

A Bill for an Act Relating to Judgment Liens.

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

SECTION 1. Section 636-3, Hawaii Revised Statutes, provides that when a money judgment is rendered by a court, it is considered to be a lien against the real property of the judgment debtor once the judgment is recorded in the bureau of conveyances. Section 636-3, Hawaii Revised Statutes, also provides that, in the case of registered land, recordation must be in compliance with chapter 501, Hawaii Revised Statutes. Section 501-102, Hawaii Revised Statutes, and rule 62(e), Rules of the Land Court, require that all documents, including a monetary judgment other than a judgment providing for child support, presented for recordation in the land court system must contain a reference to a certificate of title number and, if applicable, an indorsement of the current certificate of title number.

The legislature finds that many money judgments do not contain a reference to a certificate of title number because the information is generally not known or researched prior to a judgment being rendered. In addition, a judgment debtor may acquire registered land after the judgment is rendered. Requiring judgments to be amended in order to include references to a certificate of title number is time consuming and places a great burden on creditors' attorneys. Further, amending judgments in order to include certificate of title numbers is particularly difficult for judgments rendered in other jurisdictions.

The legislature also finds that it has become a common practice to use flysheets to identify the certificate of title number of the judgment debtor's registered land and enable judgments to be recorded, even when the document being presented for recordation does not contain any reference to a certificate of title number. It also appears that names of judgment debtors are sometimes clarified or added on a flysheet when a judgment does not contain complete or consistently spelled names. However, the additional information added to the flysheet may or may not be reliable because it is not attested to. It is burdensome for the receiving clerks at the office of the assistant registrar to independently verify or ascertain the information contained on flysheets attached to money judgments presented for recording.

The legislature believes that:

- (1) Money judgments should be considered valid liens as against all real property, including registered property, in which a judgment debtor may have an interest;
- (2) It is impractical to require judgments that are otherwise valid and enforceable to be amended to make reference to certificate of title numbers as required by the current law and court rule; and
- (3) It is in the public interest to preserve the integrity of the land court system by discouraging the current practice of allowing possibly unverified information to be added to flysheets in order to facilitate the recording of monetary judgments.

The purpose of this Act is to clarify that money judgments are considered valid liens against all real property, including registered property, when recorded in the bureau of conveyances.

SECTION 2. Section 501-82, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) 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 the 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 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 county real property tax ordinance, 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;
- (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;
- (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;
- (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;

- (7) The possibility of reversal or vacation of the decree of registration upon appeal; [ø]
- (8) Any encumbrance not herein required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest[-]; or
- (9) Money judgments, orders, or decrees of a Hawaii state court or the United States District Court for the District of Hawaii, if the same are recorded in the bureau of conveyances; provided that only the monetary lien created by the recordation shall affect the land; provided further that no other provision of a judgment, order, or decree shall affect the land unless otherwise registered in compliance with this chapter.”

SECTION 3. Section 501-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This section shall not be construed to relate to state or federal tax liens or child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapters 231, 505, and 576D, respectively[-], or to liens arising from money judgments, orders, or decrees recorded pursuant to section 636-3. The recordation of the child support order or judgment in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to place a lien on land registered in the land court under this chapter.”

SECTION 4. Section 636-3, Hawaii Revised Statutes, is amended to read as follows:

“**§636-3 Judgment, orders, decrees; lien when.** Any money judgment, order, 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 the length of time the underlying judgment, order, or decree is in force. Except as otherwise provided, every judgment shall contain or have endorsed on it the Hawaii tax identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment, order, or decree is rendered. If the debtor has no social security number, Hawaii tax identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, order, or decree, the judgment, order, or decree shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking recordation of the judgment. Failure to disclose or disclosure of an incorrect social security number, Hawaii tax identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recordation of the judgment, order, or decree. When any judgment, order, or decree is fully paid, the creditor or the creditor’s attorney of record in the action, at the expense of the debtor, shall execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment, order, or decree 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, order, or decree and for each assignment or satisfaction of judgment, order, or decree shall be as provided by section 502-25.

In the case of registered land, [~~section 501-102,~~] sections 501-241 to 501-248[;] and part II of chapter 501 shall govern.

The party seeking to record or register a judgment, order, or decree shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment, order, or decree to be recorded or registered.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 7. This Act shall take effect on July 1, 2014.

(Approved April 15, 2014.)