

ACT 20

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H.B. NO. 418

A Bill for an Act Relating to Tax Administration.

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

SECTION 1. Section 231-33, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The department may record in the bureau of conveyances at Honolulu, or in respect of a lien on a motor vehicle, file with the county director of finance, a certificate setting forth the amount of taxes due and unpaid, which have been returned, assessed, or as to which a notice of proposed assessment has issued. The certificate shall identify the taxpayer, the taxpayer’s last known address, and the tax or taxes involved. [The certificate shall include such further information, if any, as may be required by chapter 501 to procure a lien on registered land.] The recording or filing of the certificate has the effect set forth in this section, but nothing in this section shall be deemed to require that a certificate recorded or filed by the department must include the amount of any penalty or interest, in order to protect the lien therefor. The certificate, if recorded or filed with the county director of finance, shall be entered of record as provided by law[, and if recorded or filed in the bureau of conveyances at Honolulu shall be recorded in the office of the registrar of conveyances]. Recordation of the certificate in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. Any cost incurred in the filing of the certificate shall be a part of the lien for the tax therein set forth.”

SECTION 2. Section 501-82, Hawaii Revised Statutes, is amended to read as follows:

“**§501-82 Tenure of holder of certificate of title.** Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, hold the same free from all encumbrances except those noted on a¹ certificate in the order of priority of recordation, and any of the following encumbrances which may be subsisting, namely:

- (1) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting such liens, shall be deemed to fall within this [subsection] paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505.
- (2) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by section 246-55, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale.
- (3) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33.
- [(3)] (4) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of such way has been determined.
- [(4)] (5) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed.

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- [(5)] (6) Any liability to assessments for betterments, or statutory liability which may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any such liability and the lien therefor (other than for labor and material furnished in the improvement of the land which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of such assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is registered and noted on the certificate of title within such three year period; provided further that if there are easements or other rights, appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.
- [(6)] (7) The possibility of reversal or vacation of the decree of registration upon appeal.”

SECTION 3. Section 501-102, Hawaii Revised Statutes, is amended to read as follows:

“§501-102 Filing liens, etc., notice. Every conveyance, lien, attachment, order, decree, instrument, or entry affecting registered land, which would under existing laws, if recorded, filed, or entered in the bureau of conveyances, affect the real estate to which it relates, shall, if registered, filed or recorded, or entered in the office of the assistant registrar in the bureau of conveyances, be notice to all persons from the time of such registering, filing, recording, or entering. This section shall not be construed to relate to state or federal tax liens, [and] the recording of which shall be as provided by [chapter] chapters 231 and 505[., respectively.”

SECTION 4. Section 501-136, Hawaii Revised Statutes, is amended to read as follows:

“§501-136 Attachment and other liens; filing or recording of. In every case where a writing of any description or a copy of any writ is required by law to be filed or recorded in the bureau of conveyances in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land shall be filed or recorded and registered with the assistant registrar[.] of the land court. In addition to any particulars required in such papers for recording with records of deeds, it shall also contain a reference to the number of the certificate of title of the land to be affected and also, if the attachment, right, or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for identification of the land intended to be affected. This section and section 501-138 do not apply to liens for internal revenue taxes payable to the United States[.] or to liens for state taxes payable to the state department of taxation.”

SECTION 5. Section 667-5, Hawaii Revised Statutes, is amended to read as follows:

“§667-5 Foreclosure under power of sale; notice; affidavit after sale. When a power of sale is contained in a mortgage, the mortgagee, or the mortgagee’s

successor in interest, or any person authorized by the power to act in the premises, may, upon a breach of the condition, give notice of the mortgagee's, successor's, or person's intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice once in each of three successive weeks (three publications), the last publication to be not less than fourteen days before the day of sale, in a newspaper having a general circulation in the county in which the mortgaged property lies; and also give such notices and do all such acts as are authorized or required by the power contained in the mortgage. [A copy] Copies of the notice shall be filed with the state director of taxation and shall be posted on the premises not less than twenty-one days before the day of sale.

Any sale, of which notice has been given as aforesaid, may be postponed from time to time by public announcement made by the mortgagee or by some person acting on the mortgagee's behalf. The mortgagee shall, within thirty days after selling the property in pursuance of the power, file a copy of the notice of sale and the mortgagee's affidavit, setting forth the mortgagee's acts in the premises fully and particularly, in the bureau of conveyances.

The affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.

This section is inapplicable if the mortgagee is foreclosing as to personal property only."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 21, 1989.)

Note

1. So in original.