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# A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1           SECTION 1. Chapter 667, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:

4           "§667- Foreclosure counseling. (a) No later than  
5 thirty days prior to initiating any foreclosure under section  
6 667-5, a foreclosing mortgagee shall provide a mortgagor that is  
7 an owner-occupant of a mortgaged property that is held in fee  
8 simple and is subject to foreclosure, written notice of default  
9 and of the mortgagee's right to foreclose. The notice shall be  
10 delivered by first class mail to the address of the mortgaged  
11 property or to the address designated by the mortgagor by  
12 written notice to the mortgagee as the mortgagor's address for  
13 receipt of notice.

14           (b) Written notice required under this section shall  
15 advise the mortgagor of the availability of counseling through  
16 mortgage counseling agencies approved by the United States  
17 Department of Housing and Urban Development or its successor and



1 of the toll-free telephone number maintained by the United  
2 States Department of Housing and Urban Development or its  
3 successor to provide information regarding approved mortgage  
4 counseling services provided in the State."

5 SECTION 2. Section 667-5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 **"§667-5 Foreclosure under power of sale; notice; affidavit**  
8 **after sale.** (a) When a power of sale is contained in a  
9 mortgage, and where the mortgagee, the mortgagee's successor in  
10 interest, or any person authorized by the power to act in the  
11 premises, desires to foreclose under power of sale upon breach  
12 of a condition of the mortgage, the mortgagee, successor, or  
13 person shall be represented by an attorney who is licensed to  
14 practice law in the State and is physically located in the  
15 State. The attorney shall:

16 (1) Give notice of the mortgagee's, successor's, or  
17 person's intention to foreclose the mortgage and of  
18 the sale of the mortgaged property, by publication of  
19 the notice once in each of three successive weeks  
20 (three publications), the last publication to be not  
21 less than fourteen days before the day of sale, in a



1 newspaper having a general circulation in the county  
2 in which the mortgaged property lies; and

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

5 (b) Copies of the notice required under subsection (a)  
6 shall be:

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

8 (2) Posted on the premises not less than twenty-one days  
9 before the day of sale.

10 (c) Upon the request of any person entitled to notice  
11 pursuant to this section and sections 667-5.5 and 667-6, the  
12 attorney, the mortgagee, successor, or person represented by the  
13 attorney shall disclose to the [~~requester~~] requester the  
14 following information:

15 (1) The amount to cure the default, together with the  
16 estimated amount of the foreclosing mortgagee's  
17 attorneys' fees and costs, and all other fees and  
18 costs estimated to be incurred by the foreclosing  
19 mortgagee related to the default prior to the auction  
20 within five business days of the request; and

21 (2) The sale price of the mortgaged property once  
22 auctioned.



1        (d) Upon the request of the mortgagor, the mortgagee shall  
2 not initiate foreclosure proceedings until the mortgagee has  
3 mailed to the mortgagor, by way of registered or certified mail,  
4 a copy of the promissory note and mortgage document.

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

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

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



1 SECTION 3. Section 667-5.7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~§667-5.7~~ **Public sale.** At any public sale pursuant  
4 to section 667-5, the successful bidder at the public sale, as  
5 the purchaser, shall not be required to make a downpayment to  
6 the foreclosing mortgagee of more than ten per cent of the  
7 highest successful bid price. A public sale price of seventy  
8 per cent of the fair market value of the mortgaged property  
9 owned and occupied by a consumer, as established by an appraisal  
10 or broker's price opinion, shall be fair and reasonable."

11 SECTION 4. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect on July 1, 2050.



**Report Title:**

Mortgage Foreclosures; Notice; Public Sale Price

**Description:**

Requires thirty days written notice of the mortgagee's intent to foreclose and make the mortgagor aware of the availability of mortgage counseling; requires a foreclosing mortgagee to, upon the mortgagor's request, provide a copy of the promissory note and mortgage documents before initiating foreclosure proceedings; and clarifies that seventy per cent of an appraisal or banker's price opinion is a fair and reasonable public sale price. Effective 7/1/2050. (SD2)

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

