
A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1 SECTION 1. Section 667-22, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§667-22 Notice of default; contents; distribution. (a)

4 When the mortgagor or the borrower has breached the mortgage
5 agreement, and when the foreclosing mortgagee intends to conduct
6 a power of sale foreclosure under this part, the foreclosing
7 mortgagee shall prepare a written notice of default addressed to
8 the mortgagor, the borrower, and any guarantor. The notice of
9 default shall state:

- 10 (1) The name and address of the current mortgagee;
- 11 (2) The name and last known address of the mortgagor, the
12 borrower, and any guarantor;
- 13 (3) The address or a description of the location of the
14 mortgaged property, and the tax map key number of the
15 mortgaged property;
- 16 (4) The description of the default, and if the default is
17 a monetary default, an itemization of the delinquent
18 amount shall be given;



- 1 (5) The action that must be taken to cure the default,
2 including the amount to cure the default, together
3 with the estimated amount of the foreclosing
4 mortgagee's attorney's fees and costs, and all other
5 fees and costs estimated to be incurred by the
6 foreclosing mortgagee related to the default by the
7 deadline date;
- 8 (6) The date by which the default must be cured, which
9 deadline date shall be at least sixty days after the
10 date of the notice of default;
- 11 (7) That if the default is not cured by the deadline date
12 stated in the notice of default, the entire unpaid
13 balance of the moneys owed to the mortgagee under the
14 mortgage agreement will be due, that the mortgagee
15 intends to conduct a power of sale foreclosure to sell
16 the mortgaged property at a public sale without any
17 court action and without going to court, and that the
18 mortgagee or any other person may acquire the
19 mortgaged property at the public sale; and
- 20 (8) The name, address, including electronic address, and
21 telephone number of the attorney who is representing
22 the foreclosing mortgagee; provided that the attorney



1 shall be licensed to practice law in the State and
2 physically located in the State.

3 (b) The notice of default shall also contain wording
4 substantially similar to the following in all capital letters:

5 "IF THE DEFAULT ON THE LOAN CONTINUES AFTER THE
6 DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY
7 MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION
8 AND WITHOUT GOING TO COURT.

9 YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES.
10 FOR ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY
11 LICENSED IN THIS STATE.

12 AFTER THE DEADLINE DATE IN THIS NOTICE, TWO
13 PUBLIC SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE
14 LENDER WILL BE HELD, BUT ONLY IF ALL MORTGAGORS
15 (OWNERS) OF THE PROPERTY SO AGREE. TO SHOW THAT ALL
16 OWNERS AGREE TO ALLOW TWO OPEN HOUSES BY THE LENDER,
17 ALL OWNERS MUST SIGN A LETTER SHOWING THEY AGREE. ALL
18 OWNERS MUST SEND THE SIGNED LETTER TO THIS OFFICE AT
19 THE ADDRESS GIVEN IN THIS NOTICE.

20 THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED
21 LETTER BY THE DEADLINE DATE IN THIS NOTICE. THE
22 SIGNED LETTER MUST BE SENT TO THIS OFFICE BY CERTIFIED



1 MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE
2 PREPAID AND RETURN RECEIPT REQUESTED.

3 IF THE SIGNED LETTER IS NOT RECEIVED BY THIS
4 OFFICE BY THE DEADLINE DATE, THE PROPERTY WILL THEN BE
5 SOLD WITHOUT ANY OPEN HOUSES BEING HELD.

6 EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO
7 ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE
8 PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO
9 ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD
10 WITHOUT ANY OPEN HOUSES BEING HELD.

11 ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE
12 MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED
13 THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO
14 THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT
15 ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO
16 THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR
17 EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT
18 REQUESTED."

19 (c) The notice of default shall include a copy, signed by
20 both the mortgagor and the mortgagee, of the original mortgage
21 agreement and of any subsequent mortgage agreements, notes, or
22 documents that amended or altered the terms of the original



1 mortgage agreement signed by the mortgagor and the mortgagee or
2 any successors or assigns of the mortgagor and the mortgagee.

3 [~~e~~] (d) The foreclosing mortgagee shall have the notice
4 of default served on:

- 5 (1) The mortgagor and the borrower;
- 6 (2) Any prior or junior creditors having a recorded lien
7 on the mortgaged property before the recordation of
8 the notice of default under section 667-23;
- 9 (3) The state director of taxation;
- 10 (4) The director of finance of the county where the
11 mortgaged property is located; and
- 12 (5) Any other person entitled to receive notice under
13 section 667-5.5."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect on July 1, 2010.

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INTRODUCED BY:

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Report Title:

Alternate Power of Sale Foreclosure Procedure

Description:

Requires the mortgagee in an alternate power of sale foreclosure procedure to attach a copy of the original, signed mortgage agreement and any amendments thereto to the notice of default.

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

