
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 through first class
10 mail at the address of the mortgaged property or at the address
11 designated by the mortgagor by written notice to the mortgagee
12 as the mortgagor's address for receipt of notice.
13 (b) Written notice required under this section shall
14 advise the mortgagor of the availability of counseling through
15 mortgage counseling agencies approved by the United States
16 Department of Housing and Urban Development or its successor and
17 of the toll-free telephone number maintained by the United

1 States Department of Housing and Urban Development or its
2 successor to provide information regarding approved mortgage
3 counseling services provided in the State."

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

6 **"§667-5 Foreclosure under power of sale; notice; affidavit**
7 **after sale.** (a) When a power of sale is contained in a
8 mortgage, and where the mortgagee, the mortgagee's successor in
9 interest, or any person authorized by the power to act in the
10 premises, desires to foreclose under power of sale upon breach
11 of a condition of the mortgage, the mortgagee, successor, or
12 person shall be represented by an attorney who is licensed to
13 practice law in the State and is physically located in the
14 State. The attorney shall:

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

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

3 (b) Copies of the notice required under subsection (a)
4 shall be:

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

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

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

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

19 (2) The sale price of the mortgaged property once
20 auctioned.

21 (d) Upon the request of the mortgagor, the mortgagee shall
22 not commence foreclosure proceedings until the mortgagee has

1 mailed to the mortgagor, by way of registered or certified mail,
2 a copy of the promissory note and mortgage document.

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

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

19 ~~(f)~~ (g) This section is inapplicable if the mortgagee is
20 foreclosing as to personal property only."

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

1 "~~§667-5.7~~ **Public sale.** At any public sale pursuant
2 to section 667-5, the successful bidder at the public sale, as
3 the purchaser, shall not be required to make a downpayment to
4 the foreclosing mortgagee of more than ten per cent of the
5 highest successful bid price. A public sale price of seventy
6 per cent of the latest real property tax assessed value of a fee
7 simple mortgaged property owned and occupied by a consumer shall
8 be reasonable and fair."

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on July 1, 2010.

12

Report Title:

Mortgage Foreclosures

Description:

Requires notice of intent to foreclose that includes notice of the availability of mortgage counseling. Requires a foreclosing mortgagee to provide a copy of the promissory note and mortgage documents upon request. Specifies that a public sale price of seventy per cent of assessed value is fair and reasonable.

(SD1)

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