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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. Section 667-1, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§667-1 Foreclosure by action.** The circuit court may  
4 assess the amount due upon a mortgage, whether of real or  
5 personal property, without the intervention of a jury, and shall  
6 render judgment for the amount awarded, and the foreclosure of  
7 the mortgage[-]; provided that, in the case of a real property  
8 foreclosure, the court shall allow at least                    days  
9 between the assessment and judgment. Execution may be issued on  
10 the judgment, as ordered by the court."

11           SECTION 2. Section 667-5, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13           "(a) When a power of sale is contained in a mortgage, and  
14 where the mortgagee, the mortgagee's successor in interest, or  
15 any person authorized by the power to act in the premises,  
16 desires to foreclose under power of sale upon breach of a  
17 condition of the mortgage, the mortgagee, successor, or person



1 shall allow at least \_\_\_\_\_ days after contact is made with  
2 the mortgagor before filing a notice of default.

3 The mortgagee, successor, or person authorized by the power  
4 of sale to act in the premises shall be represented by an  
5 attorney who is licensed to practice law in the [State] state  
6 and is physically located in the [~~State.~~] state. The attorney  
7 shall [+], at the appropriate time:

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

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

18 SECTION 3. 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 the default must be cured, which  
21 deadline date 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] state  
14          and physically located in the [~~State-~~] state."

15          SECTION 4. Section 667-25, Hawaii Revised Statutes, is  
16          amended by amending subsection (a) to read as follows:

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

19               (1) At least [~~sixty~~]                    days after the public  
20               notice of the public sale is distributed under section  
21               667-27; or



1 (2) At least [fourteen] days after the date of  
2 the publication of the third public notice  
3 advertisement under section 667-27."

4 SECTION 5. Section 667-27, Hawaii Revised Statutes, is  
5 amended as follows:

6 1. By amending subsection (b) to read:

7 "(b) The public notice shall also contain wording  
8 substantially similar to the following in all capital letters:

9 "THE DEFAULT UNDER THE MORTGAGE AGREEMENT MAY BE CURED  
10 NO LATER THAN [~~THREE~~] BUSINESS DAYS BEFORE  
11 THE DATE OF THE PUBLIC SALE OF THE MORTGAGED PROPERTY  
12 BY PAYING THE ENTIRE AMOUNT WHICH WOULD BE OWED TO THE  
13 FORECLOSING MORTGAGEE IF THE PAYMENTS UNDER THE  
14 MORTGAGE AGREEMENT HAD NOT BEEN ACCELERATED, PLUS THE  
15 FORECLOSING MORTGAGEE'S ATTORNEY'S FEES AND COSTS, AND  
16 ALL OTHER FEES AND COSTS INCURRED BY THE FORECLOSING  
17 MORTGAGEE RELATED TO THE DEFAULT, UNLESS OTHERWISE  
18 AGREED TO BETWEEN THE FORECLOSING MORTGAGEE AND THE  
19 BORROWER. THERE IS NO RIGHT TO CURE THE DEFAULT OR  
20 ANY RIGHT OF REDEMPTION AFTER THAT TIME. IF THE  
21 DEFAULT IS SO CURED, THE PUBLIC SALE SHALL BE  
22 CANCELED. ""



1           2. By amending subsection (d) to read:

2           "(d) The foreclosing mortgagee shall have the public  
3 notice of the public sale published in the classified section of  
4 a daily newspaper of general circulation in the county where the  
5 mortgaged property is located. The public notice shall be  
6 published once each week for three consecutive weeks (three  
7 publications). The public sale shall take place no sooner than  
8 [~~fourteen~~]                   days after the date of the publication of  
9 the third public notice advertisement."

10           SECTION 6. Section 667-28, Hawaii Revised Statutes, is  
11 amended by amending subsections (b) and (c) to read as follows:

12           "(b) If there is a postponement of the public sale of the  
13 mortgaged property, a new public notice of the public sale shall  
14 be published once in the format described in section 667-27.  
15 The new public notice shall state that it is a notice of a  
16 postponed sale. The public sale shall take place no sooner than  
17 [~~fourteen~~]                   days after the date of the publication of  
18 the new public notice. No sooner than [~~fourteen~~]  
19 days before the date of the public sale, a copy of the new  
20 public notice shall be posted on the mortgaged property or on  
21 such other real property of which the mortgaged property is a  
22 part, and it shall be mailed or delivered to the mortgagor, to



1 the borrower, and to any other person entitled to receive notice  
2 under section 667-27.

3 (c) The default under the mortgage agreement may be cured  
4 no later than [~~three~~] business days before the date of  
5 the public sale of the mortgaged property by paying the entire  
6 amount which would be owed to the foreclosing mortgagee if the  
7 payments under the mortgage agreement had not been accelerated,  
8 plus the foreclosing mortgagee's attorney's fees and costs, and  
9 all other fees and costs incurred by the foreclosing mortgagee  
10 related to the default, unless otherwise agreed to between the  
11 foreclosing mortgagee and the borrower. There is no right to  
12 cure the default or any right of redemption after that time. If  
13 the default is so cured, the public sale shall be canceled."

14 SECTION 7. Section 667-32, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:

16 "(b) The recitals in the affidavit required under  
17 subsection (a) may, but need not, be substantially in the  
18 following form:

19 "(1) I am duly authorized to represent or act on behalf of  
20 \_\_\_\_\_ (name of mortgagee) ("foreclosing  
21 mortgagee") regarding the following power of sale  
22 foreclosure. I am signing this affidavit in



1           accordance with the alternate power of sale  
2           foreclosure law (Chapter 667, Part II, Hawaii Revised  
3           Statutes);

4           (2) The foreclosing mortgagee is a "foreclosing mortgagee"  
5           as defined in the power of sale foreclosure law;

6           (3) The power of sale foreclosure is of a mortgage made by  
7           \_\_\_\_\_ (name of mortgagor)  
8           ("mortgagor"), dated \_\_\_\_\_, and recorded in the  
9           \_\_\_\_\_ (bureau of conveyances or office of  
10          the assistant registrar of the land court) as  
11          \_\_\_\_\_ (recordation information). The  
12          mortgaged property is located at:  
13          \_\_\_\_\_ (address or description of  
14          location) and is identified by tax map key number:  
15          \_\_\_\_\_. The legal description of the mortgaged  
16          property is attached as Exhibit "A". The name of the  
17          borrower, if different from the mortgagor, is  
18          \_\_\_\_\_ ("borrower");

19          (4) Pursuant to the power of sale provision of the  
20          mortgage, the power of sale foreclosure was conducted  
21          as required by the power of sale foreclosure law. The  
22          following is a summary of what was done:





- 1 (A) A notice of default was served on the mortgagor,
- 2 the borrower, and the following person:
- 3 \_\_\_\_\_ . The notice of default was
- 4 served on the following date and in the following
- 5 manner: \_\_\_\_\_ ;
- 6 (B) The date of the notice of default was \_\_\_\_\_
- 7 (date). The deadline in the notice for curing
- 8 the default was \_\_\_\_\_ (date), which deadline
- 9 date was at least [~~sixty~~] \_\_\_\_\_ days after
- 10 the date of the notice;
- 11 (C) The notice of default was recorded before the
- 12 deadline date in the \_\_\_\_\_ (bureau of
- 13 conveyances or office of the assistant registrar
- 14 of the land court). The notice was recorded on
- 15 \_\_\_\_\_ (date) as document no. \_\_\_\_\_. A
- 16 copy of the recorded notice is attached as
- 17 Exhibit "1";
- 18 (D) The default was not cured by the deadline date in
- 19 the notice of default;
- 20 (E) A public notice of the public sale was initially
- 21 published in the classified section of the
- 22 \_\_\_\_\_, a daily newspaper of



1           general circulation in the county where the  
 2           mortgaged property is located, once each week for  
 3           three consecutive weeks on the following dates:  
 4           \_\_\_\_\_. A copy of the affidavit of  
 5           publication for the last public notice of the  
 6           public sale is attached as Exhibit "2". The date  
 7           of the public sale was \_\_\_\_\_ (date). The  
 8           last publication was not less than [~~fourteen~~]  
 9                            days before the date of the public  
 10          sale;

11          (F) The public notice of the public sale was sent to  
 12          the mortgagor, to the borrower, to the state  
 13          director of taxation, to the director of finance  
 14          of the county where the mortgaged property is  
 15          located, and to the following:  
 16          \_\_\_\_\_. The public notice was sent on  
 17          the following dates and in the following manner:  
 18          \_\_\_\_\_. Those dates were after the  
 19          deadline date in the notice of default, and those  
 20          dates were at least [~~sixty~~]                days  
 21          before the date of the public sale;



1 (G) The public notice of the public sale was posted  
 2 on the mortgaged property or on such other real  
 3 property of which the mortgaged property is a  
 4 part on \_\_\_\_\_ (date). That date was at  
 5 least [~~sixty~~] \_\_\_\_\_ days before the date of  
 6 the public sale;

7 (H) Two public showings (open houses) of the  
 8 mortgaged property were held (or were not held  
 9 because the mortgagor did not cooperate);

10 (I) A public sale of the mortgaged property was held  
 11 on a business day during business hours on:  
 12 \_\_\_\_\_ (date), at \_\_\_\_\_ (time), at the  
 13 following location: \_\_\_\_\_. The  
 14 highest successful bidder was \_\_\_\_\_  
 15 \_\_\_\_\_ (name) with the highest  
 16 successful bid price of \$\_\_\_\_\_; and

17 (J) At the time the public sale was held, the default  
 18 was not cured and there was no circuit court  
 19 foreclosure action pending in the circuit where  
 20 the mortgaged property is located; and

21 (5) This affidavit is signed under penalty of perjury."



1 SECTION 8. Section 667-62, Hawaii Revised Statutes, is  
2 amended by amending subsections (a), (b), and (c) to read as  
3 follows:

4 "(a) When a power of sale is contained in a mortgage of a  
5 time share interest, the mortgagee or the mortgagee's successor  
6 in interest or any person authorized by the power to act in the  
7 premises, upon a breach of the condition, [~~may foreclose~~] shall  
8 allow at least \_\_\_\_\_ days after contact is made with the  
9 mortgagor before foreclosing upon the mortgage by:

10 (1) Giving notice of the intention to foreclose the  
11 mortgage, and of the sale of the mortgaged time share  
12 interest by:

13 (A) Certified mail, return receipt requested, to the  
14 mortgagor at the mortgagor's last known address,  
15 for mortgagors whose address is within the United  
16 States; or

17 (B) Mail to the mortgagor at the mortgagor's last  
18 known address, for mortgagors whose address is  
19 outside the United States; and

20 (C) Publication once in each of three successive  
21 weeks (three publications), the last publication  
22 to be not less than [~~fourteen~~] days



1 before the day of sale, in a newspaper of general  
2 circulation in the county in which the mortgaged  
3 time share interest lies; and

4 (2) Giving such notices and do all such acts as are  
5 authorized or required by the power contained in the  
6 mortgage.

7 Copies of the notice shall be filed with the state director of  
8 taxation and shall be posted on the premises of the time share  
9 interest not less than [~~twenty-one~~] days before the  
10 day of sale.

11 (b) The day of sale may be at any time after [~~four~~]  
12 weeks from the date of publication of the first  
13 notice pursuant to subsection (a)(1). Any sale of which notice  
14 has been given pursuant to subsection (a) may be postponed from  
15 time to time by public announcement made by the mortgagee or by  
16 some person acting on the mortgagee's behalf.

17 (c) Within [~~thirty~~] days after selling the time  
18 share interest pursuant to the power of sale, the mortgagee  
19 shall file a copy of the notice of sale and the mortgagee's  
20 affidavit in the bureau of conveyances. The affidavit may  
21 lawfully be made by any person duly authorized to act for the  
22 mortgagee and in such capacity conducting the foreclosure, and



1 shall set forth the mortgagee's acts in the time share interest  
2 fully and with particularity. The notice may contain a  
3 description of the mortgaged time share interest and the time  
4 and place proposed for its sale."

5 SECTION 9. Section 667-63, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) The mortgagee receiving the request shall thereafter  
8 give notice to all mortgage creditors who have timely submitted  
9 their request. The notice shall be sent by mail or otherwise  
10 communicated to the mortgage creditors not less than [~~seven~~]  
11 calendar days prior to the day of sale."

12 SECTION 10. This Act does not affect rights and duties  
13 that matured, penalties that were incurred, and proceedings that  
14 were begun, before its effective date.

15 SECTION 11. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored, except  
17 that the underscoring in the form in section 667-32, Hawaii  
18 Revised Statutes, as set forth in section 7 of this Act, is not  
19 indicating new statutory material and shall be set forth as part  
20 of the form.

21 SECTION 12. This Act shall take effect on July 1, 2020.



**Report Title:**  
Foreclosure

**Description:**  
Provides a vehicle to allow more time to a defaulting mortgagor facing foreclosure. Effective July 1, 2020. (HB304 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

