



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 11, 2017

**GOV. MSG. NO. 1306**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Ninth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Twenty-Ninth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 11, 2017, the following bill was signed into law:

SB396 SD1 HD1 CD1

RELATING TO SECURITY INTERESTS IN REAL  
PROPERTY  
**ACT 192 (17)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

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# 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. The legislature has  
8 recognized that it is in the public's interest to clear the  
9 public record of unreleased mortgages and has authorized title  
10 insurers or underwritten title companies to make a demand on the  
11 mortgagee and, in the absence of compliance, to execute and  
12 record a release of a fully satisfied mortgage under certain  
13 conditions. However, there is no comparable provision for  
14 compelling and accomplishing a release of a recorded assignment  
15 of leases or rents, which sometimes accompanies the mortgage as  
16 additional security for the loan. Accordingly, many  
17 unenforceable assignments continue to exist in the public record  
18 and may cloud title to real estate.



1           The purpose of this Act is to amend the procedure for  
2 clearing titles by adding a reference to recorded assignments of  
3 leases and rents for which the underlying debt has been fully  
4 paid or satisfied, which will help clarify the public record.

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

7           "§506-8 Release of mortgages of real property or  
8 fixtures[-] and reassignment of security interests. (a) The  
9 mortgagee of real property or the record assignee of a mortgage  
10 interest shall provide to the mortgagor a release of mortgage  
11 upon full satisfaction of the mortgage and discharge of any  
12 secured debt. If the debt secured by the mortgage is also  
13 secured by an assignment of the borrower's or mortgagor's  
14 interest in leases or rents to the mortgagee, then the mortgagee  
15 or record assignee shall also provide to the borrower or  
16 mortgagor, as applicable, a reassignment or release of the  
17 security interest upon full satisfaction and discharge of the  
18 secured debt. The instrument or instruments shall be duly  
19 acknowledged, shall sufficiently describe the mortgage or  
20 assignment that has been satisfied, and be recordable in the



1 bureau of conveyances or office of the assistant registrar of  
2 the land court, or both, as appropriate.

3 (b) If the mortgagee or record assignee fails to provide a  
4 release of the mortgage and reassignment or release of security  
5 interest as required by this section within sixty days from the  
6 date of a request made in writing by any party in interest, and  
7 sent by certified or registered mail to the mortgagee or record  
8 assignee at its last known address, then:

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

15 (A) The release or reassignment shall have attached  
16 to it an affidavit setting forth proof, such as a  
17 canceled check or written confirmation from the  
18 mortgagee [7] or record assignee, that reasonably  
19 establishes that the [~~mortgage~~] debt secured by  
20 the mortgage or assignment of leases and rents  
21 has been discharged and the mortgage or



1           assignment of leases and rents has been fully  
2           satisfied; and  
3           (B) The release or reassignment shall be executed by  
4           an officer of the title insurer or underwritten  
5           title company.

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



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

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

16          (B) If the mortgagee or record assignee does not file  
17               an answer to the complaint within forty-five days  
18               after the mailing, the court, upon receipt of an  
19               affidavit of mailing required by this section and  
20               upon satisfactory proof that the mortgage debt  
21               has been discharged and the mortgage has been



1 fully satisfied, shall issue an order releasing  
2 the mortgage [-] or reassigning or releasing the  
3 security interest in the leases and rents, as  
4 applicable;

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

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

17 SECTION 3. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2017.

APPROVED this 11 day of JUL, 2017


  
GOVERNOR OF THE STATE OF HAWAII

**THE SENATE OF THE STATE OF HAWAII**

Date: May 2, 2017  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the  
Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.

  
President of the Senate

  
Clerk of the Senate



SB No. 396, SD 1, HD 1, CD 1

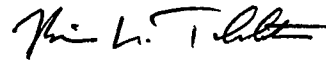
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.



Joseph M. Souki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives