

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**



**Before the House Committees on
INTRASTATE COMMERCE
and
CONSUMER PROTECTION & COMMERCE**


**Tuesday, March 21, 2017
2:00 P.M.
State Capitol, Conference Room 329**

**In consideration of
SENATE BILL 396, SENATE DRAFT 1
RELATING TO SECURITY INTERESTS IN REAL PROPERTY**

Senate Bill 396, Senate Draft 1 proposes to authorize title insurers or underwritten title companies to execute the reassignment or release of mortgagee's security interest in leases and rents on behalf of the mortgagee or record assignee, under certain conditions and upon full satisfaction of the mortgage and discharge of the secured debt. **The Department of Land and Natural Resources supports this measure.**



 | 808-733-7060
 | 808-737-4977

 | 1259 A'ala Street, Suite 300
Honolulu, HI 96817

March 21, 2017

The Honorable Takashi Ohno, Chair

House Committee on Intrastate Commerce

The Honorable Roy M. Takumi, Chair

House Committee on Consumer Protection & Commerce

State Capitol, Room 329

Honolulu, Hawaii 96813

RE: S.B. 396, S.D.1, Relating to Security Interests in Real Property

HEARING: Tuesday, March 21, 2017, at 2:00 p.m.

Aloha Chair Ohno, Chair Takumi, and Members of the Committees.

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,200 members. HAR **supports** S.B. 396, S.D.1 which:

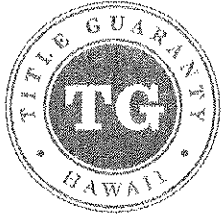
1. Requires a mortgagee or record assignee to provide to a mortgagor or borrower, upon full satisfaction of the mortgage and discharge of the secured debt, a reassignment or release of security interests in leases and rents that served as additional security for the mortgage;
2. Authorizes title insurers or underwritten title companies to make demands on mortgagees and, in the absence of compliance, to reassign or release mortgagees' security interests in leases and rents on behalf of the mortgagee or record assignee, under certain conditions; and
3. Authorizes certain entities to institute an action in any circuit court to obtain the release or reassignment instrument in the absence of compliance of a mortgagee or record assignee.

HAR believes that title companies currently have authority under Hawaii Revised Statutes Section 506-8 to institute a procedure for recording a release of a satisfied mortgage; however, there is no corresponding mechanism for clearing the public record of unreleased mortgages.

The benefit to the public will be that unenforceable assignments will no longer to exist in public record to ensure clean title to real estate.

Mahalo for the opportunity to testify.





Title Guaranty of Hawaii, Inc.

235 QUEEN STREET, HONOLULU, HI 96813 • P.O. Box 3084, HONOLULU, HI 96806
LEGAL DEPARTMENT TEL: (808) 533-5842 • FAX: (808) 521-0287

March 20, 2017

The Honorable Representative Takashi Ohno, Chair
The Honorable Representative Isaac W. Choy, Vice Chair
Members of the House Committee On Intrastate Commerce
Conference Room 329, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

The Honorable Representative Roy M. Takumi, Chair
The Honorable Representative Linda Ichiyama, Vice Chair
Members of the House Committee On Consumer Protection & Commerce
Conference Room 329, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Hearing Date: Tuesday, March 21, 2017 at 2:00 p.m.
Testimony IN SUPPORT of Senate Bill 396 Relating To Security Interests In Real Property

Dear Representatives Ohno, Choy, Takumi and Ichiyama, and Members of the House Committee on Intrastate Commerce and the House Committee On Consumer Protection & Commerce:

Thank you very much for considering this testimony in support of Senate Bill 396. The important public purpose to be addressed by this bill is to clear the public records of assignments of leases and rents to a lender that remain of record after a loan is satisfied and paid.

In our experience, there are many instances where the parties will make sure to record a release of the mortgage when the loan is paid, but sometimes the loan is also secured by a security interest in leases and rents and the parties overlook the need to record a release/reassignment of that security interest. The result is that there are many of these recorded but unenforceable assignments that continue to be found in subsequent title searches involving the property.

Title companies currently have authority under Hawaii Revised Statutes Section 506-8 to institute a procedure for releasing a satisfied mortgage if the lender has failed to do so. However, there is no corresponding mechanism for clearing the public record of the assignments of leases and rents. Senate Bill 396 is designed to allow this.

The benefit to the public will be that title companies will be better able to facilitate clearing extraneous security interests from titles to real property, and will improve the processing of real estate transactions.

Current Senate Draft 1 of the bill includes an effective date of January 7, 2059. We respectfully request that the effective date of the bill if passed be restored to July 1, 2017.

We very much appreciate your consideration of this measure, and respectfully request that your Committee vote in favor of the Bill. Thank you again.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "L. Hirano".

Lorrin Hirano, Sr. Vice President

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

March 21, 2017

Rep. Takashi Ohno, Chair; Rep. Isaac W. Choy, Vice Chair; and members of the
House Committee on Intrastate Commerce
Rep. Roy M. Takumi, Chair; Rep. Linda Ichiyama, Vice Chair; and members of the
House Committee on Consumer Protection & Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 396, S.D. 1 (Security Interests in Real Property)**
Hearing Date/Time: Tuesday, March 21, 2017, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **supports the intent** of this Bill.

This Bill: (a) requires a mortgagee or record assignee to provide to a mortgagor or borrower, upon full satisfaction of the mortgage and discharge of the secured debt, a reassignment or release of security interests in leases and rents that served as additional security for the mortgage; (b) authorizes title insurers or underwritten title companies to make demands on mortgagees and, in the absence of compliance, to reassign or release mortgagees' security interests in leases and rents on behalf of the mortgagee or record assignee, under certain conditions; and (c) authorizes certain entities to institute an action in any circuit court to obtain the release or reassignment instrument in the absence of compliance of a mortgagee or record assignee.

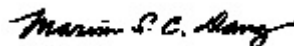
Lenders sometimes secure a loan to a borrower with an assignment of the borrower's rights in leases and rents involving a real property. That assignment would then be recorded in the Bureau of Conveyances and/or in the Office of the Assistant Registrar of the Land Court. When the loan is later paid off, there are instances when a release or a reassignment of the security interest in the leases and rents is not recorded. At that point, even though the assignment is unenforceable when the loan is paid off, the assignment stays on the public record at the Bureau and/or Land Court and affects that real property.

Currently, if a mortgage loan is paid off, but a release of the mortgage isn’t recorded, title insurers and underwritten title companies are authorized under Hawaii Revised Statutes Sec. 506-8 to sign and record a release of the mortgage under certain limited circumstances.

But there is no statutory provision for title insurers and underwritten title companies to sign and record a release or reassignment of the security interest in the leases and rents when the loan is paid off.

This Bill would amend HRS Sec. 506-8 to enable title insurers and underwritten title companies to do that. Unenforceable assignments will then be released from the public record.

We ask that your Committee pass this Bill. Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

March 20, 2017

The Honorable Takashi Ohno, Chair,
The Honorable Isaac W. Choy, Vice Chair, and
Members of the House Committee on Intrastate Commerce

The Honorable Roy M. Takumi, Chair,
The Honorable Linda Ichiyama, Vice Chair, and
Members of the House Committee on Consumer Protection and Commerce

Hawaii State Capitol
Honolulu, Hawaii 96813

Hearing Date/Time: March 21, 2017, 2:00 p.m.
Conference Room: 329

Re: Senate Bill 396, SD1 Relating to Security Interests in Real Property

Chairs Ohno and Takumi, Vice Chairs Choy and Ichiyama, and Members of the Committees:

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service or support the origination and servicing of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending and servicing.

The MBAH supports Senate Bill 396, SD1. The bill requires a lender to provide a release or reassignment of security interests in leases and rents that served as security or additional security on a secured loan. If a lender does not comply, the bill allows the title company to make demands on the lender and subsequently release the security interests under certain conditions. The bill also allows certain entities to take legal action to obtain the release or reassignment due to non-compliance by the lender.

Under Hawaii Revised Statutes (HRS) Section 506-8, a title company may record a release of mortgage under certain circumstances if the lender did not release said

mortgage that was paid in full. However, the statute does not provide any provisions for the release of the security interests in leases and rents.

This bill will ensure that any security interests in leases and rents are released when a secured loan encumbering such leases and rents are paid in full.

Please accept my apologies for the late filing of this written testimony.

LINDA NAKAMURA
Mortgage Bankers Association of Hawaii