

JAN 20 2017

---

---

# A BILL FOR AN ACT

RELATING TO SECURITY INTERESTS IN REAL PROPERTY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the records of the  
2 bureau of conveyances reflect numerous instruments evidencing  
3 assignments of borrower's interests in leases and rents that  
4 were given as security for mortgage loans, and that the records  
5 for many of these assignments have not subsequently been  
6 reassigned or released even though the underlying loans have  
7 been fully paid or otherwise satisfied. The legislature has  
8 recognized that it is in the public's interest to clear the  
9 public record of unreleased mortgages and has authorized title  
10 insurers or underwritten title companies to make a demand on the  
11 mortgagee and, in the absence of compliance, to execute and  
12 record a release of a fully satisfied mortgage under certain  
13 conditions. However, there is no comparable provision for  
14 compelling and accomplishing a release of a recorded assignment  
15 of leases or rents, which sometimes accompanies the mortgage as  
16 additional security for the loan. Accordingly, many



1 unenforceable assignments continue to exist in the public record  
2 and may cloud title to real estate.

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

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

9 **"§506-8 Release of mortgages of real property or**  
10 **fixtures[-] and reassignment of security interests.** (a) The  
11 mortgagee of real property or the record assignee of a mortgage  
12 interest shall provide to the mortgagor a release of mortgage  
13 upon full satisfaction of the mortgage and discharge of any  
14 secured debt. If the debt secured by the mortgage is also  
15 secured by an assignment of the borrower's or mortgagor's  
16 interest in leases or rents to the mortgagee, then the mortgagee  
17 or record assignee shall also provide to the borrower or  
18 mortgagor, as applicable, a reassignment or release of the  
19 security interest upon full satisfaction and discharge of the  
20 secured debt. The instrument or instruments shall be duly  
21 acknowledged, shall sufficiently describe the mortgage or



1 assignment that has been satisfied, and be recordable in the  
2 bureau of conveyances or office of the assistant registrar of  
3 the land court, or both, as appropriate.

4 (b) If the mortgagee or record assignee fails to provide a  
5 release of the mortgage and reassignment or release of security  
6 interest as required by this section within sixty days from the  
7 date of a request made in writing by any party in interest, and  
8 sent by certified or registered mail to the mortgagee or record  
9 assignee at its last known address, then:

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

16 (A) The release or reassignment shall have attached  
17 to it an affidavit setting forth proof, such as a  
18 canceled check or written confirmation from the  
19 mortgagee[7] or recorded assignee, that  
20 reasonably establishes that the [mortgage] debt  
21 secured by the mortgage or assignment of leases



## S.B. NO. 396

1           and rents has been discharged and the mortgage or  
2           assignment of leases and rents has been fully  
3           satisfied; and

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

7           In the event that a mortgage is released or the  
8           mortgagee's security interest in the leases and rents  
9           is reassigned or released by a title insurer or  
10          underwritten title company under [~~the provisions of~~]  
11          this section but the mortgage debt has not been  
12          discharged, the mortgage has not been fully satisfied,  
13          and the title insurer or underwritten title company  
14          acted with gross negligence or in bad faith in  
15          releasing the mortgage[~~7~~] or reassigning or releasing  
16          the security interest in the leases and rents, the  
17          title insurer or underwritten title company releasing  
18          the mortgage or reassigning or releasing the security  
19          interest in the leases and rents shall be liable to  
20          the mortgagee for treble damages and reasonable  
21          attorneys' fees and costs; or



1           (2) The mortgagor or a company issuing title insurance to  
2           a new owner of the mortgaged subject real property or  
3           to another mortgagee of the subject real property, or  
4           the escrow company charged by the mortgagor with  
5           obtaining the release of mortgage~~[7]~~ or reassignment  
6           or release of the security interest in the leases and  
7           rents, or any other interested party, as plaintiff,  
8           may institute an action in any circuit court to obtain  
9           the appropriate release [~~of mortgage7~~] or reassignment  
10          instrument; provided that:

11           (A) The plaintiff in the action shall mail a copy of  
12           the complaint to the mortgagee or record assignee  
13           by certified or registered mail addressed to the  
14           mortgagee or record assignee at its last known  
15           address;

16           (B) If the mortgagee or record assignee does not file  
17           an answer to the complaint within forty-five days  
18           after the mailing, the court, upon receipt of an  
19           affidavit of mailing required by this section and  
20           upon satisfactory proof that the mortgage debt  
21           has been discharged and the mortgage has been



1 fully satisfied, shall issue an order releasing  
 2 the mortgage[+] or reassigning or releasing the  
 3 security interest in the leases and rents, as  
 4 applicable;

5 (C) This order shall be recorded in the bureau of  
 6 conveyances or office of the assistant registrar  
 7 of the land court, or both, as appropriate; and

8 (D) Upon a finding of good cause by the court, the  
 9 plaintiff shall be entitled to treble damages and  
 10 reasonable attorneys' fees and costs incurred in  
 11 the action unless the court finds that the  
 12 mortgagee had a reasonable basis for believing  
 13 that a dispute existed regarding whether the  
 14 mortgage should have been released[-] or the  
 15 security interest in the leases and rents should  
 16 have been reassigned or released."

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

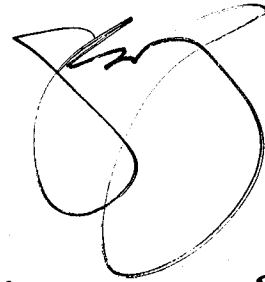
19 SECTION 4. This Act shall take effect upon its approval.

20  
*[Handwritten signature]*

INTRODUCED BY: *Rosalyn H Baker*  
*[Handwritten signature]*



# S.B. NO. 396



Clarence D. Fisher  
Will you



# S.B. NO. 396

**Report Title:**

Security Interests; Reassignment or Release of Security Interests; Leases and Rents

**Description:**

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. 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. 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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

