or  
4 assignment of leases and rents has been fully  
5 satisfied; and

6 (B) The release or reassignment shall be executed by  
7 an officer of the title insurer or underwritten  
8 title company.

9 In the event that a mortgage is released or the  
10 mortgagee's security interest in the leases and rents  
11 is reassigned or released by a title insurer or  
12 underwritten title company under the provisions of  
13 this section but the mortgage debt has not been  
14 discharged, the mortgage has not been fully satisfied,  
15 and the title insurer or underwritten title company  
16 acted with gross negligence or in bad faith in  
17 releasing the mortgage[~~7~~] or reassigning or releasing  
18 the security interest in the leases and rents, the  
19 title insurer or underwritten title company releasing  
20 the mortgage or reassigning or releasing the security  
21 interest in the leases and rents shall be liable to



1 the mortgagee for treble damages and reasonable  
2 attorneys' fees and costs; or

3 (2) The mortgagor or a company issuing title insurance to  
4 a new owner of the mortgaged subject real property or  
5 to another mortgagee of the subject real property, or  
6 the escrow company charged by the mortgagor with  
7 obtaining the release of mortgage~~[7]~~ or reassignment  
8 or release of the security interest in the leases and  
9 rents, or any other interested party, as plaintiff,  
10 may institute an action in any circuit court to obtain  
11 the appropriate release [~~of mortgage~~] or reassignment  
12 instrument; provided that:

13 (A) The plaintiff in the action shall mail a copy of  
14 the complaint to the mortgagee or record assignee  
15 by certified or registered mail addressed to the  
16 mortgagee or record assignee at its last known  
17 address;

18 (B) If the mortgagee or record assignee does not file  
19 an answer to the complaint within forty-five days  
20 after the mailing, the court, upon receipt of an  
21 affidavit of mailing required by this section and



1           upon satisfactory proof that the mortgage debt  
2           has been discharged and the mortgage has been  
3           fully satisfied, shall issue an order releasing  
4           the mortgage[-] and reassigning or releasing the  
5           security interest in the leases and rents, as  
6           applicable;

7           (C) This order shall be recorded in the bureau of  
8           conveyances or office of the assistant registrar  
9           of the land court, or both, as appropriate; and

10          (D) Upon a finding of good cause by the court, the  
11          plaintiff shall be entitled to treble damages and  
12          reasonable attorneys' fees and costs incurred in  
13          the action unless the court finds that the  
14          mortgagee had a reasonable basis for believing  
15          that a dispute existed regarding whether the  
16          mortgage should have been released[-] or the  
17          security interest in the leases and rents should  
18          have been reassigned or released."



1 SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Mortgages and Security Interests; Reassignment of Interests in  
Leases and Rents

**Description:**

Supplements the procedure for clearing titles by adding a  
reference to recorded assignments of leases and rents for which  
the underlying debt has been satisfied. (HB1630 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*

