
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 part to be appropriately designated and
3 to read as follows:

4 "PART

5 2011 NON-JUDICIAL FORECLOSURE PROCESS

6 §667-A Exercise of a power of sale. (a) Every transfer
7 of an interest in property, other than in trust, made only as a
8 security for the performance of another act, is to be deemed a
9 mortgage. Where, by a mortgage created of any estate in real
10 property, a power of sale is conferred upon the mortgagee to be
11 exercised after a breach of the obligation for which that
12 mortgage is a security, the power shall not be exercised until
13 all of the following apply:

14 (1) The mortgagee shall first file in the bureau of
15 conveyances a notice of default. That notice of
16 default shall include all of the following:

17 (A) A statement identifying the mortgage;



- 1 (B) A statement that a breach of the obligation for
- 2 which the mortgage is security has occurred; and
- 3 (C) A statement setting forth the nature of each
- 4 breach;

5 (2) Not less than three months shall elapse from the
6 filing of the notice of default; and

7 (3) After the lapse of the three months described in
8 paragraph (2), the mortgagee shall give notice of
9 sale, stating the time and place thereof.

10 (b) A recital in the deed executed pursuant to the power
11 of sale of compliance with all requirements of law regarding the
12 mailing of copies of notices or the publication of a copy of the
13 notice of default or the personal delivery of the copy of the
14 notice of default or the posting of copies of the notice of sale
15 or the publication of a copy thereof shall constitute prima
16 facie evidence of compliance with these requirements and
17 conclusive evidence thereof in favor of bona fide purchasers and
18 encumbrancers for value and without notice.

19 **§667-B Acceleration; residential real property;**
20 **declaration.** No clause in any mortgage on residential real
21 property that provides for the acceleration of the due date of
22 the obligation upon the sale or other transfer of the property



1 subject to the mortgage shall be valid unless the clause is set
2 forth in its entirety in the body of the mortgage and the
3 promissory note or other document evidencing the secured
4 obligation.

5 **§667-C Acceleration; residential real property; transfers**
6 **in title.** (a) A mortgagee may not accelerate the maturity date
7 of the principal and accrued interest on any loan secured by a
8 mortgage on residential real property solely by reason of any
9 one or more of the following transfers in the title to the real
10 property:

- 11 (1) A transfer resulting from the death of a mortgagor
12 where the transfer is to the spouse who is also a
13 mortgagor;
- 14 (2) A transfer by a mortgagor where the spouse becomes a
15 co-owner of the property;
- 16 (3) A transfer resulting from a decree of dissolution of
17 the marriage or legal separation or from a property
18 settlement agreement incidental to a decree that
19 requires the mortgagor to continue to make the loan
20 payments by which a spouse who is a mortgagor becomes
21 the sole owner of the property;



1 (4) A transfer by a mortgagor or mortgagors into an inter
2 vivos trust in which the mortgagor or mortgagors are
3 beneficiaries; or

4 (5) The real property is made subject to a junior
5 encumbrance or lien.

6 (b) Any waiver of this section by a mortgagor is void and
7 unenforceable and is contrary to public policy.

8 **§667-D Acceleration; failure to pay taxes, rents,**
9 **assessments, insurance premiums.** The provisions of any mortgage
10 on real property that authorize any mortgagee to accelerate the
11 maturity date of the principal and interest on any loan secured
12 thereby or to exercise any power of sale or other remedy
13 contained therein upon the failure of the mortgagor to pay, at
14 the times provided for under the terms of the mortgage, any
15 taxes, rents, assessments, or insurance premiums with respect to
16 the property or the loan, or any advances made by the mortgagee
17 shall be enforceable whether or not impairment of the security
18 interest in the property has resulted from the failure of the
19 mortgagor to pay the taxes, rents, assessments, insurance
20 premiums, or advances.

21 **§667-E Persons desiring notice of default and notice of**
22 **sale.** (a) Any person desiring a copy of any notice of default



1 and of any notice of sale under any mortgage with power of sale
2 upon real property, as to which mortgage the power of sale
3 cannot be exercised until these notices are given for the time
4 and in the manner provided in section 667-A, at any time
5 subsequent to recordation of the mortgage and prior to
6 recordation of notice of default thereunder, may cause to be
7 filed for record in the bureau of conveyances, a duly
8 acknowledged request for a copy of the notice of default and of
9 sale.

10 (b) The mortgagee shall do each of the following:

11 (1) Within ten business days following recordation of the
12 notice of default, mail a copy of the notice of
13 default with the recording date shown thereon,
14 addressed to each person whose name and address are
15 set forth in a duly recorded request therefor,
16 directed to the address designated in the request and
17 to each mortgagor at the mortgagor's last known
18 address if different than the address specified in the
19 mortgage with power of sale;

20 (2) At least twenty days before the date of sale, mail a
21 copy of the notice of sale, addressed to each person
22 whose name and address are set forth in a duly



1 recorded request therefor, directed to the address
2 designated in the request and to each mortgagor at the
3 mortgagor's last known address if different than the
4 address specified in the mortgage with power of sale;

5 (3) Within one month following recordation of the notice
6 of default, mail a copy of the notice of default with
7 the recording date shown thereon, addressed to each
8 person set forth as follows:

9 (A) The successor in interest, as of the recording
10 date of the notice of default, of the interest or
11 any portion thereof of the mortgagor of the
12 mortgage being foreclosed;

13 (B) The mortgagee of any mortgage recorded subsequent
14 to the mortgage being foreclosed, or recorded
15 prior to or concurrently with the mortgage being
16 foreclosed but subject to a recorded agreement or
17 a recorded statement of subordination to the
18 mortgage being foreclosed;

19 (C) The assignee of any interest of the mortgagee
20 described in subparagraph (B), as of the
21 recording date of the notice of default; and

22 (D) The state director of taxation; and



1 (4) At least twenty days before the date of sale, mail a
2 copy of the notice of sale addressed to each person to
3 whom a copy of the notice of default is to be mailed
4 as provided above, and addressed to the state director
5 of taxation.

6 (c) Any mortgage with power of sale hereafter executed
7 upon real property may contain a request that a copy of any
8 notice of default and a copy of any notice of sale thereunder
9 shall be mailed to any person or party thereto at the address of
10 the person given therein, and a copy of any notice of default
11 and of any notice of sale shall be mailed to each of these at
12 the same time and in the same manner required as though a
13 separate request therefor had been filed by each of these
14 persons as herein authorized. If any mortgage with power of
15 sale does not contain a mailing address of the mortgagor therein
16 named, and if no request for special notice by the mortgagor in
17 substantially the form set forth in this section has
18 subsequently been recorded, a copy of the notice of default
19 shall be published once a week for at least four weeks in a
20 newspaper of general circulation in the county in which the
21 property is situated, the publication to commence within ten
22 business days after the filing of the notice of default. In lieu



1 of publication, a copy of the notice of default may be delivered
2 personally to the mortgagor within the ten business days or at
3 any time before publication is completed, or by posting the
4 notice of default in a conspicuous place on the property and
5 mailing the notice to the last known address of the mortgagor.

6 **§667-F Default; cure; reinstatement.** (a) Whenever all or
7 a portion of the principal sum of any obligation secured by
8 mortgage on real property hereafter executed has, prior to the
9 maturity date fixed in that obligation, become due in payment of
10 interest or of any installment of principal, or by reason of
11 failure of mortgagor to pay, in accordance with the terms of
12 that obligation or of the mortgage, taxes, assessments, premiums
13 for insurance, or advances made by mortgagee in accordance with
14 the terms of that obligation or of the mortgage, the mortgagor
15 in the mortgaged property or any other person having a
16 subordinate lien or encumbrance of record thereon, at any time
17 within the period specified in subsection (b), if the power of
18 sale therein is to be exercised, or, otherwise at any time prior
19 to entry of the decree of foreclosure, may pay to the mortgagee
20 the entire amount due, at the time payment is tendered, with
21 respect to:



1 (A) All amounts of principal, interest, taxes,
2 assessments, insurance premiums, or advances
3 actually known to be in default;
4 (B) All amounts in default on recurring obligations
5 not shown in the notice of default; and
6 (C) All reasonable costs and expenses, which are
7 actually incurred in enforcing the terms of the
8 mortgage, and attorney's fees, other than the
9 portion of principal as would not then be due had
10 no default occurred; and
11 thereby cure the default theretofore existing, and thereupon,
12 all proceedings theretofore had or instituted shall be dismissed
13 or discontinued and the obligation and mortgage shall be
14 reinstated and shall be and remain in force and effect, the same
15 as if the acceleration had not occurred.

16 (b) Reinstatement of a monetary default under the terms of
17 an obligation secured by a mortgage may be made at any time
18 within the period commencing with the date of recordation of the
19 notice of default until five business days prior to the date of
20 sale set forth in the initial recorded notice of sale.

21 If the sale does not take place on the date set forth in
22 the initial recorded notice of sale or a subsequent recorded



1 notice of sale is required to be given, the right of
2 reinstatement shall be revived as of the date of recordation of
3 the subsequent notice of sale, and shall continue from that date
4 until five business days prior to the date of sale set forth in
5 the subsequently recorded notice of sale.

6 If the date of sale is postponed on the date of sale set
7 forth in either an initial or any subsequent notice of sale, or
8 is postponed on the date declared for sale at an immediately
9 preceding postponement of sale, and, the postponement is for a
10 period which exceeds five business days from the date set forth
11 in the notice of sale, or declared at the time of postponement,
12 then the right of reinstatement is revived as of the date of
13 postponement and shall continue from that date until five
14 business days prior to the date of sale declared at the time of
15 the postponement. Nothing contained herein shall give rise to a
16 right of reinstatement during the period of five business days
17 prior to the date of sale, whether the date of sale is noticed
18 in a notice of sale or declared at a postponement of sale.

19 (c) Pursuant to the terms of this section, no mortgagee
20 shall be liable in any manner to a mortgagor or any other person
21 having a subordinate lien or encumbrance of record thereon for
22 the failure to allow a reinstatement of the obligation secured



1 by a mortgage during the period of five business days prior to
2 the sale of the security property, and no such right of
3 reinstatement during this period is created by this section.
4 Any right of reinstatement created by this section is terminated
5 five business days prior to the date of sale set forth in the
6 initial date of sale, and is revived only as prescribed herein
7 and only as of the date set forth herein.

8 **§667-G Mortgagee's recoupment of costs and expenses prior**
9 **to foreclosure sale.** Commencing with the date that the notice
10 of sale is deposited in the mail and until the property is sold
11 pursuant to the power of sale contained in the mortgage, a
12 mortgagee may demand and receive from a mortgagor or any other
13 person having a subordinate lien or encumbrance of record those
14 reasonable costs and expenses, which are actually incurred in
15 enforcing the terms of the obligation.

16 **§667-H Junior mortgagee's right to information from senior**
17 **mortgagee; residential real property.** (a) The mortgagee of any
18 mortgage on residential real property may, with the written
19 consent of the mortgagor submit a written request to the
20 mortgagee of any lien which is senior to the lien of the
21 requesting mortgagee, for written notice of any or all
22 delinquencies of four months or more, in payments of principal



1 or interest on any obligation secured by that senior lien.
2 notwithstanding that the loan secured by the lien of the
3 requester is not then in default as to payments of principal or
4 interest. The request shall be sent to the mortgagee at the
5 address specified for the receipt of these payments, if known,
6 or, if not known, at the address shown on the recorded mortgage.

7 (b) The request for notice shall identify:

8 (1) The ownership or security interest of the requester;

9 (2) The date on which the interest of the requester will
10 terminate as evidenced by the maturity date of the
11 note of the mortgagor in favor of the requester;

12 (3) The name of the mortgagor and the name of the current
13 owner of the security property if different from the
14 mortgagor;

15 (4) The street address or other description of the
16 security property, the loan number of the loan secured
17 by the senior lien; and

18 (5) The name and address to which notice is to be sent.

19 The request shall remain valid until withdrawn in writing
20 and shall be applicable to all delinquencies as provided in this
21 section that occur prior to the date on which the interest of
22 the requester will terminate as specified in the request or the



1 expiration date, as appropriate. A request for notice shall be
2 effective for five years from the mailing of the request or the
3 recording of that request, whichever occurs later, and may be
4 renewed within six months prior to its expiration date by
5 sending the beneficiary or mortgagee, or agent, as the case may
6 be, at the address to which original requests for notice are to
7 be sent, and a copy of the earlier request for notice together
8 with a signed statement that the request is renewed. Upon
9 timely submittal of a renewal request for notice, the
10 effectiveness of the original request shall be continued for
11 five years from the time when it would otherwise have lapsed.
12 Succeeding renewal requests may be submitted in the same manner.

13 (c) Unless the delinquency has been cured, within fifteen
14 days following the end of four months from any delinquency in
15 payments of principal or interest on any obligation secured by
16 the senior lien which delinquency exists or occurs on or after
17 ten days from the mailing of the request for notice or the
18 recording of that request, whichever occurs later, the mortgagee
19 shall give written notice to the requester of the fact of any
20 delinquency and the amount thereof. Following the recording of
21 any notice of default pursuant to section 667-A with respect to



1 the same delinquency, no notice or further notice shall be
2 required pursuant to this section.

3 (d) If the mortgagee of any such senior lien fails to give
4 notice to the requester as required in subsection (c), and a
5 subsequent foreclosure occurs, the mortgagee shall be liable to
6 the requester for any monetary damage due to the failure to
7 provide notice within the time period specified in subsection
8 (c) which the requester has sustained from the date on which
9 notice should have been given to the earlier of the date on
10 which the notice is given or the date of the recording of the
11 notice of default under section 667-A.

12 (e) Any failure to comply with this section shall not
13 affect the validity of a sale in favor of a bona fide purchaser
14 or the rights of an encumbrancer for value and without notice.

15 (f) Upon satisfaction of an obligation secured by a junior
16 lien with respect to which a notice request was made pursuant to
17 this section, the mortgagee that made the request shall
18 communicate that fact in writing to the senior lienholder to
19 whom the request was made. The communication shall specify that
20 provision of notice pursuant to the prior request under this
21 section is no longer required.



1 §667-I Posting and publication of notice of sale; highest
2 offer. (a) Before any sale of property can be made under the
3 power of sale contained in any mortgage, notice of the sale
4 thereof shall accurately describe the location and whereabouts
5 of the property and shall be given by:

6 (1) Posting a written notice of the time of sale, the
7 street address, and the specific place at the street
8 address where the sale will be held, and describing
9 the property to be sold, at least twenty days before
10 the date of sale in one public place in the county
11 where the property is to be sold;

12 (2) Publishing a copy once a week for three consecutive
13 calendar weeks, the first publication to be at least
14 twenty days before the date of sale, in a newspaper of
15 general circulation published in the county in which
16 the property is situated;

17 (3) Posting a copy of the notice of sale in a conspicuous
18 place on the property to be sold at least twenty days
19 before the date of sale; and

20 (4) Recording the notice of sale with the bureau of
21 conveyances at least fourteen days prior to the date
22 of sale.



1 (b) All sales of real property pursuant to a power of sale
2 contained in any mortgage shall be held in the county where the
3 residence is located and shall be made to the person making the
4 highest offer. The mortgagee may receive offers during the ten-
5 day period immediately prior to the date of sale and if any
6 offer is accepted in writing by both the mortgagor and mortgagee
7 prior to the time set for sale, the sale shall be postponed to a
8 date certain and prior to which the property may be conveyed to
9 the person making the offer according to its terms. The offer
10 shall be revocable until accepted. The performance of the
11 offer, following acceptance, according to its terms, by a
12 conveyance of the property to the offeror, shall operate to
13 terminate any further proceeding under the notice of sale and it
14 shall be deemed revoked.

15 **§667-J Time and location for sale; postponements. (a)**
16 All sales of real property under the power of sale contained in
17 any mortgage shall be held in the county where the real property
18 is situated, and shall be made at auction, to the highest
19 bidder, between the hours of 9 a.m. and 5 p.m. on any business
20 day, Monday through Friday.

21 The sale shall commence at the time and location specified
22 in the notice of sale. Any postponement shall be announced at



1 the time and location specified in the notice of sale for
2 commencement of the sale or pursuant to subsection (c).

3 (b) When the real property consists of several known lots
4 or parcels, they shall be sold separately unless the mortgage
5 provides otherwise. When a portion of the real property is
6 claimed by a third person, who requires it to be sold
7 separately, the portion subject to the claim may be thus sold.
8 After sufficient real property has been sold to satisfy the
9 indebtedness, no more can be sold. If the real property under
10 power of sale is in two or more counties, the public auction
11 sale of all of the real property under the power of sale may
12 take place in any one of the counties where the real property is
13 located.

14 (c) There may be a postponement or postponements of the
15 sale proceedings at any time prior to the completion of the sale
16 for any period of time not to exceed a total of three hundred
17 sixty-five days from the date set forth in the notice of sale.
18 The mortgagee shall postpone the sale in accordance with any of
19 the following:

- 20 (1) Upon the order of any court of competent jurisdiction;
21 (2) If stayed by operation of law;



1 (3) By mutual agreement between the mortgagor and the
2 mortgagee.

3 (d) The notice of each postponement and the reason
4 therefor shall be given by public declaration by the mortgagee
5 at the time and place last appointed for sale. A public
6 declaration of postponement shall also set forth the new date,
7 time, and place of sale and the place of sale shall be the same
8 place as originally fixed by the mortgagee for the sale. No
9 other notice of postponement need be given; provided that the
10 sale shall be conducted no sooner than on the seventh day after
11 the earlier of:

- 12 (1) Dismissal of the action; or
13 (2) Expiration or termination of the injunction,
14 restraining order, or stay that required postponement
15 of the sale, whether by entry of an order by a court
16 of competent jurisdiction, operation of law, or
17 otherwise, unless the injunction, restraining order,
18 or subsequent order expressly directs the conduct of
19 the sale within that seven-day period.

20 (e) Notwithstanding the time periods established under
21 subsection (d), if postponement of a sale is based on a stay
22 imposed by title 11 of the United States Code, the sale shall be



1 conducted no sooner than the expiration of the stay imposed by
2 that title and the seven-day provision of subsection (d) shall
3 not apply.

4 **§667-K Irrevocable bids.** (a) Each and every bid made by
5 a bidder at a foreclosure sale under a power of sale contained
6 in a mortgage shall be deemed to be an irrevocable offer by that
7 bidder to purchase the property being sold under the power of
8 sale for the amount of the bid. Any second or subsequent bid by
9 the same bidder or any other bidder for a higher amount shall be
10 a cancellation of the prior bid.

11 (b) At the foreclosure sale the mortgagee shall have the
12 right:

13 (1) To require every bidder to show evidence of the
14 bidder's ability to pay the full amount of the
15 bidder's final bid in cash or check prior to, and as a
16 condition to, the recognizing of the bid, and to
17 conditionally accept and hold these amounts for the
18 duration of the sale; and

19 (2) To require the last and highest bidder to deposit, if
20 not deposited previously, the full amount of the
21 bidder's final bid in cash or check immediately prior
22 to the completion of the sale, the completion of the



1 sale being so announced by the fall of the hammer or
2 in another customary manner.

3 (c) If the mortgagee has not required the last and highest
4 bidder to deposit the cash or check in the manner set forth in
5 subsection (b)(2), the mortgagee shall complete the sale. If
6 the last and highest bidder then fails to deliver to the
7 mortgagee, when demanded, the amount of the final bid in cash or
8 check, that bidder shall be liable to the mortgagee for all
9 damages that the mortgagee may sustain by the refusal to deliver
10 to the mortgagee the amount of the final bid, including any
11 court costs and reasonable attorney's fees. If the last and
12 highest bidder wilfully fails to deliver to the mortgagee the
13 amount of the final bid in cash or check, that bidder shall be
14 guilty of a misdemeanor punishable by a fine of not more than
15 \$2,500.

16 (d) Any postponement or discontinuance of the sale
17 proceedings shall be a cancellation of the last bid.

18 (e) If this section conflicts with any other statute, then
19 this section shall prevail.

20 (f) It shall be unlawful for any person, acting alone or
21 in concert with others:



- 1 (1) To offer to accept or accept from another, any
- 2 consideration of any type not to bid; or
- 3 (2) To fix or restrain bidding in any manner, at a sale of
- 4 property conducted pursuant to a power of sale in a
- 5 mortgage; provided that it shall not be unlawful for
- 6 any person to state that a property subject to a
- 7 recorded notice of default or subject to a sale
- 8 conducted pursuant to this chapter is being sold in an
- 9 "as-is" condition.

10 In addition to any other remedies, any person committing any act
11 declared unlawful by this subsection or any act that would
12 operate as a fraud or deceit upon any mortgagor or junior lienor
13 shall, upon conviction, be fined not more than \$10,000 or
14 imprisoned for not more than one year, or both.

15 **§667-L Residential property; balloon payment loan.** (a)
16 This section applies to loans secured by a mortgage on real
17 property containing one to four residential units, at least one
18 of which at the time the loan is made is or is to be occupied by
19 the borrower if the loan is for a period in excess of one year
20 and is a balloon payment loan.

21 (b) At least ninety days but not more than one hundred and
22 fifty days prior to the due date of the final payment on a loan

1 that is subject to this section, the mortgagee shall mail to the
2 mortgagor, at the last known address of that person, a written
3 notice that shall include all of the following:

- 4 (1) A statement of the name and address of the person to
5 whom the final payment is required to be paid;
- 6 (2) The date on or before which the final payment is
7 required to be paid;
- 8 (3) The amount of the final payment, or if the exact
9 amount is unknown, a good faith estimate of the amount
10 thereof, including unpaid principal, interest and any
11 other charges, such amount to be determined assuming
12 timely payment in full of all scheduled installments
13 coming due between the date the notice is prepared and
14 the date when the final payment is due;
- 15 (4) If the borrower has a contractual right to refinance
16 the final payment, a statement to that effect.

17 If the due date of the final payment of a loan subject to this
18 section is extended prior to the time notice is otherwise
19 required under this subsection, this notice requirement shall
20 apply only to the due date as extended.

21 (c) Failure to provide notice as required by subsection

22 (b) does not extinguish any obligation of payment by the



1 borrower, except that the due date for any balloon payment shall
2 be the date specified in the balloon payment note, or ninety
3 days from the date of delivery or mailing of the notice required
4 by subsection (b), or the due date specified in the notice
5 required by subsection (b), whichever date is later. If the
6 operation of this section acts to extend the term of any note,
7 interest shall continue to accrue for the extended term at the
8 contract rate and payments shall continue to be due at any
9 periodic interval and on any payment schedule specified in the
10 note and shall be credited to principal or interest under the
11 terms of the note. Default in any extended periodic payment
12 shall be considered a default under terms of the note or
13 security instrument.

14 (d) The validity of any credit document or of any security
15 document subject to this section shall not be invalidated solely
16 because of the failure of any person to comply with this
17 section; provided that any person who wilfully violates this
18 section shall be liable in the amount of actual damages suffered
19 by the debtor as the proximate result of the violation, and, if
20 the debtor prevails in any suit to recover that amount, for
21 reasonable attorney's fees.



1 (e) No person may be held liable in any action under this
2 section if it is shown by a preponderance of the evidence that
3 the violation was not intentional and resulted from a bona fide
4 error notwithstanding the maintenance of procedures reasonably
5 adopted to avoid any such error.

6 (f) For purposes of this section:

7 A "balloon payment loan" is a loan that provides for a
8 final payment as originally scheduled that is more than twice
9 the amount of any of the immediately preceding six regularly
10 scheduled payments or that contains a call provision; provided,
11 however, that if the call provision is not exercised by the
12 holder of the loan, the existence of the unexercised call
13 provision shall not cause the loan to be deemed to be a balloon
14 payment loan.

15 "Call provision" means a loan contract term that provides
16 the holder of the loan with the right to call the loan due and
17 payable either after a specified period has elapsed following
18 closing or after a specified date.

19 **§667-M Notice of proceed upon the sale.** (a) Within
20 thirty days of the execution of the deed resulting from a
21 foreclosure sale in which there are proceeds remaining after
22 payment of the amounts required by section 667-N, the mortgagee



1 shall send written notice to all persons with recorded interests
2 in the real property as of the date immediately prior to the
3 foreclosure sale who would be entitled to notice pursuant to
4 section 667-E. The notice shall be sent mail in the manner
5 provided in section 667-E and inform each entitled person of
6 each of the following:

- 7 (1) That there has been a foreclosure sale of the
8 described real property;
- 9 (2) That the noticed person may have a claim to all or a
10 portion of the sale proceeds remaining after payment
11 of the amounts required by section 667-N;
- 12 (3) The noticed person may contact the mortgagee at the
13 address provided in the notice to pursue any potential
14 claim; and
- 15 (4) That before the mortgagee can act, the noticed person
16 may be required to present proof that the person a
17 claim to all or a portion of the sale proceeds
18 remaining after payment of the amounts required by
19 section 667-N.

20 (b) The mortgagee shall exercise due diligence to
21 determine the priority of the written claims received by the
22 mortgagee to the foreclosure sale surplus proceeds from those



1 persons to whom notice was sent pursuant to subsection (a).
2 Proceeds shall be paid within thirty days after the conclusion
3 of the notice period.

4 **§667-N Priority of distribution of proceeds.** (a) The
5 mortgagee shall distribute the proceeds, or a portion of the
6 proceeds, as the case may be, of the foreclosure sale in the
7 following order of priority:

8 (1) To the costs and expenses of exercising the power of
9 sale and of sale, including the payment of the
10 mortgagee's fees and attorney's fees;

11 (2) To the payment of the obligations secured by the
12 mortgage which is the subject of the foreclosure sale;

13 (3) To satisfy the outstanding balance of obligations
14 secured by any junior liens or encumbrances in the
15 order of their priority; and

16 (4) To the mortgagor.

17 (b) A mortgagee may charge costs and expenses incurred for
18 items such as mailing and a reasonable fee for services rendered
19 in connection with the distribution of the proceeds from a
20 foreclosure sale, including, but not limited to, the
21 investigation of priority and validity of claims and the
22 disbursement of funds."



1 SECTION 2. Section 667-5, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§667-5 Foreclosure under power of sale; notice;
4 affidavit after sale. (a) When a power of sale is contained in
5 a mortgage, and where the mortgagee, the mortgagee's successor
6 in interest, or any person authorized by the power to act in the
7 premises, desires to foreclose under power of sale upon breach
8 of a condition of the mortgage, the mortgagee, successor, or
9 person shall be represented by an attorney who is licensed to
10 practice law in the State and is physically located in the
11 State. The attorney shall:~~

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

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



1 ~~(b) Copies of the notice required under subsection (a)~~
2 ~~shall be:~~

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

4 ~~(2) Posted on the premises not less than twenty-one days~~
5 ~~before the day of sale.~~

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

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

17 ~~(2) The sale price of the mortgaged property once~~
18 ~~auctioned.~~

19 ~~(d) Any sale, of which notice has been given as aforesaid,~~
20 ~~may be postponed from time to time by public announcement made~~
21 ~~by the mortgagee or by some person acting on the mortgagee's~~
22 ~~behalf. Upon request made by any person who is entitled to~~



1 ~~notice pursuant to section 667-5.5 or 667-6, or this section,~~
2 ~~the mortgagee or person acting on the mortgagee's behalf shall~~
3 ~~provide the date and time of a postponed auction, or if the~~
4 ~~auction is canceled, information that the auction was canceled.~~
5 ~~The mortgagee within thirty days after selling the property in~~
6 ~~pursuance of the power, shall file a copy of the notice of sale~~
7 ~~and the mortgagee's affidavit, setting forth the mortgagee's~~
8 ~~acts in the premises fully and particularly, in the bureau of~~
9 ~~conveyances.~~

10 ~~(e) The affidavit and copy of the notice shall be recorded~~
11 ~~and indexed by the registrar, in the manner provided in chapter~~
12 ~~501 or 502, as the case may be.~~

13 ~~(f) This section is inapplicable if the mortgagee is~~
14 ~~foreclosing as to personal property only."]~~

15 SECTION 3. Section 667-5.5, Hawaii Revised Statutes, is
16 repealed.

17 [~~§667-5.5 Foreclosure notice. Notwithstanding any law or~~
18 ~~agreement to the contrary, any person who forecloses on a~~
19 ~~property within a planned community, a condominium apartment or~~
20 ~~unit, or an apartment in a cooperative housing project shall~~
21 ~~notify, by way of registered or certified mail, the board of~~
22 ~~directors of the planned community association, the association~~



1 ~~of owners of the condominium project, or the cooperative housing~~
2 ~~project in which the property to be foreclosed is located, of~~
3 ~~the foreclosure at the time foreclosure proceedings are begun.~~
4 ~~The notice, at a minimum, shall identify the property,~~
5 ~~condominium apartment or unit, or cooperative apartment which is~~
6 ~~the subject of the foreclosure and identify the name or names of~~
7 ~~the person or persons bringing foreclosure proceedings. This~~
8 ~~section shall not apply when the planned community association,~~
9 ~~condominium association of owners, or cooperative housing~~
10 ~~corporation is a party in a foreclosure action. This section~~
11 ~~shall not affect civil proceedings against parties other than~~
12 ~~the planned community association, association of owners, or~~
13 ~~cooperative housing corporation."]~~

14 SECTION 4. Section 667-5.7, Hawaii Revised Statutes, is
15 repealed.

16 ["~~[§667-5.7] Public sale. At any public sale pursuant to~~
17 ~~section 667-5, the successful bidder at the public sale, as the~~
18 ~~purchaser, shall not be required to make a downpayment to the~~
19 ~~foreclosing mortgagee of more than ten per cent of the highest~~
20 ~~successful bid price."]~~

21 SECTION 5. Section 667-6, Hawaii Revised Statutes, is
22 repealed.



1 ~~["§667-6 Notice to mortgage creditors. Whenever a~~
2 ~~mortgage creditor having a mortgage lien on certain premises~~
3 ~~desires notice that another mortgage creditor having a mortgage~~
4 ~~lien on the same premises intends to foreclose the mortgage and~~
5 ~~sell the mortgaged property pursuant to a power of sale under~~
6 ~~section 667-5, the mortgage creditor may submit a written~~
7 ~~request to the mortgagee foreclosing or who may foreclose the~~
8 ~~mortgage by power of sale, to receive notice of the mortgagee's~~
9 ~~intention to foreclose the mortgage under power of sale. This~~
10 ~~request for notice may be submitted any time after the~~
11 ~~recordation or filing of the subject mortgage at the bureau of~~
12 ~~conveyances or the land court, but must be submitted prior to~~
13 ~~the completion of the publication of the mortgagee's notice of~~
14 ~~intention to foreclose the mortgage and of the sale of the~~
15 ~~mortgaged property. This request shall be signed by the~~
16 ~~mortgage creditor, or its authorized representative, desiring to~~
17 ~~receive notice, specifying the name and address of the person to~~
18 ~~whom the notice is to be mailed. The mortgagee receiving the~~
19 ~~request shall thereafter give notice to all mortgage creditors~~
20 ~~who have timely submitted their request. The notice shall be~~
21 ~~sent by mail or otherwise communicated to the mortgage~~



1 ~~creditors, not less than seven calendar days prior to the date~~
2 ~~of sale.~~

3 ~~No request for copy of any notice pursuant to this section~~
4 ~~nor any statement or allegation in any such request nor any~~
5 ~~record thereof shall affect the title to real property or be~~
6 ~~deemed notice to any person that any party requesting copy of~~
7 ~~the notice has or claims any right, title, or interest in, or~~
8 ~~lien or charge upon the property described in the mortgage~~
9 ~~referred to therein."]~~

10 SECTION 6. Section 667-7, Hawaii Revised Statutes, is
11 repealed.

12 ~~["§667-7 Notice, contents; affidavit. (a) The notice of~~
13 ~~intention of foreclosure shall contain:~~

- 14 ~~(1) A description of the mortgaged property; and~~
15 ~~(2) A statement of the time and place proposed for the~~
16 ~~sale thereof at any time after the expiration of four~~
17 ~~weeks from the date when first advertised.~~

18 ~~(b) The affidavit described under section 667-5 may~~
19 ~~lawfully be made by any person duly authorized to act for the~~
20 ~~mortgagee, and in such capacity conducting the foreclosure."]~~

21 SECTION 7. Section 667-8, Hawaii Revised Statutes, is
22 repealed.



1 ~~["§667-8 Affidavit as evidence, when. If it appears by~~
2 ~~the affidavit that the affiant has in all respects complied with~~
3 ~~the requirements of the power of sale and the statute, in~~
4 ~~relation to all things to be done by the affiant before selling~~
5 ~~the property, and has sold the same in the manner required by~~
6 ~~the power, the affidavit, or a duly certified copy of the record~~
7 ~~thereof, shall be admitted as evidence that the power of sale~~
8 ~~was duly executed."]~~

9 SECTION 8. Section 667-9, Hawaii Revised Statutes, is
10 repealed.

11 ~~["§667-9 Dower barred, when. If the mortgage was executed~~
12 ~~by a man having at the time no lawful wife, or if the mortgagor~~
13 ~~being married, his wife joined in the deed in token of her~~
14 ~~release of dower, the sale of the property in the mode aforesaid~~
15 ~~shall be effectual to bar all claim and possibility of dower in~~
16 ~~the property."]~~

17 SECTION 9. Section 667-10, Hawaii Revised Statutes, is
18 repealed.

19 ~~["§667-10 Power unaffected by transfer; surplus after~~
20 ~~sale. No sale or transfer by the mortgagor shall impair or~~
21 ~~annul any right or power of attorney given in the mortgage to~~
22 ~~the mortgagee to sell or transfer the mortgaged property, as~~



1 ~~attorney or agent of the mortgagor, except as otherwise provided~~
2 ~~by chapters 501 and 502. When public sale is made of the~~
3 ~~mortgaged property under this chapter, the remainder of the~~
4 ~~proceeds, if any, shall be paid over to the owner of the~~
5 ~~mortgaged property, after deducting the amount of claim and all~~
6 ~~expenses attending the same."]~~

7 SECTION 10. Chapter 667, part II, Hawaii Revised Statutes,
8 is repealed.

9 SECTION 11. This Act shall apply to new mortgages, loans,
10 agreements, and contracts containing power of sale foreclosure
11 language executed by the borrowers or mortgagors after July 1,
12 2012.

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

16 SECTION 13. In codifying the new sections added by section
17 1 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 14. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 15. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Ricardo Cabanilla

Hernandez

Calvin K. Boy

[Signature]

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Kayou Kwang

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Report Title:

Mortgage Foreclosures

Description:

Repeals the regular and alternate non-judicial foreclosure processes. Implements a new non-judicial foreclosure process based upon the California deed of trust system.

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

