

A Bill for an Act Relating to Security Interests in Real Property.

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

SECTION 1. The legislature finds that the records of the bureau of conveyances reflect numerous instruments evidencing assignments of borrower's interests in leases and rents that were given as security for mortgage loans, and that the records for many of these assignments have not subsequently been re-assigned or released even though the underlying loans have been fully paid or otherwise satisfied. The legislature has recognized that it is in the public's interest to clear the public record of unreleased mortgages and has authorized title insurers or underwritten title companies to make a demand on the mortgagee and, in the absence of compliance, to execute and record a release of a fully satisfied mortgage under certain conditions. However, there is no comparable provision for compelling and accomplishing a release of a recorded assignment of leases or rents, which sometimes accompanies the mortgage as additional security for the loan. Accordingly, many unenforceable assignments continue to exist in the public record and may cloud title to real estate.

The purpose of this Act is to amend the procedure for clearing titles by adding a reference to recorded assignments of leases and rents for which the underlying debt has been fully paid or satisfied, which will help clarify the public record.

SECTION 2. Section 506-8, Hawaii Revised Statutes, is amended to read as follows:

“§506-8 Release of mortgages of real property or fixtures[-] and reassignment of security interests. (a) 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. If the debt secured by the mortgage is also secured by an assignment of the borrower's or mortgagor's interest in leases or rents to the mortgagee, then the mortgagee or record assignee shall also provide to the borrower or mortgagor, as applicable, a reassignment or release of the security interest upon full satisfaction and discharge of the secured debt. The instrument or instruments shall be duly acknowledged, shall sufficiently describe the mortgage or assignment 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.

(b) If the mortgagee or record assignee fails to provide a release of the mortgage and reassignment or release of security interest 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, then:

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

(A) The release or reassignment shall have attached to it an affidavit setting forth proof, such as a canceled check or written confirmation from the mortgagee[-] or record assignee, that reasonably establishes that the [mortgage] debt secured by the mortgage or assignment of leases and rents has been dis-

charged and the mortgage or assignment of leases and rents has been fully satisfied; and

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

In the event that a mortgage is released or the mortgagee's security interest in the leases and rents is reassigned or 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~~[-]~~ or reassigning or releasing the security interest in the leases and rents, the title insurer or underwritten title company releasing the mortgage or reassigning or releasing the security interest in the leases and rents 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 the release of mortgage~~[-]~~ or reassignment or release of the security interest in the leases and rents, or any other interested party, as plaintiff, may institute an action in any circuit court to obtain the appropriate release ~~[of mortgage;]~~ or reassignment instrument; provided that:

- (A) The plaintiff in 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 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~~[-]~~ or reassigning or releasing the security interest in the leases and rents, as applicable;
- (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
- (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 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~~[-]~~ or the security interest in the leases and rents should have been reassigned or released."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2017.

(Approved July 11, 2017.)