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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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SUZANNE D. CASE
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
JUDICIARY AND LABOR

Monday, February 27, 2017
10:00 A.M.

State Capitol, Conference Room 016

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 comment on this measure.

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February 27, 2017

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
and members of the Senate Committee on Judiciary & Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 396 (Security Interests in Real Property)**
Decision Making Date/Time: Monday, February 27, 2017, 10:00 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.

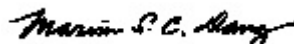
Lenders sometimes secure a loan to a borrower with an assignment of the borrower's rights in leases and rents involving a real property. That assignment would then be recorded in the Bureau of Conveyances and/or in the Office of the Assistant Registrar of the Land Court. When the loan is later paid off,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



Title Guaranty of Hawaii, Inc.

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February 24, 2017

The Honorable Senator Gilbert S. C. Keith-Agaran, Chair
The Honorable Senator Karl Rhoads, Vice Chair
Members of the Senate Committee On Judiciary and Labor
Conference Room 016, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Public Decision Making Date: Monday, February 27, 2017 at 10 a.m.
Testimony IN SUPPORT of Senate Bill 396 Relating To Security Interests In Real
Property

Dear Senator Keith-Agaran, Senator Rhoads, and Members of the Senate Committee
On Judiciary and Labor:

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, 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.

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