
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, nearly 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
22 667-22 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, until
4 thirty days 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. At this
13 time, the mortgagee shall inform the mortgagor that the
14 mortgagor has the right to attempt to negotiate a settlement
15 with the mortgagee in order to avoid foreclosure. The mortgagee
16 shall inform the mortgagor that the mortgagor has the right to
17 representation by an attorney, advisor, or United States
18 Department of Housing and Urban Development approved housing
19 counseling agency in the negotiation process and that mediation
20 may be available for the purposes of negotiating a settlement.
21 The assessment of the mortgagor's financial situation and
22 discussion of options required by this section may occur during

1 the first contact, or at a subsequent meeting scheduled for that
2 purpose.

3 The mortgagee shall provide the mortgagor with the toll-
4 free telephone number made available by the United States
5 Department of Housing and Urban Development to contact a United
6 States Department of Housing and Urban Development approved
7 housing counseling agency.

8 Any follow up meeting, at the request of the mortgagor, may
9 occur telephonically.

10 (c) Any subsequent notice of the mortgagee's intention to
11 foreclose or a notice of default filed, pursuant to section 667-
12 5 or 667-22, shall include a declaration from the mortgagee
13 that:

14 (1) The mortgagee has contacted the mortgagor as required
15 by this section;

16 (2) The mortgagee has tried with due diligence to contact
17 the mortgagor as required by this section without
18 success; or

19 (3) The mortgagor has surrendered the property to the
20 mortgagee.

21 (d) If a mortgagee has already given its notice of its
22 intention to foreclose or recorded a notice of default prior to

1 the effective date of this section, and did not subsequently
2 file a notice of rescission, then the mortgagee, as part of the
3 notice of sale filed pursuant to section 667-5(d), or the
4 affidavit after public sale recorded pursuant to section 677-33,
5 shall include a declaration that either:

6 (1) States that the mortgagor was contacted to assess the
7 mortgagor's financial situation and to explore options
8 for the mortgagor to avoid foreclosure as required by
9 this section; or

10 (2) In the event no contact was made, lists the efforts
11 made, if any, to contact the mortgagor.

12 (e) A mortgagee's loss mitigation personnel may
13 participate by telephone during any contact required by this
14 section.

15 (f) A mortgagor may designate a United States Department
16 of Housing and Urban Development approved housing counseling
17 agency, attorney, or other advisor to discuss with the
18 mortgagee, on the mortgagor's behalf, options for the mortgagor
19 to avoid foreclosure. Contact made at the direction of the
20 mortgagor shall satisfy the contact requirements of this
21 section. Any loan modification or workout plan offered at the

1 meeting by the mortgagee shall be subject to approval by the
2 mortgagor.

3 (g) A notice of intention to foreclose may be filed or
4 notice of default may be recorded, pursuant to section 667-5 or
5 667-23, when a mortgagee has not contacted a mortgagor as
6 required by this section, only if the failure to contact the
7 mortgagor occurred despite the due diligence of the mortgagee.
8 For purposes of this section, "due diligence" shall require and
9 mean all of the following:

10 (1) A mortgagee has first attempted to contact a mortgagor
11 by a first-class mailing that includes the toll-free
12 telephone number made available by the United States
13 Department of Housing and Urban Development to find an
14 approved housing counseling agency;

15 (2) Subsequent to the first attempt to contact the
16 mortgagor by mailing as required by paragraph (1), the
17 mortgagee has attempted to contact the mortgagor by
18 telephone at least three times at different hours and
19 on different days; provided that:

20 (A) Telephone calls shall be made to the primary
21 telephone number on file; and

1 (B) The mortgagee may use an automated system to dial
2 mortgagors; provided that, if the telephone call
3 is answered, the call shall be connected to a
4 live representative of the mortgagee.

5 The mortgagee shall be deemed to have satisfied the
6 telephone contact requirements if the mortgagee
7 attempted to contact the mortgagor by telephone, but
8 the mortgagor's primary telephone number and secondary
9 telephone number or numbers on file, if any, have been
10 disconnected;

11 (3) The mortgagee has provided a means for the mortgagor
12 to contact the mortgagee in a timely manner, including
13 providing a toll-free telephone number that provides
14 access to a live representative during business hours;
15 and

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

19 (A) Options that may be available to mortgagors who
20 are unable to afford their mortgage payments and
21 who wish to avoid foreclosure, and instructions

1 to mortgagors advising them on steps to take to
2 explore those options;

3 (B) A list of financial documents mortgagors should
4 collect and be prepared to present to the
5 mortgagee when discussing options for avoiding
6 foreclosure;

7 (C) A toll-free telephone number for mortgagors who
8 wish to discuss options for avoiding foreclosure;
9 and

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

13 (h) This section shall cease to apply upon the occurrence
14 of the following:

15 (1) The mortgagor has surrendered the property as
16 evidenced by either a letter confirming the surrender,
17 or delivery of the keys to the property to the
18 mortgagee;

19 (2) The mortgagor has contracted with an organization,
20 person, or entity whose primary business is advising
21 people who have decided to leave their homes on how to

1 extend the foreclosure process and avoid their
2 contractual obligations to a mortgagee; or

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

5 (i) This section shall apply only to loans made from
6 January 1, 2003, to December 31, 2008, inclusive, that are
7 secured by residential real property and are for owner-occupied
8 residences. For purposes of this section, "owner-occupied"
9 means that the residence is the principal residence of the
10 mortgagor.

11 **§667-B Notice to resident.** (a) Upon posting a notice of
12 intention to foreclose on the premises pursuant to section 667-
13 5(b)(2) or recording the notice of default pursuant to section
14 667-23, the mortgagee shall also mail the following notice, in
15 the manner and at the time required for posting the notice of
16 intention to foreclose or recording the notice of default, to
17 the mortgagor, or the mortgagor's agent, if any, at the address
18 of record concerning the premises that is the subject of the
19 foreclosure action. The notice shall state the following:

20 "Resident of Property Subject to Foreclosure
21 Sale: A foreclosure process has begun on this
22 property that may affect your right to continue to

1 live in this property. As early as twenty-one days
2 after the date of this notice, this property may be
3 sold at foreclosure. If you are renting this
4 property, the new property owner may either give you a
5 new lease or rental agreement or provide you with a
6 sixty-day eviction notice. However, other laws may
7 prohibit an eviction in this circumstance or provide
8 you with a longer notice before eviction. You may
9 wish to contact a lawyer, your local legal aid
10 society, or a housing counseling agency to discuss any
11 rights you may have."

12 (b) This section shall only apply to loans secured by
13 residential real property where the billing address for the
14 mortgage note is different than the property address.

15 **§667-C Tenant's rights.** (a) Chapter 521 notwithstanding,
16 a tenant or subtenant in possession of a rental housing unit at
17 the time the property is sold in foreclosure shall be given
18 sixty days written notice to vacate the premises before the
19 tenant or subtenant may be removed from the property as
20 prescribed by chapter 521.

21 (b) If a tenant or subtenant in possession of a rental
22 housing unit at the time the property is sold in foreclosure has

1 paid a security deposit pursuant to section 521-44, to the
2 property owner or to the property owner's predecessor or
3 successor in interest, the amount of the security deposit shall
4 be applied to payment of the last month's rent.

5 (c) 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 521-71, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§521-71 Termination of tenancy; landlord's remedies for**
11 **holdover tenants[-]; foreclosure.** (a) When the tenancy is
12 month-to-month, the landlord may terminate the rental agreement
13 by notifying the tenant, in writing, at least forty-five days in
14 advance of the anticipated termination. When the landlord
15 provides notification of termination, the tenant may vacate at
16 any time within the last forty-five days of the period between
17 the notification and the termination date, but the tenant shall
18 notify the landlord of the date the tenant will vacate the
19 dwelling unit and shall pay a prorated rent for that period of
20 occupation.

21 (b) When the tenancy is month-to-month the tenant may
22 terminate the rental agreement by notifying the landlord, in

1 writing, at least twenty-eight days in advance of the
2 anticipated termination. When the tenant provides notice of
3 termination, the tenant shall be responsible for the payment of
4 rent through the twenty-eighth day.

5 (c) Before a landlord terminates a month-to-month tenancy
6 where the landlord contemplates voluntary demolition of the
7 dwelling units, conversion to a condominium property regime
8 under chapter 514A or 514B, or changing the use of the building
9 to transient vacation rentals, the landlord shall provide notice
10 to the tenant at least one hundred twenty days in advance of the
11 anticipated demolition or anticipated termination. If notice is
12 revoked or amended and reissued, the notice period shall begin
13 from the date it was reissued or amended. Any notice provided,
14 revoked, or amended and reissued shall be in writing. When the
15 landlord provides notification of termination pursuant to this
16 subsection, the tenant may vacate at any time within the one-
17 hundred-twenty-day period between the notification and the
18 termination date, but the tenant shall notify the landlord of
19 the date the tenant will vacate the dwelling unit and shall pay
20 a prorated rent for that period of occupation.

21 (d) When the tenancy is less than month-to-month, the
22 landlord or the tenant may terminate the rental agreement by

1 notifying the other at least ten days before the anticipated
2 termination.

3 (e) Whenever the term of the rental agreement expires,
4 whether by passage of time, by mutual agreement, by the giving
5 of notice as provided in subsection (a), (b), (c), or (d) or by
6 the exercise by the landlord of a right to terminate given under
7 this chapter, if the tenant continues in possession after the
8 date of termination without the landlord's consent, the tenant
9 may be liable to the landlord for a sum not to exceed twice the
10 monthly rent under the previous rental agreement, computed and
11 prorated on a daily basis, for each day the tenant remains in
12 possession. The landlord may bring a summary proceeding for
13 recovery of the possession of the dwelling unit at any time
14 during the first sixty days of holdover. Should the landlord
15 fail to commence summary possession proceedings within the first
16 sixty days of the holdover, in the absence of a rental
17 agreement, a month-to-month tenancy at the monthly rent
18 stipulated in the previous rental agreement shall prevail
19 beginning at the end of the first sixty days of holdover.

20 (f) Before the successor in interest to a foreclosed
21 property may terminate a tenancy under subsection (a), (c), or
22 (d) that is month-to-month or less than month-to-month and

1 commence a summary proceeding for possession, the successor in
2 interest shall notify the tenant of the foreclosure. Notice
3 shall be given at least one hundred twenty days prior to the
4 date of the summary proceeding for possession. Notwithstanding
5 subsection (e), after the giving of notice under this
6 subsection, for each day the tenant remains in possession after
7 termination of the rental agreement under subsection (a), (c),
8 or (d) and to the date of commencement of the summary proceeding
9 for possession, the tenant may be liable to the successor in
10 interest for a sum not to exceed the monthly rent under the
11 rental agreement and any other charges specified under the terms
12 of the rental agreement, computed and prorated on a daily basis.
13 Thereafter, the tenant may be liable to the successor in
14 interest for the sums authorized under subsection (e) for each
15 day the tenant remains in possession.

16 For the purposes of this subsection, "successor in
17 interest" means a fee simple owner or owners of the property
18 whose interest was acquired through a foreclosure action.

19 ~~(f)~~ (g) Any notice of termination initiated for the
20 purposes of evading the obligations of the landlord under
21 subsections 521-21(d) or (e) shall be void."

1 SECTION 4. Section 667-31, Hawaii Revised Statutes, is
2 amended by amending its title and subsection (a) to read as
3 follows:

4 "[~~§~~667-31~~§~~] **Conveyance of property on payment of**
5 **purchase price; distribution of sale proceeds.** (a) After the
6 purchaser completes the purchase by paying the full purchase
7 price and the costs for the purchase, the mortgaged property
8 shall be conveyed to the purchaser by a conveyance document.
9 The conveyance document shall be in a recordable form and shall
10 be signed by the foreclosing mortgagee in the foreclosing
11 mortgagee's name. [~~The mortgagor or borrower shall sign the~~
12 ~~conveyance document on his or her own behalf.~~]"

13 SECTION 5. Section 667-41, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[~~§~~667-41~~§~~] **Public information requirement.** (a) All
16 financial institutions, mortgagees, lenders, business entities
17 and organizations without limitation, and persons, who intend to
18 use the power of sale foreclosure under this part, under the
19 conditions required by this part, shall also develop
20 informational materials to educate and inform borrowers and
21 mortgagors.

1 ~~[These]~~ (b) The materials required under this section
2 shall be made available to the public, including ~~[the]~~
3 borrowers, at the time of application for a mortgage or loan, or
4 other contract containing a power of sale foreclosure provision.
5 ~~[These]~~ The materials, among other things, shall inform the
6 borrower that the financial institution and other business
7 entities and persons who are authorized under this part to
8 exercise the power of sale foreclosure, in the event of the
9 borrower's default, have the option of pursuing either a
10 judicial or nonjudicial foreclosure as provided by law. ~~[These]~~
11 The materials shall include a statement that a borrower is
12 entitled to representation by an attorney in foreclosure
13 proceedings and in negotiations to attempt to avoid foreclosure
14 proceedings in the event of a default on the mortgage by the
15 borrower. The materials shall also specify that mediation may
16 be available to assist the borrower and the mortgagee to reach
17 an agreement to avoid foreclosure in the event of a default on
18 the mortgage by the borrower. The informational materials shall
19 fully and completely explain these remedies."

20 SECTION 6. In codifying the new sections added by section
21 2 of this Act, the revisor of statutes shall substitute

1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 7. The provisions of this Act are severable. If
4 any provision of this Act or its application is held invalid,
5 that invalidity shall not affect other provisions or
6 applications that can be given effect without the invalid
7 provision or application.

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

10 SECTION 9. This Act shall take effect on July 1, 2050
11 provided that section 667-A, Hawaii Revised Statutes, contained
12 in section 2 of this Act shall be repealed on December 31, 2012.

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. Requires that mortgagees provide notice to borrowers of means of avoiding foreclosure in the event of a default. Effective 7/1/50. (SD1)