

A Bill for an Act Relating to Agreements of Sale.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 501, Hawaii Revised Statutes is amended by adding a section to be appropriately designated and to read as follows:

“§501- Agreements of sale; priority. (a) The rights of a buyer under an agreement of sale which has been duly filed and noted on the certificate of title in accordance with this chapter shall be entitled to priority over the claim of any other person with respect to the real estate covered by the agreement of sale where such claim results:

- (1) From a conveyance made to the claimant by the seller of the real estate covered by the agreement of sale if such conveyance was filed after the filing of the agreement of sale; or
- (2) From a judgment in favor of the claimant against the seller affecting the real estate covered by the agreement of sale if the judgment or a notice of the action out of which the judgment arises was not filed prior to the filing of the agreement of sale.

(b) Upon the buyer’s satisfaction of the agreement of sale, any person who shall have such a claim resulting from such a conveyance or such a judgment, if such claim is subject to prior rights of the buyer as set forth in subsection (a), shall deliver to the holder of the buyer’s interest in the agreement

of sale a release of any interest which the claimant may have in the real estate covered by the agreement of sale.

(c) Notwithstanding subsections (a) and (b), nothing in this section shall impair or waive any valid legal defense of the claimant to such release.

(d) For purposes of this section, the following definitions apply:

“Agreement of sale” means an executory contract for the sale and purchase of real estate which binds one party to sell and the other party to buy real estate which is the subject matter of the transaction, and in which the seller retains legal title to the real estate. As used in this section, an agreement of sale includes a subagreement of sale or subsequent subagreement of sale.

“Buyer” means the party who has agreed to purchase, and “seller” means the party who has agreed to sell the real estate pursuant to an agreement of sale, and includes each of their respective assignees and successors in interest in the agreement of sale.

“Conveyance” means every written instrument by which any estate or interest in real estate is voluntarily created, alienated, mortgaged, or encumbered, or by which title to any real estate may be voluntarily affected, other than wills.

“Filed” or “filing” means filed in accordance with this chapter.

“Real estate covered by the agreement of sale” means the real estate which the seller has agreed to sell and the buyer has agreed to buy pursuant to the agreement of sale, including any portion of or any interest in such real estate.

“Release” includes a transfer of title to the real estate where the claimant has succeeded to the seller’s title and to the seller’s obligation to transfer title to the buyer upon satisfaction of the agreement of sale.

“Satisfaction of agreement of sale” means the full performance of the buyer’s obligations under the agreement of sale, and:

- (1) The buyer’s compliance or tender of compliance with all of the buyer’s written agreements and written consents with claimants whose claims are superior or subject to the rights of the buyer, and with all written directions of the seller to the buyer to make payments under the agreement of sale to a claimant or claimants;
- (2) The buyer’s compliance or tender of compliance with all orders of any court of competent jurisdiction relating to the agreement of sale or to payments under or proceeds of the agreement of sale; and
- (3) The buyer’s payment of all periodic, interim, prepaid, and final payments under the agreement of sale, either:
 - (A) Directly to the claimants who notify the buyer of their claimed right to such payments, according to the priority of the claims to the seller’s interest in the real estate, to the extent of such payments or such claims, whichever is less; or

- (B) Into an escrow account with a licensed escrow company together with the buyer's irrevocable written instructions to hold such payments and disburse them to claimants according to such priority as the claimants agree to or establish among themselves, to the extent of such payments or such claims, whichever is less.

If a claimant delivers a release as required by subsection (b) pursuant to payment into such escrow by the buyer, before the claimant actually receives satisfaction of the claim, the claim shall be automatically transferred to the payments so held in escrow in the same priority as to other claimants as existed before the release.”

SECTION 2. Chapter 502, Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

“§502- Agreements of sale; priority. (a) The rights of a buyer under an agreement of sale which has been duly recorded in accordance with this chapter shall be entitled to priority over the claim of any other person with respect to the real estate covered by the agreement of sale where such claim results:

- (1) From a conveyance made to the claimant by the seller of the real estate covered by the agreement of sale if such conveyance was recorded after the recordation of the agreement of sale; or
- (2) From a judgment in favor of the claimant against the seller affecting the real estate covered by the agreement of sale if the judgment or a notice of the action out of which the judgment arises was not recorded prior to recordation of the agreement of sale.

(b) Upon the buyer's satisfaction of the agreement of sale, any person who shall have such a claim resulting from such a conveyance or such a judgment, if such claim is subject to prior rights of the buyer as set forth in subsection (a), shall deliver to the holder of the buyer's interest in the agreement of sale a release of any interest which the claimant may have in the real estate covered by the agreement of sale.

(c) Notwithstanding subsections (a) and (b), nothing in this section shall impair or waive any valid legal defense of the claimant to such release.

(d) For purposes of this section, the following definitions apply:

“Agreement of sale” means an executory contract for the sale and purchase of real estate which binds one party to sell and the other party to buy real estate which is the subject matter of the transaction, and in which the seller retains legal title to the real estate. As used in this section, an agreement of sale includes a subagreement of sale or other subsequent subagreement of sale.

“Buyer” means the party who has agreed to purchase, and ‘seller” means the party who has agreed to sell the real estate pursuant to an agreement of sale,

and includes each of their respective assignees and successors in interest in the agreement of sale.

“Conveyance” means every written instrument by which any estate or interest in real estate is voluntarily created, alienated, mortgaged, or encumbered, or by which title to any real estate may be voluntarily affected, other than wills.

“Real estate covered by the agreement of sale” means the real estate which the seller has agreed to sell and the buyer has agreed to buy pursuant to the agreement of sale, including any portion of or any interest in such real estate.

“Recorded” or “recording” means recorded in accordance with this chapter.

“Release” includes a transfer of title to the real estate where the claimant has succeeded to the seller’s title and to the seller’s obligation to transfer title to the buyer upon satisfaction of the agreement of sale.

“Satisfaction of agreement of sale” means the full performance of the buyer’s obligations under the agreement of sale, and:

- (1) The buyer’s compliance or tender of compliance with all of the buyer’s written agreements and written consents with claimants whose claims are superior or subject to the rights of the buyer, and with all written directions of the seller to the buyer to make payments under the agreement of sale to a claimant or claimants;
- (2) The buyer’s compliance or tender of compliance with all orders of any court of competent jurisdiction relating to the agreement of sale or to payments under or proceeds of the agreement of sale; and
- (3) The buyer’s payment of all periodic, interim, prepaid, and final payments under the agreement of sale, either:
 - (A) Directly to the claimants who notify the buyer of their claimed right to such payments, according to the priority of the claims to the seller’s interest in the real estate, to the extent of such payments or such claims, whichever is less; or
 - (B) Into an escrow account with a licensed escrow company together with the buyer’s irrevocable written instructions to hold such payments and disburse them to claimants according to such priority as the claimants agree to or establish among themselves, to the extent of such payments or such claims, whichever is less.

If a claimant delivers a release as required by subsection (b) pursuant to payment into such escrow by the buyer, before the claimant actually receives satisfaction of the claim, the claim shall be automatically transferred to the payments so held in escrow in the same priority as to other claimants as existed before the release.”

ACT 205

SECTION 3. This Act shall not affect any rights or duties that have matured, penalties that were incurred, or proceedings that were begun prior to the effective date of this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 30, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.