

ACT 247

S.B. NO. 932

A Bill for an Act Relating to Agreements of Sale.

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

SECTION 1. Section 501-101.5, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§501-101.5[ ] ] 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, the claim or lien upon the real estate covered by the agreement of sale of any person who shall have such a claim resulting from [such] a conveyance or [such] a judgment[,] referred to in subsection (a), [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.] be extinguished as to such real estate upon the filing of a transfer of title to such real estate from the seller to the buyer.

[(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) [(c)] For the 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 filed written agreements and filed written consents, if any, with claimants whose claims are superior or subject to the rights of the buyer, and with all filed written directions, if any, 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, which have been filed, 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].

If a claimant's claim or lien upon the real estate covered by the agreement of sale is extinguished according to this section before the claimant actually receives satisfaction of the claim or lien, the claim or lien shall be automatically transferred to the proceeds from satisfaction of the agreement of sale, in the same priority with respect to other transferred claims or liens on such real estate and with respect to other claims or liens on such proceeds, as the transferred claim or lien had immediately before such extinguishment."

SECTION 2. Section 502-85, Hawaii Revised Statutes, is amended to read as follows:

"[ [ §502-85[ ] ] 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 [this] 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 the recordation of the agreement of sale.

(b) Upon the buyer's satisfaction of the agreement of sale, the claim or lien upon the real estate covered by the agreement of sale of any person who shall have such a claim resulting from [such] a conveyance or [such] a judgment[,] referred to in subsection (a), [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.] be extinguished as to such real estate upon the recording of a transfer of title to such real estate from the seller to the buyer.

[(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) (c) For the 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 encum-

bered, 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 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 recorded written agreements and recorded written consents, if any, with claimants whose claims are superior or subject to the rights of the buyer, and with all recorded written directions, if any, 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, which have been recorded, 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].

If a claimant’s claim or lien upon the real estate covered by the agreement of sale is extinguished according to this section before the claimant actually receives satisfaction of the claim or lien, the claim or lien shall be automatically transferred to the proceeds from satisfaction of the agreement of sale, in the same priority with respect to other transferred claims or liens on such real estate and with respect to other claims or liens on such proceeds, as the transferred claim or lien had immediately before such extinguishment.”

SECTION 3. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The provisions of this chapter expressly limiting the rate or amount of interest, discount, charges, or other consideration which may be directly or indirectly taken, received, or reserved shall not apply to any:

- (1) Indebtedness which is secured by a first mortgage lien on real property, or by a first lien on stock in a residential cooperative housing corporation, and is agreed to or incurred after May 30, 1980; provided that for the purposes of this section a wraparound lien wherein the wraparound lender has committed to loan sufficient funds to pay off the principal amount of all prior liens shall be considered a first lien; or
- (2) Agreement of sale made after May 30, 1980 under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest is clearly stated. As used in this paragraph, agreement of sale includes subagreement of sale or other subsequent subagreement of sale made [during the period from [June 18, 1982] to midnight on June 30, 1985.] on or after June 18, 1982; or
- (3) Indebtedness which is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after [ [ ]June 18, 1982[ ] ]; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property which is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction [made during the period from [June 18, 1982] to midnight on June 30, 1985]."

SECTION 4. This Act shall not affect any rights or duties that have matured, obligations that were owed, penalties that were incurred, or proceedings that were begun prior to the effective date of this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 5, 1985.)