
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 and is
6 physically located in the State. The attorney shall[+], at the
7 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 and
14 physically located in the 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.

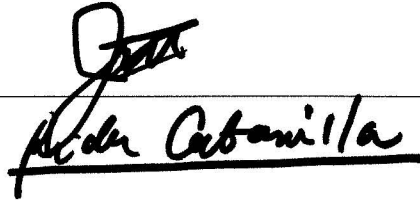
15 SECTION 11. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored, except
17 that the underscoring in the form in section 667-32, Hawaii
18 Revised Statutes, as set forth in section 7 of this Act, is not
19 indicating new statutory material and shall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



1 SECTION 12. This Act shall take effect upon its approval.

2

INTRODUCED BY:


A handwritten signature in black ink, appearing to read "Pedro Cabanilla", is written over a horizontal line. The signature is stylized and includes a large initial "P".

JAN 23 2009



Report Title:

Foreclosure

Description:

Provides a vehicle to allow more time to a defaulting mortgagor facing foreclosure.

