

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
FINANCE

Friday, March 31, 2017
3:00 P.M.
State Capitol, Conference Room 308

In consideration of
SENATE BILL 396, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO SECURITY INTERESTS IN REAL PROPERTY

Senate Bill 396, Senate Draft 1, House Draft 1 proposes to authorize title insurers or underwritten title companies to execute the reassignment or release of mortgagee's security interest in leases and rents on behalf of the mortgagee or record assignee, under certain conditions and upon full satisfaction of the mortgage and discharge of the secured debt. **The Department of Land and Natural Resources supports this measure.**



Title Guaranty of Hawaii, Inc.

235 QUEEN STREET, HONOLULU, HI 96813 • P.O. Box 3084, HONOLULU, HI 96806
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March 29, 2017

The Honorable Representative Sylvia Luke, Chair
The Honorable Representative Ty J. K. Cullen, Vice Chair
Members of the House Committee On Finance
Conference Room 308, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Hearing Date: Friday, March 31, 2017 at 3:00 p.m.
Testimony IN SUPPORT of Senate Bill 396, SD1, HD1 Relating To Security
Interests In Real Property

Dear Chair Luke, Vice-Chair Cullen and Members of the House Committee on Finance:

Thank you very much for considering this testimony in support of Senate Bill 396.

The important public purpose to be addressed by this bill is to clear the public records of assignments of leases and rents to a lender that remain of record after a loan is satisfied and paid.

In our experience, loans are often secured by both a mortgage and an assignment of the borrower's rights in leases and rents. When the loan is repaid, there are many instances where the parties will make sure to record a release of the mortgage but overlook the need to record a release/reassignment of the security interest in the leases and rents. The result is that there are many of these recorded but unenforceable assignments that continue to be found in subsequent title searches involving the property.

Title companies currently have authority under Hawaii Revised Statutes Section 506-8 to institute a procedure for releasing a satisfied mortgage if the lender has failed to do so. However, there is no corresponding mechanism for clearing the public record of the assignments of leases and rents. Senate Bill 396 is designed to allow this.

The benefit to the public will be that title companies will be better able to facilitate clearing extraneous security interests from titles to real property, and will improve the processing of real estate transactions.

We respectfully request that the effective date of the bill if passed be restored to July 1, 2017.

We very much appreciate your consideration of this measure, and respectfully request that your Committee vote in favor of the Bill. Thank you again.

Respectfully submitted,

Lorrin Hirano, Sr. Vice President



March 30, 2017

The Honorable Representative Sylvia Luke, Chair
The Honorable Representative Ty J.K. Cullen, Vice Chair
Members of the House Committee on Finance
Conference Room 308, State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: Hearing date – Friday, March 31, 2017 at 3:00 p.m.
Testimony in Support of Senate Bill 396 relating to Security Interests in Real Property

Dear Chairperson Sylvia Luke, Vice Chairperson Ty J.K. Cullen and Honorable Members of the House Committee on Finance,

First Hawaii Title Corporation, dba Nextitle, a Title & Escrow Co. (“First Hawaii Title”) is a licensed escrow depository and an underwritten title company in the State of Hawaii, having been in operation since 1985. The undersigned is General Counsel for First Hawaii Title.

First Hawaii Title supports the intent of Senate Bill 396, referenced above. In instances where the recording of a mortgage is accompanied by the recording of a security interest in leases and rents, we have found that a later release of the mortgage is not always accompanied by a release of the corresponding security interest. The result is a cloud upon title which appears in subsequent title searches and which can affect the processing of title insurance.

Senate Bill 396, provides a procedure to address this situation, subject to the existing requirements of Hawaii Revised Statutes Sec. 506-8, and allows title companies to facilitate clearing extraneous security interests from title to real property.

Thank you for your consideration of this testimony as we respectfully request that your Committee vote in favor of the Bill.

Very Truly Yours,

James Y. Agena
General Counsel



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The Honorable Representative Sylvia Luke, Chair
The Honorable Representative Ty J.K. Cullen, Vice Chair
Members of the House of Representatives Committee on Finance

Conference Room 308, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: S.B. 396, SD1, HD1, Relating to Recordation Transaction Fees

HEARING: Friday, March 31, 2017, at 3:00 p.m.

Dear Chair Luke, Vice Chair Cullen and members of the House of Representatives
Committee on Finance,

My name is Diana Allen, Counsel at First American Title Company, Inc.

I am testifying in support of S.B. 396, SD1, HD1

This bill will allow a title insurer or title company to clear our real property records of reassignments or releases of security interests in leases and rents provided that there is an affidavit or other proof that the underlying debt or lease has been fully satisfied.

The general public would benefit from by allowing title companies to clear the public record from these assigned loans or leases, which will simplify the title records and clear these remainder reassignments from title where the underlying debt has been discharged.

Thank you very much for the opportunity to provide testimony in support of this measure.

Diana Allen, First American Title Company, Inc.

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HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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LATE

March 31, 2017

Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 396, H.D. 1 (Security Interests in Real Property)**
Hearing Date/Time: Friday, March 31, 2017, 3:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **supports** this Bill.

This Bill: (a) 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; (b) 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; and (c) 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.

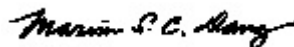
Lenders sometimes secure a loan to a borrower with an assignment of the borrower's rights in leases and rents involving a real property. That assignment would then be recorded in the Bureau of Conveyances and/or in the Office of the Assistant Registrar of the Land Court. When the loan is later paid off, there are instances when a release or a reassignment of the security interest in the leases and rents is not recorded. At that point, even though the assignment is unenforceable when the loan is paid off, the assignment stays on the public record at the Bureau and/or Land Court and affects that real property.

Currently, if a mortgage loan is paid off, but a release of the mortgage isn’t recorded, title insurers and underwritten title companies are authorized under Hawaii Revised Statutes Sec. 506-8 to sign and record a release of the mortgage under certain limited circumstances.

But there is no statutory provision for title insurers and underwritten title companies to sign and record a release or reassignment of the security interest in the leases and rents when the loan is paid off.

This Bill would amend HRS Sec. 506-8 to enable title insurers and underwritten title companies to do that. Unenforceable assignments will then be released from the public record.

We ask that your Committee pass this Bill. Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association