

JAN 18 2008

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.** When a power of sale is contained in a mortgage[7]
5 and where the mortgagee, or the mortgagee's successor in
6 interest, or any person authorized by the power to act in the
7 premises, [~~may~~] desires to foreclose under the power of sale
8 upon a breach of [the] a condition[7] of the mortgage, the
9 mortgagee, successor, or person shall be represented by an
10 attorney licensed to practice law and physically located in the
11 State. The attorney shall give notice of the mortgagee's,
12 successor's, or person's intention to foreclose the mortgage and
13 of the sale of the mortgaged property, by publication of the
14 notice once in each of three successive weeks (three
15 publications), the last publication to be not less than fourteen
16 days before the day of sale, in a newspaper having a general
17 circulation in the county in which the mortgaged property lies;



1 and also give [~~such~~] sufficient notices and do all [~~such~~]
2 sufficient acts as are authorized or required by the power
3 contained in the mortgage. Copies of the notice shall be filed
4 with the state director of taxation and shall be posted on the
5 premises not less than twenty-one days before the day of sale.
6 The attorney, the mortgagee, successor, or person represented by
7 the attorney shall provide to any person entitled to notice
8 pursuant to this section and sections 667-5.5 and 667-6 and
9 requesting in writing:

10 (1) The amount to cure the default, together with the
11 estimated amount of the foreclosing mortgagee's
12 attorneys' fees and costs, and all other fees and
13 costs estimated to be incurred by the foreclosing
14 mortgagee related to the default prior to the auction
15 within five business days; and

16 (2) The sale price of the mortgaged property once
17 auctioned.

18 Any sale, of which notice has been given as aforesaid, may
19 be postponed from time to time by public announcement made by
20 the mortgagee or by some person acting on the mortgagee's
21 behalf. Upon request by any person entitled to notice pursuant
22 to this section and section 667-5.5 and 667-6, the mortgagee or



1 person acting on the mortgagee's behalf shall provide
2 information on the date and time of the postponed auction or
3 notice of cancellation if the auction is canceled. The
4 mortgagee shall, within thirty days after selling the property
5 in pursuance of the power, file a copy of the notice of sale and
6 the mortgagee's affidavit, setting forth the mortgagee's acts in
7 the premises fully and particularly, in the bureau of
8 conveyances.

9 The affidavit and copy of the notice shall be recorded and
10 indexed by the registrar, in the manner provided in chapter 501
11 or 502, as the case may be.

12 This section is inapplicable if the mortgagee is
13 foreclosing as to personal property only."

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

16 "~~§667-7 Notice, [construction,] contents; affidavit.~~ [The
17 ~~true intent and meaning of section 667-5 is that the~~] The notice
18 of intention of foreclosure [~~may also~~] shall contain a
19 description of the mortgaged property and a statement of the
20 time and place proposed for the sale thereof at any time after
21 the expiration of four weeks from the date when first
22 advertised [~~, and also that the~~]. The affidavit contemplated by



1 section 667-5 may lawfully be made by any person duly authorized
2 to act for the mortgagee, and in such capacity conducting the
3 foreclosure."

4 SECTION 3. Section 667-22, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) When the mortgagor or the borrower has breached the
7 mortgage agreement, and when the foreclosing mortgagee intends
8 to conduct a power of sale foreclosure under this part, the
9 foreclosing mortgagee shall prepare a written notice of default
10 addressed to the mortgagor, the borrower, and any guarantor.

11 The notice of default shall state:

- 12 (1) The name and address of the current mortgagee;
13 (2) The name and last known address of the mortgagor, the
14 borrower, and any guarantor;
15 (3) The address or a description of the location of the
16 mortgaged property, and the tax map key number of the
17 mortgaged property;
18 (4) The description of the default, and if the default is
19 a monetary default, an itemization of the delinquent
20 amount shall be given;
21 (5) The action that must be taken to cure the default,
22 including the amount to cure the default, together



1 with the estimated amount of the foreclosing
2 mortgagee's attorney's fees and costs, and all other
3 fees and costs estimated to be incurred by the
4 foreclosing mortgagee related to the default by the
5 deadline date;

6 (6) The date by which the default must be cured, which
7 deadline date shall be at least sixty days after the
8 date of the notice of default;

9 (7) That if the default is not cured by the deadline date
10 stated in the notice of default, the entire unpaid
11 balance of the moneys owed to the mortgagee under the
12 mortgage agreement will be due, that the mortgagee
13 intends to conduct a power of sale foreclosure to sell
14 the mortgaged property at a public sale without any
15 court action and without going to court, and that the
16 mortgagee or any other person may acquire the
17 mortgaged property at the public sale; and

18 (8) The name, address [~~in the State~~], including electronic
19 address, and the telephone number [~~in the State~~] of
20 the [~~person~~] attorney licensed to practice law and
21 physically located in the State representing the
22 foreclosing mortgagee."



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

3 "(a) The public sale may be either postponed or canceled
4 by the foreclosing mortgagee. Notice of the postponement or the
5 cancellation of the public sale shall be announced by the
6 foreclosing mortgagee at the date, time, and place of the last
7 scheduled public sale[-] and also, provided upon request, to any
8 other person entitled to receive the notice of default under
9 section 667-22(c)."

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect upon its approval.

13

INTRODUCED BY: *Runees. Kohli* B/R



Report Title:

NonJudicial Foreclosures; Access to Information

Description:

Requires a mortgagee to provide the telephone number of an attorney located and licensed in Hawaii as the contact individual, and authorizes this individual to provide information to qualified callers.

