

JAN 28 2009

A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

1 SECTION 1. The legislature finds that Hawaii is
2 experiencing a crisis due to an increasing number of residential
3 foreclosures. On January 15, 2009, The Honolulu Advertiser
4 reported that residential foreclosures in Hawaii increased by
5 two hundred thirty per cent in 2008. Even this number may
6 understate the magnitude of Hawaii's growing foreclosure crisis
7 since most of the foreclosures occurred in the last half of 2008
8 and therefore may not have been fully reported yet.

9 In December 2008, the Pew Charitable Trusts determined that
10 one out of twenty-nine Hawaii homeowners will experience
11 foreclosure due to a high-cost loan by the end of 2010,
12 exceeding the national average of one out of thirty-three.
13 Additionally, more than half of Hawaii's remaining homeowners
14 will see the value of their homes decline by a projected average
15 of \$24,786 as a result of these foreclosures.

16 Economic loss and other hardships resulting from
17 foreclosures are not limited to individual homeowners. The



1 projected loss to Hawaii's state and local tax base caused by
2 declines in property values is \$4,160,000,000. In a December
3 2008 speech, Federal Reserve System Board Chairman Ben Bernanke
4 stated that recent losses to lenders on the defaulted subprime
5 mortgages that account for most foreclosures have averaged
6 between fifty and sixty per cent of the loan balance. The need
7 to adjudicate a growing number of foreclosures will, for some
8 time to come, increase the workload of Hawaii's courts and
9 adversely affect all users of the justice system.

10 In other states, foreclosure mediation has produced better
11 outcomes than adjudication for homeowners and lenders. Giving
12 homeowners facing foreclosure the right to request mediation
13 will help homeowners and lenders avoid unnecessary foreclosures
14 and reduce lender losses while also benefitting other property
15 owners, preserving the tax base, and keeping Hawaii's
16 neighborhoods free of blight and crime associated with vacant
17 houses. Early resolution and avoidance of foreclosure will
18 additionally ease the burden on courts currently facing a
19 growing number of foreclosure actions.

20 SECTION 2. Chapter 667, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:



1 "§667- Foreclosure mediation. (a) A homeowner who is
2 in default of the homeowner's mortgage agreement shall have the
3 right to participate in mediation to give the homeowner and the
4 lender an opportunity to negotiate in good faith in order to
5 avoid foreclosure. This section shall apply to:

6 (1) Foreclosure by power of sale subject to part I;

7 (2) Alternate power of sale foreclosure subject to
8 part II; and

9 (3) Foreclosure by action subject to sections 667-1 to
10 667-4, unless a comparable right to mediation in the
11 action is available to the homeowner through the
12 court.

13 (b) A lender shall notify the homeowner of the
14 availability of foreclosure mediation in writing, on forms
15 prescribed by the department of commerce and consumer affairs.
16 The notice shall contain instructions for requesting mediation.
17 The notice shall be delivered to the homeowner:

18 (1) In a foreclosure by action, prior to the entry of a
19 default or the filing of any motion; or

20 (2) In a foreclosure by power of sale, prior to the notice
21 required by section 667-5(a)(2) or 667-22.



1 (c) The homeowner shall request mediation within
2 twenty-one days of receiving the notice required by subsection
3 (b) or the right to mediation under this section is waived.

4 (d) If the homeowner requests mediation, no action
5 relating to foreclosure shall occur until after the mediator
6 declares in writing to the parties that the mediation is
7 terminated with no agreement reached.

8 (e) Throughout the mediation process, all parties shall
9 negotiate in good faith and shall attempt to reach a mutually
10 acceptable agreement in order to avoid foreclosure. The lender
11 shall attempt to reduce the interest rate, reduce the remaining
12 loan balance, extend the loan repayment period, or any
13 combination of the foregoing, so that the homeowner's required
14 monthly mortgage payment falls within affordability guidelines
15 based on monthly household income established by the Federal
16 National Mortgage Association, the Federal Home Loan Mortgage
17 Corporation, or the Federal Deposit Insurance Corporation.

18 (f) The director of commerce and consumer affairs shall
19 adopt rules pursuant to chapter 91 to implement the provisions
20 of this section.

21 (g) As used in this section:



1 "Homeowner" means an owner-occupant of a residential real
2 property, used as a primary residence, in Hawaii, who is also a
3 borrower under a mortgage encumbering the property.

4 "Lender" means the original lender under a mortgage, its
5 successors or assigns, or the mortgage servicer."

6 SECTION 3. Section 667-1, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§667-1 Foreclosure by action.** (a) The circuit court may
9 assess the amount due upon a mortgage, whether of real or
10 personal property, without the intervention of a jury, and shall
11 render judgment for the amount awarded, and the foreclosure of
12 the mortgage. Execution may be issued on the judgment, as
13 ordered by the court[-]; provided that a plaintiff in any
14 foreclosure action shall fully comply with section 667-52 before
15 seeking an entry of default, filing any motion, or requesting
16 the entry of judgment."

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

19 "(a) When a power of sale is contained in a mortgage, and
20 where the mortgagee, the mortgagee's successor in interest, or
21 any person authorized by the power to act in the premises,
22 desires to foreclose under power of sale upon breach of a



1 condition of the mortgage, the mortgagee, successor, or person
2 shall be represented by an attorney who is licensed to practice
3 law in the State and is physically located in the State. The
4 attorney shall:

5 (1) Give notice to the homeowner of the homeowner's right
6 to mediation pursuant to section 667- .

7 ~~[(1)]~~ (2) Give notice of the mortgagee's, successor's, or
8 person's intention to foreclose the mortgage and of
9 the sale of the mortgaged property, by publication of
10 the notice once in each of three successive weeks
11 (three publications), the last publication to be not
12 less than fourteen days before the day of sale, in a
13 newspaper having a general circulation in the county
14 ~~[in which]~~ where the mortgaged property lies; and

15 ~~[(2)]~~ (3) Give any notices and do all acts as are
16 authorized or required by the power contained in the
17 mortgage."

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

20 "(a) When the mortgagor or the borrower has breached the
21 mortgage agreement, and when the foreclosing mortgagee intends
22 to conduct a power of sale foreclosure under this part, the



1 foreclosing mortgagee shall prepare a written notice of default
2 addressed to the mortgagor, the borrower, and any guarantor.

3 The notice of default shall state:

4 (1) The name and address of the current mortgagee;

5 (2) The name and last known address of the mortgagor, the
6 borrower, and any guarantor;

7 (3) The address or a description of the location of the
8 mortgaged property, and the tax map key number of the
9 mortgaged property;

10 (4) The description of the default, and if the default is
11 a monetary default, an itemization of the delinquent
12 amount shall be given;

13 (5) The action that must be taken to cure the default,
14 including the amount to cure the default, together
15 with the estimated amount of the foreclosing
16 mortgagee's attorney's fees and costs, and all other
17 fees and costs estimated to be incurred by the
18 foreclosing mortgagee related to the default by the
19 deadline date;

20 (6) The date ~~[by which]~~ when the default must be cured,
21 ~~[which deadline date]~~ that shall be at least sixty
22 days after the date of the notice of default;



1 (7) That if the default is not cured by the deadline date
 2 stated in the notice of default, the entire unpaid
 3 balance of the moneys owed to the mortgagee under the
 4 mortgage agreement will be due, that the mortgagee
 5 intends to conduct a power of sale foreclosure to sell
 6 the mortgaged property at a public sale without any
 7 court action and without going to court, and that the
 8 mortgagee or any other person may acquire the
 9 mortgaged property at the public sale; [and]

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


15 (9) A homeowner's right to mediation pursuant to section
 16 667- ."

17 SECTION 6. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect on July 1, 2009.

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Report Title:

Mortgage Foreclosure, Real Estate

Description:

Grants owner-occupants of residential real property the right to engage in mediation with a mortgagee in order to prevent foreclosure of the residential property. Establishes notice requirements.

