

**ACT 78**

**ACT 78**

H.B. NO. 2461

A Bill for an Act Relating to Mortgages of Real Property or Fixtures.

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

SECTION 1. Chapter<sup>1</sup> 506-8, Hawaii Revised Statutes, is amended to read as follows:

**“[[§506-8]] Release of mortgages of real property or fixtures.** The mortgagee of real property or the record assignee of a mortgage interest shall provide to the mortgagor a release of mortgage upon full satisfaction of the mortgage and discharge of any secured debt [secured thereby]. The instrument shall be duly acknowledged, shall sufficiently describe the mortgage [which] that has been satisfied, and be recordable in the bureau of conveyances or office of the assistant registrar of the land court, or both, as appropriate. If the mortgagee or record assignee fails to provide a release of the mortgage as required by this section within sixty days from the date of a request made in writing by any party in interest, and sent by certified or registered mail to the mortgagee or record assignee at its last known address, [the] then:

- (1) Any title insurer or underwritten title company as defined in section 431:20-102 may execute the release of mortgage on behalf of the mortgagee or record assignee; provided that:

- (A) The release shall have attached to it an affidavit setting forth proof, such as a cancelled check or written confirmation from the mortgagee, that reasonably establishes that the mortgage debt has been discharged and the mortgage has been fully satisfied; and

- (B) The release shall be executed by an officer of the title insurer or underwritten title company.

In the event that a mortgage is released by a title insurer or underwritten title company under the provisions of this section but the mortgage debt has not been discharged, the mortgage has not been fully satisfied, and the title insurer or underwritten title company acted with gross negligence or in bad faith in releasing the mortgage, the title insurer or underwritten title company releasing the mortgage shall be liable to the mortgagee for treble damages and reasonable attorneys' fees and costs; or

- (2) The mortgagor or a company issuing title insurance to a new owner of the mortgaged subject real property or to another mortgagee of the subject real property, or the escrow company charged by the mortgagor with obtaining [such] the release of mortgage, or any other interested party [in interest], as plaintiff, may institute an action in any circuit court to obtain the release of mortgage[.]; provided that:

- (A) The plaintiff in [such] the action shall mail a copy of the complaint to the mortgagee or record assignee by certified or registered mail addressed to the mortgagee or record assignee at its last known address[.];

- (B) If the mortgagee or record assignee does not file an answer to the complaint within forty-five days after [such] the mailing, the court, upon receipt of an affidavit of mailing required by this section and upon satisfactory proof that the mortgage debt has been discharged and the mortgage has been fully satisfied, shall issue an order releasing the mortgage[, and this];

- (C) This order shall be recorded in the bureau of conveyances or office of the assistant registrar of the land court, or both, as appropriate[.]; and

## ACT 78

- (D) Upon a finding of good cause by the court, the plaintiff shall be entitled to treble damages and reasonable attorneys' fees and costs incurred in [any such] the action unless the court finds that the mortgagee had a reasonable basis for believing that a dispute existed regarding whether the mortgage should have been released."

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 June 7, 1994.)

### Note

1. So in original.