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# A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

1           SECTION 1. Chapter 521, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§521- Foreclosure; notice to tenant. (a) A  
5 successor-in-interest shall give written notice to a tenant or  
6 subtenant in possession of a rental housing unit to vacate the  
7 property within forty-five days from the date the notice is  
8 delivered to the tenant or subtenant, pursuant to subsection  
9 (b), before the tenant or subtenant may be removed from the  
10 property.

11           (b) The notice required in subsection (a) may be delivered  
12 by any of the following means:

- 13           (1) By delivering a copy to the tenant personally;  
14           (2) If the tenant is absent from the tenant's residence or  
15 usual place of business, by leaving a copy of the  
16 notice with a person of suitable age and discretion at  
17 either place and mailing a copy of the notice to the  
18 tenant at the tenant's place of residence; or



1       (3) If the tenant's whereabouts cannot be ascertained or a  
 2       person of suitable age or discretion cannot be found,  
 3       then by affixing a copy of the notice in a conspicuous  
 4       place at the rental housing unit and mailing a copy of  
 5       the notice to the tenant or current occupant at the  
 6       rental housing unit. Service upon a subtenant may be  
 7       made in the same manner."

8       SECTION 2. 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~~] If the  
15 landlord [~~fail~~] fails to commence summary possession proceedings  
16 within the first sixty days of the holdover, in the absence of a  
17 rental 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 a 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 forty-five days prior to the date of the  
4 summary proceeding for possession. Notwithstanding subsection  
5 (e), after giving notice under this subsection, for each day the  
6 tenant remains in possession after termination of the rental  
7 agreement under subsection (a), (c), or (d) and to the date of  
8 commencement of the summary proceeding for possession, the  
9 tenant may be liable to the successor-in-interest for a sum not  
10 to exceed the monthly rent under the rental agreement and any  
11 other charges specified under the terms of the rental agreement,  
12 computed and prorated on a daily basis. Thereafter, the tenant  
13 may be liable to the successor-in-interest for the sums  
14 authorized under subsection (e) for each day the tenant remains  
15 in possession.

16 As used in this subsection, "successor-in-interest" means a  
17 person who acquired an interest in the property through a  
18 foreclosure.

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 3. 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[7] 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  
18 newspaper having a general circulation in the county  
19 in which the mortgaged property lies; and

20 (2) Give any notices and do all acts as are authorized or  
21 required by the power contained in the mortgage.



1 (b) Copies of the notice required under subsection (a)

2 shall be:

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

4 (2) Posted on the premises not less than twenty-one days

5 before the day of sale.

6 (c) Upon the request of any person entitled to notice

7 pursuant to this section and sections 667-5.5 and 667-6, the

8 attorney, the mortgagee, successor, or person represented by the

9 attorney shall disclose to the requestor the following

10 information:

11 (1) The amount to cure the default, together with the

12 estimated amount of the foreclosing mortgagee's

13 attorneys' fees and costs, and all other fees and

14 costs estimated to be incurred by the foreclosing

15 mortgagee related to the default prior to the auction

16 within five business days of the request; and

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

18 auctioned.

19 (d) A tenant in possession of a mortgaged property shall

20 be notified fifteen days before the actual sale of the mortgaged

21 property.



1        [~~(d)~~] (e) Any sale, of which notice has been given as  
2        [~~aforsaid,~~] provided in this section, may be postponed from  
3        time to time by public announcement made by the mortgagee or by  
4        some person acting on the mortgagee's behalf. Upon request made  
5        by any person who is entitled to notice pursuant to section 667-  
6        5.5 or 667-6, or this section, the mortgagee or person acting on  
7        the mortgagee's behalf shall provide the date and time of a  
8        postponed auction~~[7]~~ or, if the auction is canceled, information  
9        that the auction was canceled. The mortgagee, within thirty  
10        days after selling the property in pursuance of the power, shall  
11        file a copy of the notice of sale and the mortgagee's affidavit,  
12        setting forth the mortgagee's acts in the premises fully and  
13        particularly, in the bureau of conveyances.

14        [~~(e)~~] (f) The affidavit and copy of the notice shall be  
15        recorded and indexed by the registrar, in the manner provided in  
16        chapter 501 or 502, as the case may be.

17        [~~(f)~~] (g) This section is inapplicable if the mortgagee is  
18        foreclosing as to personal property only."

19        SECTION 4. Statutory material to be repealed is bracketed  
20        and stricken. New statutory material is underscored.

21        SECTION 5. This Act shall take effect on July 1, 2009.





**Report Title:**

Landlord Tenant; Mortgage Foreclosures; Tenant Notification

**Description:**

Provides for notice to tenants of rental properties that are foreclosed upon. (HB202 HD1)

