

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 facing an
2 unprecedented threat to its state and local economies because of
3 skyrocketing residential property foreclosure rates in Hawaii.
4 Residential property foreclosures increased two hundred thirty
5 per cent in 2008. In 2008, more than three thousand two hundred
6 properties were lost to foreclosure in Hawaii. Further,
7 according to the Pew Charitable Trust, one in twenty-nine Hawaii
8 homeowners are expected to experience foreclosure by the end of
9 2010, exceeding the United States average of one in thirty-three
10 homeowners. The ripple effects of these foreclosures are
11 projected to hit more than half of Hawaii's homeowners and cost
12 more than \$4,000,000,000 in lost property value.

13 Under specified circumstances, mortgage lenders and
14 servicers are authorized under their pooling and servicing
15 agreements to modify mortgage loans when the modification is in
16 the best interests of investors. Generally, that modification
17 may be deemed to be in the best interests of investors when the



1 net present value of the income stream of the modified loan is
2 greater than the amount that would be recovered through the
3 disposition of the real property security through a foreclosure
4 sale.

5 It is essential to the economic health of Hawaii for the
6 State to ameliorate the deleterious effects of continued
7 foreclosures of residential properties by temporarily modifying
8 the foreclosure process to require mortgagees, successors, and
9 their authorized agents to contact borrowers and explore options
10 that could avoid foreclosure.

11 This Act is a temporary measure that will require early
12 contact and communications between mortgagees, successors, and
13 their authorized agents and certain borrowers to explore options
14 that could avoid foreclosure by facilitating the modification or
15 restructuring of loans in appropriate circumstances. This Act
16 shall also provide necessary and appropriate notices to renters
17 who are unintended victims of the foreclosure crisis.

18 SECTION 2. Chapter 667, Hawaii Revised Statutes, is
19 amended by adding three new sections to part III, to be
20 appropriately designated and to read as follows:

21 "§667-A Avoidance of foreclosure. (a) Sections 667-5 and
22 667-21 notwithstanding, a mortgagee, as defined in section 667-



1 21(b), may not give notice of the mortgagee's intention to
2 foreclose the mortgage, pursuant to section 667-5(a)(1), or
3 serve a notice of default, pursuant to section 667-22(c), until
4 thirty day after satisfying the requirements of this section.

5 (b) The mortgagee shall contact the mortgagor, as defined
6 in section 667-21(b), in person or by telephone in order to
7 assess the mortgagor's financial situation and explore options
8 for the mortgagor to avoid foreclosure.

9 During the initial contact, the mortgagee shall advise the
10 mortgagor that the mortgagor has the right to request a
11 subsequent meeting and, if requested, the mortgagee shall
12 schedule the meeting to occur within fourteen days. The
13 assessment of the mortgagor's financial situation and discussion
14 of options may occur during the first contact, or at the
15 subsequent meeting scheduled for that purpose.

16 The mortgagor shall be provided the toll-free telephone
17 number made available by the United States Department of Housing
18 and Urban Development to contact a United States Department of
19 Housing and Urban Development certified housing counseling
20 agency.

21 Any follow up meeting, at the request of the mortgagor, may
22 occur telephonically.



1 (c) Any subsequent notice of the mortgagee's intention to
2 foreclose or a notice of default filed, pursuant to section 667-
3 5 or 667-22, shall include a declaration from the mortgagee
4 that:

5 (1) It has contacted the mortgagor as required by this
6 section;

7 (2) Has tried with due diligence to contact the mortgagor
8 as required by this section without success; or

9 (3) The mortgagor has surrendered the property to the
10 mortgagee.

11 (d) If a mortgagee has already given its notice of its
12 intention to foreclose or recorded a notice of default prior to
13 the effective date of this Act, and did not subsequently file a
14 notice of rescission, then the mortgagee, as part of the notice
15 of sale filed pursuant to section 667-5(d), or the affidavit
16 after public sale recorded pursuant to section 677-33, shall
17 include a declaration that either:

18 (1) States that the mortgagor was contacted to assess the
19 mortgagor's financial situation and to explore options
20 for the mortgagor to avoid foreclosure; or

21 (2) Lists the efforts made, if any, to contact the
22 mortgagor in the event no contact was made.



1 (e) A mortgagee's loss mitigation personnel may
2 participate by telephone during any contact required by this
3 section.

4 (f) A mortgagor may designate a United States Department
5 of Housing and Urban Development certified housing counseling
6 agency, attorney, or other advisor to discuss with the
7 mortgagee, on the mortgagor's behalf, options for the mortgagor
8 to avoid foreclosure. Contact made at the direction of the
9 mortgagor shall satisfy the contact requirements of this
10 section. Any loan modification or workout plan offered at the
11 meeting by the mortgagee shall be subject to approval by the
12 mortgagor.

13 (g) A notice of intention to foreclose may be filed or
14 notice of default may be recorded, pursuant to section 667-5 or
15 667-23, when a mortgagee has not contacted a mortgagor as
16 required by this section; provided that the failure to contact
17 the mortgagor occurred despite the due diligence of the
18 mortgagee. For purposes of this section, "due diligence" shall
19 require and mean all of the following:

20 (1) A mortgagee shall have first attempted to contact a
21 mortgagor by first-class mail that includes the toll-
22 free telephone number made available by the United



1 States Department of Housing and Urban Development to
2 find a certified housing counseling agency;

3 (2) After the letter has been sent:

4 (A) The mortgagee shall have attempted to contact the
5 mortgagor by telephone at least three times at
6 different hours and on different days. Telephone
7 calls shall have been made to the primary
8 telephone number on file;

9 (B) The mortgagee may use an automated system to dial
10 mortgagors; provided that, if the telephone call
11 is answered, the call shall be connected to a
12 live representative of the mortgagee; or

13 (C) The mortgagee shall have satisfied the telephone
14 contact requirements of this paragraph if it
15 determines, after attempting contact pursuant to
16 this paragraph, that the mortgagor's primary
17 telephone number and secondary telephone number
18 or numbers on file, if any, have been
19 disconnected;

20 (3) The mortgagee shall have provided a means for the
21 mortgagor to contact it in a timely manner, including



1 a toll-free telephone number that would have provided
2 access to a live representative during business hours;

3 (4) The mortgagee has posted a prominent link on the
4 homepage of its internet website, if any, with the
5 following information:

6 (A) Options that may be available to mortgagors who
7 are unable to afford their mortgage payments and
8 who wish to avoid foreclosure, and instructions
9 to mortgagors advising them on steps to take to
10 explore those options;

11 (B) A list of financial documents mortgagors should
12 collect and be prepared to present to the
13 mortgagee when discussing options for avoiding
14 foreclosure;

15 (C) A toll-free telephone number for mortgagors who
16 wish to discuss options for avoiding foreclosure
17 with their mortgagee; and

18 (D) The toll-free telephone number made available by
19 the United States Department of Housing and Urban
20 Development certified housing counseling agency.

21 (h) The provisions of this section shall cease to apply
22 upon the occurrence of the following:



1 (1) The mortgagor has surrendered the property as
2 evidenced by either a letter confirming the surrender,
3 or delivery of the keys to the property to the
4 mortgagee;

5 (2) The mortgagor has contracted with an organization,
6 person, or entity whose primary business is advising
7 people who have decided to leave their homes on how to
8 extend the foreclosure process and avoid their
9 contractual obligations to mortgagees; or

10 (3) The mortgagor has filed for bankruptcy, and the
11 proceedings have not been finalized.

12 (i) This section shall apply only to loans made from
13 January 1, 2003, to December 31, 2008, inclusive, that are
14 secured by residential real property and are for owner-occupied
15 residences. For purposes of this section, "owner-occupied"
16 means that the residence is the principal residence of the
17 mortgagor.

18 §667-B Notice to resident. (a) Upon posting a notice of
19 intention to foreclose on the premises pursuant to section 667-
20 5(b) (2), and recording the notice of default pursuant to section
21 667-23, the mortgagee shall also mail the following notice, in
22 the manner and at the time required for posting the notice of



1 intention to foreclose or record the notice of default to the
2 mortgagor, or the mortgagor's agent, if any, at the address of
3 record concerning the premises that is the subject of the
4 foreclosure action containing substantially the following:

5 "Resident of Property Subject to Foreclosure Sale
6 a foreclosure process has begun on this property, that
7 may affect your right to continue to live in this
8 property. Twenty-one days or more after the date of
9 this notice, this property may be sold at foreclosure.
10 If you are renting this property, the new property
11 owner may either give you a new lease or rental
12 agreement or provide you with a sixty-day eviction
13 notice. However, other laws may prohibit an eviction
14 in this circumstance or provide you with a longer
15 notice before eviction. You may wish to contact a
16 lawyer or your local legal aid or housing counseling
17 agency to discuss any rights you may have."

18 (b) This section shall only apply to loans secured by
19 residential real property, and if the billing address for the
20 mortgage note is different than the property address.

21 §667-C Tenant's rights. (a) Chapter 521 notwithstanding,
22 a tenant in possession of a rental housing unit at the time the



1 property is sold in foreclosure shall be given sixty days
2 written notice to vacate the premises pursuant to this section
3 before the tenant or subtenant may be removed from the property
4 as prescribed by the provisions of chapter 521.

5 (b) This section shall not apply if any party to the
6 promissory note or mortgage that is being foreclosed remains on
7 the property as a tenant, subtenant, or occupant."

8 SECTION 3. Section 521-45, Hawaii Revised Statutes is
9 amended to read as follows:

10 **"§521-45 Limitation of landlord and management liability.**

11 (a) Unless otherwise agreed, a landlord who conveys premises
12 ~~[which]~~ that include a dwelling unit subject to a rental
13 agreement, in a good faith sale to a person not connected with
14 the landlord, discloses~~[r]~~ in writing~~[r]~~ in any form, ~~[of]~~ the
15 contract for the sale of ~~[such]~~ the premises, is relieved of
16 liability under the rental agreement and under this chapter as
17 to events occurring subsequent to the conveyance.

18 (b) The new owner who purchases the premises referred to
19 in subsection (a) is liable under the rental agreement and under
20 this chapter.

21 (c) In the event of a foreclosure of the premises subject
22 to a rental agreement, the successor in interest of the prior



1 landlord shall give the tenant a notice that, at the option of
2 the tenant to be exercised within seven days:

3 (1) The rental agreement may remain in full force and
4 effect; or

5 (2) The tenant shall vacate the premises within sixty days
6 of the notice.

7 [~~e~~] (d) Unless otherwise agreed, a person who is a
8 manager of premises [~~which~~] that include a dwelling unit subject
9 to a rental agreement is relieved of liability under the rental
10 agreement and under this chapter as to events occurring
11 subsequent to the termination of the person's management."

12 SECTION 4. The provisions of this Act are severable. If
13 any provision of this Act or its application is held invalid,
14 that invalidity shall not affect other provisions or
15 applications that can be given effect without the invalid
16 provision or application.

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



1 SECTION 6. This Act shall take effect upon its approval,
 2 provided that Section 667-A contained in section 2 this Act
 3 shall be repealed on December 31, 2012.

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Report Title:

Foreclosures

Description:

Requires mortgagors and mortgagees to explore options to avoid foreclosure, including modification or restructuring of loans; effective on approval and repeals 12/31/2012. Requires notice of foreclosure be given to a tenant of the foreclosed property with the option to keep rental agreement in full force or vacate premises in 60 days.

