
A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1 SECTION 1. Section 667-5, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§667-5 Foreclosure under power of sale; notice; affidavit**
4 **after sale.** (a) When a power of sale is contained in a
5 mortgage, and where the mortgagee, [~~or~~] the mortgagee's
6 successor in interest, or any person authorized by the power to
7 act in the premises, [~~may, upon a breach of the condition, give~~]
8 desires to foreclose under power of sale upon breach of a
9 condition of the mortgage, the mortgagee, successor, or person
10 shall be represented by an attorney who is licensed to practice
11 law in the state and is physically located in the state. The
12 attorney shall:
13 (1) Give notice of the mortgagee's, successor's, or
14 person's intention to foreclose the mortgage and of
15 the sale of the mortgaged property, by publication of
16 the notice once in each of three successive weeks
17 (three publications), the last publication to be not



1 less than fourteen days before the day of sale, in a
2 newspaper having a general circulation in the county
3 in which the mortgaged property lies; and [~~also give~~
4 ~~such~~]

5 (2) Give any notices and do all [~~such~~ acts as are
6 authorized or required by the power contained in the
7 mortgage.

8 (b) Copies of the notice required under subsection (a)
9 shall be [~~filed~~]:

10 (1) Filed with the state director of taxation [~~and shall~~
11 be posted]; and

12 (2) Posted on the premises not less than twenty-one days
13 before the day of sale.

14 (c) Upon a written request made by any person who is
15 entitled to notice pursuant to section 667-5.5 or 667-6, or this
16 section, the attorney or the mortgagee, successor, or person
17 represented by the attorney shall provide:

18 (1) Within five business days of the request, the amount
19 to cure the default, together with the estimated
20 amount of the foreclosing mortgagee's attorneys' fees
21 and costs, and all other fees and costs estimated to



1 be incurred by the foreclosing mortgagee related to
2 the default prior to the auction; and

3 (2) Within business days of the auction, the sale
4 price of the mortgaged property once auctioned.

5 (d) Any sale, of which notice has been given as aforesaid,
6 may be postponed from time to time by public announcement made
7 by the mortgagee or by some person acting on the mortgagee's
8 behalf. Upon request made by any person who is entitled to
9 notice pursuant to section 667-5.5 or 667-6, or this section,
10 the mortgagee or person acting on the mortgagee's behalf shall
11 provide the date and time of a postponed auction, or if the
12 auction is cancelled, information that the auction was
13 cancelled. The mortgagee [~~shall,~~] within thirty days after
14 selling the property in pursuance of the power, shall file a
15 copy of the notice of sale and the mortgagee's affidavit,
16 setting forth the mortgagee's acts in the premises fully and
17 particularly, in the bureau of conveyances.

18 (e) The affidavit and copy of the notice shall be recorded
19 and indexed by the registrar, in the manner provided in chapter
20 501 or 502, as the case may be.

21 (f) This section is inapplicable if the mortgagee is
22 foreclosing as to personal property only."



1 SECTION 2. Section 667-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§667-7 Notice** [~~, construction,~~] **contents; affidavit.** (a)

4 The [~~true intent and meaning of section 667-5 is that the]~~
5 notice of intention of foreclosure [~~may also~~] shall contain [a]:

6 (1) A description of the mortgaged property [~~and a~~]; and

7 (2) A statement of the time and place proposed for the

8 sale thereof at any time after the expiration of four

9 weeks from the date when first advertised [~~; and also~~

10 ~~that the~~].

11 (b) The affidavit [~~contemplated by~~] described under

12 section 667-5 may lawfully be made by any person duly authorized

13 to act for the mortgagee, and in such capacity conducting the

14 foreclosure."

15 SECTION 3. Section 667-22, Hawaii Revised Statutes, is

16 amended by amending subsection (a) to read as follows:

17 "(a) When the mortgagor or the borrower has breached the

18 mortgage agreement, and when the foreclosing mortgagee intends

19 to conduct a power of sale foreclosure under this part, the

20 foreclosing mortgagee shall prepare a written notice of default

21 addressed to the mortgagor, the borrower, and any guarantor.

22 The notice of default shall state:



- 1 (1) The name and address of the current mortgagee;
- 2 (2) The name and last known address of the mortgagor, the
3 borrower, and any guarantor;
- 4 (3) The address or a description of the location of the
5 mortgaged property, and the tax map key number of the
6 mortgaged property;
- 7 (4) The description of the default, and if the default is
8 a monetary default, an itemization of the delinquent
9 amount shall be given;
- 10 (5) The action that must be taken to cure the default,
11 including the amount to cure the default, together
12 with the estimated amount of the foreclosing
13 mortgagee's attorney's fees and costs, and all other
14 fees and costs estimated to be incurred by the
15 foreclosing mortgagee related to the default by the
16 deadline date;
- 17 (6) The date by which the default must be cured, which
18 deadline date shall be at least sixty days after the
19 date of the notice of default;
- 20 (7) That if the default is not cured by the deadline date
21 stated in the notice of default, the entire unpaid
22 balance of the moneys owed to the mortgagee under the



1 mortgage agreement will be due, that the mortgagee
2 intends to conduct a power of sale foreclosure to sell
3 the mortgaged property at a public sale without any
4 court action and without going to court, and that the
5 mortgagee or any other person may acquire the
6 mortgaged property at the public sale; and

7 (8) The name, address [~~in the State~~], including electronic
8 address, and [~~the~~] telephone number [~~in the State~~] of
9 the [~~person~~] attorney who is representing the
10 foreclosing mortgagee[~~-~~]; provided that the attorney
11 shall be licensed to practice law in the state and
12 physically located in the state."

13 SECTION 4. Section 667-28, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) The public sale may be either postponed or canceled
16 by the foreclosing mortgagee. Notice of the postponement or the
17 cancellation of the public sale shall be [~~announced~~]:

18 (1) Announced by the foreclosing mortgagee at the date,
19 time, and place of the last scheduled public sale[~~-~~];
20 and



1 (2) Provided, upon request, to any other person who is
2 entitled to receive the notice of default under
3 section 667-22(c)."

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

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

9 SECTION 7. This Act shall take effect upon its approval.



S.B. NO. 2454
S.D. 1
H.D. 1

Report Title:

Non-Judicial Foreclosures; Access to Information

Amends the mortgage foreclosures law to ensure that consumers and others receive important information regarding a foreclosure in a timely manner. (SB2454 HD1)

SB2454 HD1 HMS 2008-2919

