

ACT 28

H.B. NO. 2516-86

A Bill for an Act Relating to Mortgages.

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

SECTION 1. Section 506-1, Hawaii Revised Statutes, is amended to read as follows:

“§506-1 Lien of mortgages of real property or fixtures; debts secured; priority. (a) Every transfer of an interest in real property or fixtures made as security for the performance of another act or subject to defeasance upon the payment of an obligation, whether the transfer is made in trust or otherwise, is to be deemed a mortgage and shall create a lien only as security for the obligation and shall not be deemed to pass title.

(b) A mortgage may secure the repayment of past debt, a debt incurred at the time the mortgage is executed, or a debt incurred for advances which may be made by the mortgagee subsequent to the execution of the mortgage even though the mortgagee is under no contractual duty to make such advances.

Except as otherwise provided in section 490:9-313 of the Uniform Commercial Code with respect to security interests in fixtures, [in any case where the mortgagee is under no such contractual duty, the mortgage lien, to the extent that it] a mortgage which secures future advances[,] shall, up to but not exceeding the maximum amount of future advances stated in the mortgage, be superior to any subsequently recorded mortgage, [or any other] lien[,] or other encumbrances or conveyance, other than liens for taxes and for public improvements, [duly recorded subsequent to the time at which the advance has been made, but in the event the mortgagee is under a contractual duty to make future advances and the maximum amount of the future advances is stated in the mortgage, the lien therefor shall be superior to that of any subsequently recorded mortgage or other lien, except liens for taxes and for public improvements,] even though [the] such subsequently recorded mortgage, [or other] lien[, except liens for taxes and for public improvements,] or other encumbrance or conveyance is recorded prior to the date upon which any advance or advances have been made.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 14, 1986.)