

ACT 275

H.B. NO. 1530

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] these advances. Except as otherwise provided in section 490:9-313 of the Uniform Commercial Code with respect to security interests in fixtures, a mortgage which secures future advances [shall], up to but not exceeding the maximum amount of future advances stated in the mortgage, shall be superior to any subsequently recorded mortgage, lien or other encumbrances or conveyance, other than liens for real property taxes and assessments for public improvements, even though [such] the subsequently recorded mortgage, lien or other encumbrance or conveyance is recorded prior to the date upon which any advance or advances have been made.”

SECTION 2. Chapter 403, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§403- Mortgage insurance; opportunity to accept or decline. (a) A financial institution that provides a mortgagor with mortgage life insurance which is not a condition of obtaining the mortgage, without charge and for a period that is equal to or less than the term of the mortgage, shall send each insured mortgagor, no later than four weeks prior to the expiration of the period during which the insurance is provided without charge (the “free-period”), a form with a designated “yes” or “no” space in which the insured mortgagor may indicate a desire to continue or discontinue the mortgage life insurance after the free-period has ended. The form shall clearly indicate the amount of the premium to be charged to continue the mortgage life insurance and shall also provide a space for the mortgagor’s signature and the date of signing.

(b) Failure to provide the form as specified under this section shall result in the automatic termination of the mortgage life insurance policy upon the expiration of the free-period, unless the mortgagor indicates otherwise in writing to the financial institution.

(c) For the purposes of this section, “mortgage life insurance” means an insurance plan which will pay off the mortgage balance in the event of the death or, as the case may be, disability of the insured mortgagor.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 24, 1987.)

Note

1. Edited pursuant to HRS §23G-16.5.