

A Bill for an Act Relating to the Bureau of Conveyances.

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

SECTION 1. Chapter 502, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§502- Reference in other sections. Any reference throughout the Hawaii Revised Statutes to book and page after December 31, 1989, shall also refer to book and page or document number.”

SECTION 2. Section 246-55, Hawaii Revised Statutes, is amended to read as follows:

“§246-55 Tax liens; co-owners’ rights; foreclosure; limitation. (a) Every tax due upon real property, as defined by section 246-1, shall be a paramount lien upon the property assessed, which lien shall attach as of July 1 in each tax year and shall continue for six years. If proceedings for the enforcement or foreclosure of the lien are brought within the applicable period hereinabove designated, the lien shall continue until the termination of the proceedings or the completion of the foreclosure sale.

(b) In case of cotenancy, if one cotenant pays, within the period of the aforesaid government lien, all of the real property taxes, interest, penalties, and other additions to the tax, due and delinquent at the time of payment, the cotenant shall have, pro tanto, a lien on the interest of any noncontributing cotenant upon recording in the bureau of conveyances, within ninety days after the payment so made by the cotenant, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify it, the tax year or years, and the name of the cotenant upon whose interest such lien is asserted. When a notice of such tax lien is recorded by a cotenant, the registrar shall forthwith cause the same to be indexed in the general indexes of the bureau of conveyances. In case the land affected is registered in the land court the notice shall also contain a reference to the number of the certificate of title of such land and shall be filed and registered in the office of the assistant registrar of the land court, and the registrar, in the registrar’s capacity as assistant registrar of the land court, shall make a notation of the filing thereof on each land court certificate of title so specified.

The cotenant’s lien shall have the same priority as the lien or liens of the government for the taxes paid by the cotenant, and may be enforced by an action in the nature of a suit in equity. The lien shall continue for three years after recording or registering, or until termination of the proceedings for enforcement thereof if such proceedings are begun and notice of the pendency thereof is recorded or filed and registered as provided by law, within the period.

(c) The director or the director’s subordinate, in case of a government lien, and the creditor cotenant, in case of a cotenant’s lien, at the expense of the debtor, upon payment of the amount of the lien, shall execute and deliver to the debtor a sworn satisfaction thereof, including a reference to the name of the person assessed or cotenant affected as shown in the original notice, the date of filing of the original notice, a description of the land involved, and the number of the certificate of title

of such land if registered in the land court, which, when recorded in the bureau of conveyances or filed and registered in the office of the assistant registrar of the land court, in the case of a cotenant's lien, which contains the reference to the book and page or document number of the original lien, shall be entered in the general indexes of the bureau of conveyances, and if a notation of the original notice was made on any land court certificate of title the filing of such satisfaction shall also be noted on the certificate.

This section as to cotenancy shall apply, as well, in any case of ownership by more than one assessable person.

(d) Upon enforcement or foreclosure by the government, in any manner whatsoever, of any such real property tax lien, all taxes of whatsoever nature and whatsoever accruing due at the time of the foreclosure sale from the taxpayer against whose property such tax lien is so enforced or foreclosed shall be satisfied as far as possible out of the proceeds of the sale remaining after payment of (1) the costs and expenses of the enforcement and foreclosure including a title search, if any, (2) the amount of subsisting real property tax liens, and (3) the amount of any recorded liens against the property, in the order of their priority.

The liens may be enforced by action of the tax collector in the circuit court of the judicial circuit in which the property is situate, and jurisdiction is conferred upon the circuit courts to hear and determine all proceedings brought or instituted to enforce and foreclose such tax liens, and the proceedings had before the circuit courts shall be conducted in the same manner and form as ordinary foreclosure proceedings. If the owners or claimants of the property against which a lien is sought to be foreclosed are at the time without the State or cannot be served within the State, or if the owners are unknown, and the fact shall be made to appear by affidavit to the satisfaction of the court, and it shall in like manner appear prima facie that a cause of action exists against such owners or claimants or against the property described in the complaint or that such owners or claimants are necessary or proper parties to the action, the court may grant an order that the service may be made in the manner provided by sections 634-23 to 634-27.

In any such case it shall not be necessary to obtain judgment and have execution issued and returned unsatisfied, before proceeding to foreclose the lien for taxes in the manner herein provided."

SECTION 3. Section 490:9-403, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (3) to read:

"(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by book and page or document number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2), of section 490:9-405, including payment of the required fee. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if [he] the filing officer has retained a microfilm or other photographic record, or in

ACT 47

other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if [he] the filing officer physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.”

2. By amending subsection (5) to read as follows:

“(5) [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be [\$2 per page.] \$10.”

SECTION 4. Section 490:9-404, Hawaii Revised Statutes, is amended to read as follows:

“**§490:9-404 Termination statement.** (1) If a financing statement covering consumer goods is filed on or after July 1, 1978, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that [he] the secured party no longer claims a security interest under the financing statement, which shall be identified by book and page or document number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that [he] the secured party no longer claims a security interest under the financing statement, which shall be identified by book and page or document number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with [subsection (2) of] section [490:9-405,] 490:9-405(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor [he] the affected secured party shall be liable to the debtor for [one hundred dollars,] \$100, and in addition for any loss caused to the debtor by such failure.

(2) The filing officer, on presentation of such a termination statement, must record and index it in the manner provided in chapter 502.

(3) [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing and indexing a termination statement shall be [\$2 per page.] \$10.”

SECTION 5. Section 490:9-405, Hawaii Revised Statutes, is amended to read as follows:

“**§490:9-405 Assignment of security interest; duties of filing officer; fees.**

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such financing statement the filing officer shall process the same as provided in section 490:9-403(4). [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing,

indexing and furnishing filing data for a financing statement so indicating an assignment shall be [\$2 per page.] \$10.

(2) A secured party may assign of record all or a part of [his] the secured party's rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record. Such statement shall set forth the name of the secured party of record and the debtor, the name and address of the assignee, the date of filing of the financing statement and the book and page or document number and shall contain a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. The filing officer, upon presentation of such a separate statement, shall record and index such separate statement in the manner provided in chapter 502. [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be [\$2 per page.] \$10.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

SECTION 6. Section 490:9-406, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-406 Release of collateral; duties of filing officer; fees. A secured party of record may by [his] the secured party's signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the book and page or document number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 490:9-405, including payment of the required fee. The filing officer, upon representation of such statement of release shall record and index such statement in the manner provided in chapter 502. [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing and noting such a statement of release shall be [\$2 per page.] \$10."

SECTION 7. Section 490:9-407, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) If the person filing any financing statement, termination statement, statement of assignments, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the book and page or document number and date and hour of the filing of the original and deliver or send the copy to such person."

SECTION 8. Section 502-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the registrar is entitled to demand and receive the following fees:

- (1) For the registry of any instrument required by law to be recorded, or presented for record, except that no fee shall be required of any county presenting a document for record, wherein the county is the grantee,

- [\\$2 for the first page or portion thereof plus \\$1 for each additional page or portion thereof;] \\$10;
- (2) For taking any [acknowledgement] acknowledgment preparatory to registry, \\$1 for each party signing;
 - (3) For every copy of any instrument recorded in the registrar's office, authenticated by the registrar's seal of office, or for a copy of any instrument or portion thereof not authenticated by the registrar's seal of office, \\$1 per page;
 - (4) For searching the records, and giving the certificate required by law, \\$10 for each year searched and also \\$1 for each page in the certificate;
 - (5) For copy of plan of land, authenticated by the registrar's seal of office, \\$1 for the first square foot and additional 10 cents for each additional square foot or fraction thereof in the size of the plan;
 - (6) For photographing instruments, etc., for any federal, state, or county agency, the cost of the materials used therein, such fees to be used by the registrar for the purchase of necessary materials used in such photographing process[.];
 - (7) For a daily copy of the magnetic tapes containing the computerized daily entry record, \\$100 per month."

SECTION 9. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

"§502-31 Recording, method. The registrar shall make or cause to be made an entire literal copy of all instruments required to be recorded in the registrar's office, and the registrar, the registrar's deputy, or clerk shall certify its correspondence with the original, after which the registrar, the registrar's deputy, or clerk shall certify upon the exterior, or indorse upon the recorded instrument, the date of its registry[, the book in the registrar's office in which, and the page of the book at which it was recorded.] and the document number.

The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as they first appear in the recorded instrument. All names of individual signatories shall be typewritten, stamped or printed beneath all signatures.

The registrar or the registrar's deputy may refuse to accept for record any document of a size larger than eight and one-half inches by [thirteen] fourteen inches, or which contains a schedule or inventory sheet in excess of such size.

This paragraph shall apply to all instruments presented for recording in the bureau of conveyances, unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91.

On all [documents] instruments to be recorded the top [two] three and one-half inches of space of the first page shall be reserved for recording information[.] for the assistant registrar on the left half of such space, and for the registrar of conveyances on the right half of such space. The [left-hand three and one-half inches] following one inch of [such] space shall be reserved for information [to the public to show the person requesting recordation and] showing to whom the document should be returned. If an instrument consists of more than one page, it shall be stapled once in the upper left corner. The registrar may refuse to accept all instruments, papers, or notices presented for recordation that will not reproduce legibly under photographic or electrostatic methods."

SECTION 10. Section 502-32, Hawaii Revised Statutes, is amended to read as follows:

"§502-32 Instrument recorded as of time of delivery; office hours. Every instrument entitled by law to be recorded, shall be recorded in the order and as of

the time when the same is delivered to the registrar for that purpose, and shall be considered as recorded from the time of such delivery; provided that it shall not be lawful for the registrar to accept or enter for record and record any instrument or other paper on any Sunday or legal holiday, or on any Saturday that the registrar's office remains closed pursuant to law, or on any other day except between the hours of 8:00 a.m. and 3:30 p.m. It is further provided that it shall be lawful for the registrar to enter into a written agreement with any person or association, which agreement authorizes an instrument to be recorded at 8:01 a.m. on a day subsequent to its delivery to the registrar."

SECTION 11. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

"§502-33 Identification of assignments, etc., of mortgages and leases by reference to registration of original. The registrar shall not record any assignment, extension, or release of mortgage of real property, or an affidavit of foreclosure under a power contained in a mortgage, or a writ, order, or judgment, for possession of the premises covered by any mortgage, or an assignment, extension, or cancellation of lease, unless the same contains a reference to the book and page or document number of the registration of the original mortgage or lease, as the case may be. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are or are to become fixtures shall be filed unless it complies with the requirements of the Uniform Commercial Code, section 490:9-408. This section does not apply to any document mentioned herein executed prior to April 13, 1915; and this section does not apply to any document mentioned herein which refers to an unrecorded mortgage or lease, if such fact be recited therein."

SECTION 12. Section 502-34, Hawaii Revised Statutes, is amended to read as follows:

"§502-34 Grantee's address in deed. The registrar shall not record any deed unless it contains or has endorsed upon it the [place of residence and post office] address of the grantee. This section does not apply to any deed executed prior to July 1, 1951."

SECTION 13. Section 505-3, Hawaii Revised Statutes, is amended to read as follows:

"§505-3 Certificates of release. Certificates of release or of partial discharges of any tax lien containing a reference to the book and page or document number of the registration of the original tax lien issued by the collector of internal revenue or other proper officer are entitled to be recorded in the bureau of conveyances. The registrar shall forthwith cause the same to be indexed in the general indexes in like manner as the original lien."

SECTION 14. Section 505-4, Hawaii Revised Statutes, is amended to read as follows:

"§505-4 Fees. [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fees payable under this chapter are as follows:

For each notice of federal tax lien in the bureau of conveyances, [\$1.50;]
\$10;

ACT 47

For each certificate of release, partial release, or discharge of a federal tax lien in the bureau of conveyances, [25 cents.] \$10.

[The foregoing fees apply when the notice of federal tax lien, or the certificate of release, partial release, or discharge names but a single taxpayer. If the notice or certificate names more than one taxpayer, the fee shall be multiplied by the number of taxpayers named.]”

SECTION 15. Section 506-3, Hawaii Revised Statutes, is amended to read as follows:

“§506-3 After-acquired real property and fixtures. The mortgage shall operate only as a contract between the parties with respect to, and shall not create a lien upon real property or fixtures acquired in any manner by the mortgagor subsequent to the execution of the mortgage, if there are not described therein such real property, such fixtures and the real property to which such fixtures are or will be affixed, unless and until the mortgagor or the mortgagee, at the time of or subsequent to the acquisition, executes and duly records in the bureau of conveyances an instrument or affidavit containing a reference to the book and page or document number where the mortgage is recorded and also a description of such real property, such fixtures and the real property to which such fixtures are or will be affixed sufficient to identify and locate the same, which description of real property may be made by describing the deed or other instrument of conveyance by which the real property was acquired or by describing the land by metes and bounds.”

SECTION 16. Section 636-3, Hawaii Revised Statutes, is amended to read as follows:

“§636-3 Judgment, lien when. Any money judgment or decree of a state court or the United States District Court for the District of Hawaii shall be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances. No such lien shall continue beyond ten years after the date of the judgment. When any such judgment is fully paid, the creditor or the creditor’s attorney of record in the action shall, at the expense of the debtor, execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment shall contain a reference to the book and page or document number of the registration of the original judgment. The recording fees for a judgment and for each assignment or satisfaction of judgment shall be as provided by section 502-25.

In the case of registered land, section 501-102 shall govern.”

SECTION 17. This Act shall not affect the recording of any instrument executed prior to January 1, 1990 which would be recordable but for the provisions of this Act.

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 19. This Act shall take effect January 1, 1990.

(Approved April 24, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.