
A BILL FOR AN ACT

RELATING TO 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, the mortgagee's successor in
6 interest, or any person authorized by the power to act in the
7 premises, desires to foreclose under power of sale upon breach
8 of a condition of the mortgage, the mortgagee, successor, or
9 person shall be represented by an attorney who is licensed to
10 practice law in the State and is physically located in the
11 State. The attorney shall:

12 (1) Give notice of the mortgagee's, successor's, or
13 person's intention to foreclose the mortgage and of
14 the sale of the mortgaged property, by publication of
15 the notice once in each of three successive weeks
16 (three publications), the last publication to be not
17 less than fourteen days before the day of sale, in a



1 newspaper having a general circulation in the county
2 in which the mortgaged property lies; [and]

3 (2) Give notice to a tenant currently residing in the
4 mortgaged property, provided that the notice shall
5 state that the tenant has forty-five days to vacate
6 the premises from the date the tenant receives the
7 notice; and

8 [~~2~~] (3) Give any notices and do all acts as are
9 authorized or required by the power contained in the
10 mortgage.

11 (b) Copies of the notice required under subsection (a)
12 shall be:

13 (1) Filed with the state director of taxation; and

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

16 (c) Upon the request of any person entitled to notice
17 pursuant to this section and sections 667-5.5 and 667-6, the
18 attorney, the mortgagee, successor, or person represented by the
19 attorney shall disclose to the requestor the following
20 information:

21 (1) The amount to cure the default, together with the
22 estimated amount of the foreclosing mortgagee's



1 attorneys' fees and costs, and all other fees and
2 costs estimated to be incurred by the foreclosing
3 mortgagee related to the default prior to the auction
4 within five business days of the request; and

5 (2) The sale price of the mortgaged property once
6 auctioned.

7 (d) No power of sale shall commence until forty-five days
8 after notice was given to a tenant residing in the mortgaged
9 property pursuant to subsection (a) (2).

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



1 ~~(e)~~ (f) The affidavit and copy of the notice shall be
2 recorded and indexed by the registrar, in the manner provided in
3 chapter 501 or 502, as the case may be.

4 ~~(f)~~ (g) This section is inapplicable if the mortgagee is
5 foreclosing as to personal property only."

6 SECTION 2. Section 667-22, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) The foreclosing mortgagee shall have the notice of
9 default served on:

- 10 (1) The mortgagor and the borrower;
- 11 (2) Any prior or junior creditors having a recorded lien
12 on the mortgaged property before the recordation of
13 the notice of default under section 667-23;
- 14 (3) The state director of taxation;
- 15 (4) The director of finance of the county where the
16 mortgaged property is located; ~~and~~
- 17 (5) The tenant currently residing in the mortgaged
18 property, provided that the notice shall state that
19 the tenant has forty-five days to vacate the premises
20 from the date the tenant receives the notice; and

21 ~~(5)~~ (6) Any other person entitled to receive notice under
22 section 667-5.5."



1 SECTION 3. Section 667-25, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The public sale of the mortgaged property shall take
4 place on the later of the following:

5 (1) At least sixty days after the public notice of the
6 public sale is distributed under section 667-27; or

7 (2) At least fourteen days after the date of the
8 publication of the third public notice advertisement
9 under section 667-27.

10 (3) After forty-five days from the date a tenant residing
11 in the mortgaged property was given notice of the
12 default pursuant to section 677-22(c) (5)."

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

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Calvin K. Iy
Mahalo H. Muzumby

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Report Title:

Foreclosures; Tenants; Dislocation

Description:

Requires mortgagees to provide notice to tenants of foreclosure and give them 45 days from the date of notice to vacate when their rental property is disposed of in either a judicial or non-judicial foreclosure.

