

SB396

Measure Title: RELATING TO SECURITY INTERESTS IN REAL PROPERTY.

Report Title: Security Interests; Reassignment or Release of Security Interests; 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.

Companion:

Package: None

Current Referral: CPH, JDL

Introducer(s): BAKER, S. Chang, English, Espero, Nishihara, Wakai

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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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 Senate Committee on
COMMERCE, CONSUMER PROTECTION, AND HEALTH

Tuesday, January 31, 2017
9:00 A.M.
State Capitol, Conference Room 229

In consideration of
SENATE BILL 396
RELATING TO SECURITY INTERESTS IN REAL PROPERTY

Senate Bill 396 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.**

Thank you for the opportunity to testify on this measure.

HAWAII FINANCIAL SERVICES ASSOCIATION

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January 31, 2017

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
and members of the Senate Committee on Commerce, Consumer Protection & Health
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 396 (Security Interests in Real Property)**
Hearing Date/Time: Tuesday, January 31, 2017, 9:00 a.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 the intent** of 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.

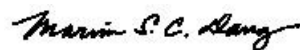
Lenders sometimes secure a loan to a borrower with an assignment of the borrower's rights in leases and rents involving a real property. That assignment would then be recorded in the Bureau of Conveyances and/or in the Office of the Assistant Registrar of the Land Court. When the loan is later paid off, 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



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January 31, 2017

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce, Consumer Protection, and Health
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 396, Relating to Security Interests in Real Property

HEARING: Tuesday, January 31, 2017, at 9:00 a.m.

Aloha Chair Baker, Vice Chair Nishihara, and Members of the Committee.

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,000 members. HAR **supports** S.B. 396, which:

1. 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;
2. 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
3. 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.

HAR believes that title companies currently have authority under Hawaii Revised Statutes Section 506-8 to institute a procedure for recording a release of a satisfied mortgage; however, there is no corresponding mechanism for clearing the public record of unreleased mortgages.

The benefit to the public will be that unenforceable assignments will no longer to exist in public record to ensure clean title to real estate.

Mahalo for the opportunity to testify.



Lorrin Hirano
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Phone: (808) 533-5842

January 27, 2017

The Honorable Senator Rosalyn H. Baker, Chair
The Honorable Senator Clarence K. Nishihara, Vice Chair
Members of the Senate Committee On Commerce, Consumer Protection, and Health
Conference Room 229, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Hearing Date: Tuesday, January 31, 2017 at 9:00 a.m.
Testimony IN SUPPORT of Senate Bill 396 Relating To
Security Interests In Real Property

Dear Senator Baker, Senator Nishihara, and Members of the Senate Committee On Commerce, Consumer Protection, and Health:

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 my experience, there are many instances where the parties will make sure to record a release of the mortgage when the loan is paid, but sometimes the loan is also secured by a security interest in leases and rents and the parties overlook the need to record a release/reassignment of that security interest. 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.

There is one typographical change that I believe is in order. In Section 3 of the bill, on page 3, line 19, the inserted word "recorded" should be "record". This will make the wording consistent with the text of the existing statute (see e.g., page 5, lines 12 and 16).

I respectfully request that the Committee vote in favor of the Bill, and I thank you again very much for your consideration.

Respectfully submitted,



Lorrin Hirano

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 25, 2017 8:26 PM
To: CPH Testimony
Cc: ngatnn88@gmail.com
Subject: Submitted testimony for SB396 on Jan 31, 2017 09:00AM

SB396

Submitted on: 1/25/2017

Testimony for CPH on Jan 31, 2017 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Nga	Individual	Oppose	No

Comments: I do not think this is a good bill as it does not protect innocent victims of real estate fraud. It does not also acknowledge the interests of a current title holder to a property. It should not be assumed that a mortgagor is also a title holder to the property. Thus, this bill should be well thought out and rewritten.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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