



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Commerce & Consumer Protection

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, February 11, 2014, 9:30 a.m.
State Capitol, Conference Room 229

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WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2149, Relating to Fraudulent Records

Purpose: Adds a new section to the Commercial Code and provides for civil actions and administrative procedures to clear a title of a fraudulent lien or reinstate a valid lien on title. Complements the Penal Code provisions for fraudulent filings.

Judiciary's Position:

The Judiciary provides the following comments on this measure.

Judges and court-appointed commissioners have learned that disgruntled foreclosure litigants sometimes place liens upon their property as a consequence for their involvement in foreclosure actions. Frequently, the liens are not discovered until the parties in interest are in the process of selling or refinancing their homes. In one situation, a purchasing opportunity was almost lost because a judge who presided over a foreclosure proceeding was unaware that the litigant had placed a lien upon his home until it was revealed through a routine title insurance search during a sales transaction. In another case, significant delays arose in expunging a lien on



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a judge and a court appointed commissioner's respective properties because proper notice upon the lien claimant was hindered by the lien claimant's failure to provide his street address on the lien claim.

The Legislature enacted HRS chapter 507D to respond to the growing number of frivolous liens placed upon government employees' personal real property. HRS Chapter 507D limits the circumstances under which nonconsensual common law liens are recognized. In 1998, legislation was enacted to clarify that the statute covers judiciary employees and court-appointed real estate commissioners who were frequently the target of these liens. In 2000, House Bill, No. 2649, H.D.1, S.D.1 (part of the Judiciary's legislative package) was enacted to further discourage the filing of frivolous lien claims against government employees or officials by requiring that claims be accompanied by a certified court order.

Presently, HRS chapter 507D requires lien claimants to identify in the caption of the lien document that it is directed to a public official or employee. This helps place the bureau of conveyances on notice that the lien document must be submitted with a court order authorizing it to be filed, thereby complying with the statutory requirement. The law also prohibits the registrar from accepting for filing a claim of lien against a public officer that is not accompanied by a certified court order authorizing the lien. This ensures that the lien claimants give proper notice to the party in interest and actually obtain a court ruling that the lien is meritorious, thereby minimizing frivolous filings. Also, it permits the registrar to refuse to file documents that do not meet this requirement.

Finally, the law imposes criminal sanctions against persons who knowingly and intentionally submit invalid court orders in support of nonconsensual common law liens. This deters persons from circumventing the statute by submitting false or fraudulent court orders in an attempt to file an invalid lien.

If the circuit court finds a purported lien invalid, it orders the registrar to expunge the instrument purporting to create it, and may order the lien claimant to pay actual damages, costs of suit, and reasonable attorneys' fees. This order is presented to the registrar for recordation and has the effect of voiding the lien from its inception. If the circuit court finds the purported lien is frivolous, the prevailing party in any action brought under HRS § 507D-4 is awarded costs of suit, reasonable attorneys' fees, and either actual damages or \$5,000, whichever is greater. If the circuit court finds the purported lien is frivolous, upon application of a party in interest, the registrar, or the government counsel representing the government officer or employee affected by the purported lien, the court may also issue appropriate injunctive relief against the lien claimant to preclude further filings of any kind with the registrar for a period of five years, unless



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that person obtains leave of court to file another instrument with the registrar. Damages, penalties, costs and attorneys' fees may also be awarded.

Since the enactment of HRS Chapter 507D, the number of frivolous nonconsensual common law liens brought to our attention has diminished considerably. We are aware of one case in which the circuit court expunged a lien placed on a judge's home and imposed a sanction of \$5,000.00 for filing a frivolous lien. Generally, however, we have seen far fewer cases over the years and believe that it is a direct result of the presence and application of HRS Chapter 507D.

We thank you for the opportunity to provide these comments.