

JAN 22 2016

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 mortgage7~~] 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."

19 SECTION 3. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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S.B. NO. 2329

1 SECTION 4. This Act shall take effect upon its approval.

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S.B. NO. 2329

Report Title:

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

Description:

Requires a mortgagee or record assignee to provide to a mortgagor or borrower, upon full satisfaction of the mortgage and discharge of the secured debt, a reassignment or release of security interests in leases and rents that served as additional security for the mortgage. Authorizes title insurers or underwritten title companies to make demands on mortgagees and, in the absence of compliance, to reassign or release mortgagees' security interests in leases and rents on behalf of the mortgagee or record assignee, under certain conditions. Authorizes certain entities to institute an action in any circuit court to obtain the release or reassignment instrument in the absence of compliance of a mortgagee or record assignee.

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